TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
APRIL 21, 2026
110 EAST MAIN STREET AND TELECONFERENCE
TOWN COUNCIL CHAMBERS
7:00 PM

Rob Moore, Mayor
Maria Ristow, Vice Mayor
Mary Badame, Council Member
Matthew Hudes, Council Member
Rob Rennie, 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). You may watch the Council meeting without providing public comment on Comcast cable channel 15 or at www.LosGatosCA.gov/TownYouTube. Members of the public may provide public comments for agenda items in-person or virtually by following the instructions listed at the end of the agenda.

Council Member Rob Rennie will be participating via teleconference pursuant to Government Code Section 54953(b)(3) from a location at Via di Gracciano nel Corso, 82, 53045 Montepulciano, Italy. The teleconference location shall be accessible to the public and the agenda will be posted at the teleconference location 72 hours before the meeting.

To watch and participate via Zoom, please go to:

https://losgatosca-gov.zoom.us/j/86730363468?pwd=pfKQoh92JnbwOYwFvZqIdSSWpjxYoK.1

Enter Passcode: 577971

CALL MEETING TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

PRESENTATIONS

i. Small Business Recognition
ii. National Poetry Month Proclamation
iii. Teen Center Presentation by Los Gatos Thrives

CONSENT ITEMS *(Consent Items are considered routine Town business and may be approved by one motion. Any member of the Council may remove an item 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 located at the end of this agenda. If an item is removed, the Mayor has the sole discretion to determine when the item will be heard. Each speaker is limited to no more than three (3) minutes or such time as authorized by the Mayor.)

1. **Approve the Minutes of the April 7, 2026, Closed Session Town Council Meeting.**
   RECOMMENDATION: Approve the Minutes of the April 7, 2026, Closed Session Town Council Meeting.

2. **Approve the Minutes of the April 7, 2026, Town Council Meeting.**
   RECOMMENDATION: Approve the Minutes of the April 7, 2026, Town Council Meeting.

3. **Receive the Monthly Financial and Investment Report for February 2026.**
   RECOMMENDATION: Receive the Monthly Financial and Investment Reports for February 2026.

4. **Authorize the Town Manager to Execute an Agreement for Construction Services with Saviano, Co., Inc., and Authorize a 10% Construction Contingency for a Total Project Authorization Amount of $107,801.38 (La Rinconada Sports Court Resurfacing Project).**
   RECOMMENDATION: Authorize the Town Manager to execute a construction agreement with Saviano, Co., Inc. in an amount of $98,001.25, to complete the La Rinconada Sports Court Resurfacing Project and authorize a 10% construction contingency of $9,800.13 for a total project authorization amount not to exceed $107,801.38.

5. **Authorize the Town Manager to Execute a Construction Contract with QLM, Inc. in the Amount of $646,336 with Change Order Authority Not to Exceed $64,634 (10% Contingency); Authorize the Town Manager to Execute a Agreement for Professional Services with Ninyo & Moore in the Amount of $18,390; Authorize the Town Manager to Execute a Agreement for Professional Services with Precision Works LLC DBA Precision Concrete Cutting in the Amount of $90,000; Approve the Plans and Specifications (Design Immunity); and Authorize Associated Budget Adjustments.**
   RECOMMENDATION: Staff recommends that the Town Council take the following actions in regard to the 2026 Curb, Gutter, and Sidewalk Maintenance Project (4118120; CIP No. 813-9921):
   a. Authorize the Town Manager to execute a public works contract with QLM, Inc. in the amount of $646,336, with authority to approve construction change orders in an amount not to exceed $64,634 (10% contingency);
   b. Authorize the Town Manager to execute an Agreement for Professional Services with Ninyo & Moore for Materials Testing Services for a total agreement in an amount not to exceed $18,390;
   c. Authorize the Town Manager to execute an Agreement for Services with Precision Works LLC DBA Precision Concrete Cutting for Sidewalk Cutting Services for a total agreement in an amount not to exceed $90,000;
   d. Approve the project construction plans and specifications per Government Code 830.6 (Design Immunity);
   e. Find the project Categorically Exempt under Section 15301(c) of the California Environmental Quality Act; and

f. Authorize An Expenditure Budget Transfer in the Amount of $439,706 from the Annual Street Repair and Resurfacing Project (4118155, CIP No. 811-9901) to the Annual Curb, Gutter and Sidewalk Maintenance Project (4118120, CIP No. 813-9921).

6. **Adopt a Resolution Describing Improvements and Directing the Preparation of the Town Engineer's Report for Fiscal Year 2026-27 for Landscape and Lighting Assessment Districts No. 1 and 2.**
RECOMMENDATION: Adopt a Resolution describing improvements and directing the preparation of the Town Engineer's Report for Fiscal Year 2026-27 for Landscape and Lighting Assessment Districts No. 1 and 2.

7. **Authorize the Town Manager to Execute a Three-Year Agreement for Professional Services with Disability Access Consultants, LLC, in an Amount Not to Exceed $50,000 Annually and $150,000 Total.**
RECOMMENDATION: Authorize the Town Manager to execute a three-year agreement for Professional Services with Disability Access Consultants, LLC, for ADA Transition Plan implementation and support services in an amount not to exceed $50,000 annually and $150,000 total.

8. **Authorize the Town Manager or Designee to Enter into a Second Amendment to the Contract for Litigation Legal Services for FY 2025-26 with Goldfarb and Lipman to Increase the Contract Amount by $100,000, for a Total Contract Amount Not to Exceed $450,000.**
RECOMMENDATION: Authorize the Town Manager or designee to enter into a Second Amendment to the Contract for Litigation Legal Services for FY 2025-26 with Goldfarb and Lipman in an amount not to exceed $450,000.

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. Town resources may not be used to facilitate audio or visual presentations. To ensure all agenda items are heard, this portion of the agenda is limited to 30 minutes. In the event additional speakers were not 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 *(Presentations during the Public Hearings portion of the agenda by appellants and applicants, including any expert or consultant assisting with the presentation, shall be limited to a total of no more than five (5) minutes for all speakers. Appellants and applicants shall be provided no more than three (3) minutes to rebut at the end of the public hearing. Visual presentations that require the use of staff resources shall be limited to appellants and applicants. Members of the public testifying at public hearings shall be limited to no more than three (3) minutes, or such time as authorized by the Mayor.)*

9. **Following a Court Order, Hear the Appeals Submitted by Applicants for (1) Luxe and (2) Arya Projects Regarding Government Code Section 65941.1's Deadline for Submittal of Complete Planning Applications for Proposed Projects at (1) 14849 Los Gatos Boulevard, and (2) 15300 and 15330 Los Gatos Boulevard.**
RECOMMENDATION: Following a court order, hear the appeals regarding Government Code Section 65941.1's deadline for submittal of complete Planning Applications for proposed projects at (1) 14849 Los Gatos Boulevard (Architecture and Site Application S-24-008 and Subdivision Application M-24-005) and (2) 15300 and 15330 Los Gatos Boulevard (Architecture and Site Application S-24-018, Conditional Use Permit Application U-24-007, and Subdivision Application M-24-009) and adopt Resolutions applying the Superior Court determination that multiple 90-Day resubmission periods to respond to successive incompleteness determinations are allowed.

OTHER BUSINESS *(Each speaker is limited to no more than three (3) minutes or such time as authorized by the Mayor.)*

10. **Receive the Fiscal Condition Assessment and Fiscal Impact Analysis for Proposed and Planned Growth Memorandums and Provide Feedback.**
RECOMMENDATION: Receive the Fiscal Condition Assessment with Five-Year and Long-Term Financial Projections and Fiscal Impact Analysis for Proposed and Planned Growth Memorandums and provide feedback for the Town Council.

COUNCIL MATTERS *(Members of the public who wish to speak on matters listed under Council Matters may do so under Verbal Communications.)*

MANAGER MATTERS

ATTORNEY MATTERS AND 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 require special assistance to participate in this meeting, please contact the Clerk's Office at (408) 354-6834. Please notify the Clerk's Office at least two (2) business days prior to the meeting so that reasonable arrangements can be made to ensure accessibility in compliance with 28 CFR §35.102-35.104 and related provisions.

NOTICE REGARDING SUPPLEMENTAL MATERIALS - Materials related to an item on this agenda submitted to the Town Council after initial distribution of the agenda packets are available for public inspection in the Clerk's Office at Town Hall, 110 E. Main Street, Los Gatos and on the Town's website at www.losgatosca.gov. Town Council agendas and related materials can be viewed online at https://losgatos-ca.municodemeetings.com/.

HOW TO PARTICIPATE

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 public is welcome to provide oral comments in real-time during the meeting in three ways:

- **Zoom Webinar (Online)**: To participate from a PC, Mac, iPad, iPhone or Android device. Please use this URL to join: https://losgatosca-gov.zoom.us/j/86730363468?pwd=pfKQoh92JnbwOYwFvZqIdSSWpjxYoK.1 Passcode: **577971**. You can also type in **867 3036 3468** in the "Join a Meeting" page on the Zoom website at www.zoom.us and use passcode **577971**. When the Mayor announces the item for which you wish to speak, click the "raise hand" feature in Zoom.
- **Telephone**: To participate by phone please dial 1 (408) 961-3927 or 1 (855) 758-1310 for US Toll-free and use Meeting ID: **867 3036 3468**. When the Mayor announces the item for which you wish to speak, press *9 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 submit it to the Town Clerk before the meeting or when the Mayor announces the item for which you wish to speak.

NOTES: Comments will be limited to three (3) minutes or less at the Mayor's discretion. If you are unable to participate in real-time, you may email to Clerk@losgatosca.gov the subject line "Public Comment Item #__ " (insert the item number relevant to your comment).

Deadlines to submit written comments are:

-3:00 p.m. the Thursday before the Council meeting for inclusion in the agenda packet.
-3:00 p.m. the Friday and Monday before the Council meeting for inclusion in an addendum.
-11:00 a.m. the day of the Council meeting for inclusion in a desk item.

TOWN OF LOS GATOS
COUNCIL CLOSED SESSION MINUTES

MEETING DATE: 04/21/2026
ITEM NO: 1

DRAFT
Minutes of the Town Council Special Meeting Closed Session
Tuesday, April 7, 2026

The Town Council of the Town of Los Gatos conducted a special meeting in person to hold a Closed Session.

MEETING CALLED TO ORDER AT APPROXIMATELY 5:45 P.M.

ROLL CALL

Present: Mayor Rob Moore, Vice Mayor Maria Ristow, Council Member Mary Badame, Council Member Matthew Hudes, and Council Member Rob Rennie.
Absent: None

VERBAL COMMUNICATIONS (ONLY ON ITEMS ON THE AGENDA)

The following individuals spoke on the item:

1. Member of the Public

Mayor Moore announced the closed session title as listed on the agenda.

THE TOWN COUNCIL MOVED TO CLOSED SESSION ON THE FOLLOWING ITEMS:

1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION Significant exposure to litigation pursuant to subdivision (d)(2) of Government Code Section 54956.9: 2 cases.

There was no reportable action.

ADJOURNMENT

The meeting adjourned at approximately 6:50 p.m.

Attest:

____

Jenna De Long, Deputy Town Clerk

Submitted by:

____

Chris Constantin, Town Manager

110 E. Main Street Los Gatos, CA 95030 ● 408-354-6832
www.losgatosca.gov

TOWN OF LOS GATOS
COUNCIL AGENDA REPORT

MEETING DATE: 04/21/2026
ITEM NO: 2

DRAFT
Minutes of the Town Council Meeting
Tuesday, April 7, 2026

The Town Council of the Town of Los Gatos conducted a regular meeting in person and via teleconference.

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

ROLL CALL

Present: Mayor Rob Moore, Vice Mayor Maria Ristow, Council Member Mary Badame, Council Member Rob Rennie, Council Member Matthew Hudes.
Absent: None.

PLEDGE OF ALLEGIANCE

Lucas LeJanairo led the Pledge of Allegiance. The audience was invited to participate.

PRESENTATIONS

Mayor Moore presented an Arbor Day proclamation.

Valley Transportation Authority (VTA) gave a presentation on VTA's draft local investment plan.

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

1. Approve the Minutes of the March 16, 2026, Special Joint Study Session Meeting of the Town Council and Finance Commission.
2. Approve the Minutes of the March 16, 2026, Town Council Special Meeting.
3. Approve the Minutes of the March 17, 2026, Closed Session Town Council Meeting.
4. Approve the Minutes of the March 17, 2026, Special Joint Study Session Meeting of the Town Council and Planning Commission.
5. Approve the Minutes of the March 17, 2026, Town Council Meeting.
6. Approve the Minutes of the March 30, 2026, Closed Session Town Council Meeting.
7. Authorize the Town Manager to Execute a Construction Contract with QLM, Inc. in the Amount of $163,538 with Change Order Authority Not to Exceed $16,354; Approve the Plans and Specifications (Design Immunity), and Authorize the Town Manager to Execute a Professional Services with Ninyo & Moore for an Amount Not to Exceed $9,880 (Oak Meadow Bandstand Area Improvements Project).
8. Authorize the Town Manager to Execute a First Amendment to the Agreement for Consultant Services with CSG Consultants, Inc., to Extend the Term of the Agreement.
9. Authorize the Town Manager to Execute a First Amendment to the Agreement for Services with Bear Electrical Solutions LLC to Increase the Scope of Work and Compensation for

Fiscal Year 2025-26 and Fiscal Year 2026-27 for a Total Agreement Amount Not to Exceed $982,907.

10. Authorize the Town Manager to Execute a Professional Services Agreement with Dudek for the Town-Wide Evacuation Plan, in an Amount Not to Exceed $346,930.00; Execute a Cost Sharing Agreement with Monte Sereno, totaling $56,039.50; and Approve the Associated Revenue Budget Adjustment.
11. Authorize the Town Manager to Execute a First Amendment to an Agreement with NHA Advisors, LLC for Fiscal Condition Analysis, Fiscal Impact Analysis, and Asset Liability Management Studies to Extend the Contract to June 30, 2026.
12. Adopt Resolutions to Join the California Joint Powers Insurance Authority (CJPIA), Participate in Its Liability Protection Program, Delegate Claims Handling Authority, Authorize Administrative Implementation, and Appoint the Mayor as Voting Delegate and the Town Manager and Town Attorney as Alternates. **RESOLUTIONS 2026-012, 2026-013, 2026-014, and 2026-015**
13. Authorize the Town Manager to Negotiate and Execute an Art Transfer Agreement with the Los Gatos Museum Association (NUMU) to Transfer a Sculpture and Plaque.

Mayor Moore opened public comment.

The following individuals spoke on the consent items:

1. Carin Yamamoto (Items 1, 2, 4, 5, 7, 9, and 10)
2. Member of the Public (Items 1-4, 10, and 12)
3. Sharon Childs (Item 7)

Mayor Moore closed public comment.

(Video time: 00:41:46)
MOTION: **Motion** by **Council Member Rennie** to approve the consent calendar consisting of items one through thirteen. **Seconded** by **Council Member Hudes.**

VOTE: **Motion passed unanimously.**

VERBAL COMMUNICATIONS

The following individuals spoke during verbal communications:

1. Muffi Ghadiali
2. Jeff Suzuki
3. Sue Ann Lorig
4. Keith Blaine
5. Susan Bassi
6. Member of the Public

7. Monica Faria

PUBLIC HEARINGS

14. Adopt a resolution approving the Comprehensive Fee Schedule for FY 2026-27 to continue certain Department fees, rates, and charges, and amend certain fees, rates, and charges for FY 2026-27; and Adopt a resolution approving the Administrative Fine and Penalty Schedule for FY 2026-27 to continue certain department fines and amend certain fines for FY 2026-27. **RESOLUTIONS 2026-016 and 2026-017**

Kristina Alfaro, Administrative Services Director, gave a presentation on the proposed changes to the fee schedule.

Mayor Moore opened public comment.

The following individuals spoke on this item:

1. Carin Yamamoto

Mayor Moore closed public comment.

(Video time: 01:32:43)

MOTION: **Motion** by **Council Member Badame** to approve the comprehensive fee schedule effective July 1, 2026, and the administrative fine and penalty schedule effective July 1, 2026, and adopt the related resolutions in attachment 1 and attachment 4. **AMENDMENTS**: (1) to pull the adopt a bench fee until [Council] receive(s) further information from staff on two things: what have we actually been charging, and whether there are any lower cost alternatives; and (2) to increase the fine for the fireworks first time offender to $1,000, the second offence $1,250, and the third offence $1,500. **Seconded** by **Council Member Rennie.**

VOTE: **Motion passed unanimously.**

OTHER BUSINESS

15. Receive the West Valley Homeless Services Feasibility Study and Adopt a Resolution of Intent to Support Participation in a West Valley Homeless Services Implementation Task Force. **RESOLUTION 2026-018**

Joel Paulson, Community Development Director, introduced consultant Vera Gil, from Good City Company. Consultant Vera Gil gave a presentation on the task force.

Mayor Moore opened public comment.

The following individuals spoke on this item:

1. Carin Yamamoto
2. Lee Fagot

Mayor Moore closed public comment.

(Video time: 02:08:28)
MOTION: **Motion** by **Council Member Badame** to adopt the resolution to support the Town's participation in a West Valley Homeless Services Implementation Task Force per attachment 4 and receive the [Feasibility] Study. **Seconded** by **Vice Mayor Ristow.**

VOTE: Motion passed unanimously.

Mayor Moore called a recess at 9:17 p.m.
Mayor Moore reconvened the meeting at 9:29 p.m.

16. Approve Legislative Priorities with Regard to State, Federal, and Regional Legislation.

Katy Nomura, Assistant Town Manager, presented the staff report.

Mayor Moore opened public comment.

No one spoke.

Mayor Moore closed public comment.

(Video time: 02:50:37)
MOTION: **Motion** by **Council Member Badame** to set the Town's Strategic Priorities as the Town's Legislative Priorities with regard to state, federal, and regional legislation. **Seconded** by **Vice Mayor Ristow.**

VOTE: Motion passed 4-0-1. Council Member Hudes abstained.

COUNCIL MATTERS

- Council Member Badame stated she participated in a meeting of a resident wildfire advisory group; met with the Committee Chair of the Los Gatos Thrives Foundation; and participated in a Silicon Valley Animal Control Authority (SVACA) Board meeting.
- Vice Mayor Ristow stated she attended the Silicon Valley at Home Elected Officials Roundtable, the California Department of Housing and Community Development (HCD) Advisory Commission meeting; spoke at NUMU during the ArtNow preview; attended the Wet Valley Community Services Chefs of Compassion fundraiser, the Los Gatos Chamber of Commerce Gala; met with potential Town Council candidates, and a representative for a developer who is interested in the Alberto Way property.

- Council Member Hudes stated he met with the Los Gatos Thrives Foundation; participated in the Sourcewise Advisory Committee, and participated in the Silicon Valley Regional Interoperability Authority Board of Directors meeting.
- Council Member Rennie stated he attended the Los Gatos Chamber of Commerce Gala; and met with the developer for Alberto Way.
- Mayor Moore stated he attended the Association of Bay Area Governments (ABAG) Executive Committee meeting, Gail Pelerin's Woman of the Year celebration, the Cat's Hill Bike Race, the Los Gatos Thrives Foundation monthly movie screening event, three Passover Seders, a meet and greet for Kiwanis, the Kiwanis easter egg hunt, the Wet Valley Community Services Chefs of Compassion fundraiser, the Los Gatos Chamber of Commerce Gala, an open house for L'Aterlier, and the grand opening for the European Piano Academy.

MANAGER MATTERS

- Commented on the Chamber of Commerce Event and the recognition that the Town Library received during the event.
- Stated the Town complies with the California Values Act but will take a case-by-case approach to immigration enforcement requests. Review of discretionary federal requests will be centralized to allow Town management to determine appropriate actions and provide staff direction, while considering specific circumstances and public safety.

ATTORNEY MATTERS AND CLOSED SESSION REPORT

Gabrielle Whelan, Town Attorney

- Stated the Town Council met in closed session earlier in the evening to discuss two matters of anticipated litigation, pursuant to Government Code Section 54956.9, and there is no reportable action taken.

ADJOURNMENT

The meeting adjourned at 10:03 p.m.

Respectfully Submitted:

____

Jenna De Long, Deputy Town Clerk

TOWN OF LOS GATOS
COUNCIL AGENDA REPORT

MEETING DATE: 04/21/2026
ITEM NO: 3

DATE: April 21, 2026

TO: Mayor and Town Council

FROM: Chris Constantin, Town Manager

SUBJECT: **Receive the Monthly Financial and Investment Report for February 2026**

RECOMMENDATION: Receive the Monthly Financial and Investment Reports for February 2026.

FISCAL IMPACT:

There is no fiscal impact from the receipt of this report.

STRATEGIC PRIORITY:

This item aligns with the strategic priority to ensure prudent financial management.

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 Administrative Services Director assumes the Town Treasurer role. Attachment 1 contains the February 2026 monthly Financial and Investment Report, which fulfills this requirement.

The February 2026 Monthly Financial and Investment Report was received by the Finance Commission at its April 13, 2026, regular meeting.

DISCUSSION:

The February 2026 Monthly Financial and Investment Report includes a Fund Balance Schedule, representing estimated funding available for all funds at the beginning of the fiscal year and at

PREPARED BY: Eric Lemon
Finance and Accounting Manager

Reviewed by: Town Manager, Town Attorney, and Administrative Services Director

SUBJECT: Monthly Financial and Investment Report for February 2026
DATE: April 13, 2026

the end of the respective month.

As operations fluctuate month to month, there are differences between balances in one month and balances in another. Such differences may be significant due to the type of activity in those months and the timing of any estimates used in the presentation, based on the information available. This is demonstrated by the attached February 28, 2026, fund balance report.
In the case that the differences are extraordinary and unanticipated, we will ensure we present more information to explain the differences.

The difference between the February 28 and January 31 estimated fund balance is due to normal day-to-day fluctuations in revenues and expenditures.

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.

As illustrated in the summary below, Ending Fund Balance = Cash + Assets - Liabilities, which represents the actual amount of funds available.

Reconciling Cash to Fund Balance - February 28, 2026		
Total Cash	$	77,392,752
Plus: Assets	$	13,508,339
Less: Liabilities	$	(23,900,731)
Estimated Fund Balance	**$**	**67,000,360**

As of February 28, 2026, the Town's financial position (Cash Plus Other Assets $90.90M, Liabilities $23.90M, and Fund Equity $67.00M) remains strong, and the Town has sufficient funds to meet the cash demands for the next six months.

As of February 28, 2026, the Town's weighted portfolio yield for investments under management was 4.20%, which was 33 basis points above the Local Agency Investment Fund (LAIF) yield of 3.87% for the same reporting period. Currently, the LAIF portfolio's weighted average maturity (WAM) is 258 days versus the Town's longer WAM of 640 days. The Town's assets under management reflect the Town's selection of the 1-3 year benchmark investment strategy through the Town's investment advisor to lock in higher yields at the top of the interest rate cycle. The longer maturities are 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 4.20% at the close of February was 1 basis point lower when compared to the prior month's return of 4.21% reported as of January 31, 2026.

Since February 2025, LAIF yields decreased from 433 basis points (4.33%) to 387 basis points (3.87%) through the end of February 2026. The State LAIF pool typically lags the market when current market yields are either increasing or decreasing.

The Federal Open Market Committee implemented three rate cuts in 2025. The first, on September 17, reduced the federal funds target range by 25 basis points to 4.00%–4.25% amid slower economic growth in the first half of the year and emerging signs of labor-market softening. A second 25-basis-point cut on October 29 brought the range down to 3.75%–4.00% as labor-market weakness and broader economic uncertainty persisted. At its December 10 meeting, the Committee approved a final 25-basis-point reduction to 3.50%–3.75%, reflecting ongoing concerns about the economic outlook. These adjustments align with the FOMC's objective to promote maximum employment and achieve a year-over-year inflation target of 2%.

Labor market conditions continued to reflect a "low hiring, low firing" regime. Revisions to 2025 employment figures showed only 181,000 new jobs added for the full year, the lowest annual total outside of recession years since 2003. Initial jobless claims eased from 231,000 in early February due to severe winter weather to 212,000 by month-end. Continuing claims fell to 1.833 million in mid-February, the lowest level since June 2024.

The Town's investments are in compliance with the Town's Investment Policy dated March 18, 2025, and are also in compliance with the requirements of Section 53600 et 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:

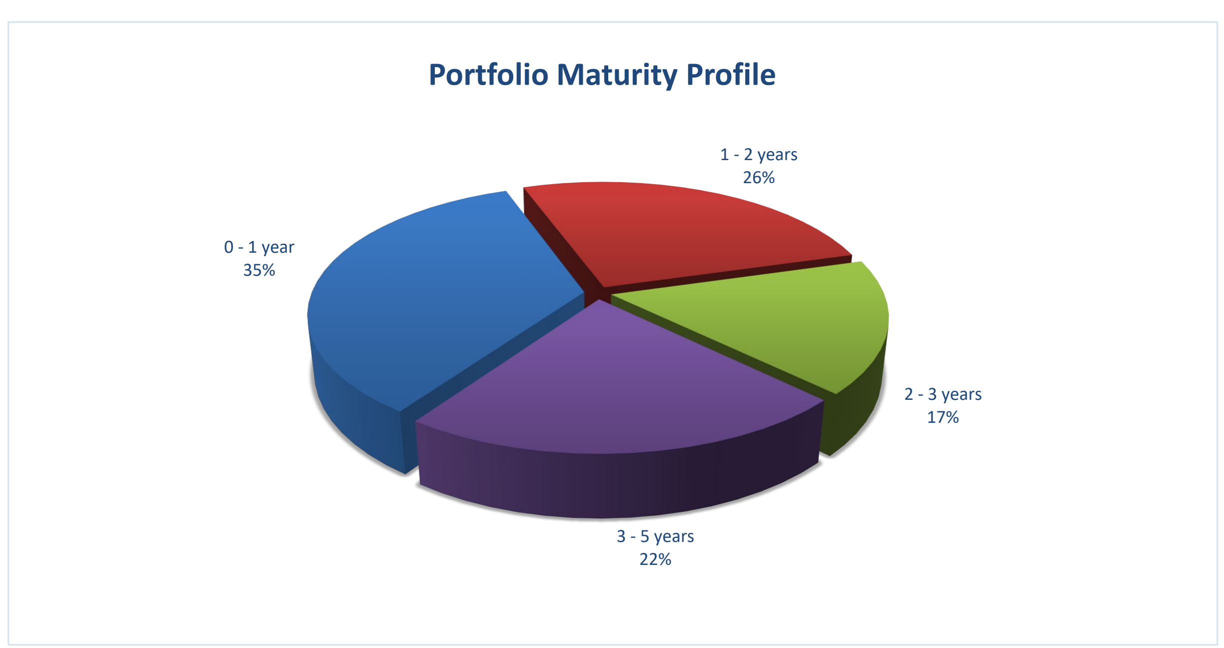
Receive the Monthly Financial and Investment Report for February 2026.

Attachments:

1. Financial and Investment Report (February 2026)

Town of Los Gatos
Summary Investment Information
February 28, 2026

Weighted Average YTM Portfolio Yield on Investments under Management	**4.20%**		
Weighted Average Maturity (days)	**640**		
	This Month	**Last Month**	**One year ago**
Portfolio Allocation & Treasurer's Cash Balances	$77,392,752	$78,053,230	$69,759,388
Managed Investments	$53,206,065		
Local Agency Investment Fund	$9,605,206		
Reconciled Demand Deposit Balances	$14,581,481		
Portfolio Allocation & Treasurer's Cash Balances	$77,392,752		
Benchmarks/ References:			
Town's Average Yield	4.20%	4.21%	4.44%
LAIF Yield for month	3.87%	3.93%	4.33%
3 mo. Treasury	3.66%	3.65%	4.29%
6 mo. Treasury	3.62%	3.62%	4.27%
2 yr. Treasury	3.37%	3.52%	3.99%
5 yr. Treasury	3.50%	3.79%	4.02%
10 Yr. Treasury	3.94%	4.24%	4.21%



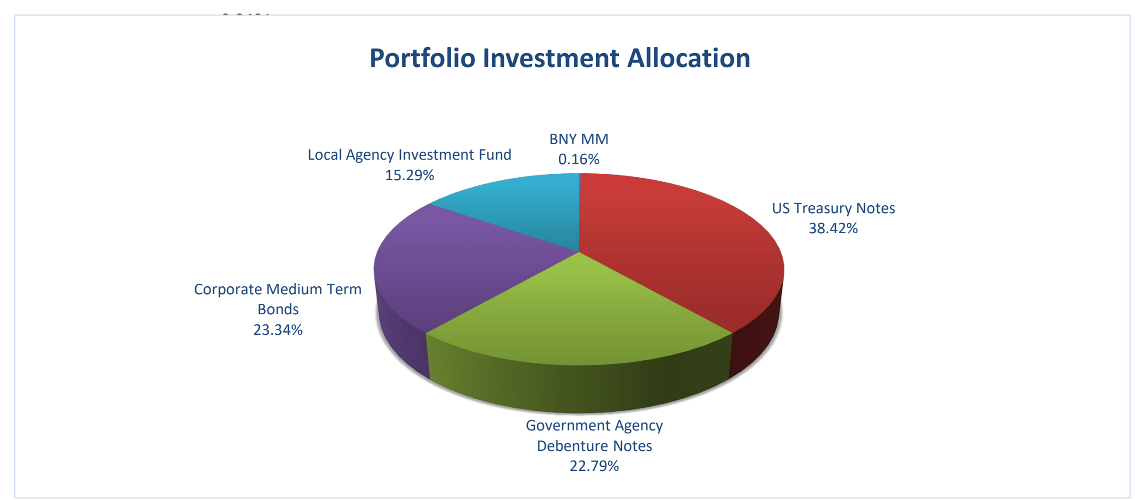
Compliance: The Town's investments are in compliance with the Town's investment policy dated March 18, 2025, and also in compliance with the requirements of Section 53600 at seq. of the California State Code. Based on the information available, the Town has sufficient funds to meet the cash demands for the next six months.

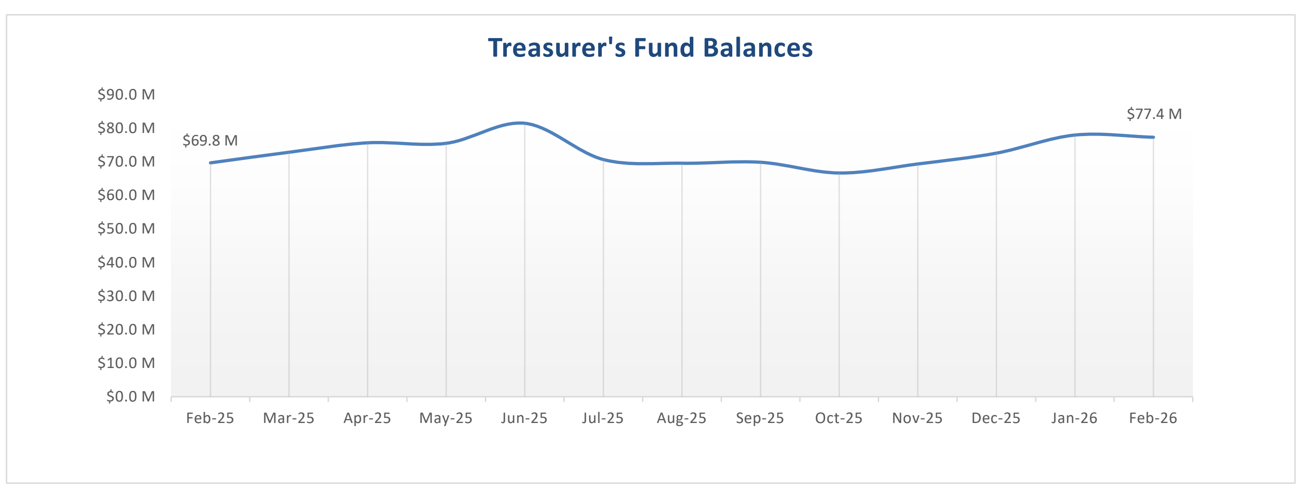
ATTACHMENT 1

Town of Los Gatos
Portfolio Allocation & Treasurer's Cash Balances
February 28, 2026

	Month	YTD
Cash & Investment Balances - Beginning of Month/Period	$ 78,053,229.67	$ 81,558,113.19
Receipts	3,975,089.85	54,370,159.84
Disbursements	(4,635,568.01)	(58,535,521.52)
Cash & Investment Balances - End of Month/Period	$77,392,751.51	$77,392,751.51

Portfolio Allocation	Amount	% of Portfolio	Max. % or $ Allowed per State Law or Policy
BNY MM	$101,071.46	0.16%	20% of Town Portfolio
US Treasury Notes	$24,129,270.12	38.42%	No Max. on US Treasuries
Government Agency Debenture Notes	$14,316,775.31	22.79%	No Max. on Non-Mortgage Backed
Corporate Medium Term Bonds	$14,658,947.80	23.34%	30% of Town Portfolio
Local Agency Investment Fund	$9,605,206.08	15.29%	$75 M per State Law
Subtotal - Investments	62,811,270.77	100.00%	
Reconciled Demand Deposit Balances	14,581,480.74		
Total Portfolio Allocation & Treasurer's Cash Balances	$77,392,751.51		





Town of Los Gatos
Non-Treasury Restricted Fund Balances
February 28, 2026

	Beginning Balance	February 2026 Deposits Realized Gain/Adj.	February 2026 Interest/ Earnings	February 2026 Withdrawals	Ending Balance	
Non-Treasury Funds:						
Cert. of Participation 2002 Ser A Reserve Fund	$ 698,819.89	$ -	$ 1,894.91	$ -	$ 700,714.80	**Note 1**
Cert. of Participation 2010 Ser Lease Payment Fund	72,470.81	-	69.36	72,462.50	77.67	**Note 2**
Cert. of Participation 2002 Ser A Lease Payment Fund	86,790.82	-	96.20	86,750.00	137.02	**Note 1**
Cert. of Participation 2010 Ser Reserve Fund	1,307,454.86	-	3,970.25	-	1,311,425.11	**Note 2**
Total Restricted Funds:	$ 2,165,536.38	$ -	$ 6,030.72	$ 159,212.50	$ 2,012,354.60	
CEPPT IRS Section 115 Trust	3,272,329.63	690,000.00	68,779.36	590.29	$ 4,030,518.70	**Note 3**
Grand Total COP's and CEPPT Trust	$ 5,437,866.01	$ 690,000.00	$ 74,810.08	$ 159,802.79	$ 6,042,873.30	

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 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 28, 2026

Month		Amount
July 2025	$	238,713.97
August 2025	$	238,367.28
September 2025	$	259,685.13
October 2025	$	228,769.00
November 2025	$	220,968.79
December 2025	$	234,197.60
January 2026	$	228,526.08
February 2026	$	205,910.96
March 2026	$	-
April 2026	$	-
May 2026	$	-
June 2026	$	-
	$	1,855,138.81

ITEM NO. 3.

Town of Los Gatos
Investment Schedule
February 28, 2026

Institution	CUSIP #	Security	Coupon	Deposit Date	Par Value	Original Cost	Original Issue (Discount) Premium	Market Value	Market Value Above (Under) Cost	Purchased Interest	Maturity Date or Call Date	Yield to Maturity or Call	Interest Received to Date	Interest Earned Prior Yrs.	Interest Earned Current FY	Days to Maturity
Apple	037833DB3	Corporate Bond	2.90%	12/20/2022	1,300,000.00	1,228,591.00	(71,409.00)	1,287,429.00	58,838.00		6/21/2027	4.19%	$ 102,837.22	$ 135,426.07	$ 35,653.88	478
Home Depot	437076BM3	Corporate Bond	3.00%	8/4/2022	1,000,000.00	991,960.00	(8,040.00)	999,250.00	7,290.00		4/1/2026	3.04%	$ 94,750.00	$ 93,590.54	$ 21,434.97	32
FFCB	3133EN5V8	Gov. Agency Debenture	4.13%	1/17/2023	236,000.00	239,174.20	3,174.20	236,951.08	(2,223.12)		1/11/2027	3.76%	$ 29,042.75	$ 21,918.24	$ 5,950.99	317
US Treasury	91282CBT7	US Treasury Note	0.75%	9/30/2022	800,000.00	712,565.18	(87,434.82)	798,112.00	85,546.82		3/31/2026	4.14%	$ 18,000.00	$ 85,193.12	$ 20,619.45	31
JP Morgan Chase	46625HRS1	Corporate Bond	3.20%	9/23/2022	500,000.00	474,660.00	(25,340.00)	499,070.00	24,410.00		3/15/2026	4.70%	$ 51,644.44	$ 64,505.94	$ 15,504.40	15
FHLB	3130AQF65	Gov. Agency Debenture	1.25%	11/30/2022	1,300,000.00	1,160,559.40	(139,440.60)	1,276,990.00	116,430.60		12/21/2026	4.15%	$ 49,697.92	$ 130,709.25	$ 33,682.24	296
FHLB	3130APJH9	Gov. Agency Debenture	1.00%	1/17/2023	1,000,000.00	907,010.00	(92,990.00)	991,780.00	84,770.00		10/28/2026	4.17%	$ 28,354.17	$ 84,829.28	$ 23,031.86	242
FFCB	3133EN5N6	Gov. Agency Debenture	4.00%	2/8/2023	1,700,000.00	1,706,732.00	6,732.00	1,717,289.00	10,557.00		1/6/2028	3.91%	$ 197,955.56	$ 159,363.33	$ 44,358.86	677
American Honda	02665WED9	Corporate Bond	4.70%	5/11/2023	600,000.00	608,856.00	8,856.00	609,348.00	492.00		1/12/2028	4.34%	$ 75,278.33	$ 56,288.41	$ 17,513.55	683
US Treasury	91282CEF4	US Treasury Note	2.50%	6/9/2023	1,500,000.00	1,416,626.12	(83,373.88)	1,484,295.00	67,668.88		3/31/2027	4.09%	$ 86,577.87	$ 122,333.72	$ 39,530.71	396
Colgate-Palmolive	194162AR4	Corporate Bond	4.60%	7/14/2023	500,000.00	504,655.00	4,655.00	509,190.00	4,535.00		2/1/2028	4.37%	$ 49,002.79	$ 43,173.83	$ 14,632.13	703
FFCB	3133EPQC2	Gov. Agency Debenture	4.63%	7/17/2023	500,000.00	501,957.50	1,957.50	501,380.00	(577.50)		7/17/2026	4.48%	$ 57,812.50	$ 43,961.07	$ 14,961.54	139
FFCB	3133EPBM6	Gov. Agency Debenture	4.13%	7/14/2023	600,000.00	596,220.00	(3,780.00)	605,652.00	9,432.00		8/23/2027	4.29%	$ 64,556.25	$ 50,424.13	$ 17,089.35	541
PNC Bank	69353RFJ2	Corporate Bond	3.25%	7/25/2023	1,000,000.00	921,490.00	(78,510.00)	992,140.00	70,650.00		12/23/2027	5.23%	$ 80,979.17	$ 97,247.67	$ 33,471.93	663
US Treasury	91282CFU0	US Treasury Note	4.13%	7/31/2023	1,300,000.00	1,290,660.60	(9,339.40)	1,314,781.00	24,120.40		10/31/2027	4.31%	$ 120,656.25	$ 107,052.11	$ 37,162.38	610
Toyota Motor Credit	89236TKL8	Corporate Bond	5.45%	8/25/2023	1,600,000.00	1,617,168.00	17,168.00	1,647,200.00	30,032.00		11/10/2027	5.16%	$ 192,566.67	$ 153,725.55	$ 55,341.20	620
US Treasury	912810FE3	US Treasury Note	5.50%	10/3/2023	1,200,000.00	1,238,207.14	38,207.14	1,259,772.00	21,564.86		8/15/2028	4.76%	$ 156,211.96	$ 101,335.84	$ 38,717.94	899
FFCB	3133EPUW3	Gov. Agency Debenture	4.75%	10/13/2023	1,000,000.00	994,338.00	(5,662.00)	1,005,400.00	11,062.00		9/1/2026	4.96%	$ 89,458.33	$ 84,828.57	$ 32,928.66	185
US Treasury	91282CEW7	US Treasury Note	3.25%	10/16/2023	1,000,000.00	950,039.06	(49,960.94)	997,420.00	47,380.94		6/30/2027	4.73%	$ 71,711.96	$ 78,477.53	$ 30,610.02	487
US Treasury	91282CEN7	US Treasury Note	2.75%	10/31/2023	1,300,000.00	1,214,336.39	(85,663.61)	1,289,184.00	74,847.61		4/30/2027	4.82%	$ 71,500.00	$ 100,336.49	$ 40,101.59	426
US Treasury	91282CCH2	US Treasury Note	1.25%	12/21/2023	900,000.00	798,647.55	(101,352.45)	857,457.00	58,809.45		6/30/2028	3.99%	$ 22,805.71	$ 51,319.84	$ 22,389.09	853
FNMA	3135G0Q22	Gov. Agency Debenture	1.88%	12/21/2023	900,000.00	845,676.00	(54,324.00)	891,036.00	45,360.00		9/24/2026	4.22%	$ 29,671.88	$ 55,770.03	$ 24,330.55	208
US Treasury	91282CFB2	US Treasury Note	2.75%	1/2/2024	1,000,000.00	960,354.91	(39,645.09)	990,470.00	30,115.09		7/31/2027	3.95%	$ 57,167.12	$ 57,605.73	$ 25,684.76	518
US Treasury	91282CHE4	US Treasury Note	3.63%	1/17/2024	1,800,000.00	1,775,185.72	(24,814.28)	1,809,414.00	34,228.28		5/31/2028	3.97%	$ 121,942.63	$ 102,986.91	$ 47,218.53	823
JP Morgan Chase	46647PDG8	Corporate Bond	4.85%	2/1/2024	1,400,000.00	1,396,528.00	(3,472.00)	1,416,422.00	19,894.00		7/25/2027	4.93%	$ 134,696.10	$ 97,231.80	$ 45,878.31	512
US Bancorp	91159HJF8	Corporate Bond	4.55%	2/5/2024	1,000,000.00	989,200.00	(10,800.00)	1,008,840.00	19,640.00		7/22/2027	4.89%	$ 89,317.67	$ 68,041.60	$ 32,356.38	509
Treasury	91282CHB0	US Treasury Note	3.63%	2/23/2024	1,175,000.00	1,151,962.92	(23,037.08)	1,174,753.25	22,790.33		5/15/2026	4.56%	$ 73,485.92	$ 71,517.53	$ 35,251.04	76
FHLB	3130AXB31	Gov. Agency Debenture	4.88%	2/27/2024	1,000,000.00	1,003,060.00	3,060.00	1,000,330.00	(2,730.00)		3/13/2026	4.72%	$ 76,104.17	$ 63,303.13	$ 31,457.39	13
FFCB	3133EP5U5	Gov. Agency Debenture	4.13%	3/28/2024	1,700,000.00	1,687,981.00	(12,019.00)	1,733,048.00	45,067.00		3/20/2029	4.28%	$ 103,629.17	$ 91,219.09	$ 48,292.46	1116
US Treasury	9128285M8	US Treasury Note	3.13%	4/30/2024	1,200,000.00	1,123,832.14	(76,167.86)	1,192,080.00	68,247.86		11/15/2028	4.69%	$ 57,795.34	$ 63,313.82	$ 36,115.63	991
Cisco Systems	17275RBR2	Corporate Bond	4.85%	5/15/2024	1,000,000.00	999,130.00	(870.00)	1,030,020.00	30,890.00		1/26/2029	4.87%	$ 86,356.94	$ 54,820.58	$ 32,412.17	1063
Home Depot	437076CW0	Corporate Bond	4.90%	5/17/2024	1,000,000.00	1,001,790.00	1,790.00	1,031,670.00	29,880.00		4/15/2029	4.86%	$ 69,144.44	$ 54,498.76	$ 32,379.46	1142
Treasury	91282CJR3	US Treasury Note	3.75%	5/31/2024	1,200,000.00	1,154,629.02	(45,370.98)	1,211,856.00	57,226.98		12/31/2028	4.68%	$ 71,208.79	$ 59,398.06	$ 36,541.08	1037
FHLB	3130B1BT3	Gov. Agency Debenture	4.88%	7/2/2024	1,150,000.00	1,150,966.00	966.00	1,153,657.00	2,691.00		6/12/2026	4.82%	$ 75,372.92	$ 55,261.42	$ 36,993.18	104
Citibank	17325FBK3	Corporate Bond	4.84%	8/15/2024	1,250,000.00	1,263,062.50	13,062.50	1,284,375.00	21,312.50		7/6/2029	4.60%	$ 89,200.62	$ 50,520.38	$ 38,484.18	1224
FNMA	3135G05Y5	Gov. Agency Debenture	0.75%	9/10/2024	1,100,000.00	1,010,724.00	(89,276.00)	1,054,614.00	43,890.00		10/8/2027	3.56%	$ 8,891.67	$ 29,915.45	$ 24,810.42	587
US Treasury	91282CFL0	US Treasury Note	3.88%	12/3/2024	1,100,000.00	1,088,144.31	(11,855.69)	1,116,071.00	27,926.69		9/30/2029	4.12%	$ 35,130.49	$ 25,813.46	$ 30,012.78	1310
FHLB	3130ATUT2	Gov. Agency Debenture	4.50%	2/12/2025	505,000.00	508,253.21	3,253.21	523,538.55	15,285.34		12/14/2029	4.35%	$ 19,063.75	$ 8,337.70	$ 14,681.61	1385
FFCB	3133ER5X5	Gov. Agency Debenture	3.88%	3/12/2025	1,000,000.00	998,480.00	(1,520.00)	1,007,560.00	9,080.00		3/7/2028	3.93%	$ 18,836.81	$ 11,831.34	$ 26,136.50	738
Treasury	91282CJF9	US Treasury Note	4.88%	3/31/2025	1,100,000.00	1,130,167.75	30,167.75	1,141,382.00	11,214.25		10/31/2028	4.04%	$ 31,256.56	$ 11,273.90	$ 30,105.02	976
State Street Corp	857477CD3	Corporate Bond	5.27%	4/30/2025	800,000.00	811,184.00	11,184.00	803,488.00	(7,696.00)		8/3/2026	4.04%	$ 31,983.47	$ 5,565.50	$ 22,170.75	156
Freddie Mac	3134HAW33	Gov. Agency Debenture	4.75%	4/30/2025	1,000,000.00	1,005,644.00	5,644.00	1,002,570.00	(3,074.00)		12/18/2029	4.23%	$ 30,743.07	$ 7,735.00	$ 30,813.19	1389
US Treasury	91282CNG2	US Treasury Note	4.00%	6/30/2025	660,000.00	665,184.24	5,184.24	673,589.40	8,405.16		5/31/2030	3.82%	$ 11,036.08	$ -	$ 16,874.46	1553
US Treasury	91282CMG3	US Treasury Note	4.25%	8/4/2025	825,000.00	842,308.43	17,308.43	848,817.75	6,509.32		1/31/2030	3.74%	$ 17,150.14	$ -	$ 17,786.94	1433
US Treasury	91282CMA6	US Treasury Note	4.13%	8/25/2025	1,200,000.00	1,218,847.77	18,847.77	1,228,452.00	9,604.23		11/30/2029	3.72%	$ 13,118.86	$ -	$ 23,098.06	1371
US Treasury	91282CHR5	US Treasury Note	4.00%	9/23/2025	950,000.00	967,036.38	17,036.38	969,817.00	2,780.62		7/31/2030	3.59%	$ 13,423.92	$ -	$ 14,930.27	1614
US Treasury	91282CGQ8	US Treasury Note	4.00%	10/3/2025	1,000,000.00	1,013,362.72	13,362.72	1,019,920.00	6,557.28		2/28/2030	3.67%	$ 16,353.59	$ -	$ 14,990.04	1461
State Street Corp	857477DB6	Corporate Bond	4.83%	11/10/2025	580,000.00	596,535.80	16,535.80	597,951.00	1,415.20	1,246.09	4/24/2030	4.13%	$ (1,246.09)	$ -	$ 7,330.91	1516
US Treasury	91282CKA8	US Treasury Note	4.13%	12/17/2025	1,150,000.00	1,157,775.34	7,775.34	1,156,359.50	(1,415.84)		2/15/2027	3.52%	$ 7,734.37	$ -	$ 8,151.97	352
US Treasury	91282CHW4	US Treasury Note	4.13%	12/17/2025	1,150,000.00	1,170,308.54	20,308.54	1,179,647.00	9,338.46		8/31/2030	3.71%	$ 9,566.13	$ -	$ 8,624.56	1645
US Treasury	91282CHZ7	US Treasury Note	4.63%	1/13/2026	1,050,000.00	1,089,087.89	39,087.89	1,099,591.50	10,503.61	14,008.41	9/30/2030	3.75%	$ (14,008.41)	$ -	$ 5,075.44	1675
Morgan Stanley Pvt Bank	61776NU43	Corporate Bond	4.21%	2/26/2026	1,250,000.00	1,254,137.50	4,137.50	1,256,187.50	2,050.00	3,510.83	2/8/2029	4.09%	$ (3,510.83)	$ -	$ 280.89	1076
Subtotal					$ 54,031,000.00	$ 53,104,993.23	$ (926,006.77)	$ 54,487,617.53	$ 1,382,624.30	$ 18,765.33			$ 3,092,017.14	$ 2,912,001.71	$ 1,393,955.63	
BNY MM		Money Market				101,071.46		101,071.46	0.00			0.00%				1
LAIF		State Investment Pool				9,605,206.08		9,626,159.67	20,953.59			3.87%			327,429.64	1
						62,811,270.77		**$64,214,848.66**	**$1,403,577.89**	**$18,765.33**			$ 3,092,017.14	$ 2,912,001.71	$ 1,721,385.27	
Matured Assets																
US Treasury	91282CAB7	US Treasury Note	0.25%	11/15/2023	675,000.00	623,900.39	(51,099.61)				7/31/2025	4.92%	$ 2,884.34	$ 51,302.62	$ 2,681.92	
FHLB	3135G05X7	Gov. Agency Debenture	0.38%	6/10/2022	1,200,000.00	1,102,952.40	(97,047.60)				8/25/2025	3.04%	$ 14,437.50	$ 106,169.42	$ 5,327.50	
FFCB	3133ENP95	Gov. Agency Debenture	4.25%	9/30/2022	900,000.00	900,939.60	939.60				9/30/2025	4.14%	$ 114,750.00	$ 104,352.97	$ 9,562.22	
Freddie Mac	3137EAEX3	Gov. Agency Debenture	0.38%	5/1/2023	750,000.00	689,032.50	(60,967.50)				9/23/2025	3.97%	$ 6,734.37	$ 61,146.74	$ 6,570.76	
FannieMae	3135G06G3	Gov. Agency Debenture	0.50%	7/14/2023	500,000.00	455,157.00	(44,843.00)				11/7/2025	4.63%	$ 5,784.72	$ 42,871.33	$ 7,773.04	
US Treasury	91282CGA3	US Treasury Note	4.00%	6/20/2023	2,100,000.00	2,080,558.59	(19,441.41)				12/15/2025	4.40%	$ 208,852.46	$ 186,379.78	$ 42,256.15	
American Honda	02665WEY3	Corporate Bond	4.95%	6/27/2024	1,000,000.00	995,640.00	(4,360.00)				1/9/2026	5.25%	$ 51,287.50	$ 52,766.88	$ 26,383.44	
Pepsico Inc	713448DF2	Corporate Bond	2.85%	10/16/2023	1,000,000.00	947,570.00	(52,430.00)				2/24/2026	5.24%	$ 67,133.33	$ 86,538.35	$ 33,198.50	
Total Investments "Matured"															$ 133,753.54	
Total Interest FY 24_25 Matured and Current															$ 1,855,138.81	

Maturity Profile

	Amount	Percent
0-1 year	$ 21,809,126.08	35%
1-2 years	$16,412,181.08	26%
2-3 years	$10,472,416.82	17%
3-5 years	$ 14,117,546.79	22%
	$62,811,270.77	100%

Town of Los Gatos
Investment Transaction Detail
February 28, 2026

Date	Cusip/Id	Description	Transaction Type	Trade Date	Settlement Date	Par	Coupon	Maturity Date	Price	Principal	Interest	Transaction Total
2/3/2026	Cash-USD	Cash-USD	SHORT TERM INVESTMENT FUND INCOME	2/3/2026	2/3/2026	718.65	0.000%		100.00	-	-	718.65
2/3/2026	857477CD3	STATE STREET CORP 5.272% 03AUG2026 (CALLABLE 03JUL26)	BOND INTEREST	2/3/2026	2/3/2026	800,000.00	5.272%	8/3/2026	-	-	21,088.00	21,088.00
2/6/2026	17325FBK3	CITIBANK NA 4.838% 06AUG2029 (CALLABLE 06JUL29)	BOND INTEREST	2/6/2026	2/6/2026	1,250,000.00	4.838%	8/6/2029	-	-	30,237.50	30,237.50
2/17/2026	912810FE3	USA TREASURY 5.5% 15AUG2028	BOND INTEREST	2/15/2026	2/15/2026	1,200,000.00	5.500%	8/15/2028	-	-	33,000.00	33,000.00
2/17/2026	91282CKA8	USA TREASURY 4.125% 15FEB2027	BOND INTEREST	2/15/2026	2/15/2026	1,150,000.00	4.125%	2/15/2027	-	-	23,718.75	23,718.75
2/23/2026	3133EPBM6	FEDERAL FARM CREDIT BANK 4.125% 23AUG2027	BOND INTEREST	2/23/2026	2/23/2026	600,000.00	4.125%	8/23/2027	-	-	12,375.00	12,375.00
2/24/2026	713448DF2	PEPSICO INC 2.85% 24FEB2026 CALLABLE	REDEMPTION	2/24/2026	2/24/2026	1,000,000.00	0.000%	2/24/2026	100.00	1,000,000.00	-	1,000,000.00
2/24/2026	713448DF2	PEPSICO INC 2.85% 24FEB2026 CALLABLE	BOND INTEREST	2/24/2026	2/24/2026	1,000,000.00	0.000%	2/24/2026	-	-	14,250.00	14,250.00
2/26/2026	61776NU43	MORGAN STANLEY PVT BANK 4.213% 08FEB2030 (CALLABLE 08FEB29)	PURCHASE	2/25/2026	2/26/2026	1,250,000.00	4.213%	2/8/2030	100.33	1,254,137.50	3,510.83	1,257,648.33
2/26/2026	17275RBR2	CISCO SYSTEMS INC 4.85% 26FEB2029 (CALLABLE 26JAN29)	BOND INTEREST	2/26/2026	2/26/2026	1,000,000.00	4.850%	2/26/2029	-	-	24,250.00	24,250.00
3/2/2026	91282CHW4	USA TREASURY 4.125% 31AUG2030	BOND INTEREST	2/28/2026	2/28/2026	1,150,000.00	4.125%	8/31/2030	-	-	23,718.75	23,718.75
3/2/2026	91282CGQ8	USA TREASURY 4% 28FEB2030	BOND INTEREST	2/28/2026	2/28/2026	1,000,000.00	4.000%	2/28/2030	-	-	20,000.00	20,000.00

TOWN OF LOS GATOS, CA

Insight ESG ratings as of February 28, 2026

CUSIP	Security description	Maturity date	Par/Shares	Total market value ($)	S&P rating	Moody's rating	Insight ESG rating	Environment	Social	Governance
02665WED9	AMERICAN HONDA FINANCE 4.7% 12JAN2028	1/12/2028	600,000	612,863	A-	A3	3	2	4	3
037833DB3	APPLE INC 2.9% 12SEP2027 (CALLABLE 12JUN27)	9/12/2027	1,300,000	1,304,636	AA+	Aaa	5	2	5	5
17275RBR2	CISCO SYSTEMS INC 4.85% 26FEB2029 (CALLABLE 26JAN29)	2/26/2029	1,000,000	1,030,095	AA-	A1	2	1	3	3
17325FBK3	CITIBANK NA 4.838% 06AUG2029 (CALLABLE 06JUL29)	8/6/2029	1,250,000	1,287,665	A+	Aa3	3	1	2	4
194162AR4	COLGATE-PALMOLIVE CO 4.6% 01MAR2028 (CALLABLE 01FEB28)	3/1/2028	500,000	520,035	A+	Aa3	3	3	3	2
437076CW0	HOME DEPOT INC 4.9% 15APR2029 (CALLABLE 15MAR29)	4/15/2029	1,000,000	1,049,470	A	A2	3	3	3	3
437076BM3	HOME DEPOT INC 3% 01APR2026 (CALLABLE 29MAR26)	4/1/2026	1,000,000	1,011,500	A	A2	3	3	3	3
46625HRS1	JPMORGAN CHASE & CO 3.2% 15JUN2026 (CALLABLE 29MAR26)	6/15/2026	500,000	502,313	A	A1	3	2	3	5
46647PDG8	JPMORGAN CHASE & CO 4.851% 25JUL2028 (CALLABLE 25JUL27)	7/25/2028	1,400,000	1,422,446	A	A1	3	2	3	5
61776NU43	MORGAN STANLEY PVT BANK 4.213% 08FEB2030 (CALLABLE 08FEB29)	2/8/2030	1,250,000	1,259,748	A+	Aa3	3	1	3	4
69353RFJ2	PNC BANK NA 3.25% 22JAN2028 (CALLABLE 23DEC27)	1/22/2028	1,000,000	995,262	A	A2	3	3	3	2
857477CD3	STATE STREET CORP 5.272% 03AUG2026 (CALLABLE 03JUL26)	8/3/2026	800,000	806,397	A	Aa3	1	1	2	2
857477DB6	STATE STREET CORP 4.834% 24APR2030 (CALLABLE 24MAR30)	4/24/2030	580,000	607,133	A	Aa3	1	1	2	2
89236TKL8	TOYOTA MOTOR CREDIT CORP 5.45% 10NOV2027	11/10/2027	1,600,000	1,673,170	A+	A1	3	1	3	4
91159HJF8	US BANCORP 4.548% 22JUL2028 (CALLABLE 22JUL27)	7/22/2028	1,000,000	1,013,118	A	A3	3	2	3	3
Total Corporate / weighted average			**14,780,000**	**15,095,850**			**3**	**2**	**3**	**4**

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

Fund Number	Fund Description	Prior Year Carryforward 7/1/2025*	Increase/ (Decrease) July-January	February 2026				Estimated Fund Balance 2/28/2026*
				Current Revenue	Current Expenditure	Transfer In	Transfer Out	
	GENERAL FUND							
	Non-Spendable:							
	Loans Receivable	159,000	-	-	-	-	-	159,000
	Restricted Fund Balances:							
	Pension	3,090,731	-	-	-	-	-	3,090,731
	Land Held for Resale	-	-	-	-	-	-	-
	Committed Fund Balances:							
	Budget Stabilization	7,870,639	-	-	-	-	-	7,870,639
	Catastrophic	7,870,639	-	-	-	-	-	7,870,639
	Pension/OPEB	1,300,000	-	-	-	-	-	1,300,000
	Measure G District Sales Tax	-	-	-	-	-	-	-
	Assigned Fund Balances:							
	Open Space	410,000	-	-	-	-	-	410,000
	Sustainability	140,553	-	-	-	-	-	140,553
	Capital/Special Projects	1,983,271	-	-	-	-	-	1,983,271
	Carryover Encumbrances	6,367	-	-	-	-	-	6,367
	Compensated Absences	1,519,243	-	-	-	-	-	1,519,243
	ERAF Risk Reserve	-	-	-	-	-	-	-
	Market Fluctuations	1,201,824	-	-	-	-	-	1,201,824
	Council Priorities - Economic Recovery	-	-	-	-	-	-	-
	Unassigned Fund Balances:							
111	Other Unassigned Fund Balance Reserve (Pre YE distribution)	10,211,049	(808,831)	3,817,470	(5,048,778)	-	-	8,170,910
	General Fund Total	35,763,316	(808,831)	3,817,470	(5,048,778)	-	-	33,723,177

* Interfund transfers and Council Priorities/Economic Recovery funding allocation to be performed as part of the fiscal year end closing entries.

Fund Schedule

ITEM NO. 3.

Fund Number	Fund Description	Prior Year Carryforward 7/1/2025*	Increase/ (Decrease) July-January	February 2026 Current Revenue	February 2026 Current Expenditure	February 2026 Transfer In	February 2026 Transfer Out	Estimated Fund Balance 2/28/2026*
	SPECIAL REVENUE							
211/212	CDBG	166,653	-	-	-	-	-	166,653
222	Urban Runoff (NPDES)	664,168	836	13,641	(12,342)	-	-	666,303
231-236	Landscape & Lighting Districts	193,606	3,281	915	(2,100)	-	-	195,702
251	Los Gatos Theatre	381,120	105,139	44,549	(4,739)	-	-	526,069
261-264,269	Library Trusts	559,745	44,304	4,000	(1,754)	-	-	606,295
	Special Revenue Total	1,965,292	153,560	63,105	(20,935)	-	-	2,161,022
	CAPITAL PROJECTS							
411	GFAR - General Fund Appropriated Reserve	16,974,946	1,069,749	82,165	(54,697)	-	-	18,072,163
412	Community Center Development	819,604	-	-	-	-	-	819,604
421	Grant Funded Projects	(1,577,430)	852,101	232,153	(7,785)	-	-	(500,961)
461-463	Storm Basin Projects	2,825,234	57,501	20,564	-	-	-	2,903,299
471	Traffic Mitigation Projects	676,482	-	-	-	-	-	676,482
472	Utility Undergrounding Projects	3,763,913	20,490	-	-	-	-	3,784,403
481	Gas Tax Projects	2,130,548	(73,273)	149,315	(249)	-	-	2,206,341
	Capital Projects Total	25,613,297	1,926,568	484,197	(62,731)	-	-	27,961,331
	INTERNAL SERVICE FUNDS							
611	Town General Liability	208,746	(734,362)	-	(5,309)	-	-	(530,925)
612	Workers Compensation	1,259,972	(9,427)	26,702	(51,644)	-	-	1,225,603
621	Information Technology	2,585,103	(363,863)	8,195	(38,143)	-	-	2,191,292
631	Vehicle & Equipment Replacement	3,890,428	408,484	19,964	-	-	-	4,318,876
633	Facility Maintenance	820,099	9,014	5,884	(111,742)	-	-	723,255
	Internal Service Funds Total	8,764,348	(690,154)	60,745	(206,838)	-	-	7,928,101
	Trust/Agency							
942	RDA Successor Agency	(3,037,146)	(1,735,969)	-	(156)	-	-	(4,773,271)
	Trust/Agency Fund Total	(3,037,146)	(1,735,969)	-	(156)	-	-	(4,773,271)
	Total Town	**69,069,107**	**(1,154,826)**	**4,425,517**	**(5,339,438)**	**-**	**-**	**67,000,360**

* Interfund transfers and Council Priorities/Economic Recovery 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 $616,430.62

111-23521 BMP Housing deposit account balance $3,723,190.79

TOWN OF LOS GATOS

COUNCIL AGENDA REPORT

MEETING DATE: 04/21/2026

ITEM NO: 4

DATE: April 21, 2026

TO: Mayor and Town Council

FROM: Chris Constantin, Town Manager

SUBJECT: **Authorize the Town Manager to Execute an Agreement for Construction Services with Saviano, Co., Inc., and Authorize a 10% Construction Contingency for a Total Project Authorization Amount of $107,801.38 (La Rinconada Sports Court Resurfacing Project)**

RECOMMENDATION: Authorize the Town Manager to execute a construction agreement with Saviano, Co., Inc. in an amount of $98,001.25, to complete the La Rinconada Sports Court Resurfacing Project and authorize a 10% construction contingency of $9,800.13 for a total project authorization amount not to exceed $107,801.38

FISCAL IMPACT

Sufficient funding is available in the FY 2025-26 Sport Court Resurfacing Capital Improvement Project budget (CIP No. 831-4611, 4118414) for the full cost of the recommended contract and contingency expenses. No additional appropriation is required. A ten percent (10%) construction contingency is recommended, consistent with industry standards for projects of this type. The contingency accounts for potential unforeseen conditions, including subsurface repairs, additional crack remediation, or minor scope adjustments identified during construction.

STRATEGIC PRIORITY:

This item does not directly address a Strategic Priority; however, it aligns with the Core Goal of Quality Public Infrastructure.

PREPARED BY: Tyler Thomas
Superintendent

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

BACKGROUND:

The La Rinconada Park sports court is a heavily utilized recreational facility that supports both tennis and pickleball activities. Since the introduction of pickleball programming in 2018, use of the court has increased significantly, with regular programmed activities and daily open play contributing to ongoing wear of the facility.

Over time, the court surface has experienced deterioration, including cracking and surface degradation due to weather exposure and sustained high usage. Resurfacing is necessary to maintain a safe, functional, and high-quality recreational amenity for the community.

In addition to increased use, the Town has received ongoing community feedback regarding noise associated with pickleball activity and concerns related to early morning and evening court access. As a result, this project includes operational improvements such as installation of sound-reducing netting and a timed gate lock to better manage hours of use.

This project was initially scoped to include improvements at both La Rinconada Park and Blossom Hill Park; however, due to site constraints and potential conflicts between tennis and pickleball uses at Blossom Hill Park, the project scope was refined through the Capital Improvement Program process to focus available funding on improvements at La Rinconada Park.

DISCUSSION:

The project is being advanced to restore the condition of the existing court surface and to implement operational improvements. This project focuses on maintaining and improving the existing facility at La Rinconada Park to meet current activity needs for tennis and pickleball. The proposed project includes repairing current cracks in the existing surface, repaving the court with 1.5 inches of asphalt, resurfacing and restriping the new asphalt for pickleball and tennis, adding a new tennis net, putting in a new entry gate with a panic bar and electronic timed lock, and placing sound netting on three sides of the court.

The project was bid for construction on February 6, 2026 and bids were opened on February 25, 2026. Three bids were received and Saviano Co., Inc. was the low bidder. A Bid summary is presented in Attachment 2.

Saviano Co. Inc. has demonstrated experience performing similar work for public agencies and is qualified to complete the project in accordance with Town standards. A 10% contingency is recommended to address any unforeseen site conditions, including subsurface issues or additional repairs that may be identified during construction. Attachment 1 is the proposed construction agreement.

Construction is anticipated to begin in May 2026 and be completed by July 2026. The construction contract requires completion within 80 calendar days and includes liquidated damages for delays beyond the approved schedule. If the recommended maintenance action is not taken, the condition of the court surface will continue to deteriorate, potentially resulting in safety concerns, increased maintenance costs, and reduced usability of the facility.

CONCLUSION:

Staff recommend that the Town Council authorize the Town Manager to execute a construction agreement with Saviano, Co., Inc. for the La Rinconada Sports Court Resurfacing Project including a 10% construction contingency.

COORDINATION:

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

ENVIRONMENTAL ASSESSMENT:

This is a project as defined under CEQA but is Categorically Exempt (Section 15301). A notice of exemption will not be filed.

Attachments:
1. Construction Agreement
2. Bid Summary

CONSTRUCTION CONTRACT

La Rinconada Sports Court Resurfacing

This public works contract ("Contract") is by and between Town of Los Gatos ("Town") and Saviano Co., Inc. ("Contractor"), for work on the La Rinconada Sports Court Resurfacing Project #831-4611 ("Project").

The parties agree as follows:

1. Award of Contract. In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. The Town has authorized award of this Contract to Contractor for the amount set forth in Section 4, below. Town has elected to include the following Project alternate(s) in the Contract: No alternates. .

2. Contract Documents. The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.

A. Notice Inviting Bids;

B. Instructions to Bidders;

C. Addenda, if any;

D. Bid Proposal and attachments thereto;

E. Contract;

F. Payment and Performance Bonds;

G. General Conditions;

H. Special Conditions;

I. Project Plans and Specifications;

J. Change Orders, if any;

K. Notice of Potential Award;

L. Notice to Proceed; and

M. The following: No other documents.

3. Contractor's Obligations. Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. Payment. As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor $98,001.25 ("Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.

5. Time for Completion. Contractor will fully complete the Work for the Project, meeting all requirements for Final Completion, within 80 calendar days from the start date set forth in the Notice to Proceed ("Contract Time"). below, Contractor expressly waives any claim for delayed early completion.

6. Liquidated Damages. As further specified in Section 5.4 of the General Conditions, if Contractor fails to complete the Work within the Contract Time, Town will assess liquidated damages in the amount of $1,000 per day for each day of unexcused delay in achieving Final Completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.

7. Labor Code Compliance.

A. **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.

B. **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at http://www.dir.ca.gov/DLSR.

C. **DIR Registration.** City may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.

8. Workers' Compensation Certification. Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. Conflicts of Interest. Contractor, its employees, Subcontractors, and agents may not have, maintain, or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.

10. Independent Contractor. Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.

11. Notice. Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

Town:

Invoices:
Town of Los Gatos
Attn: Accounts Payable
P.O. Box 655

Los Gatos, CA 95031-0655
Email (preferred): AP@losgatosca.gov

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

Contractor:

Saviano Co., Inc.
1784 Smith Avenue, San Jose, CA 95112

Attn: John Saviano President john@saviano.com (650)-948-3274

12. General Provisions.

A. **Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.

B. **Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract.

C. **Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Santa Clara County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure § 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Santa Clara County, California.

D. **Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

E. **Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor.

F. **Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.

G. **Iran Contracting Act.** If the Contract Price exceeds $1,000,000, Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.

H. **Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporations Code § 313.

[Signatures are on the following page.]

The parties agree to this Contract as witnessed by the signatures below:

TOWN OF LOS GATOS:	SAVIANO CO., INC.:
SIGNATURE	**CONTRACTOR SIGNATORY'S SIGNATURE**
Chris Constantin	John Saviano
FULL NAME	**CONTRACTOR SIGNATORY'S FULL NAME**
Town Manager	President
TITLE	**CONTRACTOR SIGNATORY'S TITLE**
DATE SIGNED	**DATE SIGNED**

Approved as to form:

SIGNATURE

Gabrielle Whelan

FULL NAME

Town Attorney

TITLE

DATE SIGNED

The execution date is the date on which the last party has signed.

Town of Los Gatos
Parks and Public Works
Nicolle Burnham, Parks and Public Works Director
110 E. Main St, Los Gatos, CA 95030

EVALUATION TABULATION

La Rinconada Sports Court Resurfacing
RESPONSE DEADLINE: February 25, 2026 at 2:00 pm

SELECTED VENDOR TOTALS

Vendor	Total
Saviano Co., Inc.	$98,001.25
Silicon Valley Paving, Inc.	$112,825.00
Vintage Contractors, Inc.	$186,000.00

TABLE 1

Vendor	Total
Saviano Co., Inc.	$98,001.25
Silicon Valley Paving, Inc.	$112,825.00
Vintage Contractors, Inc.	$186,000.00

Attachment 2

TOWN OF LOS GATOS
COUNCIL AGENDA REPORT

MEETING DATE: 04/21/2026
ITEM NO: 5

DATE: April 21, 2026

TO: Mayor and Town Council

FROM: Chris Constantin, Town Manager

SUBJECT: **Authorize the Town Manager to Execute a Construction Contract with QLM, Inc. in the Amount of $646,336 with Change Order Authority Not to Exceed $64,634 (10% Contingency); Authorize the Town Manager to Execute a Agreement for Professional Services with Ninyo & Moore in the Amount of $18,390; Authorize the Town Manager to Execute a Agreement for Professional Services with Precision Works LLC DBA Precision Concrete Cutting in the Amount of $90,000; Approve the Plans and Specifications (Design Immunity); and Authorize Associated Budget Adjustments**

RECOMMENDATION: Staff recommends that the Town Council take the following actions in regard to the 2026 Curb, Gutter, and Sidewalk Maintenance Project (4118120; CIP No. 813-9921):

a. Authorize the Town Manager to execute a public works contract with QLM, Inc. in the amount of $646,336, with authority to approve construction change orders in an amount not to exceed $64,634 (10% contingency);
b. Authorize the Town Manager to execute an Agreement for Professional Services with Ninyo & Moore for Materials Testing Services for a total agreement in an amount not to exceed $18,390;
c. Authorize the Town Manager to execute an Agreement for Services with Precision Works LLC DBA Precision Concrete Cutting for Sidewalk Cutting Services for a total agreement in an amount not to exceed $90,000;
d. Approve the project construction plans and specifications per Government Code 830.6 (Design Immunity);

PREPARED BY: Saurabh Nijhawan
Senior Civil Engineer

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

e. Find the project Categorically Exempt under Section 15301(c) of the California Environmental Quality Act; and
f. Authorize An Expenditure Budget Transfer in the Amount of $439,706 from the Annual Street Repair and Resurfacing Project (4118155, CIP No. 811-9901) to the Annual Curb, Gutter and Sidewalk Maintenance Project (4118120, CIP No. 813-9921).

FISCAL IMPACT:

Total authorized project expenditures under this action equal $819,360, comprised of: QLM, Inc. construction contract ($646,336), 10% construction contingency ($64,634), Ninyo & Moore Agreement for Professional Services ($18,390), and Precision Works LLC DBA Precision Concrete Cutting for Sidewalk Cutting Services Agreement for Services ($90,000). The adopted FY 2025-26 Budget for the Annual Curb Gutter and Sidewalk CIP Project has an existing balance of $379,654 available from previous appropriations for this action. Staff is recommending an expenditure budget adjustment in the amount of $439,706 from the Annual Street Repair and Resurfacing Project (4118155, CIP No. 811-9901) to the Annual Curb, Gutter and Sidewalk Maintenance Project (4118120, CIP No. 813-9921) to complete the action.

Various funding sources support the Annual Street Repair and Resurfacing Project. This includes restricted GFAR and the Local Streets and Roads Program (SB1), which can be used for concrete rehabilitation and repair. The transfer of funds between the Annual Street Repair and Resurfacing Project and the Annual Curb, Gutter, and Sidewalk Maintenance Project is therefore consistent with the intent of the funding sources.

STRATEGIC PRIORITY:

This item does not directly address a Strategic Priority; however, it aligns with the Core Goal of Quality Public Infrastructure**.** The proposed work ensures safety for all users and supports compliance with the Americans with Disabilities Act (ADA).

BACKGROUND:

The adopted FY 2025/26-2029/30 Capital Improvement Program (CIP) Budget designates funding for the Curb, Gutter, and Sidewalk Maintenance Project (4118120, CIP No. 813-9921). This annual project replaces and improves damaged or outdated curbs, gutters, sidewalks, driveways, and curb ramps within the Town’s jurisdiction to address safety and operational issues and to improve accessibility.

The Annual Curb, Gutter, and Sidewalk Maintenance (Concrete) Project work includes replacing or retrofitting curb ramps for compliance with the Americans with Disabilities Act (ADA) and other accessibility requirements. Title II of the ADA obligates jurisdictions to upgrade non-

conforming curb ramps when streets are resurfaced from one intersection to another. The United States Department of Justice has determined that surface treatments such as asphalt overlay, rubber cape seal, and micro-surfacing trigger the requirement for ADA compliant curb ramps on associated streets.

As such, the scope of work proposed for the annual curb, gutter, and sidewalk maintenance project is dictated by the location of the annual paving project, the award of which will be the subject of a future Town Council action.

DISCUSSION:

The Curb, Gutter, and Sidewalk Maintenance Project was advertised for bid on Friday, February 20, 2026. On March 17, 2026, bids were opened with twelve contractors submitting bids. A summary of bid results is presented in Table 1 with QLM, Inc. as the apparent low bidder. A detailed bid summary is included in Attachment 2.

Table 1. Bid Results for the Annual Curb, Gutter, and Sidewalk Maintenance Project (CIP No. 813-9921)

Contractor	Base Bid
Engineers Estimate	*$ 820,000.00*
QLM, Inc.	$ 646,336.00
Spektren Engineering, Inc.	$ 646,465.19
Duran Construction Group	$ 705,072.00
Bosco Co.	$ 731,112.00
ASG Builders	$ 798,927.60
Sposeto Engineering Inc.	$ 804,078.50
Zara Construction, Inc.	$ 819,850.00
Spencon Construction	$ 832,592.00
FBD Vanguard Construction, Inc.	$ 873,236.00
JJR Construction, Inc.	$ 914,281.00
SAE Consulting Engineering	$ 1,063,910.00
Precision Grade Inc.	$ 1,225,022.52

Staff reviewed the bids received for responsiveness and responsibility. Based on this review, QLM Inc. was determined to be the lowest responsive and responsible bidder. The proposed construction contract amount of $646,336.00 is below the engineer's estimate and is consistent with the scope of work identified in the construction documents. The bid submitted by QLM, Inc. is approximately 21% below the Engineer's Estimate, indicating competitive pricing consistent with current market conditions.

Government Code 830.6 states that neither a public entity nor a public employee is liable under this chapter for an injury caused by the plan or design of a construction of, or an improvement to, public property where such plan or design has been approved in advance of the construction or improvement by the legislative body. Staff requests that the Town Council approve the construction plans for this project. Approval of the plans and specifications will provide design immunity pursuant to Government Code Section 830.6. The project construction plans are provided in Attachment 3.

The Town received proposals for materials testing, and staff recommends an agreement with Ninyo & Moore (Attachment 4), which is proposed based on the quality of their proposal and ability to perform the work successfully.

Staff requests approval of a single source contract with PrecisionWorks LLC, DBA Precision Concrete Cutting (Attachment 5) through PLAN JPA, which is a cooperative purchasing authority. This project will be in conjunction with our annual sidewalk project. PCC has performed these services for the Town in the past, and their work was of good quality. PCC is the industry leader and sole contractor that provides horizontal concrete cutting of this type required for this project.

Construction is anticipated to begin in May 2026 and be completed within approximately 56 calendar days.

CONCLUSION:

Staff recommends the Town Council authorize the Town Manager to execute a public works contract with QLM, Inc. for the Curb, Gutter, and Sidewalk Maintenance Project to perform concrete repairs and replacement within the Town.

COORDINATION:

This project was coordinated with the Finance Department.

ENVIRONMENTAL ASSESSMENT:

This is a project defined under CEQA as being Categorically Exempt pursuant to CEQA Guidelines Section 15301(c). A Notice of Exemption has been filed.

Attachments:

1. Construction Agreement
2. Bid Summary
3. Construction Plans & Specifications and Addenda
4. Agreement for Material Testing Services
5. Agreement for Sidewalk Cutting Services

CONSTRUCTION CONTRACT

2026 Annual Curb, Gutter, and Sidewalk Maintenance

This public works contract ("Contract") is by and between Town of Los Gatos ("Town") and QLM INC. ("Contractor"), for work on the 2026 Annual Curb, Gutter, and Sidewalk Maintenance Project #25-813-9921 ("Project").

The parties agree as follows:

1. Award of Contract. In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. The Town has authorized award of this Contract to Contractor for the amount set forth in Section 4, below. Town has elected to include the following Project alternate(s) in the Contract: No alternates.

2. Contract Documents. The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.

A. Notice Inviting Bids;

B. Instructions to Bidders;

C. Addenda, if any;

D. Bid Proposal and attachments thereto;

E. Contract;

F. Payment and Performance Bonds;

G. General Conditions;

H. Special Conditions;

I. Project Plans and Specifications;

J. Change Orders, if any;

K. Notice of Potential Award;

L. Notice to Proceed; and

M. The following: No other documents

3. Contractor's Obligations. Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. Payment. As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, Town will pay Contractor $646,336.00 ("Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.

5. Time for Completion. Contractor will fully complete the Work for the Project, meeting all requirements for Final Completion, within 56 calendar days from the start date set forth in the Notice to Proceed ("Contract Time"). [...] below, Contractor expressly waives any claim for delayed early completion.

6. Liquidated Damages. As further specified in Section 5.4 of the General Conditions, if Contractor fails to complete the Work within the Contract Time, Town will assess liquidated damages in the amount of 3000 per day for each day of unexcused delay in achieving Final Completion, and such liquidated damages may be deducted from Town's payments due or to become due to Contractor under this Contract.

7. Labor Code Compliance.

A. **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.

B. **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at http://www.dir.ca.gov/DLSR.

C. **DIR Registration.** Town may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.

8. Workers' Compensation Certification. Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. Conflicts of Interest. Contractor, its employees, Subcontractors, and agents may not have, maintain, or acquire a conflict of interest in relation to this Contract in violation of any Town ordinance or requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.

10. Independent Contractor. Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of Town and are not entitled to participate in any health, retirement, or any other employee benefits from Town.

11. Notice. Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

Town:

Invoices:
Town of Los Gatos
Attn: Accounts Payable
P.O. Box 655

Los Gatos, CA 95031-0655
Email (preferred): AP@losgatosca.gov

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

Contractor:

QLM INC.
94 Umbarger Road, San Jose, CA 95111

Attn: Darrell Qualls President darrell.qualls@qlm-inc.com (408)-265-0904

12. General Provisions.

A. **Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without Town's written consent. This Contract is binding on Contractor's and Town's lawful heirs, successors and permitted assigns.

B. **Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract.

C. **Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Santa Clara County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure § 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Santa Clara County, California.

D. **Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

E. **Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between Town and Contractor.

F. **Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.

G. **Iran Contracting Act.** If the Contract Price exceeds $1,000,000, Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.

H. **Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporations Code § 313.

ITEM NO. 5.

l. **Mediation.** Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the me parties. In the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a blind draw. The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

[Signatures are on the following page.]

The parties agree to this Contract as witnessed by the signatures below:

TOWN OF LOS GATOS:

SIGNATURE

Chris Constantin

FULL NAME

Town Manager

TITLE

DATE SIGNED

Approved as to form:

SIGNATURE

Gabrielle Whelan

FULL NAME

Town Attorney

TITLE

DATE SIGNED

QLM INC.:

CONTRACTOR SIGNATORY'S SIGNATURE

Darrell Qualls

CONTRACTOR SIGNATORY'S FULL NAME

President

CONTRACTOR SIGNATORY'S TITLE

DATE SIGNED

CONTRACTOR SIGNATORY'S SIGNATURE

Hector Deanda

CONTRACTOR SIGNATORY'S FULL NAME

Secretary

CONTRACTOR SIGNATORY'S TITLE

DATE SIGNED

The execution date is the date on which the last party has signed.

#25-813-9921 2026 Annual Curb, Gutter, and Sidewalk Maintenance

Bid Opening: Tuesday, March 17, 2026 at 2 pm

Schedule of Quantities				QLM INC.		Spektren Engineering, Inc.		Duran Construction Group		Bosco Co	
Item	Description	Quantity	Unit	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total
1	Traffic Control	1	L.S.	$40,000.00	$40,000.00	$8,868.02	$8,868.02	$10,000.00	$10,000.00	$30,000.00	$30,000.00
2	Adjust Frame and Grate to Grade	1	Ea.	$300.00	$300.00	$973.79	$973.79	$500.00	$500.00	$1,500.00	$1,500.00
3	Adjust Utility Box to Grade	8	Ea.	$300.00	$2,400.00	$279.30	$2,234.40	$375.00	$3,000.00	$750.00	$6,000.00
4	Adjust Water Meter Box to Grade	1	Ea.	$300.00	$300.00	$307.15	$307.15	$175.00	$175.00	$750.00	$750.00
5	Remove and Reinstall Bicycle Rack	1	Ea.	$500.00	$500.00	$978.98	$978.98	$600.00	$600.00	$750.00	$750.00
6	Clearing and Grubbing	1	L.S.	$5,000.00	$5,000.00	$4,284.25	$4,284.25	$3,500.00	$3,500.00	$8,500.00	$8,500.00
7	Remove and Replace Curb and Gutter	1595	L.F.	$108.00	$172,260.00	$70.00	$111,650.00	$83.00	$132,385.00	$78.00	$124,410.00
8	Remove and Replace Sidewalk	8717	S.F.	$22.00	$191,774.00	$18.33	$159,782.61	$20.00	$174,340.00	$19.00	$165,623.00
9	Remove and Replace Sidewalk (Villa	120	S.F.	$22.00	$2,640.00	$40.92	$4,910.40	$39.00	$4,680.00	$19.00	$2,280.00
10	Remove Hardscape and Replace with Topsoil	130	S.F.	$8.00	$1,040.00	$5.73	$744.90	$8.50	$1,105.00	$15.00	$1,950.00
11	Remove and Replace Residential Driveway (Revocable)	100	S.F.	$25.00	$2,500.00	$40.33	$4,033.00	$32.00	$3,200.00	$19.00	$1,900.00
12	Remove and Replace Commercial Driveway	775	S.F.	$26.00	$20,150.00	$30.74	$23,823.50	$35.00	$27,125.00	$21.00	$16,275.00
13	Install Detectable Warning Surface	1	Ea.	$1,000.00	$1,000.00	$776.16	$776.16	$750.00	$750.00	$1,500.00	$1,500.00
14	Install New Curb and Gutter	80	L.F.	$108.00	$8,640.00	$83.20	$6,656.00	$95.00	$7,600.00	$78.00	$6,240.00
15	Install New Sidewalk	66	S.F.	$22.00	$1,452.00	$37.27	$2,459.82	$32.00	$2,112.00	$19.00	$1,254.00
16	Install Curb Ramp-Case B	12	Ea.	$3,500.00	$42,000.00	$5,675.77	$68,109.24	$6,200.00	$74,400.00	$6,500.00	$78,000.00
17	Install Curb Ramp-Case B (Villa Hermosa)	3	Ea.	$3,500.00	$10,500.00	$7,067.57	$21,202.71	$7,200.00	$21,600.00	$6,500.00	$19,500.00
18	Install Curb Ramp-Case C	6	Ea.	$3,500.00	$21,000.00	$5,868.88	$35,213.28	$6,000.00	$36,000.00	$6,500.00	$39,000.00
19	Install Curb Ramp-Case C (Villa Hermosa)	2	Ea.	$3,500.00	$7,000.00	$6,438.03	$12,876.06	$6,800.00	$13,600.00	$6,500.00	$13,000.00
20	Install Curb Ramp-Case F	13	Ea.	$3,500.00	$45,500.00	$5,223.44	$67,904.72	$5,500.00	$71,500.00	$6,500.00	$84,500.00
21	Install Curb Ramp-Case G	11	Ea.	$3,500.00	$38,500.00	$5,344.77	$58,792.47	$5,500.00	$60,500.00	$6,500.00	$71,500.00
22	Install New Curb Ramp-Type A Passageway	2	Ea.	$3,500.00	$7,000.00	$6,705.11	$13,410.22	$5,000.00	$10,000.00	$6,500.00	$13,000.00
23	Install New Curb Ramp-Type C Passageway	1	Ea.	$3,500.00	$3,500.00	$8,177.27	$8,177.27	$6,500.00	$6,500.00	$6,500.00	$6,500.00
24	Remove Curb Ramp	2	Ea.	$800.00	$1,600.00	$1,145.13	$2,290.26	$4,500.00	$9,000.00	$1,500.00	$3,000.00
25	Paint Red Curb (Revocable)	100	L.F.	$12.00	$1,200.00	$13.49	$1,349.00	$20.00	$2,000.00	$35.00	$3,500.00
26	Root Prune and Install Root Barrier	100	L.F.	$25.00	$2,500.00	$8.77	$877.00	$65.00	$6,500.00	$65.00	$6,500.00
27	Remove Sign and Post	1	Ea.	$500.00	$500.00	$229.00	$229.00	$200.00	$200.00	$500.00	$500.00
28	Remove and Reinstall Sign and Post	2	Ea.	$600.00	$1,200.00	$229.00	$458.00	$800.00	$1,600.00	$1,500.00	$3,000.00
29	Remove and Reinstall Sign on New Post	1	Ea.	$700.00	$700.00	$395.03	$395.03	$800.00	$800.00	$1,500.00	$1,500.00
30	Install New Sign on New Post	1	Ea.	$800.00	$800.00	$629.75	$629.75	$800.00	$800.00	$1,500.00	$1,500.00
A1.1	Install Caltrans Type A1-8 Curb	60	L.F.	$98.00	$5,880.00	$86.63	$5,197.80	$110.00	$6,600.00	$78.00	$4,680.00
A1.2	Install Curb Ramp-Case A	2	Ea.	$3,500.00	$7,000.00	$8,435.20	$16,870.40	$6,200.00	$12,400.00	$6,500.00	$13,000.00
	Total				**$646,336.00**		**$646,465.19**		**$705,072.00**		**$731,112.00**

ATTACHMENT 2

#25-813-9921 2026 Annual Curb, Gutter, and Sidewalk Maintenance

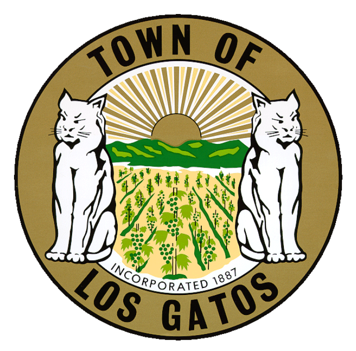
Bid Opening: Tuesday, March 17, 2026 at 2 pm

Schedule of Quantities				ASG Builders		Sposeto Engineering Inc		Zara Construction, Inc.		Spencon Construction	
Item	Description	Quantity	Unit	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total
1	Traffic Control	1	L.S.	$23,400.00	$23,400.00	$23,000.00	$23,000.00	$40,000.00	$40,000.00	$10,000.00	$10,000.00
2	Adjust Frame and Grate to Grade	1	Ea.	$2,592.00	$2,592.00	$1,200.00	$1,200.00	$3,000.00	$3,000.00	$400.00	$400.00
3	Adjust Utility Box to Grade	8	Ea.	$936.00	$7,488.00	$200.00	$1,600.00	$2,500.00	$20,000.00	$400.00	$3,200.00
4	Adjust Water Meter Box to Grade	1	Ea.	$1,224.00	$1,224.00	$200.00	$200.00	$2,500.00	$2,500.00	$400.00	$400.00
5	Remove and Reinstall Bicycle Rack	1	Ea.	$1,296.00	$1,296.00	$350.00	$350.00	$2,000.00	$2,000.00	$750.00	$750.00
6	Clearing and Grubbing	1	L.S.	$6,480.00	$6,480.00	$20,000.00	$20,000.00	$15,000.00	$15,000.00	$5,000.00	$5,000.00
7	Remove and Replace Curb and Gutter	1595	L.F.	$74.88	$119,433.60	$135.00	$215,325.00	$70.00	$111,650.00	$125.00	$199,375.00
8	Remove and Replace Sidewalk	8717	S.F.	$22.00	$191,774.00	$19.50	$169,981.50	$20.00	$174,340.00	$24.00	$209,208.00
9	Remove and Replace Sidewalk (Villa	120	S.F.	$24.00	$2,880.00	$50.00	$6,000.00	$35.00	$4,200.00	$35.00	$4,200.00
10	Remove Hardscape and Replace with Topsoil	130	S.F.	$18.00	$2,340.00	$10.00	$1,300.00	$60.00	$7,800.00	$5.00	$650.00
11	Remove and Replace Residential Driveway (Revocable)	100	S.F.	$28.00	$2,800.00	$24.00	$2,400.00	$80.00	$8,000.00	$30.00	$3,000.00
12	Remove and Replace Commercial Driveway	775	S.F.	$28.00	$21,700.00	$29.00	$22,475.00	$42.00	$32,550.00	$35.00	$27,125.00
13	Install Detectable Warning Surface	1	Ea.	$35.00	$35.00	$1,600.00	$1,600.00	$1,500.00	$1,500.00	$1,500.00	$1,500.00
14	Install New Curb and Gutter	80	L.F.	$65.00	$5,200.00	$92.00	$7,360.00	$90.00	$7,200.00	$125.00	$10,000.00
15	Install New Sidewalk	66	S.F.	$21.00	$1,386.00	$19.50	$1,287.00	$35.00	$2,310.00	$24.00	$1,584.00
16	Install Curb Ramp-Case B	12	Ea.	$7,200.00	$86,400.00	$7,500.00	$90,000.00	$7,000.00	$84,000.00	$6,300.00	$75,600.00
17	Install Curb Ramp-Case B (Villa Hermosa)	3	Ea.	$7,450.00	$22,350.00	$8,000.00	$24,000.00	$7,000.00	$21,000.00	$8,000.00	$24,000.00
18	Install Curb Ramp-Case C	6	Ea.	$7,560.00	$45,360.00	$7,500.00	$45,000.00	$7,000.00	$42,000.00	$6,300.00	$37,800.00
19	Install Curb Ramp-Case C (Villa Hermosa)	2	Ea.	$7,900.00	$15,800.00	$8,000.00	$16,000.00	$7,000.00	$14,000.00	$8,000.00	$16,000.00
20	Install Curb Ramp-Case F	13	Ea.	$7,750.00	$100,750.00	$3,800.00	$49,400.00	$7,000.00	$91,000.00	$6,300.00	$81,900.00
21	Install Curb Ramp-Case G	11	Ea.	$7,650.00	$84,150.00	$5,500.00	$60,500.00	$7,000.00	$77,000.00	$6,300.00	$69,300.00
22	Install New Curb Ramp-Type A Passageway	2	Ea.	$6,960.00	$13,920.00	$3,800.00	$7,600.00	$7,000.00	$14,000.00	$8,000.00	$16,000.00
23	Install New Curb Ramp-Type C Passageway	1	Ea.	$7,200.00	$7,200.00	$7,500.00	$7,500.00	$7,000.00	$7,000.00	$8,000.00	$8,000.00
24	Remove Curb Ramp	2	Ea.	$2,250.00	$4,500.00	$2,000.00	$4,000.00	$1,500.00	$3,000.00	$1,500.00	$3,000.00
25	Paint Red Curb (Revocable)	100	L.F.	$11.00	$1,100.00	$10.00	$1,000.00	$23.00	$2,300.00	$10.00	$1,000.00
26	Root Prune and Install Root Barrier	100	L.F.	$47.00	$4,700.00	$75.00	$7,500.00	$90.00	$9,000.00	$35.00	$3,500.00
27	Remove Sign and Post	1	Ea.	$505.00	$505.00	$150.00	$150.00	$500.00	$500.00	$500.00	$500.00
28	Remove and Reinstall Sign and Post	2	Ea.	$930.00	$1,860.00	$250.00	$500.00	$900.00	$1,800.00	$550.00	$1,100.00
29	Remove and Reinstall Sign on New Post	1	Ea.	$1,124.00	$1,124.00	$500.00	$500.00	$900.00	$900.00	$650.00	$650.00
30	Install New Sign on New Post	1	Ea.	$1,260.00	$1,260.00	$650.00	$650.00	$900.00	$900.00	$750.00	$750.00
A1.1	Install Caltrans Type A1-8 Curb	60	L.F.	$62.00	$3,720.00	$95.00	$5,700.00	$90.00	$5,400.00	$75.00	$4,500.00
A1.2	Install Curb Ramp-Case A	2	Ea.	$7,100.00	$14,200.00	$5,000.00	$10,000.00	$7,000.00	$14,000.00	$6,300.00	$12,600.00
	Total				**$798,927.60**		**$804,078.50**		**$819,850.00**		**$832,592.00**

#25-813-9921 2026 Annual Curb, Gutter, and Sidewalk Maintenance

Bid Opening: Tuesday, March 17, 2026 at 2 pm

Schedule of Quantities				FBD Vanguard Construction, Inc.		JJR Construction, Inc		SAE Consulting Engineering		Precision Grade Inc	
Item	Description	Quantity	Unit	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total
1	Traffic Control	1	L.S.	$31,974.00	$31,974.00	$5,000.00	$5,000.00	$65,000.00	$65,000.00	$100,000.00	$100,000.00
2	Adjust Frame and Grate to Grade	1	Ea.	$270.00	$270.00	$2,500.00	$2,500.00	$1,200.00	$1,200.00	$434.00	$434.00
3	Adjust Utility Box to Grade	8	Ea.	$270.00	$2,160.00	$400.00	$3,200.00	$750.00	$6,000.00	$400.00	$3,200.00
4	Adjust Water Meter Box to Grade	1	Ea.	$300.00	$300.00	$300.00	$300.00	$750.00	$750.00	$600.00	$600.00
5	Remove and Reinstall Bicycle Rack	1	Ea.	$290.00	$290.00	$1,500.00	$1,500.00	$1,000.00	$1,000.00	$550.00	$550.00
6	Clearing and Grubbing	1	L.S.	$12,500.00	$12,500.00	$500.00	$500.00	$12,000.00	$12,000.00	$12,000.00	$12,000.00
7	Remove and Replace Curb and Gutter	1595	L.F.	$85.00	$135,575.00	$132.00	$210,540.00	$77.00	$122,815.00	$148.00	$236,060.00
8	Remove and Replace Sidewalk	8717	S.F.	$24.00	$209,208.00	$22.00	$191,774.00	$35.00	$305,095.00	$33.00	$287,661.00
9	Remove and Replace Sidewalk (Villa	120	S.F.	$60.00	$7,200.00	$37.00	$4,440.00	$50.00	$6,000.00	$47.00	$5,640.00
10	Remove Hardscape and Replace with Topsoil	130	S.F.	$15.00	$1,950.00	$8.00	$1,040.00	$15.00	$1,950.00	$20.00	$2,600.00
11	Remove and Replace Residential Driveway (Revocable)	100	S.F.	$30.00	$3,000.00	$33.00	$3,300.00	$25.00	$2,500.00	$69.00	$6,900.00
12	Remove and Replace Commercial Driveway	775	S.F.	$35.00	$27,125.00	$35.00	$27,125.00	$28.00	$21,700.00	$54.00	$41,850.00
13	Install Detectable Warning Surface	1	Ea.	$580.00	$580.00	$1,000.00	$1,000.00	$900.00	$900.00	$796.00	$796.00
14	Install New Curb and Gutter	80	L.F.	$85.00	$6,800.00	$132.00	$10,560.00	$110.00	$8,800.00	$113.00	$9,040.00
15	Install New Sidewalk	66	S.F.	$24.00	$1,584.00	$22.00	$1,452.00	$75.00	$4,950.00	$60.00	$3,960.00
16	Install Curb Ramp-Case B	12	Ea.	$8,200.00	$98,400.00	$8,250.00	$99,000.00	$10,000.00	$120,000.00	$11,500.00	$138,000.00
17	Install Curb Ramp-Case B (Villa Hermosa)	3	Ea.	$11,000.00	$33,000.00	$10,650.00	$31,950.00	$10,000.00	$30,000.00	$12,000.00	$36,000.00
18	Install Curb Ramp-Case C	6	Ea.	$8,200.00	$49,200.00	$8,000.00	$48,000.00	$10,000.00	$60,000.00	$10,200.00	$61,200.00
19	Install Curb Ramp-Case C (Villa Hermosa)	2	Ea.	$11,000.00	$22,000.00	$9,075.00	$18,150.00	$9,500.00	$19,000.00	$9,200.00	$18,400.00
20	Install Curb Ramp-Case F	13	Ea.	$7,500.00	$97,500.00	$8,000.00	$104,000.00	$9,500.00	$123,500.00	$7,800.00	$101,400.00
21	Install Curb Ramp-Case G	11	Ea.	$7,500.00	$82,500.00	$8,000.00	$88,000.00	$7,500.00	$82,500.00	$8,100.00	$89,100.00
22	Install New Curb Ramp-Type A Passageway	2	Ea.	$5,000.00	$10,000.00	$8,000.00	$16,000.00	$8,000.00	$16,000.00	$8,850.00	$17,700.00
23	Install New Curb Ramp-Type C Passageway	1	Ea.	$5,000.00	$5,000.00	$12,000.00	$12,000.00	$10,000.00	$10,000.00	$7,500.00	$7,500.00
24	Remove Curb Ramp	2	Ea.	$5,000.00	$10,000.00	$1,500.00	$3,000.00	$1,500.00	$3,000.00	$1,200.00	$2,400.00
25	Paint Red Curb (Revocable)	100	L.F.	$6.00	$600.00	$10.00	$1,000.00	$25.00	$2,500.00	$13.00	$1,300.00
26	Root Prune and Install Root Barrier	100	L.F.	$28.00	$2,800.00	$35.00	$3,500.00	$75.00	$7,500.00	$75.00	$7,500.00
27	Remove Sign and Post	1	Ea.	$240.00	$240.00	$250.00	$250.00	$400.00	$400.00	$300.00	$300.00
28	Remove and Reinstall Sign and Post	2	Ea.	$660.00	$1,320.00	$400.00	$800.00	$600.00	$1,200.00	$600.00	$1,200.00
29	Remove and Reinstall Sign on New Post	1	Ea.	$400.00	$400.00	$600.00	$600.00	$750.00	$750.00	$670.00	$670.00
30	Install New Sign on New Post	1	Ea.	$660.00	$660.00	$1,000.00	$1,000.00	$900.00	$900.00	$950.00	$950.00
A1.1	Install Caltrans Type A1-8 Curb	60	L.F.	$85.00	$5,100.00	$105.00	$6,300.00	$150.00	$9,000.00	$112.48	$6,748.80
A1.2	Install Curb Ramp-Case A	2	Ea.	$7,000.00	$14,000.00	$8,250.00	$16,500.00	$8,500.00	$17,000.00	$11,681.36	$23,362.72
	Total				**$873,236.00**		**$914,281.00**		**$1,063,910.00**		**$1,225,022.52**



PROJECT
PLANS AND SPECIFICATIONS
FOR
2026 ANNUAL CURB, GUTTER, AND SIDEWALK MAINTENANCE
25-813-9921

Bid Opening
Tuesday, March 17, 2026, 2:00 pm

ISSUE DATE: February 20, 2026

ATTACHMENT 3

2026 ANNUAL CURB, GUTTER, AND SIDEWALK MAINTENANCE
25-813-9921

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Attachments:

A - 2026 Concrete - Locations of Work

B - Standard Plans

C - Sample Contract

D - Blueprint for a Clean Bay

E - Stormwater Ordinance

1. NOTICE INVITING BIDS

1.1. Bid Submission

The Town of Los Gatos ("Town") will accept electronic bids for its Project # 2026 Annual Curb, Gutter, and Sidewalk Maintenance Project #25-813-9921 ("Project"), by or before Tuesday, March 17, 2026, at 2:00 pm, via the Town's bidding site at https://procurement.opengov.com/portal/losgatosca, at which time the bids will be opened electronically, as further specified in the Instructions to Bidders.

1.2. Project Information

A. **Location and Description -** The Project involves the repair or replacement of concrete curb and gutter, sidewalks, and driveway approaches, installation of new curb ramps, sign posts, root pruning, and associated work within the Town, as shown in **Appendix A**, Locations of Work, incorporated herein.

B. **Time for Final Completion -** The Project must be fully completed within 56 calendar days from the start date set forth in the Notice to Proceed.

C. **Estimated Cost.** The estimated construction cost is 820000.

1.3. License and Registration Requirements

A. **License -** This Project requires a valid California contractor's license for the following classification(s): A or C-8.

B. **DIR Registration -** Town may not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder is registered with the California Department of Industrial Relations ("DIR") to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.

1.4. Contract Documents

The plans, specifications, bid forms and contract documents for the Project, and any addenda thereto ("Contract Documents") may be downloaded from Town's bidding site https://procurement.opengov.com/portal/losgatosca. Printed copy of the Contract Documents is not available from the Town.

1.5. Bid Security

The Bid Proposal must be accompanied by bid security of ten percent of the maximum bid amount, in the form of a cashier's or certified check made payable to Town, or a bid bond executed by a surety licensed to do business in the State of California on the Bid Bond form included with the Contract Documents. The bid security must guarantee that within ten days after Town issues the Notice of Potential Award, the successful bidder will execute the Contract and submit the payment and performance bonds, insurance certificates and endorsements, valid Certificates of Reported Compliance as required under the California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.) ("Off-Road Regulation"), if applicable, and any other submittals required by the Contract Documents and as specified in the Notice of Potential Award.

1.6. Prevailing Wage Requirements

A. **General -** Pursuant to California Labor Code § 1720 et seq., this Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes.

B. **Rates -** The prevailing rates are on file with the Town and are available online at http://www.dir.ca.gov/DLSR. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half.

C. **Compliance -** The Contract will be subject to compliance monitoring and enforcement by the DIR, under Labor Code § 1771.4.

1.7. Retention

The percentage of retention that will be withheld from progress payments is 5 %.

1.8. Performance and Payment Bonds

The successful bidder will be required to provide performance and payment bonds, each for 100% of the Contract Price, as further specified in the Contract Documents.

1.9. Substitution of Securities

Substitution of appropriate securities in lieu of retention amounts from progress payments is permitted under Public Contract Code § 22300

1.10. Subcontractor List

Each Subcontractor must be registered with the DIR to perform work on public projects. Each bidder must submit a completed Subcontractor List form with its Bid Proposal, including the name, location of the place of business, California contractor license number, DIR registration number, and percentage of the Work to be performed (based on the base bid price) for each Subcontractor that will perform Work or service or fabricate or install Work for the prime contractor in excess of one-half of 1% of the bid price, using the Subcontractor List form included with the Contract Documents.

1.11. Instructions to Bidders

All bidders should carefully review the Instructions to Bidders for more detailed information before submitting a Bid Proposal. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, as defined therein, including this Notice Inviting Bids.

By: **/s/ Wendy Wood, Town Clerk**

Publication Date: Friday, February 20, 2026

2. Instructions to Bidders

Each Bid Proposal submitted to **Town of Los Gatos** ("Town") for its 2026 Annual Curb, Gutter, and Sidewalk Maintenance Project #25-813-9921 ("Project") must be submitted in accordance with the following instructions and requirements:

2.1. Bid Submission

A. **General -** Each bidder must register for an account on the Town's bidding site, https://procurement.opengov.com/portal/losgatosca to submit the Bid Proposal electronically. Plans, Specifications, and Addendums (if any) may be viewed and downloaded free of charge via the internet at https://procurement.opengov.com/portal/losgatosca. To be included on the Plan Holder's List for the Project, registered users must download the Plans and Specifications from the bidding website. Each Bid Proposal must be completed and submitted electronically through the bidding site, with all required forms and attachments, by or before the date and time set forth in Section 1 of the Notice Inviting Bids, or as amended by subsequent addendum. Faxed or emailed Bid Proposals will not be accepted. Late submissions will not be considered. Town reserves the right to postpone the date or time for receiving or opening bids. Each bidder is solely responsible for all of its costs to prepare and submit its bid and by submitting a bid waives any right to recover those costs from Town. The bid price(s) must include all costs to perform the Work as specified, including all labor, material, supplies, and equipment and all other direct or indirect costs such as applicable taxes, insurance and overhead.

B. **Bid Opening -** Bids timely submitted via the Town's bidding portal will be opened and publicly read aloud during a Zoom meeting after bids have closed on the day and time listed above. Here is the Zoom link to participate:

https://losgatosca-gov.zoom.us/j/83653039622 or https://www.zoom.com/, Webinar ID: 836 5303 9622

A. **DIR Registration -** Subject to limited legal exceptions for joint venture bids and federally-funded projects, Town may not accept a Bid Proposal from a bidder without proof that the bidder is registered with the DIR to perform public work under Labor Code § 1725.5. If Town is unable to confirm that the bidder is currently registered with the DIR, Town may disqualify the bidder and disregard its bid. (Labor Code §§ 1725.5 and 1771.1(a).)

2.2. Bid Proposal

A Bid Proposal submitted with exceptions or terms such as "negotiable," "will negotiate," or similar, will be considered nonresponsive. Each Bid Proposal must be accompanied by bid security, as set forth in Section titled "Bid Security" below, and by a completed Subcontractor List and Non-Collusion Declaration using the forms included with the Contract Documents, and any other required enclosures, as applicable.

2.3. Bid Security

Each Bid Proposal must be accompanied by bid security of ten percent of the maximum bid amount, in the form of a cashier's check or certified check, made payable to the Town, or bid bond using the form included in the Contract Documents and executed by a surety licensed to do business in the State of California. The bid security must guarantee that, within ten days after issuance of the Notice of Potential Award, the bidder will: execute and submit the enclosed Contract for the bid price; submit payment and performance bonds for 100% of the maximum Contract Price; submit the insurance certificates and endorsements; and submit valid Certificates of Reported Compliance as required by the Off-Road Regulation, if applicable, and any other submittals, if any, required by the Contract Documents or the Notice of

Potential Award. A Bid Proposal may not be withdrawn for a period of 60 days after the bid opening without forfeiture of the bid security, except as authorized for material error under Public Contract Code § 5100 et seq.

2.4. Liquidated Damages

As further specified in Section 5.4 of the General Conditions, if Contractor fails to complete the Work within the Contract Time, Town will assess liquidated damages in the amount of 3000 per day for each day of unexcused delay in achieving Final Completion, and such liquidated damages may be deducted from Town's payments due or to become due to Contractor under this Contract.

2.5. Requests for Information

Questions or requests for clarifications regarding the Project, the bid procedures, or any of the Contract Documents must be submitted through the Town's bidding site https://procurement.opengov.com/portal/losgatosca and received a minimum of five (5) working days prior to the scheduled bid opening. Oral responses are not authorized and are not binding on the Town. Bidders should submit any such written inquiries at least five Working Days before the scheduled bid opening. Questions received any later might not be addressed before the bid deadline. An interpretation or clarification by Town in response to Questions or requests for clarifications will be issued through an addendum no later than 72 hours prior to bid opening.

2.6. Pre-Bid Investigation

A. **General -** Each bidder is solely responsible at its sole expense for diligent and thorough review of the Contract Documents, examination of the Project site, and reasonable and prudent inquiry concerning known and potential site and area conditions prior to submitting a Bid Proposal. Each bidder is responsible for knowledge of conditions and requirements which reasonable review and investigation would have disclosed. However, except for any areas that are open to the public at large, bidders may not enter property owned or leased by the Town or the Project site without prior written authorization from Town.

B. **Document Review -** Each bidder is responsible for review of the Contract Documents and any informational documents provided "For Reference Only," e.g., as-builts, technical reports, test data, and the like. A bidder is responsible for notifying Town of any errors, omissions, inconsistencies, or conflicts it discovers in the Contract Documents, acting solely in its capacity as a contractor and subject to the limitations of Public Contract Code § 1104. Notification of any such errors, omissions, inconsistencies, or conflicts must be submitted in writing to the Town no later than five Working Days before the scheduled bid opening. (See Section 5, above.) Town expressly disclaims responsibility for assumptions a bidder might draw from the presence or absence of information provided by Town.

C. **Project Site -** Questions regarding the availability of soil test data, water table elevations, and the like should be submitted to the Town through the bidding site, as specified in Section 5, above. Any subsurface exploration at the Project site must be done at the bidder's expense, but only with prior written authorization from Town. All soil data and analyses available for inspection or provided in the Contract Documents apply only to the test hole locations. Any water table elevation indicated by a soil test report existed on the date the test hole was drilled. The bidder is responsible for determining and allowing for any differing soil or water table conditions during construction. Because groundwater levels may fluctuate, difference(s) in elevation between ground water shown in soil boring logs and ground water actually encountered during construction will not be considered changed Project site conditions. Actual locations and depths must be determined by bidder's field investigation.

The bidder may request access to underlying or background information on the Project site in Town's possession that is necessary for the bidder to form its own conclusions, including, if available, record drawings or other documents indicating the location of subsurface lines, utilities, or other structures.

D. **Utility Company Standards -** The Project must be completed in a manner that satisfies the standards and requirements of any affected utility companies or agencies (collectively, "utility owners"). The successful bidder may be required by the third party utility owners to provide detailed plans prepared by a California registered civil engineer showing the necessary temporary support of the utilities during coordinated construction work. Bidders are directed to contact the affected third party utility owners about their requirements before submitting a Bid Proposal.

2.7. Bidders Interested in More Than One Bid

No person, firm, or corporation may submit or be a party to more than one Bid Proposal unless alternate bids are specifically called for. However, a person, firm, or corporation that has submitted a subcontract proposal or quote to a bidder may submit subcontract proposals or quotes to other bidders.

2.8. Addenda

Any addenda issued prior to the bid opening are part of the Contract Documents. Subject to the limitations of Public Contract Code § 4104.5, Town reserves the right to issue addenda prior to bid time. Each bidder is solely responsible for ensuring it has received and reviewed all addenda prior to submitting its bid. Bidders should check Town's site periodically for any addenda or updates on the Project at https://procurement.opengov.com/portal/losgatosca.

2.9. Brand Designations and "Or Equal" Substitutions

Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate quality and type of item desired, and bidders may request use of any equal material, product, thing, or service. All data substantiating the proposed substitute as an equal item must be submitted with the written request for substitution. A request for substitution must be submitted within 35 days after Notice of Potential Award unless otherwise provided in the Contract Documents. This provision does not apply to materials, products, things, or services that may lawfully be designated by a specific brand or trade name under Public Contract Code § 3400(c).

2.10. Bid Protest

Any bid protest against another bidder must be submitted in writing and received by Town sent via email to Gary Heap, Town Engineer, at gheap@losgatosca.gov before 5:00 p.m. no later than two Working Days following bid opening ("Bid Protest Deadline") and must comply with the following requirements:

A. **General -** Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest. For purposes of this Section 10, a "Working Day" means a day that Town is open for normal business, and excludes weekends and holidays observed by Town. Pursuant to Public Contract Code § 4104, inadvertent omission of a Subcontractor's DIR registration number on the Subcontractor List form is not grounds for a bid protest, provided it is corrected within 24 hours of the bid opening or as otherwise provided under Labor Code § 1771.1(b).

B. **Protest Contents -** The bid protest must contain a complete statement of the basis for the protest and must include all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the specific portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address, email address, and telephone number of the protesting bidder and any person submitting the protest on behalf of or as an authorized representative of the protesting bidder.

C. **Copy to Protested Bidder -** Upon submission of its bid protest to Town, the protesting bidder must also concurrently transmit the protest and all supporting documents to the protested bidder, and to any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest, by email or hand delivery to ensure delivery before the Bid Protest Deadline.

D. **Response to Protest -** The protested bidder may submit a written response to the protest, provided the response is received by Town before 5:00 p.m., within two Working Days after the Bid Protest Deadline or after actual receipt of the bid protest, whichever is sooner (the "Response Deadline"). The response must attach all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address, email address, and telephone number of the person responding on behalf of or representing the protested bidder if different from the protested bidder.

E. **Copy to Protesting Bidder -** Upon submission of its response to the bid protest to the Town, the protested bidder must also concurrently transmit by email or hand delivery, by or before the Response Deadline, a copy of its response and all supporting documents to the protesting bidder and to any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

F. **Exclusive Remedy -** The procedure and time limits set forth in this Section are mandatory and are the bidder's sole and exclusive remedy in the event of a bid protest. A bidder's failure to comply with these procedures will constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.

G. **Right to Award -** Town reserves the right, acting in its sole discretion, to reject any bid protest that it determines lacks merit, to award the Contract to the bidder it has determined to be the responsible bidder submitting the lowest responsive bid, and to issue a Notice to Proceed with the Work notwithstanding any pending or continuing challenge to its determination.

2.11. Reservation of Rights

Town reserves the unfettered right, acting in its sole discretion, to waive or to decline to waive any immaterial bid irregularities; to accept or reject any or all bids; to cancel or reschedule the bid; to postpone or abandon the Project entirely; or to perform all or part of the Work with its own forces. The Contract will be awarded, if at all, within 60 days after opening of bids or as otherwise specified in the Special Conditions, to the responsible bidder that submitted the lowest responsive bid. Any planned start date for the Project represents the Town's expectations at the time the Notice Inviting Bids was first issued. Town is not bound to issue a Notice to Proceed by or before such planned start date, and it reserves the right to issue the Notice to Proceed when the Town determines, in its sole discretion, the appropriate time for commencing the Work. The Town expressly disclaims responsibility for any assumptions a bidder might draw from the presence or absence of information provided by the Town in any form. Each bidder is solely responsible for its costs to prepare and submit a bid, including site investigation costs.

2.12. Bonds

Within ten calendar days following Town's issuance of the Notice of Potential Award to the successful bidder, the bidder must submit payment and performance bonds to Town as specified in the Contract Documents using the bond forms included in the Contract Documents. All required bonds must be calculated on the maximum total Contract Price as awarded, including additive alternates, if applicable.

2.13. License(s)

The successful bidder and its Subcontractor(s) must possess the California contractor's license(s) in the classification(s) required by law to perform the Work. The successful bidder must also obtain a Town business license within ten (10) days following Town's issuance of the Notice of Potential Award. Subcontractors must also obtain a Town business license before performing any Work.

2.14. Ineligible Subcontractor

Any Subcontractor who is ineligible to perform work on a public works project under Labor Code §§ 1777.1 or 1777.7 is prohibited from performing work on the Project.

2.15. Safety Orders

If the Project includes construction of a pipeline, sewer, sewage disposal system, boring and jacking pits, or similar trenches or open excavations, which are five feet or deeper, each bid must include a bid item for adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life or limb, which comply with safety orders as required by Labor Code § 6707.

2.16. In-Use Off-Road Diesel-Fueled Fleets

If the Project involves the use of vehicles subject to the California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.) ("Off-Road Regulation"), then within ten calendar days following Town's issuance of the Notice of Potential Award to the successful bidder, the bidder must submit to Town valid Certificates of Reported Compliance for its fleet and its listed Subcontractors, if applicable, in accordance with the Off-Road Regulation, unless exempt under the Off-Road Regulation.

2.17. Additive and Deductive Alternates

As required by Public Contract Code § 20103.8, if this bid solicitation includes additive or deductive items, the following method will be used to determine the lowest bid: The lowest bid will be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

2.18. Bid Schedule

Each bidder must complete the Bid Schedule form with unit prices as indicated, and submit the completed Bid Schedule with its Bid Proposal.

A. **Estimated Quantities -** Unless identified as a "Final Pay Quantity," the quantities shown on the Bid Schedule are estimated and the actual quantities required to perform the Work may be greater or less than the estimated amount. The Contract Price will be adjusted to reflect the actual quantities required for the Work based on the itemized or unit prices provided in the Bid Schedule, with no allowance for anticipated profit for quantities that are deleted or decreased, and no increase in the unit price, and without regard to the percentage increase or decrease of the estimated quantity and the actual quantity.

2.19. For Reference Only

The following documents are provided "For Reference Only," as defined in Section 3.4 of the General Conditions:

- Attachment B-Standard Plans
- Attachment C-Sample Contract
- Attachment D-Blueprint for a Clean Bay
- Attachment E-Town of Los Gatos Storm Water Pollution Control Ordinance

3. Bid Schedule

This Bid Schedule must be completed and included with the Bid Proposal. Pricing must be provided for each Bid Item as indicated. Items marked "(SW)" are Specialty Work that must be performed by a qualified Subcontractor. The lump sum or unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead. The sum of all amounts entered in the "Extended Total Amount" column must be identical to the Base Bid price entered in Section 1 of the Bid Proposal form.

AL = Allowance CF = Cubic Feet CY = Cubic Yard EA = Each LB = Pounds
LF = Linear Foot LS = Lump Sum SF = Square Feet TON = Ton (2000 lbs)

SCHEDULE OF QUANTITIES

Item	Description	Unit	Quantity	Unit Cost	Total
1.	Traffic Control	L.S.	1		
2.	Adjust Frame and Grate to Grade	Ea.	1		
3.	Adjust Utility Box to Grade	Ea.	8		
4.	Adjust Water Meter Box to Grade	Ea.	1		
5.	Remove and Reinstall Bicycle Rack	Ea.	1		
6.	Clearing and Grubbing	L.S.	1		
7.	Remove and Replace Curb and Gutter	L.F.	1,595		
8.	Remove and Replace Sidewalk	S.F.	8,717		
9.	Remove and Replace Sidewalk (Villa Hermosa)	S.F.	120		
10.	Remove Hardscape and Replace with Topsoil	S.F.	130		
11.	Remove and Replace Residential Driveway (Revocable)	S.F.	100		
12.	Remove and Replace Commercial Driveway	S.F.	775		
13.	Install Detectable Warning Surface	Ea.	1		
14.	Install New Curb and Gutter	L.F.	80		
15.	Install New Sidewalk	S.F.	66		

Item	Description	Unit	Quantity	Unit Cost	Total
16.	Install Curb Ramp-Case B	Ea.	12		
17.	Install Curb Ramp-Case B (Villa Hermosa)	Ea.	3		
18.	Install Curb Ramp-Case C	Ea.	6		
19.	Install Curb Ramp-Case C (Villa Hermosa)	Ea.	2		
20.	Install Curb Ramp-Case F	Ea.	13		
21.	Install Curb Ramp-Case G	Ea.	11		
22.	Install New Curb Ramp-Type A Passageway	Ea.	2		
23.	Install New Curb Ramp-Type C Passageway	Ea.	1		
24.	Remove Curb Ramp	Ea.	2		
25.	Paint Red Curb (Revocable)	L.F.	100		
26.	Root Prune and Install Root Barrier	L.F.	100		
27.	Remove Sign and Post	Ea.	1		
28.	Remove and Reinstall Sign and Post	Ea.	2		
29.	Remove and Reinstall Sign on New Post	Ea.	1		
30.	Install New Sign on New Post	Ea.	1		
A1.1	Install Caltrans Type A1-8 Curb	L.F.	60		
A1.2	Install Curb Ramp-Case A	Ea.	2		
TOTAL					

4. Vendor Questionnaire

1. Formation date of company*

*Response required

2. Number of years providing the specified services*
*Response required

3. Please list names and titles of all officers and directors. If an individual or partnership, please list names and addresses of all partners, indicating whether they are general or limited partners.*
*Response required

4. Indicate whether Proposer has ever failed to complete any Agreement awarded to it. If so, note when, where, and why. Attach additional sheets, if necessary. *
*Response required

5. Indicate whether Proposer has been or is the subject of a bankruptcy or insolvency proceeding or subject to assignment for the benefit of creditors. *
*Response required

6. Will you be using subcontractor/s?*

☐ Yes

☐ No

*Response required

When equals "Yes"

*6.1. Subcontractor's list**

Please download the below documents, complete, and upload.

- Subsontractors_list.pdf

*Response required

7. Please provide Bid Bond*

Please download the below documents, complete, and upload.

- bid_bond.pdf

*Response required

8. Noncollusion Declaration*

Please download the below documents, complete, and upload.

- Noncollusion_declaration_fo...

*Response required

9. Bidder's Certifications and Warranties. *

By confirming and submitting this Bid Proposal, Bidder certifies and warrants the following:

A. **Examination of Contract Documents.** Bidder has thoroughly examined the Contract Documents and represents that, to the best of Bidder's knowledge, there are no errors, omissions, or discrepancies in the Contract Documents, subject to the limitations of Public Contract Code § 1104.

B. **Addenda.** Bidder agrees that it has confirmed receipt of or access to, and reviewed, all addenda issued for this bid. Bidder waives any claims it might have against the Town based on its failure to receive, access, or review any addenda for any reason.

C. **Examination of Worksite.** Bidder has had the opportunity to examine the Worksite and local conditions at the Project location.

D. **Bidder Responsibility.** Bidder is a responsible bidder, with the necessary ability, capacity, experience, skill, qualifications, workforce, equipment, and resources to perform or cause the Work to be performed in accordance with the Contract Documents and within the Contract Time.

E. **Responsibility for Bid.** Bidder has carefully reviewed this Bid Proposal and is solely responsible for any errors or omissions contained in its completed bid. All statements and information provided in this Bid Proposal and enclosures are true and correct to the best of Bidder's knowledge.

F. **Nondiscrimination.** In preparing this bid, the Bidder has not engaged in discrimination against any prospective or present employee or Subcontractor on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status.

G. **Iran Contracting Act.** If the Contract Price exceeds $1,000,000, Bidder is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.

☐ Please confirm

*Response required

10. Award of Contract*

Award of Contract. By confirming and submitting this Bid Proposal, Bidder agrees that, if Town issues the Notice of Potential Award to Bidder, then within ten days following issuance of the Notice of Potential Award to Bidder, Bidder will do all of the following:

A. **Execute Contract.** Enter into the Contract with Town in accordance with the terms of this Bid Proposal, by signing and submitting to Town the Contract prepared by Town using the form included with the Contract Documents;

B. **Submit Required Bonds.** Submit to Town a payment bond and a performance bond, each for 100% of the Contract Price, using the bond forms provided and in accordance with the requirements of the Contract Documents;

C. **Insurance Requirements.** Submit to Town the insurance certificate(s) and endorsement(s) as required by the Contract Documents; and

D. **Certificates of Reported Compliance.** Submit to Town valid Certificates of Reported Compliance for its fleet and its listed Subcontractors, if applicable, if the Project involves the use of vehicles subject to the Off-Road Regulation. (See Section 16 of the Instructions to Bidders.)

☐ Please confirm

*Response required

5. General Conditions

Article 1 - Definitions

Definitions - The following definitions apply to all of the Contract Documents unless otherwise indicated, e.g., additional definitions that apply solely to the Specifications or other technical documents. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the following (in any tense or form): “day,” “furnish,” “including,” “install,” “work day,” or “working day.”

Allowance means a specific amount that must be included in the Bid Proposal for a specified purpose.

Article, as used in these General Conditions, means a numbered Article of the General Conditions, unless otherwise indicated by the context.

Change Order means a written document duly approved and executed by Town, which changes the scope of Work, the Contract Price, or the Contract Time.

Claim means a separate demand by Contractor for a change in the Contract Time or Contract Price, that has previously been submitted to Town in accordance with the requirements of the Contract Documents, and which has been rejected by Town, in whole or in part; or a written demand by Contractor objecting to the amount of Final Payment.

Contract means the signed agreement between Town and Contractor for performing the Work required for the Project, and all documents expressly incorporated therein.

Contract Documents means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Notice Inviting Bids; the Instructions to Bidders; addenda, if any; the Bid Proposal and attachments thereto; the Contract; the Notice of Potential Award and Notice to Proceed; the payment and performance bonds; the General Conditions; the Special Conditions; the Project Plans and Specifications; any Change Orders; and any other documents which are clearly and unambiguously made part of the Contract Documents. The Contract Documents do not include documents provided “For Reference Only,” or documents that are intended solely to provide information regarding existing conditions.

Contract Price means the total compensation to be paid to Contractor for performance of the Work, as set forth in the Contract and as may be amended by Change Order or adjusted for an Allowance. The Contract Price is not subject to adjustment due to inflation or due to the increased cost of labor, material, supplies, or equipment following submission of the Bid Proposal.

Contract Time means the time specified for complete performance of the Work, as set forth in the Contract and as may be amended by Change Order.

Contractor means the individual, partnership, corporation, or joint-venture that has signed the Contract with Town to perform the Work.

Day means a calendar day unless otherwise specified.

Design Professional means the licensed individual(s) or firm(s) retained by Town to provide architectural, engineering, or other design professional services for the Project. If no Design Professional has been retained for this Project, any reference to Design Professional is deemed to refer to the Engineer.

DIR means the California Department of Industrial Relations.

Drawings has the same meaning as Plans.

Engineer means the Town Engineer and his or her authorized delegees.

Excusable Delay is defined in Section 5.3(B), Excusable Delay.

Extra Work means new or unforeseen work added to the Project, as determined by the Engineer in his or her sole discretion, including Work that was not part of or incidental to the scope of the Work when the Contractor's bid was submitted; Work that is substantially different from the Work as described in the Contract Documents at bid time; or Work that results from a substantially differing and unforeseeable condition.

Final Completion means Contractor has fully completed all of the Work required by the Contract Documents to the Town's satisfaction, including all punch list items and any required commissioning or training, and has provided the Town with all required submittals, including the instructions and manuals, product warranties, and as-built drawings.

Final Payment means payment to Contractor of the unpaid Contract Price, including release of undisputed retention, less amounts withheld or deducted pursuant to the Contract Documents.

Furnish means to purchase and deliver for the Project.

Government Code Claim means a claim submitted pursuant to California Government Code § 900 et seq.

Hazardous Materials means any substance or material identified now or in the future as hazardous under any Laws, or any other substance or material that may be considered hazardous or otherwise subject to Laws governing handling, disposal, or cleanup.

Including, whether or not capitalized, means "including, but not limited to," unless the context clearly requires otherwise.

Inspector means the individual(s) or firm(s) retained or employed by Town to inspect the workmanship, materials, and manner of construction of the Project and its components to ensure compliance with the Contract Documents and all Laws.

Install means to fix in place for materials, and to fix in place and connect for equipment.

Laws means all applicable local, state, and federal laws, regulations, rules, codes, ordinances, permits, orders, and the like enacted or imposed by or under the auspices of any governmental entity with jurisdiction over any of the Work or any performance of the Work, including health and safety requirements.

Non-Excusable Delay is defined in Section 5.3(D), Non-Excusable Delay.

Plans means the Town-provided plans, drawings, details, or graphical depictions of the Project requirements, but does not include Shop Drawings.

Project means the public works project referenced in the Contract, as modified by any Project alternates elected by Town, if any.

Project Manager means the individual designated by Town to oversee and manage the Project on Town's behalf and may include his or her authorized delegee(s) when the Project Manager is unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to the Engineer.

Recoverable Costs is defined in Section 5.3(F), Recoverable Costs.

Request for Information or **RFI** means Contractor's written request for information about the Contract Documents, the Work or the Project, submitted to Town in the manner and format specified by Town.

Section, when capitalized in these General Conditions, means a numbered section or subsection of the General Conditions, unless the context clearly indicates otherwise.

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to Town acceptance, which are intended to provide details for fabrication, installation, and the like, of items required by or shown in the Plans or Specifications.

Specialty Work means Work that must be performed by a specialized Subcontractor with the specified license or other special certification, and that the Contractor is not qualified to self-perform.

Specifications means the technical, text specifications describing the Project requirements, which are prepared for and incorporated into the Contract by or on behalf of Town, and does not include the Contract, General Conditions or Special Conditions.

Subcontractor means an individual, partnership, corporation, or joint-venture retained by Contractor directly or indirectly through a subcontract to perform a specific portion of the Work. The term Subcontractor applies to subcontractors of all tiers, unless otherwise indicated by the context. A third party such as a utility performing related work on the Project is not a Subcontractor, even if Contractor must coordinate its Work with the third party.

Technical Specifications has the same meaning as Specifications.

Town means the Town of Los Gatos, acting through its Town Council, officers, employees, Town Engineer, and any other authorized representatives.

Town Engineer means the Engineer for Town and his or her authorized delegee(s).

Work means all of the construction and services necessary for or incidental to completing the Project in conformance with the requirements of the Contract Documents.

Work Day or **Working Day**, whether or not capitalized, means a weekday when the Town is open for business, and does not include holidays observed by the Town.

Worksite means the place or places where the Work is performed, which includes, but may extend beyond the Project site, including separate locations for staging, storage, or fabrication.

Article 2 - Roles and Responsibilities

2.1 Town.

A. ***Town Council.*** The Town Council has final authority in all matters affecting the Project, except to the extent it has delegated authority to the Engineer.

B. ***Engineer.*** The Engineer, acting within the authority conferred by the Town Council, is responsible for administration of the Project on behalf of Town, including authority to provide directions to the Design Professional and to Contractor to ensure proper and timely completion of the Project. The Engineer's decisions are final and conclusive within the scope of his or her authority, including interpretation of the Contract Documents.

C. ***Project Manager.*** The Project Manager assigned to the Project will be the primary point of contact for the Contractor and will serve as Town's representative for daily administration of the Project on behalf of Town. Unless otherwise specified, all of Contractor's communications to Town (in any form) will go to or through the Project Manager. Town reserves the right to reassign the Project Manager role at any time or to delegate duties to additional Town representatives, without prior notice to or consent of Contractor.

D. ***Design Professional.*** The Design Professional is responsible for the overall design of the Project and, to the extent authorized by Town, may act on Town's behalf to ensure performance of the Work in compliance with the Plans and Specifications, including any design changes authorized by Change Order. The Design Professional's duties may include review of Contractor's submittals, visits to any Worksite, inspecting the Work, evaluating test and inspection results, and participation in Project-related meetings, including any pre-construction conference, weekly meetings, and coordination meetings. The Design Professional's interpretation of the Plans or Specifications is final and conclusive.

2.2 Contractor.

A. ***General.*** Contractor must provide all labor, materials, supplies, equipment, services, and incidentals necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economical and efficient manner in the best interests of Town, and with minimal inconvenience to the public.

B. ***Responsibility for the Work and Risk of Loss.*** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for and required to exercise full control over the Work, including the construction means, methods, techniques, sequences, procedures, safety precautions and programs, and coordination of all portions of the Work with that of all other contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions. Contractor's responsibilities extend to any plan, method or sequence suggested, but not required by Town or specified in the Contract Documents. From the date of commencement of the Work until either the date on which Town formally accepts the Project or the effective date of termination of the Contract, whichever is later, Contractor bears all risks of injury or damage to the Work and the materials and equipment delivered to any Worksite, by any cause including fire, earthquake, wind, weather, vandalism, or theft.

C. ***Project Administration.*** Contractor must provide sufficient and competent administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents. Before starting the Work, Contractor must designate in writing and provide complete contact information, including telephone numbers and email address, for the officer or employee in Contractor's organization who is to serve as Contractor's primary representative for the Project, and who has authority to act on Contractor's behalf. A Subcontractor may not serve as Contractor's primary representative.

D. ***On-Site Superintendent.*** Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent acceptable to Town, and assistants as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. The superintendent must have full authority to act and communicate on behalf of Contractor, and Contractor will be bound by the superintendent's communications to Town. Town's approval of the superintendent is required before the Work commences. If Town is not satisfied with the superintendent's performance, Town may request a qualified

replacement of the superintendent. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of Contract Time, until an approved superintendent is physically present to supervise the Work. Contractor must provide written notice to Town, as soon as practicable, before replacing the superintendent.

E. ***Standards.*** Contractor must, at all times, ensure that the Work is performed in an efficient, skillful manner following best practices and in full compliance with the Contract Documents, Laws, and applicable manufacturer's recommendations. Contractor has a material and ongoing obligation to provide true and complete information, to the best of its knowledge, with respect to all records, documents, or communications pertaining to the Project, including oral or written reports, statements, certifications, Change Order requests, or Claims.

F. ***Meetings.*** Contractor, its project manager, superintendent and any primary Subcontractors requested by Town, must attend a pre-construction conference, if requested by Town, as well as weekly Project progress meetings scheduled with Town. If applicable, Contractor may also be required to participate in coordination meetings with other parties relating to other work being performed on or near the Project site or in relation to the Project, including work or activities performed by Town, other contractors, or other utility owners.

G. ***Construction Records.*** Contractor will maintain up-to-date, thorough, legible, and dated daily job reports, which document all significant activity on the Project for each day that Work is performed on the Project. The daily report for each day must include the number of workers at the Project site; primary Work activities; major deliveries; problems encountered, including injuries, if any; weather and site conditions; and delays, if any. Contractor will take date and time-stamped photographs to document general progress of the Project, including site conditions prior to construction activities, before and after photographs at offset trench laterals, existing improvements and utilities, damage and restoration. Contractor will maintain copies of all subcontracts, Project-related correspondence with Subcontractors, and records of meetings with Subcontractors. Upon request by the Town, Contractor will permit review of and/or provide copies of any of these construction records.

H. ***Responsible Party.*** Contractor is solely responsible to Town for the acts or omissions of any Subcontractors, or any other party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or the Subcontractors. Upon Town's written request, Contractor must promptly and permanently remove from the Project, at no cost to Town, any employee or Subcontractor or employee of a Subcontractor who the Engineer has determined to be incompetent, intemperate or disorderly, or who has failed or refused to perform the Work as required under the Contract Documents.

I. ***Correction of Defects.*** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by Town to be deficient or defective in any way, including workmanship, materials, parts, or equipment. Workmanship, materials, parts, or equipment that do not conform to the requirements under the Plans, Specifications, and other Contract Documents, as determined by Town, will be considered defective and subject to rejection. Contractor must also promptly correct, at Contractor's sole expense, any Work performed beyond the lines and grades shown on the Plans or established by Town, and any Extra Work performed without Town's prior written approval. If Contractor fails to correct or to take reasonable steps toward correcting defective Work within five days following notice from Town, or within the time specified in Town's notice to correct, Town may elect to have the defective Work corrected by its own forces or by a third party, in which case

the cost of correction will be deducted from the Contract Price. If Town elects to correct defective Work due to Contractor's failure or refusal to do so, Town or its agents will have the right to take possession of and use any equipment, supplies, or materials available at the Project site or any Worksite on Town property, in order to effectuate the correction, at no extra cost to Town. Contractor's warranty obligations under Section 11.2, Warranty, will not be waived nor limited by Town's actions to correct defective Work under these circumstances. Alternatively, Town may elect to retain defective Work, and deduct the difference in value, as determined by the Engineer, from payments otherwise due to Contractor. This paragraph applies to any defective Work performed by Contractor during the one-year warranty period under Section 11.2.

J. ***Contractor's Records.*** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos, electronic records, approved samples, and the construction records required pursuant to paragraph (G), above. Project records subject to this provision include complete Project cost records and records relating to preparation of Contractor's bid, including estimates, take-offs, and price quotes or bids.

1. Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials, and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as Extra Work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.

2. Contractor must continue to maintain its Project-related records in an organized manner for a period of five years after Town's acceptance of the Project or following Contract termination, whichever occurs first. Subject to prior notice to Contractor, Town is entitled to inspect or audit any of Contractor's records relating to the Project during Contractor's normal business hours. Contractor's records may also be subject to examination and audit by the California State Auditor, pursuant to Government Code § 8546.7. The record-keeping requirements set forth in this subsection 2.2(J) will survive expiration or termination of the Contract.

K. ***Copies of Project Documents.*** Contractor and its Subcontractors must keep copies, at the Project site, of all Work-related documents, including the Contract, permit(s), Plans, Specifications, addenda, Contract amendments, Change Orders, RFIs and RFI responses, Shop Drawings, as-built drawings, schedules, daily records, testing and inspection reports or results, and any related written interpretations. These documents must be available to Town for reference at all times during construction of the Project.

2.3 Subcontractors.

A. ***General.*** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors. Town reserves the right to approve or reject any and all Subcontractors proposed to perform the Work, for reasons including the Subcontractor's poor reputation, lack of relevant experience, financial instability, and lack of technical ability or adequate trained workforce. Each Subcontractor must obtain a Town business license before performing any Work.

B. ***Contractual Obligations.*** Contractor must require each Subcontractor to comply with the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, including the generally applicable terms of the Contract Documents, and to likewise bind their subcontractors. Contractor will provide that the rights that each Subcontractor may have against any manufacturer or supplier for breach of warranty or guarantee relating to items provided by the Subcontractor for the Project, will be assigned to Town. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and Town, but Town is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.

C. ***Termination.*** If the Contract is terminated, each Subcontractor's agreement must be assigned by Contractor to Town, subject to the prior rights of any surety, but only if and to the extent that Town accepts, in writing, the assignment by written notification, and assumes all rights and obligations of Contractor pursuant to each such subcontract agreement.

D. ***Substitution of Subcontractor.*** If Contractor requests substitution of a listed Subcontractor under Public Contract Code § 4107, Contractor is solely responsible for all costs Town incurs in responding to the request, including legal fees and costs to conduct a hearing, and any increased subcontract cost to perform the Work that was to be performed by the listed Subcontractor. If Town determines that a Subcontractor is unacceptable to Town based on the Subcontractor's failure to satisfactorily perform its Work, or for any of the grounds for substitution listed in Public Contract Code § 4107(a), Town may request removal of the Subcontractor from the Project. Upon receipt of a written request from Town to remove a Subcontractor pursuant to this paragraph, Contractor will immediately remove the Subcontractor from the Project and, at no further cost to Town, will either (1) self-perform the remaining Work to the extent that Contractor is duly licensed and qualified to do so, or (2) substitute a Subcontractor that is acceptable to Town, in compliance with Public Contract Code § 4107, as applicable.

2.4 Coordination of Work.

A. ***Concurrent Work.*** Town reserves the right to perform, have performed, or permit performance of other work on or adjacent to the Project site while the Work is being performed for the Project. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, including by any utility companies or agencies, and must avoid hindering, delaying, or interfering with the work of other contractors, individuals, or entities, and must ensure safe and reasonable site access and use as required or authorized by Town. To the full extent permitted by law, Contractor must hold harmless and indemnify Town against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of any utility company or agency or another contractor or subcontractor.

B. ***Coordination.*** If Contractor's Work will connect or interface with work performed by others, Contractor is responsible for independently measuring and visually inspecting such work to ensure a correct connection and interface. Contractor is responsible for any failure by Contractor or its Subcontractors to confirm measurements before proceeding with connecting Work. Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give the Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any known or reasonably discoverable defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work. Contractor must also promptly

notify Town if work performed by others, including work or activities performed by Town's own forces, is operating to hinder, delay, or interfere with Contractor's timely performance of the Work. Town reserves the right to backcharge Contractor for any additional costs incurred due to Contractor's failure to comply with the requirements in this Section 2.4.

2.5 Submittals. Unless otherwise specified, Contractor must submit to the Engineer for review and acceptance, all schedules, Shop Drawings, samples, product data, and similar submittals required by the Contract Documents, or upon request by the Engineer. Unless otherwise specified, all submittals, including Requests for Information, are subject to the general provisions of this Section, as well as specific submittal requirements that may be included elsewhere in the Contract Documents, including the Special Conditions or Specifications. The Engineer may require submission of a submittal schedule at or before a pre-construction conference, as may be specified in the Notice to Proceed.

A. ***General.*** Contractor is responsible for ensuring that its submittals are accurate and conform to the Contract Documents.

B. ***Time and Manner of Submission.*** Contractor must ensure that its submittals are prepared and delivered in a manner consistent with the current Town-accepted schedule for the Work and within the applicable time specified in the Contract Documents, or if no time is specified, in such time and sequence so as not to delay the performance of the Work or completion of the Project.

C. ***Required Contents.*** Each submittal must include the Project name and contract number, Contractor's name and address, the name and address of any Subcontractor or supplier involved with the submittal, the date, and references to applicable Specification section(s) and/or drawing and detail number(s).

D. ***Required Corrections.*** If corrections are required, Contractor must promptly make and submit any required corrections as specified in full conformance with the requirements of this Section, or other requirements that apply to that submittal.

E. ***Effect of Review and Acceptance.*** Review and acceptance of a submittal by Town will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for any errors in any submittal, and review or acceptance of a submittal by Town is not an assumption of risk or liability by Town.

F. ***Enforcement.*** Any Work performed or any material furnished, installed, fabricated or used without Town's prior acceptance of a required submittal is performed or provided at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work, repairs to other affected portions of the Work or material, and the cost of additional time or services required of Town, including costs for the Design Professional, Project Manager, or Inspector.

G. ***Excessive RFIs.*** A RFI will be considered excessive or unnecessary if Town determines that the explanation or response to the RFI is clearly and unambiguously discernable from the Contract Documents. Town's costs to review and respond to excessive or unnecessary RFIs may be deducted from payments otherwise due to Contractor.

2.6 Shop Drawings. When Shop Drawings are required by the Specifications or requested by the Engineer, they must be prepared according to best practices at Contractor's expense. The Shop Drawings must be of a size and scale to clearly show all necessary details. Unless otherwise specified by Town, Shop Drawings must be provided to the Engineer for review and acceptance at least 30 days before the Work will be performed. If Town requires changes, the corrected

Shop Drawings must be resubmitted to the Engineer for review within the time specified by the Engineer. For all Project components requiring Shop Drawings, Contractor will not furnish materials or perform any Work until the Shop Drawings for those components are accepted by Town. Contractor is responsible for any errors or omissions in the Shop Drawings, shop fits and field corrections; any deviations from the Contract Documents; and for the results obtained by the use of Shop Drawings. Acceptance of Shop Drawings by Town does not relieve Contractor of Contractor's responsibility.

2.7 Access to Work. Contractor must afford prompt and safe access to any Worksite by Town and its employees, agents, or consultants authorized by Town; and upon request by Town, Contractor must promptly arrange for Town representatives to visit or inspect manufacturing sites or fabrication facilities for items to be incorporated into the Work.

2.8 Personnel. Contractor and its Subcontractors must employ only competent and skillful personnel to perform the Work. Contractor and its Subcontractor's supervisors, security or safety personnel, and employees who have unescorted access to the Project site must possess proficiency in English sufficient to read, understand, receive, and implement oral or written communications or instructions relating to their respective job functions, including safety and security requirements. Upon written notification from the Engineer, Contractor and its Subcontractors must immediately discharge any personnel who are incompetent, disorderly, disruptive, threatening, abusive, or profane, or otherwise refuse or fail to comply with the requirements of the Contract Documents or Laws, including Laws pertaining to health and safety. Any such discharged personnel may not be re-employed or permitted on the Project in any capacity without Town's prior written consent.

Article 3 - Contract Documents

3.1 Interpretation of Contract Documents.

A. ***Plans and Specifications.*** The Plans and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Plans and Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all Work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Plans and Specifications, the Specifications will control, unless the drawing(s) at issue are dated later than the Specification(s) at issue. Detailed drawings take precedence over general drawings, and large-scale drawings take precedence over smaller scale drawings. Any arrangement or division of the Plans and Specifications into sections is for convenience and is not intended to limit the Work required by separate trades. A conclusion presented in the Plans or Specifications is only a recommendation. Actual locations and depths must be determined by Contractor's field investigation. Contractor may request access to underlying or background information in Town's possession that is necessary for Contractor to form its own conclusions.

B. ***Duty to Notify and Seek Direction.*** If Contractor becomes aware of a changed condition in the Project, or of any ambiguity, conflict, inconsistency, discrepancy, omission, or error in the Contract Documents, including the Plans or Specifications, Contractor must promptly submit a Request for Information to the Engineer and wait for a response from Town before proceeding further with the related Work. The RFI must notify Town of the issue and request clarification, interpretation or direction. The Engineer's clarification, interpretation or direction will be final and binding on Contractor. If Contractor proceeds with the related Work before obtaining Town's

response, Contractor will be responsible for any resulting costs, including the cost of correcting any incorrect or defective Work that results. Timely submission of a clear and complete RFI is essential to avoiding delay. Delay resulting from Contractor's failure to submit a timely and complete RFI to the Engineer is Non-Excusable Delay. If Contractor believes that Town's response to an RFI justifies a change to the Contract Price or Contract Time, Contractor must perform the Work as directed, but may submit a timely Change Order request in accordance with the Contract Documents. (See Articles 5 and 6.)

C. ***Figures and Dimensions.*** Figures control over scaled dimensions.

D. ***Technical or Trade Terms.*** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those meanings, unless otherwise specifically defined in the Contract Documents.

E. ***Measurements.*** Contractor must verify all relevant measurements in the Contract Documents and at the Project site before ordering any material or performing any Work, and will be responsible for the correctness of those measurements or for costs that could have been avoided by independently verifying measurements.

F. ***Compliance with Laws.*** The Contract Documents are intended to comply with Laws and will be interpreted to comply with Laws.

3.2 Order of Precedence. Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. Unless otherwise specified in the Special Conditions, in case of any conflict or inconsistency among the Contract Documents, the following order of precedence will apply, beginning from highest to lowest, with the most recent version taking precedent over an earlier version:

1. Change Orders;
2. Addenda;
3. Contract;
4. Notice to Proceed;
5. Federal Contract Requirements (only if used);
6. Special Conditions;
7. General Conditions;
8. Payment and Performance Bonds;
9. Specifications;
10. Plans;
11. Notice of Potential Award;
12. Notice Inviting Bids;
13. Federal Bidding Requirements (only if used);
14. Instructions to Bidders;
15. Contractor's Bid Proposal and attachments;

16. Locations of Work
17. Standard Plans; and
18. Any generic documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, such as the Caltrans Standard Specifications or Caltrans Special Provisions.

3.3 Caltrans Standard Specifications. Any reference to or incorporation of the Standard Specifications of the State of California, Department of Transportation (“Caltrans”), including “Standard Specifications,” “Caltrans Specifications,” “State Specifications,” or “CSS,” means the most current edition of Caltrans’ Standard Specifications, unless otherwise specified (“Caltrans Standard Specifications”), including the most current amendments as of the date that Contractor’s bid was submitted for this Project. The following provisions apply to use of or reference to the Caltrans Standard Specifications or Special Provisions:

A. ***Limitations.*** The “General Provisions” of the Caltrans Standard Specifications, i.e., sections 1 through 9, do not apply to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.

B. ***Conflicts or Inconsistencies.*** If there is a conflict or inconsistency between any provision in the Caltrans Standard Specifications or Special Provisions and a provision of these Contract Documents, as determined by Town, the provision in the Contract Documents will govern.

C. ***Meanings.*** Terms used in the Caltrans Standard Specifications or Special Provisions are to be interpreted as follows:

1. Any reference to the “Engineer” is deemed to mean the Town Engineer.
2. Any reference to the “Special Provisions” is deemed to mean the Special Conditions, unless the Caltrans Special Provisions are expressly included in the Contract Documents listed in Section 2 of the Contract.
3. Any reference to the “Department” or “State” is deemed to mean Town.

3.4 For Reference Only. Contractor is responsible for the careful review of any document, study, or report provided by Town or appended to the Contract Documents solely for informational purposes and identified as “For Reference Only.” Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. Contractor is advised that Town or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Any record drawings or similar final or accepted drawings or maps that are not part of the Contract Documents are deemed to be For Reference Only. The provisions of the Contract Documents are not modified by any perceived or actual conflict with provisions in any document that is provided For Reference Only.

3.5 Current Versions. Unless otherwise specified by Town, any reference to standard specifications, technical specifications, or any Town or state codes or regulations means the latest specification, code, or regulation in effect on the date that bids were due.

3.6 Conformed Copies. If Town prepares a conformed set of the Contract Documents following award of the Contract, it will provide Contractor with two hard copy (paper) sets and one copy of the electronic file in PDF format. It is Contractor’s responsibility to ensure that all Subcontractors, including fabricators, are provided with the conformed set of the Contract Documents at Contractor’s sole expense.

3.7 Ownership. No portion of the Contract Documents may be used for any purpose other than construction of the Project, without prior written consent from Town. Contractor is deemed to have conveyed the copyright in any designs, drawings, specifications, Shop Drawings, or other documents (in paper or electronic form) developed by Contractor for the Project, and Town will retain all rights to such works, including the right to possession.

Article 4 - Bonds, Indemnity, and Insurance

4.1 Payment and Performance Bonds. Within ten days following issuance of the Notice of Potential Award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than 100% of the Contract Price, and each executed by Contractor and its surety using the bond forms included with the Contract Documents.

A. ***Surety*.** Each bond must be issued and executed by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from Town, Contractor must substitute a surety acceptable to Town. If Contractor fails to substitute an acceptable surety within the specified time, Town may, at its sole discretion, withhold payment from Contractor until the surety is replaced to Town's satisfaction, or terminate the Contract for default.

B. ***Supplemental Bonds for Increase in Contract Price*.** If the Contract Price increases during construction by five percent or more over the original Contract Price, Contractor must provide supplemental or replacement bonds within ten days of written notice from Town pursuant to this Section, covering 100% of the increased Contract Price and using the bond forms included with the Contract Documents.

4.2 Indemnity. To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless Town, its Council, officers, officials, employees, agents, volunteers, and consultants (individually, an "Indemnitee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, causes of action, demands, charges, fines, costs, and expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or in failing to comply with any obligation of Contractor under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's bid for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this Contract will be deemed a material breach of the Contract. Town will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code § 9201. Contractor waives any right to express or implied indemnity against any Indemnitee. Contractor's indemnity obligations under this Contract will survive the expiration or any early termination of the Contract.

4.3 Insurance. No later than ten days following issuance of the Notice of Potential Award, Contractor must procure and provide proof of the insurance coverage required by this Section in the form of certificates and endorsements acceptable to Town. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract, through the date of Town's acceptance of the Project. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VIII" or better. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, Town may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate the

Contract for default. The procurement of the required insurance will not be construed to limit Contractor's liability under this Contract or to fulfill Contractor's indemnification obligations under this Contract.

A. ***Policies and Limits.*** The following insurance policies and limits are required for this Contract, unless otherwise specified in the Special Conditions:

1. *Commercial General Liability ("CGL") Insurance:* The CGL insurance policy must be issued on an occurrence basis, written on a comprehensive general liability form, and must include coverage for liability arising from Contractor's or its Subcontractor's acts or omissions in the performance of the Work, including contractor's protective coverage, contractual liability, products and completed operations, and broad form property damage, with limits of at least $2,000,000 per occurrence and at least $4,000,000 general aggregate. The CGL insurance coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella policies, provided each such policy complies with the requirements set forth in this Section, including required endorsements.

2. *Automobile Liability Insurance:* The automobile liability insurance policy must provide coverage of at least $2,000,000 combined single-limit per accident for bodily injury, death, or property damage, including hired and non-owned auto liability.

3. *Workers' Compensation Insurance and Employer's Liability:* The workers' compensation and employer's liability insurance policy must comply with the requirements of the California Labor Code, providing coverage of at least $1,000,000 or as otherwise required by the statute. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the DIR.

B. ***Notice.*** Each certificate of insurance must state that the coverage afforded by the policy or policies will not be reduced, cancelled or allowed to expire without at least 30 days written notice to Town, unless due to non-payment of premiums, in which case ten days written notice must be made to Town.

C. ***Waiver of Subrogation.*** Each required policy must include an endorsement providing that the carrier will waive any right of subrogation it may have against Town.

D. ***Required Endorsements.*** The CGL policy, automobile liability policy, pollution liability policy, and builder's risk policy must include the following specific endorsements:

1. The Town, including its Council, officials, officers, employees, agents, volunteers and consultants (collectively, "Additional Insured") must be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and the policy must protect the Additional Insured against any and all liability for personal injury, death or property damage or destruction arising directly or indirectly in the performance of the Contract. The additional insured endorsement must be provided using ISO form CG 20 10 11 85 or equivalent form(s) approved by the Town.

2. The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

3. The insurance provided by Contractor is primary and no insurance held or owned by any Additional Insured may be called upon to contribute to a loss.

4. This policy does not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

E. ***Contractor's Responsibilities.*** This Section 4.3 establishes the minimum requirements for Contractor's insurance coverage in relation to this Project, but is not intended to limit Contractor's ability to procure additional or greater coverage. Contractor is responsible for its own risk assessment and needs and is encouraged to consult its insurance provider to determine what coverage it may wish to carry beyond the minimum requirements of this Section. Contractor is solely responsible for the cost of its insurance coverage, including premium payments, deductibles, or self-insured retentions, and no Additional Insured will be responsible or liable for any of the cost of Contractor's insurance coverage.

F. ***Deductibles and Self-Insured Retentions***. Any deductibles or self-insured retentions that apply to the required insurance (collectively, "deductibles") in excess of $100,000 are subject to approval by the Town's Risk Manager, acting in his or her sole discretion, and must be declared by Contractor when it submits its certificates of insurance and endorsements pursuant to this Section 4.3. If the Town's Risk Manager determines that the deductibles are unacceptably high, at Town's option, Contractor must either reduce or eliminate the deductibles as they apply to Town and all required Additional Insured; or must provide a financial guarantee, to Town's satisfaction, guaranteeing payment of losses and related investigation, claim administration, and legal expenses.

G. ***Subcontractors.*** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the Additional Insureds and waiver of subrogation, but excluding pollution liability or builder's risk insurance unless otherwise specified in the Special Conditions. A Subcontractor may be eligible for reduced insurance coverage or limits, but only to the extent approved in writing in advance by the Town's Risk Manager. Contractor must confirm that each Subcontractor has complied with these insurance requirements before the Subcontractor is permitted to begin Work on the Project. Upon request by the Town, Contractor must provide certificates and endorsements submitted by each Subcontractor to prove compliance with this requirement. The insurance requirements for Subcontractors do not replace or limit the Contractor's insurance obligations.

Article 5 - Contract Time

5.1 Time is of the Essence. Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.

A. ***General.*** Contractor must commence the Work on the date indicated in the Notice to Proceed and must fully complete the Work in strict compliance with all requirements of the Contract Documents and within the Contract Time. Contractor may not begin performing the Work before the date specified in the Notice to Proceed.

B. ***Authorization.*** Contractor is not entitled to compensation or credit for any Work performed before the date specified in the Notice to Proceed, with the exception of any schedules, submittals, or other requirements, if any, that must be provided or performed before issuance of the Notice to Proceed.

C. ***Rate of Progress.*** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the

Contract Time. If Town determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, Town may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to Town, in order to achieve a rate of progress satisfactory to Town. If Contractor fails to comply with Town's directive in this regard, Town may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use Town's own forces to achieve the necessary rate of progress. Alternatively, Town may terminate the Contract based on Contractor's default.

5.2 Schedule Requirements. Contractor must prepare all schedules using standard, commercial scheduling software acceptable to the Engineer, and must provide the schedules in electronic and paper form as requested by the Engineer. In addition to the general scheduling requirements set forth below, Contractor must also comply with any scheduling requirements included in the Special Conditions or in the Technical Specifications.

A. ***Baseline (As-Planned) Schedule.*** Within ten calendar days following Town's issuance of the Notice to Proceed (or as otherwise specified in the Notice to Proceed), Contractor must submit to Town for review and acceptance a baseline (as-planned) schedule using critical path methodology showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time, including labor, equipment, materials, and fabricated items. The baseline schedule must show the order of the major items of Work and the dates of start and completion of each item, including when the materials and equipment will be procured. The schedule must also include the work of all trades, reflecting anticipated labor or crew hours and equipment loading for the construction activities, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the baseline schedule must be dated, provided in the format specified in the Contract Documents or as required by Town, and must include, at a minimum, a description of the activity, the start and completion dates of the activity, and the duration of the activity.

1. *Specialized Materials Ordering*. Within five calendar days following issuance of the Notice to Proceed, Contractor must order any specialized material or equipment for the Work that is not readily available from material suppliers. Contractor must also retain documentation of the purchase order date(s).

B. ***Town's Review of Schedules.*** Town will review and may note exceptions to the baseline schedule, and to the progress schedules submitted as required below, to assure completion of the Work within the Contract Time. Contractor is solely responsible for resolving any exceptions noted in a schedule and, within seven days, must correct the schedule to address the exceptions. Town's review or acceptance of Contractor's schedules will not operate to waive or limit Contractor's duty to complete the Project within the Contract Time, nor to waive or limit Town's right to assess liquidated damages for Contractor's unexcused failure to do so.

C. ***Progress Schedules.*** After Town accepts the final baseline schedule with no exceptions, Contractor must submit an updated progress schedule and three-week look-ahead schedule, in the format specified by Town, for review and acceptance with each application for a progress payment, or when otherwise specified by Town, until completion of the Work. The updated progress schedule must: show how the actual progress of the Work as constructed to date compares to the baseline schedule; reflect any proposed changes in the construction schedule or method of operations, including to achieve Project milestones within the Contract Time; and identify any actual or potential impacts to the critical path. Contractor must also submit periodic reports to Town of any changes in the projected material or equipment delivery dates for the Project.

1. *Float*. The progress schedule must show early and late completion dates for each task. The number of days between those dates will be designated as the "float." Any float belongs to the Project and may be allocated by the Engineer to best serve timely completion of the Project.
2. *Failure to Submit Schedule*. Reliable, up-to-date schedules are essential to efficient and cost-effective administration of the Project and timely completion. If Contractor fails to submit a schedule within the time periods specified in this Section, or submits a schedule to which Town has noted exceptions that are not corrected, Town may withhold up to five percent from payment(s) otherwise due to Contractor until the exceptions are resolved, the schedule is corrected and resubmitted, and Town has accepted the schedule. In addition, Contractor's failure to comply with the schedule requirements in this Section 5.2 will be deemed a material default and a waiver of any claims for Excusable Delay or loss of productivity arising during any period when Contractor is out of compliance, subject only to the limits of Public Contract Code § 7102.

D. ***Recovery Schedule.*** If Town determines that the Work is more than one week behind schedule, within seven days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.

E. ***Effect of Acceptance.*** Contractor and its Subcontractors must perform the Work in accordance with the most current Town-accepted schedule unless otherwise directed by Town. Town's acceptance of a schedule does not operate to extend the time for completion of the Work or any component of the Work, and will not affect Town's right to assess liquidated damages for Contractor's unexcused delay in completing the Work within the Contract Time.

F. ***Posting.*** Contractor must at all times prominently post a copy of the most current Town-accepted progress or recovery schedule in its on-site office.

G. ***Reservation of Rights.*** Town reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by Town or others, or to facilitate Town's use of its property. The Contract Time or Contract Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.

H. ***Authorized Working Days and Times.*** Contractor is limited to working Monday through Friday, excluding holidays, during Town's normal business hours, except as provided in the Special Conditions or as authorized in writing by Town. Town reserves the right to charge Contractor for additional costs incurred by Town due to Work performed on days or during hours not expressly authorized in the Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

A. ***Notice of Delay.*** If Contractor becomes aware of any actual or potential delay affecting the critical path, Contractor must promptly notify the Engineer in writing, regardless of the nature or cause of the delay, so that Town has a reasonable opportunity to mitigate or avoid the delay.

B. ***Excusable Delay.*** The Contract Time may be extended if Contractor encounters "Excusable Delay," which is an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond

Contractor's control, and which Contractor could not have avoided or mitigated through reasonable care, planning, foresight, and diligence, provided that Contractor is otherwise fully performing its obligations under the Contract Documents. Grounds for Excusable Delay may include fire, natural disasters including earthquake or unusually severe weather, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, or suspension for convenience under Article 13. The Contract Time will not be extended based on circumstances which will not unavoidably delay completing the Work within the Contract Time based on critical path analysis.

C. ***Weather Delays.*** A "Weather Delay Day" is a Working Day during which Contractor and its forces, including Subcontractors, are unable to perform more than 40% of the critical path Work scheduled for that day due to adverse weather conditions which impair the ability to safely or effectively perform the scheduled critical path Work that day. Adverse weather conditions may include rain, saturated soil, and Project site clean-up required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, Town-approved schedule. Contractor will be entitled to a non-compensable extension of the Contract Time for each Weather Delay Day in excess of the normal Weather Delay Days within a given month as determined by reliable records, including monthly rainfall averages, for the preceding ten years (or as otherwise specified in the Special Conditions or Specifications).

1. Contractor must fully comply with the applicable procedures in Articles 5 and 6 of the General Conditions regarding requests to modify the Contract Time.

2. Contractor will not be entitled to an extension of time for a Weather Delay Day to the extent Contractor is responsible for concurrent delay on that day.

3. Contractor must take reasonable steps to mitigate the consequences of Weather Delay Days, including prudent workforce management and protecting the Work, Project Site, materials, and equipment.

D. ***Non-Excusable Delay.*** Delay which Contractor could have avoided or mitigated through reasonable care, planning, foresight, and diligence is "Non-Excusable Delay." Contractor is not entitled to an extension of Contract Time or any compensation for Non-Excusable Delay, or for Excusable Delay that is concurrent with Non-Excusable Delay. Non-Excusable Delay includes delay caused by:

1. weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten years;

2. Contractor's failure to order equipment and materials sufficiently in advance of the time needed for completion of the Work within the Contract Time;

3. Contractor's failure to provide adequate notification to utility companies or agencies for connections or services necessary for completion of the Work within the Contract Time;

4. foreseeable conditions which Contractor could have ascertained from reasonably diligent inspection of the Project site or review of the Contract Documents or other information provided or available to Contractor;

5. Contractor's failure, refusal, or financial inability to perform the Work within the Contract Time, including insufficient funds to pay its Subcontractors or suppliers;

6. performance or non-performance by Contractor's Subcontractors or suppliers;
7. the time required to respond to excessive RFIs (see Section 2.5(G));
8. delayed submission of required submittals, or the time required for correction and resubmission of defective submittals;
9. time required for repair of, re-testing, or re-inspection of defective Work;
10. enforcement of Laws by Town, or outside agencies with jurisdiction over the Work; or
11. Town's exercise or enforcement of any of its rights or Contractor's duties pursuant to the Contract Documents, including correction of defective Work, extra inspections or testing due to non-compliance with Contract requirements, safety compliance, environmental compliance, or rejection and return of defective or deficient submittals.

E. ***Compensable Delay.*** Pursuant to Public Contract Code § 7102, in addition to entitlement to an extension of Contract Time, Contractor is entitled to compensation for costs incurred due to delay caused solely by Town, when that delay is unreasonable under the circumstances involved and not within the contemplation of the parties ("Compensable Delay"). Contractor is not entitled to an extension of Contract Time or recovery of costs for Compensable Delay that is concurrent with Non-Excusable Delay.

F. ***Recoverable Costs.*** Contractor is not entitled to compensation for Excusable Delay unless it is Compensable Delay, as defined above. Contractor is entitled to recover only the actual, direct, reasonable, and substantiated costs ("Recoverable Costs") for each working day that the Compensable Delay prevents Contractor from proceeding with more than 50% of the critical path Work scheduled for that day, based on the most recent progress schedule accepted by Town. Recoverable Costs will not include home office overhead or lost profit.

G. ***Request for Extension of Contract Time or Recoverable Costs.*** A request for an extension of Contract Time or any associated Recoverable Costs must be submitted in writing to Town within 30 calendar days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time, or any entitlement to the Contract Time extension or to the Recoverable Costs will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6 below. Strict compliance with these requirements is necessary to ensure that any delay or consequences of delay may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project and timely performance of the Work. Any request for an extension of Contract Time or Recoverable Costs that does not strictly comply with all of the requirements of Article 5 and Article 6 will be deemed waived.

1. *Required Contents.* The request must include a detailed description of the cause(s) of the delay and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, such as by workforce management or by a change in sequencing. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor's plan for continued mitigation of the delay or its effects.
2. *Delay Days and Costs.* The request must specify the number of days of Excusable Delay claimed or provide a realistic estimate if the duration of the delay is not yet known. If Contractor believes it is entitled to Recoverable Costs for Compensable Delay, the request must specify the amount and basis for the

Recoverable Costs that are claimed or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known. The maximum extension of Contract Time will be the number of days, if any, by which an Excusable Delay or a Compensable Delay exceeds any concurrent Non-Excusable Delay. Contractor is entitled to an extension of Contract Time, or compensation for Recoverable Costs, only if, and only to the extent that, such delay will unavoidably delay Final Completion.

3. *Supporting Documentation.* The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including scheduling and cost impacts with a time impact analysis using critical path methodology and demonstrating the unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to Town.

4. *Burden of Proof.* Contractor has the burden of proving that: the delay was an Excusable Delay or Compensable Delay, as defined above; Contractor has fully complied with its scheduling obligations in Section 5.2, Schedule Requirements; Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts; the delay will unavoidably result in delaying Final Completion; and any Recoverable Costs claimed by Contractor were actually incurred and were reasonable under the circumstances.

5. *Legal Compliance.* Nothing in this Section 5.3 is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code § 7102.

6. *No Waiver.* Any grant of an extension of Contract Time, or compensation for Recoverable Costs due to Compensable Delay, will not operate as a waiver of Town's right to assess liquidated damages for Non-Excusable Delay.

7. *Dispute Resolution.* In the event of a dispute over entitlement to an extension of Contract Time or compensation for Recoverable Costs, Contractor may not stop Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on Town's rejection of a Change Order request for an extension of Contract Time or compensation for Recoverable Costs is to comply with the dispute resolution provisions set forth in Article 12 below.

5.4 Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, Town will suffer damages from the delay that are difficult to determine and accurately specify. Pursuant to Public Contract Code § 7203, if Contractor fails to achieve Final Completion within the Contract Time due to Contractor's Non-Excusable Delay, Town will charge Contractor in the amount specified in the Contract for each calendar day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty. Any waiver of accrued liquidated damages, in whole or in part, is subject to approval of the Town Council or its authorized delegee.

A. ***Liquidated Damages.*** Liquidated damages will not be assessed for any Excusable Delay or Compensable Delay, as set forth above.

B. ***Milestones.*** Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents.

C. ***Setoff.*** Town is entitled to deduct the amount of liquidated damages assessed against any payments otherwise due to Contractor, including progress payments, Final Payment, or unreleased retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, Town is entitled to recover the balance from Contractor or its performance bond surety.

D. ***Occupancy or Use.*** Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute Town's acceptance of the Project and will not operate as a waiver of Town's right to assess liquidated damages for Contractor's Non-Excusable Delay in achieving Final Completion.

E. ***Other Remedies.*** Town's right to liquidated damages under this Section applies only to damages arising from Contractor's Non-Excusable Delay or failure to complete the Work within the Contract Time. Town retains its right to pursue all other remedies under the Contract for other types of damage, including damage to property or persons, costs or diminution in value from defective materials or workmanship, costs to repair or complete the Work, or other liability caused by Contractor.

Article 6 - Contract Modification

6.1 Contract Modification. Subject to the limited exception set forth in subsection (D) below, any change in the Work or the Contract Documents, including the Contract Price or Contract Time, will not be a valid and binding change to the Contract unless it is formalized in a Change Order, including a "no-cost" Change Order or a unilateral Change Order. Changes in the Work pursuant to this Article 6 will not operate to release, limit, or abridge Contractor's warranty obligations pursuant to Article 11 or any obligations of Contractor's bond sureties.

A. ***Town-Directed Changes.*** Town may direct changes in the scope or sequence of Work or the requirements of the Contract Documents, without invalidating the Contract. Such changes may include Extra Work as set forth in subsection (C) below, or deletion or modification of portions of the Work. Contractor must promptly comply with Town-directed changes in the Work in accordance with the original Contract Documents, even if Contractor and Town have not yet reached agreement as to adjustments to the Contract Price or Contract Time for the change in the Work or for the Extra Work. Contractor is not entitled to extra compensation for cost savings resulting from "value engineering" pursuant to Public Contract Code § 7101, except to the extent authorized in advance by Town in writing, and subject to any applicable procedural requirements for submitting a proposal for value engineering cost savings.

B. ***Disputes.*** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to a Town-directed change in the Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute. Likewise, in the event that Town and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents or constitute Extra Work, or otherwise dispute the interpretation of any portion(s) of the Contract Documents, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute, as directed by Town. If Contractor refuses to perform the Work in dispute, Town may, acting in its sole discretion, elect to

delete the Work from the Contract and reduce the Contract Price accordingly, and self-perform the Work or direct that the Work be performed by others. Alternatively, Town may elect to terminate the Contract for convenience or for cause. Contractor's sole recourse for an unresolved dispute related to changes in the Work or performance of any Extra Work is to comply with the dispute resolution provisions set forth in Article 12, below.

C. ***Extra Work.*** Town may direct Contractor to perform Extra Work related to the Project. Contractor must promptly perform any Extra Work as directed or authorized by Town in accordance with the original Contract Documents, even if Contractor and Town have not yet reached agreement on adjustments to the Contract Price or Contract Time for such Extra Work. If Contractor believes it is necessary to perform Extra Work due to changed conditions, Contractor must promptly notify the Engineer in writing, specifically identifying the Extra Work and the reason(s) the Contractor believes it is Extra Work. This notification requirement does not constitute a Change Order request pursuant to Section 6.2, below. Contractor must maintain detailed daily records that itemize the cost of each element of Extra Work, and sufficiently distinguish the direct cost of the Extra Work from the cost of other Work performed. For each day that Contractor performs Extra Work, or Work that Contractor contends is Extra Work, Contractor must submit no later than the following Working Day, a daily report of the Extra Work performed that day and the related costs, together with copies of certified payroll, invoices, and other documentation substantiating the costs ("Extra Work Report"). The Engineer will make any adjustments to Contractor's Extra Work Report(s) based on the Engineer's records of the Work. When an Extra Work Report(s) is agreed on and signed by both Town and Contractor, the Extra Work Report(s) will become the basis for payment under a duly authorized and signed Change Order. Failure to submit the required documentation by close of business on the next Working Day is deemed a full and complete waiver for any change in the Contract Price or Contract Time for any Extra Work performed that day.

D. ***Minor Changes and RFIs.*** Minor field changes, including RFI replies from Town, that do not affect the Contract Price or Contract Time and that are approved by the Engineer acting within his or her scope of authority, do not require a Change Order. By executing an RFI reply from Town, Contractor agrees that it will perform the Work as clarified therein, with no change to the Contract Price or Contract Time.

E. ***Remedy for Non-Compliance.*** Contractor's failure to promptly comply with a Town-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, Town may, at its sole discretion, hire another contractor or use its own forces to complete the disputed Work at Contractor's sole expense, and may deduct the cost from the Contract Price.

6.2 Contractor Change Order Requests. Contractor must submit a request or proposal for a change in the Work, compensation for Extra Work, or a change in the Contract Price or Contract Time as a written Change Order request or proposal.

A. ***Time for Submission.*** Any request for a change in the Contract Price or the Contract Time must be submitted in writing to the Engineer within 30 calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time. If Town requests that Contractor propose the terms of a Change Order, unless otherwise specified in Town's request, Contractor must

provide the Engineer with a written proposal for the change in the Contract Price or Contract Time within five working days of receiving Town's request, in a form satisfactory to the Engineer.

B. ***Required Contents.*** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes, insurance, subcontract amounts, and, if applicable, Extra Work Reports. Any estimated cost must be updated in writing as soon as the actual amount is known.

C. ***Required Documentation.*** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions. Upon request, Contractor must permit Town to inspect its original and unaltered bidding records, subcontract agreements, subcontract change orders, purchase orders, invoices, or receipts associated with the claimed costs.

D. ***Required Form.*** Contractor must use Town's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by Town.

E. ***Certification.*** All Change Order requests must be signed by Contractor and must include the following certification:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete as to the Work or changes referenced herein, and agrees that any known or foreseeable costs, expenses, or time extension requests not included herein, are deemed waived."

6.3 Adjustments to Contract Price. The amount of any increase or decrease in the Contract Price will be determined based on one of the following methods listed below, in the order listed with unit pricing taking precedence over the other methods. Markup applies only to Town-authorized time and material Work, and does not apply to any other payments to Contractor. For Work items or components that are deleted in their entirety, Contractor will only be entitled to compensation for those direct, actual, and documented costs (including restocking fees), reasonably incurred before Contractor was notified of the Town's intent to delete the Work, with no markup for overhead, profit, or other indirect costs.

A. ***Unit Pricing.*** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or in a post-award schedule of values pursuant to Section 8.1, Schedule of Values, will apply to determine the price for the affected Work, to the extent applicable unit prices have been provided for that type of Work. No additional markup for overhead, profit, or other indirect costs will be added to the calculation.

B. ***Lump Sum.*** A mutually agreed upon, all-inclusive lump sum price for the affected Work with no additional markup for overhead, profit, or other indirect costs.

C. ***Time and Materials.*** On a time and materials basis, if and only to the extent compensation on a time and materials basis is expressly authorized by Town in advance of Contractor's performance of the Work and subject to any not-to-exceed limit. Time and materials compensation for increased costs or Extra Work (but not decreased costs or deleted Work), will include allowed markup for overhead, profit, and other indirect costs, calculated as the total of the following sums, the cumulative total of which may not exceed the maximum markup rate of 15%:

1. All direct labor costs provided by the Contractor, excluding superintendence, project management, or administrative costs, plus 15% markup;
2. All direct material costs provided by the Contractor, including sales tax, plus 15% markup;
3. All direct plant and equipment rental costs provided by the Contractor, plus 15% markup;
4. All direct additional subcontract costs plus 10% markup for Work performed by Subcontractors; and
5. Increased bond or insurance premium costs computed at 1.5% of total of the previous four sums.

6.4 Unilateral Change Order. If the parties dispute the terms of a proposed Change Order, including disputes over the amount of compensation or extension of time that Contractor has requested, the value of deleted or changed Work, what constitutes Extra Work, or quantities used, Town may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time for the adjustment to compensation or time that the Town believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

6.5 Non-Compliance Deemed Waiver. Contractor waives its entitlement to any increase in the Contract Price or Contract Time if Contractor fails to fully comply with the provisions of this Article. Contractor will not be paid for unauthorized Extra Work.

Article 7 - General Construction Provisions

7.1 Permits, Fees, Business License, and Taxes.

A. ***Permits, Fees, and Town Business License.*** Contractor must obtain and pay for all permits, fees, and licenses required to perform the Work, including a Town business license. Contractor must cooperate with and provide notifications to all government agencies with jurisdiction over the Project, as may be required. Contractor must provide Town with copies of all records of permits and permit applications, payment of required fees, and any licenses required for the Work.

B. ***Taxes.*** Contractor must pay for all taxes on labor, material, and equipment, except Federal Excise Tax to the extent that Town is exempt from Federal Excise Tax.

7.2 Temporary Facilities. Contractor must provide, at Contractor's sole expense, any and all temporary facilities for the Project, including an onsite staging area for materials and equipment, a field office, sanitary facilities, utilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any incidental utility services. The location of all temporary facilities must be approved by the Town prior to installation. Temporary facilities must be safe and adequate for the intended use and installed and maintained in accordance with Laws and the Contract Documents. Contractor must fence and screen the Project site and, if applicable, any separate Worksites, including the staging area, and its operation must minimize inconvenience to neighboring properties. Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.

A. ***Utilities.*** Contractor must install and maintain the power, water, sewer, and all other utilities required for the Project site, including the piping, wiring, internet and wifi connections, and any related equipment necessary to maintain the temporary facilities.

B. ***Removal and Repair.*** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to Town's property or to other property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

7.3 Noninterference and Site Management. Contractor must avoid interfering with Town's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures. Contractor must also minimize disruption of access to private property in the Project vicinity. Contractor must coordinate with affected property owners, tenants, and businesses, and maintain some vehicle and pedestrian access to their residences or properties at all times. Temporary access ramps, fencing or other measures must be provided as needed. Before blocking access to a private driveway or parking lot, Contractor must provide effective notice to the affected parties at least 48 hours in advance of the pending closure and allow them to remove vehicles. Private driveways, residences and parking lots must have access to a roadway during non-Work hours.

A. ***Offsite Acquisition.*** Unless otherwise provided by Town, Contractor must acquire, use, and dispose of, at its sole expense, any Worksites, licenses, easements, and temporary facilities necessary to access and perform the Work.

B. ***Offsite Staging Area and Field Office*.** If additional space beyond the Project site is needed, such as for the staging area or the field office, Contractor may need to make arrangements with the nearby property owner(s) to secure the space. Before using or occupying any property owned by a third party, Contractor must provide Town with a copy of the necessary license agreement, easement, or other written authorization from the property owner, together with a written release from the property owner holding Town harmless from any related liability, in a form acceptable to the Town Attorney.

C. ***Traffic Management.*** Contractor must provide traffic management and traffic controls as specified in the Contract Documents, as required by Laws, and as otherwise required to ensure public and worker safety, and to avoid interference with public or private operations or the normal flow of vehicular, bicycle, or pedestrian traffic.

7.4 Signs. No signs may be displayed on or about Town's property, except signage which is required by Laws or by the Contract Documents, without Town's prior written approval as to size, design, and location.

7.5 Project Site and Nearby Property Protections.

A. ***General.*** Contractor is responsible at all times, on a 24-hour basis and at its sole cost, for protecting the Work, the Project site, and the materials and equipment to be incorporated into the Work, until the Town has accepted the Project, excluding any exceptions to acceptance, if any. Except as specifically authorized by Town, Contractor must confine its operations to the area of the Project site indicated in the Plans and Specifications. Contractor is liable for any damage caused by Contractor or its Subcontractors to the Work, Town's property, the property of adjacent or nearby property owners and the work or personal property of other contractors working for Town, including damage related to Contractor's failure to adequately secure the Work or any Worksite.

1. Subject to Town's approval, Contractor will provide and install safeguards to protect the Work; any Worksite, including the Project site; Town's real or personal property and the real or personal property of adjacent or nearby property owners, including plant and tree protections.
2. Town wastewater systems may not be interrupted. If the Work disrupts existing sewer facilities, Contractor must immediately notify Town and establish a plan, subject to Town's approval, to convey the sewage in closed conduits back into the sanitary sewer system. Sewage must not be permitted to flow in trenches or be covered by backfill.
3. Contractor must remove with due care, and store at Town's request, any objects or material from the Project site that Town will salvage or reuse at another location.
4. If directed by Engineer, Contractor must promptly repair or replace any property damage, as specified by the Engineer. However, acting in its sole discretion, Town may elect to have the property damage remedied otherwise, and may deduct the cost to repair or replace the damaged property from payment otherwise due to Contractor.
5. Contractor will not permit any structure or infrastructure to be loaded in a manner that will damage or endanger the integrity of the structure or infrastructure.

B. ***Securing Project Site.*** After completion of Work each day, Contractor must secure the Project site and, to the extent feasible, make the area reasonably accessible to the public unless Town approves otherwise. All excess materials and equipment not protected by approved traffic control devices must be relocated to the staging area or demobilized. Trench spoils must be hauled off the Project site daily and open excavations must be protected with steel plates. Contractor and Subcontractor personnel may not occupy or use the Project site for any purpose during non-Work hours, except as may be provided in the Contract Documents or pursuant to prior written authorization from Town.

C. ***Unforeseen Conditions.*** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Plans or apparent from inspection of the Project site, Contractor must immediately notify the Town and promptly submit a Request for Information to obtain further directions from the Engineer. Contractor must avoid taking any action which could cause damage to the facilities or utilities pending further direction from the Engineer. The Engineer's written response will be final and binding on Contractor. If the Engineer's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6 above.

D. ***Support; Adjacent Properties.*** Contractor must provide, install, and maintain all shoring, bracing, and underpinning necessary to provide support to Town's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by Laws. See also, Section 7.15, Trenching of Five Feet or More.

E. ***Notification of Property Damage.*** Contractor must immediately notify the Town of damage to any real or personal property resulting from Work on the Project. Contractor must immediately provide a written report to Town of any such property damage in excess of $500 (based on estimated cost to repair or replace) within 24 hours of the occurrence. The written report must include: (1) the location and nature of the damage, and the

owner of the property, if known; (2) the name and address of each employee of Contractor or any Subcontractor involved in the damage; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with another government agency, Contractor will provide a copy of the report to Town.

7.6 Materials and Equipment.

A. ***General.*** Unless otherwise specified, all materials and equipment required for the Work must be new, free from defects, and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Contractor must employ measures to preserve the specified quality and fitness of the materials and equipment. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation and must be installed in accordance with the manufacturer's recommendations or instructions. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work. Contractor is responsible for providing security and protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until Town has formally accepted the Project as set forth in Section 11.1, Final Completion. Contractor will not assign, sell, mortgage, or hypothecate any materials or equipment for the Project, or remove any materials or equipment that have been installed or delivered.

B. ***Town-Provided.*** If the Work includes installation of materials or equipment to be provided by Town, Contractor is solely responsible for the proper examination, handling, storage, and installation in accordance with the Contract Documents. Contractor must notify Town of any defects discovered in Town-provided materials or equipment, sufficiently in advance of scheduled use or installation to afford adequate time to procure replacement materials or equipment as needed. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.

C. ***Intellectual Property Rights.*** Contractor must, at its sole expense, obtain any authorization or license required for use of patented or copyright-protected materials, equipment, devices, or processes that are incorporated into the Work. Contractor's indemnity obligations in Article 4 apply to any claimed violation of intellectual property rights in violation of this provision.

7.7 Substitutions.

A. ***"Or Equal."*** Any Specification designating a material, product, or thing (collectively, "item") or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate the quality and type of item or service desired, and Contractor may request use of any equal item or service. Unless otherwise stated in the Specifications, any reference to a specific brand or trade name for an item or service that is used solely for the purpose of describing the type of item or service desired, will be deemed to be followed by the words "or equal." A substitution will only be approved if it is a true "equal" item or service in every aspect of design, function, and quality, as determined by Town, including dimensions, weight, maintenance requirements, durability, fit with other elements, and schedule impacts.

B. ***Request for Substitution.*** A post-award request for substitution of an item or service must be submitted in writing to the Engineer for approval in advance, within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within 35 days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.

C. ***Substantiation.*** Any available data substantiating the proposed substitute as an equal item or service must be submitted with the written request for substitution. Contractor's failure to timely provide all necessary substantiation, including any required test results as soon as they are available, is grounds for rejection of the proposed substitution, without further review.

D. ***Burden of Proving Equality.*** Contractor has the burden of proving the equality of the proposed substitution at Contractor's sole cost. Town has sole discretion to determine whether a proposed substitution is equal, and Town's determination is final.

E. ***Approval or Rejection.*** If the proposed substitution is approved, Contractor is solely responsible for any additional costs or time associated with the substituted item or service. If the proposed substitution is rejected, Contractor must, without delay, install the item or use the service as specified by Town.

F. ***Contractor's Obligations.*** Town's approval of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. In the event Contractor makes an unauthorized substitution, Contractor will be solely responsible for all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

7.8 Testing and Inspection.

A. ***General.*** All materials, equipment, and workmanship used in the Work are subject to inspection and testing by Town at all times and at all locations during construction and/or fabrication, including at any Worksite, shops, and yards. All manufacturers' application or installation instructions must be provided to the Inspector at least ten days prior to the first such application or installation. Contractor must, at all times, make the Work available for testing or inspection. Neither Town's inspection or testing of Work, nor its failure to do so, operate to waive or limit Contractor's duty to complete the Work in accordance with the Contract Documents.

B. ***Scheduling and Notification.*** Contractor must cooperate with Town in coordinating the inspections and testing. Contractor must submit samples of materials, at Contractor's expense, and schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must notify the Engineer no later than noon of the Working Day before any inspection or testing and must provide timely notice to the other necessary parties as specified in the Contract Documents. If Contractor schedules an inspection or test beyond regular Work hours, or on a Saturday, Sunday, or recognized Town holiday, Contractor must notify the Engineer at least two Working Days in advance for approval. If approved, Contractor must reimburse Town for the cost of the overtime inspection or testing. Such costs, including the Town's hourly costs for required personnel, may be deducted from payments otherwise due to Contractor.

C. ***Responsibility for Costs.*** Town will bear the initial cost of inspection and testing to be performed by independent consultants retained by Town, subject to the following exceptions:

1. Contractor will be responsible for the costs of any subsequent inspections or tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.
2. Contractor will be responsible for inspection costs, at Town's hourly rates, for inspection time lost because the Work is not ready, or Contractor fails to appear for a scheduled inspection.
3. If any portion of the Work that is subject to inspection or testing is covered or concealed by Contractor prior to the inspection or testing, Contractor will bear the cost of making that portion of the Work available for the inspection or testing required by the Contract Documents, and any associated repair or remediation costs.
4. Contractor is responsible for properly shoring all compaction test sites deeper than five feet below grade, as required under Section 7.15 below.
5. Any Work or material that is defective or fails to comply with the requirements of the Contract Documents must be promptly repaired, removed, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work or material was previously inspected or included in a progress payment.

D. ***Contractor's Obligations.*** Contractor is solely responsible for any delay occasioned by remediation of defective or noncompliant Work or material. Inspection or testing of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified. Any Work done without the inspection(s) or testing required by the Contract Documents will be subject to rejection by Town.

E. ***Distant Locations.*** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.

F. ***Final Inspection.*** The provisions of this Section 7.8 also apply to final inspection under Article 11, Completion and Warranty Provisions.

7.9 Project Site Conditions and Maintenance. Contractor must at all times, on a 24-hour basis and at its sole cost, maintain the Project site and staging and storage areas in clean, neat, and sanitary condition and in compliance with all Laws pertaining to safety, air quality, and dust control. Adequate toilets must be provided, and properly maintained and serviced for all workers on the Project site, located in a suitably secluded area, subject to Town's prior approval. Contractor must also, on a daily basis and at its sole cost, remove and properly dispose of the debris and waste materials from the Project site.

A. ***Air Emissions Control.*** Contractor must not discharge smoke or other air contaminants into the atmosphere in violation of any Laws. Contractor must comply with all Laws, including the California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.).

B. ***Dust and Debris.*** Contractor must minimize and confine dust and debris resulting from the Work. Contractor must abate dust nuisance by cleaning, sweeping, and immediately sprinkling with water excavated areas of dirt or other materials prone to cause dust, and within one hour after the Engineer notifies Contractor that an airborne nuisance exists. The Engineer may direct that Contractor provide an approved water-spraying truck for this purpose. If water is used for dust control, Contractor will only use the minimum necessary. Contractor must take all necessary steps to keep waste water out of streets, gutters, or storm drains. See Section 7.19,

Environmental Control. If Town determines that the dust control is not adequate, Town may have the work done by others and deduct the cost from the Contract Price. Contractor will immediately remove any excess excavated material from the Project site and any dirt deposited on public streets.

C. ***Clean up.*** Before discontinuing Work in an area, Contractor must clean the area and remove all debris and waste along with the construction equipment, tools, machinery, and surplus materials.

1. Except as otherwise specified, all excess Project materials, and the materials removed from existing improvements on the Project site with no salvage value or intended reuse by Town, will be Contractor's property.

2. Hauling trucks and other vehicles leaving the Project site must be cleaned of exterior mud or dirt before traveling on Town streets. Materials and loose debris must be delivered and loaded to prevent dropping materials or debris. Contractor must immediately remove spillage from hauling on any publicly traveled way. Streets affected by Work on the Project must be kept clean by street sweeping.

D. ***Disposal.*** Contractor must dispose of all Project debris and waste materials in a safe and legal manner. Contractor may not burn or bury waste materials on the Project site. Contractor will not allow any dirt, refuse, excavated material, surplus concrete or mortar, or any associated washings, to be disposed of onto streets, into manholes or into the storm drain system.

E. ***Completion.*** At the completion of the Work, Contractor must remove from the Project site all of its equipment, tools, surplus materials, waste materials and debris, presenting a clean and neat appearance. Before demobilizing from the Project site, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas. Contractor must ensure that all parts of the construction are properly joined with the previously existing and adjacent improvements and conditions. Contractor must provide all cutting, fitting and patching needed to accomplish that requirement. Contractor must also repair or replace all existing improvements that are damaged or removed during the Work, both on and off the Project site, including curbs, sidewalks, driveways, fences, signs, landscaping, utilities, street surfaces and structures. Repairs and replacements must be at least equal to the previously existing improvements, and the condition, finish and dimensions must match the previously existing improvements. Contractor must restore to original condition all property or items that are not designated for alteration under the Contract Documents and leave each Worksite clean and ready for occupancy or use by Town.

F. ***Non-Compliance.*** If Contractor fails to comply with its maintenance and cleanup obligations or any Town clean up order, Town may, acting in its sole discretion, elect to suspend the Work until the condition(s) is corrected with no increase in the Contract Time or Contract Price, or undertake appropriate cleanup measures without further notice and deduct the cost from any amounts due or to become due to Contractor.

7.10 Instructions and Manuals. Contractor must provide to Town three copies each of all instructions and manuals required by the Contract Documents, unless otherwise specified. These must be complete as to drawings, details, parts lists, performance data, and other information that may be required for Town to easily maintain and service the materials and equipment installed for this Project.

A. ***Submittal Requirements.*** All manufacturers' application or installation instructions must be provided to Town at least ten days prior to the first such application. The instructions and manuals, along with any required guarantees, must be delivered to Town for review.

B. ***Training.*** Contractor or its Subcontractors must train Town's personnel in the operation and maintenance of any complex equipment or systems as a condition precedent to Final Completion, if required in the Contract Documents.

7.11 As-built Drawings. Contractor and its Subcontractors must prepare and maintain at the Project site a detailed, complete and accurate as-built set of the Plans which will be used solely for the purpose of recording changes made in any portion of the original Plans in order to create accurate record drawings at the end of the Project.

A. ***Duty to Update.*** The as-built drawings must be updated as changes occur, on a daily basis if necessary. Town may withhold the estimated cost for Town to have the as-built drawings prepared from payments otherwise due to Contractor, until the as-built drawings are brought up to date to the satisfaction of Town. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities installed underground, in walls, floors, or otherwise concealed. Deviations from the original Plans must be shown in detail. The exact location of all main runs, whether piping, conduit, ductwork or drain lines, must be shown by dimension and elevation. The location of all buried pipelines, appurtenances, or other improvements must be represented by coordinates and by the horizontal distance from visible above-ground improvements.

B. ***Final Completion.*** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to the Engineer for review and acceptance as a condition precedent to Final Completion and Final Payment.

7.12 Existing Utilities.

A. ***General.*** The Work may be performed in developed, urban areas with existing utilities, both above and below ground, including utilities identified in the Contract Documents or in other informational documents or records. Contractor must take due care to locate identified or reasonably identifiable utilities before proceeding with trenching, excavation, or any other activity that could damage or disrupt existing utilities. This may include excavation with small equipment, potholing, or hand excavation, and, if practical, using white paint or other suitable markings to delineate the area to be excavated. Except as otherwise provided herein, Contractor will be responsible for costs resulting from damage to identified or reasonably identifiable utilities due to Contractor's negligence or failure to comply with the Contract Documents, including the requirements in this Article 7.

B. ***Unidentified Utilities.*** Pursuant to Government Code § 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by Town in the Contract Documents, Contractor must immediately provide written notice to Town and the utility. Town assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site if those utilities are not identified in the Contract Documents. Contractor will be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating utility facilities not indicated in the Plans or Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not

be assessed liquidated damages for delay in completion of the Work, to the extent the delay was caused by Town's failure to provide for removal or relocation of the utility facilities.

7.13 Notice of Excavation. Contractor must comply with all applicable requirements in Government Code § 4216 et seq., which are incorporated by reference herein.

7.14 Trenching and Excavations of Four Feet or More. As required by Public Contract Code § 7104, if the Work includes digging trenches or other excavations that extend deeper than four feet below the surface, the provisions in this Section apply to the Work and the Project.

A. ***Duty to Notify.*** Contractor must promptly, and before the following conditions are disturbed, provide written notice to Town if Contractor finds any of the following conditions:

1. Material that Contractor believes may be a hazardous waste, as defined in § 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing Laws;
2. Subsurface or latent physical conditions at the Project site differing from those indicated by information about the Project site made available to bidders prior to the deadline for submitting bids; or
3. Unknown physical conditions at the Project site of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.

B. ***Town Investigation.*** Town will promptly investigate the conditions and if Town finds that the conditions materially differ from those indicated, apparent, or reasonably inferred from information about the Project site made available to bidders, or involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, Town will issue a Change Order.

C. ***Disputes.*** In the event that a dispute arises between Town and Contractor regarding any of the conditions specified in subsection (B) above, or the terms of a Change Order issued by Town, Contractor will not be excused from completing the Work within the Contract Time, but must proceed with all Work to be performed under the Contract. Contractor will retain any and all rights provided either by the Contract or by Laws which pertain to the resolution of disputes between Contractor and Town.

7.15 Trenching of Five Feet or More. As required by Labor Code § 6705, if the Contract Price exceeds $25,000 and the Work includes the excavation of any trench or trenches of five feet or more in depth, a detailed plan must be submitted to Town for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it must be prepared by a California registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.

7.16 New Utility Connections. Except as otherwise specified, Town will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify Town sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.

7.17 Lines and Grades. Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work. Contractor must also provide, preserve, and replace if necessary, all construction stakes required for the Project. All stakes or marks must be set by a California licensed surveyor or a California registered civil engineer. Contractor must notify the Engineer of any discrepancies found between Contractor's staking and grading and information provided by the Contract Documents. Upon completion, all Work must conform to the lines, elevations, and grades shown in the Plans, including any changes directed by a Change Order.

7.18 Historic or Archeological Items.

A. ***Contractor's Obligations.*** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify the Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, a burial ground, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").

B. ***Discovery; Cessation of Work.*** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an 85-foot radius of the find and may not resume until authorized in writing by Town. If required by Town, Contractor must assist in protecting or recovering the Historic or Archeological Items, with any such assistance to be compensated as Extra Work on a time and materials basis under Article 6, Contract Modification. At Town's discretion, a suspension of Work required due to discovery of Historic or Archeological Items may be treated as Excusable Delay pursuant to Article 5, or as a suspension for convenience under Article 13.

7.19 Environmental Control. Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor must prevent the release of any hazardous material or hazardous waste into the soil or groundwater, and prevent the unlawful discharge of pollutants into Town's storm drain system and watercourses as required below. Contractor and its Subcontractors must at all times in the performance of the Work comply with all Laws concerning pollution of waterways.

A. ***Stormwater Permit.*** Contractor must comply with all applicable conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Stormwater Permit").

B. ***Contractor's Obligations.*** If required for the Work, a copy of the Stormwater Permit is on file in Town's principal administrative offices, and Contractor must comply with it without adjustment of the Contract Price or the Contract Time. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit. Contractor also must comply with all other Laws governing discharge of stormwater, including applicable municipal stormwater management programs.

7.20 Noise Control. Contractor must comply with all applicable noise control Laws. Noise control requirements apply to all equipment used for the Work or related to the Work, including trucks, transit mixers or transient equipment that may or may not be owned by Contractor.

7.21 Mined Materials. Pursuant to the Surface Mining and Reclamation Act of 1975, Public Resources Code § 2710 et seq., any purchase of mined materials, such as construction aggregate, sand, gravel, crushed stone, road base, fill

materials, and any other mineral materials must originate from a surface mining operation included on the AB 3098 List, which may be accessed online at: https://www.conservation.ca.gov/smgb/Pages/AB-3098-List.aspx.

Article 8 - Payment

8.1 Schedule of Values. Prior to submitting its first application for payment, Contractor must prepare and submit to the Project Manager a schedule of values apportioned to the various divisions and phases of the Work, including mobilization and demobilization. If a Bid Schedule was submitted with Contractor's bid, the amounts in the schedule of values must be consistent with the Bid Schedule. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid.

A. ***Measurements for Unit Price Work.*** Materials and items of Work to be paid for on the basis of unit pricing will be measured according to the methods specified in the Contract Documents.

B. ***Deleted or Reduced Work.*** Contractor will not be compensated for Work that Town has deleted or reduced in scope, except for any labor, material, or equipment costs for such Work that Contractor reasonably incurred before Contractor learned that the Work could be deleted or reduced. Contractor will only be compensated for those actual, direct and documented costs incurred, and will not be entitled to any mark up for overhead or lost profits.

8.2 Progress Payments. Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to the Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.

A. ***Application for Payment.*** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Project site, as well as authorized and approved Change Orders. Each payment application must be supported by the unit prices submitted with Contractor's Bid Schedule and/or schedule of values and any other substantiating data required by the Contract Documents.

B. ***Payment of Undisputed Amounts.*** Town will pay the undisputed amount due within 30 days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code § 20104.50. Town will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may deduct or withhold additional amounts as set forth in Section 8.3, below.

8.3 Adjustment of Payment Application. Town may adjust or reject the amount requested in a payment application, including application for Final Payment, in whole or in part, if the amount requested is disputed or unsubstantiated. Contractor will be notified in writing of the basis for the modification to the amount requested. Town may also deduct or withhold from payment otherwise due based upon any of the circumstances and amounts listed below. Sums withheld from payment otherwise due will be released when the basis for that withholding has been remedied and no longer exists.

A. For Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items, Town may withhold or deduct an amount based on the Town's estimated cost to correct or complete the Work.

B. For loss or damage caused by Contractor or its Subcontractors arising out of or relating to performance of the Work or any failure to protect the Project site, Town may deduct an amount based on the estimated cost to repair or replace.

C. For Contractor's failure to pay its Subcontractors and suppliers when payment is due, Town may withhold an amount equal to the total of past due payments and may opt to pay that amount separately via joint check pursuant to Section 8.6(B), Joint Checks.

D. For Contractor's failure to timely correct rejected, nonconforming, or defective Work, Town may withhold or deduct an amount based on the Town's estimated cost to correct or complete the Work.

E. For any unreleased stop notice, Town may withhold 125% of the amount claimed.

F. For Contractor's failure to submit any required schedule or schedule update in the manner specified or within the time specified in the Contract Documents, Town may withhold an amount equal to five percent of the total amount requested until Contractor complies with its schedule submittal obligations.

G. For Contractor's failure to maintain or submit as-built documents in the manner specified or within the time specified in the Contract Documents, Town may withhold or deduct an amount based on the Town's cost to prepare the as-builts.

H. For Work performed without Shop Drawings that have been accepted by Town, when accepted Shop Drawings are required before proceeding with the Work, Town may deduct an amount based on the estimated cost to correct unsatisfactory Work or diminution in value.

I. For fines, payments, or penalties assessed under the Labor Code, Town may deduct from payments due to Contractor as required by Laws and as directed by the Division of Labor Standards Enforcement.

J. For any other costs or charges that may be withheld or deducted from payments to Contractor, as provided in the Contract Documents, including liquidated damages, Town may withhold or deduct such amounts from payment otherwise due to Contractor.

8.4 Early Occupancy. Neither Town's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work.

8.5 Retention. Town will retain five percent of the full amount due on each progress payment (i.e., the amount due before any withholding or deductions pursuant to Section 8.3, Adjustment of Payment Application), or the percentage stated in the Notice Inviting Bids, whichever is greater, as retention to ensure full and satisfactory performance of the Work. Contractor is not entitled to any reduction in the rate of withholding at any time, nor to release of any retention before 35 days following Town's acceptance of the Project.

A. ***Substitution of Securities.*** As provided by Public Contract Code § 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by Town. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code § 22300 and will be subject to approval as to form by Town's legal counsel. If Town exercises its right to draw upon such securities in the event of default pursuant to section (7) of the statutory Escrow Agreement for Security Deposits in Lieu of Retention, pursuant to subdivision (g) of Public Contract Code § 22300 ("Escrow Agreement"), and if Contractor disputes that it is in default, its sole remedy is to comply with the dispute resolution procedures in

Article 12 and the provisions therein. It is agreed that for purposes of this paragraph, an event of default includes Town's rights pursuant to these Contract Documents to withhold or deduct sums from retention, including withholding or deduction for liquidated damages, incomplete or defective Work, stop payment notices, or backcharges. It is further agreed that if any individual authorized to give or receive written notice on behalf of a party pursuant to section (10) of the Escrow Agreement are unavailable to give or receive notice on behalf of that party due to separation from employment, retirement, death, or other circumstances, the successor or delegee of the named individual is deemed to be the individual authorized to give or receive notice pursuant to section (10) of the Escrow Agreement.

B. ***Release of Undisputed Retention.*** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld pursuant to Section 8.3, Adjustment of Payment Application, will be released as Final Payment to Contractor no sooner than 35 days following recordation of the notice of completion, and no later than 60 days following acceptance of the Project by Town's governing body or authorized designee pursuant to Section 11.1(C), Acceptance, or, if the Project has not been accepted, no later than 60 days after the Project is otherwise considered complete pursuant to Public Contract Code § 7107(c).

8.6 Payment to Subcontractors and Suppliers. Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Project site by the Subcontractor or supplier during the preceding month. Such payments must be made in accordance with the requirements of Laws pertaining to such payments, and those of the Contract Documents and applicable subcontract or supplier contract.

A. ***Withholding for Stop Notice.*** Pursuant to Civil Code § 9358, Town will withhold 125% of the amount claimed by an unreleased stop notice, a portion of which may be retained by Town for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.

B. ***Joint Checks.*** Town reserves the right, acting in its sole discretion, to issue joint checks made payable to Contractor and a Subcontractor or supplier, if Town determines this is necessary to ensure fair and timely payment for a Subcontractor or supplier who has provided services or goods for the Project. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by the Town Attorney's Office. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between Town and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

8.7 Final Payment. Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. If Contractor fails to submit a timely application for Final Payment, Town reserves the right to unilaterally process and issue Final Payment without an application from Contractor in order to close out the Project. For the purposes of determining the deadline for Claim submission pursuant to Article 12, the date of Final Payment is deemed to be the date that Town acts to release undisputed retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment or that no undisputed funds remain available for Final Payment due to offsetting withholdings or deductions

pursuant to Section 8.3, Adjustment of Payment Application. If the amount due from Contractor to Town exceeds the amount of Final Payment, Town retains the right to recover the balance from Contractor or its sureties.

8.8 Release of Claims. Town may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing Town with a written waiver and release of all claims against Town arising from or related to the portion of Work covered by those undisputed amounts subject to the limitations of Public Contract Code § 7100. Any disputed amounts may be specifically excluded from the release.

8.9 Warranty of Title. Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to Town free of any claims, liens, or encumbrances upon payment to Contractor.

Article 9 - Labor Provisions

9.1 Discrimination Prohibited. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Laws prohibiting discrimination, including the California Fair Employment and Housing Act (Govt. Code § 12900 et seq.), Government Code § 11135, and Labor Code §§ 1735, 1777.5, 1777.6, and 3077.5.

9.2 Labor Code Requirements.

A. ***Eight Hour Day.*** Pursuant to Labor Code § 1810, eight hours of labor constitute a legal day's work under this Contract.

B. ***Penalty.*** Pursuant to Labor Code § 1813, Contractor will forfeit to Town as a penalty, the sum of $25.00 for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight hours in any one calendar day or more than 40 hours per calendar week, except if such workers are paid overtime under Labor Code § 1815.

C. ***Apprentices.*** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code § 1777.5, which is fully incorporated by reference.

D. ***Notices.*** Pursuant to Labor Code § 1771.4, Contractor is required to post all job site notices prescribed by Laws.

9.3 Prevailing Wages. Each worker performing Work under this Contract that is covered under Labor Code §§ 1720, 1720.3, or 1720.9, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in §§ 1771 and 1774 of the Labor Code. The prevailing wage rates are on file with the Town and available online at http://www.dir.ca.gov/dlsr. Contractor must post a copy of the applicable prevailing rates at the Project site.

A. ***Penalties.*** Pursuant to Labor Code § 1775, Contractor and any Subcontractor will forfeit to Town as a penalty up to $200.00 for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

B. ***Federal Requirements.*** If this Project is subject to federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the currently applicable state or federal prevailing wage rates.

9.4 Payroll Records. Contractor must comply with the provisions of Labor Code §§ 1771.4, 1776, and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for monthly electronic submission of payroll records to the DIR.

A. ***Contractor and Subcontractor Obligations***. Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct; and
2. Contractor or the Subcontractor has complied with the requirements of Labor Code §§ 1771, 1811, and 1815 for any Work performed by its employees on the Project.

B. ***Certified Record.*** A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to Town, to the Division of Labor Standards Enforcement, to the Division of Apprenticeship Standards of the DIR, and as further required by the Labor Code.

C. ***Enforcement.*** Upon notice of noncompliance with Labor Code § 1776, Contractor or Subcontractor has ten days in which to comply with the requirements of this section. If Contractor or Subcontractor fails to do so within the ten-day period, Contractor or Subcontractor will forfeit a penalty of $100.00 per day, or portion thereof, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from payments then due to Contractor.

9.5 Labor Compliance. Pursuant to Labor Code § 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the DIR.

Article 10 - Safety Provisions

10.1 Safety Precautions and Programs. Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must at all times comply with all applicable health and safety Laws and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at any Worksite, materials and equipment stored on or off site, and property at or adjacent to any Worksite.

A. ***Reporting Requirements.*** Contractor must immediately notify the Town of any death, serious injury or illness resulting from Work on the Project. Contractor must immediately provide a written report to Town of each recordable accident or injury occurring at any Worksite within 24 hours of the occurrence. The written report must include: (1) the name and address of the injured or deceased person; (2) the name and address of each employee of Contractor or of any Subcontractor involved in the incident; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to Town.

B. ***Legal Compliance.*** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide Town with copies of all notices required by Laws.

C. ***Contractor's Obligations.*** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.

D. ***Remedies.*** If Town determines, in its sole discretion, that any part of the Work or Project site is unsafe, Town may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to Town's satisfaction. If Contractor fails to promptly take the required corrective measures, Town may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with Town's request for corrective measures pursuant to this provision.

10.2 Hazardous Materials. Unless otherwise specified in the Contract Documents, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Project site that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to Town. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.

10.3 Material Safety. Contractor is solely responsible for complying with § 5194 of Title 8 of the California Code of Regulations, including by providing information to Contractor's employees about any hazardous chemicals to which they may be exposed in the course of the Work. A hazard communication program and other forms of warning and training about such exposure must be used. Contractor must also maintain Safety Data Sheets ("SDS") at the Project site, as required by Laws, for materials or substances used or consumed in the performance of the Work. The SDS will be accessible and available to Contractor's employees, Subcontractors, and Town.

A. ***Contractor Obligations.*** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Project site and/or used in the performance of the Work. Contractor must notify the Engineer if a specified product or material cannot be used safely.

B. ***Labeling.*** Contractor must ensure proper labeling on any material brought onto the Project site so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

10.4 Hazardous Condition. Contractor is solely responsible for determining whether a hazardous condition exists or is created during the course of the Work, involving a risk of bodily harm to any person or risk of damage to any property. If a hazardous condition exists or is created, Contractor must take all precautions necessary to address the condition and ensure that the Work progresses safely under the circumstances. Hazardous conditions may result from, but are not limited to, use of specified materials or equipment, the Work location, the Project site condition, the method of construction, or the way any Work must be performed.

10.5 Emergencies. In an emergency affecting the safety or protection of persons, Work, or property at or adjacent to any Worksite, Contractor must take reasonable and prompt actions to prevent damage, injury, or loss, without prior

authorization from the Town if, under the circumstances, there is inadequate time to seek prior authorization from the Town.

Article 11 - Completion and Warranty Provisions

11.1 Final Completion.

A. ***Final Inspection and Punch List.*** When the Work required by this Contract is fully performed, Contractor must provide written notification to Town requesting final inspection. The Engineer will schedule the date and time for final inspection, which must include Contractor's primary representative for this Project and its superintendent. Based on that inspection, Town will prepare a punch list of any items that are incomplete, missing, defective, incorrectly installed, or otherwise not compliant with the Contract Documents. The punch list to Contractor will specify the time by which all of the punch list items must be completed or corrected. The punch list may include Town's estimated cost to complete each punch list item if Contractor fails to do so within the specified time. The omission of any non-compliant item from a punch list will not relieve Contractor from fulfilling all requirements of the Contract Documents. Contractor's failure to complete any punch list item within the time specified in the punch list will not waive or abridge its warranty obligations for any such items that must be completed by the Town or by a third party retained by the Town due to Contractor's failure to timely complete any such outstanding item.

B. ***Requirements for Final Completion.*** Final Completion will be achieved upon completion or correction of all punch list items, as verified by Town's further inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents and submission of all final submittals, including instructions and manuals as required under Section 7.10, and complete, final as-built drawings as required under Section 7.11, all to Town's satisfaction.

C. ***Acceptance.*** The Project will be considered accepted upon Town Council action during a public meeting to accept the Project, unless the Engineer is authorized to accept the Project, in which case the Project will be considered accepted upon the date of the Engineer's issuance of a written notice of acceptance. In order to avoid delay of Project close out, the Town may elect, acting in its sole discretion, to accept the Project as complete subject to exceptions for punch list items that are not completed within the time specified in the punch list.

D. ***Final Payment and Release of Retention.*** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than 35 days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, Town may withhold up to 150% of Town's estimated cost to complete each of the remaining items from Final Payment and may use the withheld retention to pay for the costs to self-perform the outstanding items or to retain a third party to complete any such outstanding punch list item.

11.2 Warranty.

A. ***General.*** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor warrants that materials or items incorporated into

the Work comply with the requirements and standards in the Contract Documents, including compliance with Laws, and that any Hazardous Materials encountered or used were handled as required by Laws. At Town's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

B. ***Warranty Period.*** Contractor's warranty must guarantee its Work for a period of one year from the date of Project acceptance (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors, suppliers and manufacturers any special or extended warranties required by the Contract Documents.

C. ***Warranty Documents.*** As a condition precedent to Final Completion, Contractor must supply Town with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.

D. ***Subcontractors.*** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor agrees to be co-guarantor of such Work.

E. ***Contractor's Obligations.*** Upon written notice from Town to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period. Work performed during the Warranty Period ("Warranty Work") will be subject to the warranty provisions in this Section 11.2 for a one-year period that begins upon completion of such Warranty Work to Town's satisfaction.

F. ***Town's Remedies.*** If Contractor or its responsible Subcontractor fails to correct defective Work within ten days following notice by Town, or sooner if required by the circumstances, Town may correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor must reimburse Town for its costs in accordance with subsection (H), below.

G. ***Emergency Repairs.*** In cases of emergency where any delay in correcting defective Work could cause harm, loss or damage, Town may immediately correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor or its surety must reimburse Town for its costs in accordance with subsection (H), below.

H. ***Reimbursement.*** Contractor must reimburse Town for its costs to repair under subsections (F) or (G), above, within 30 days following Town's submission of a demand for payment pursuant to this provision. If Town is required to initiate legal action to compel Contractor's compliance with this provision, and Town is the prevailing party in such action, Contractor and its surety are solely responsible for all of Town's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein, in addition to any and all costs Town incurs to correct the defective Work.

11.3 Use Prior to Final Completion. Town reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if Town has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion.

A. ***Non-Waiver.*** Occupation or use of the Project, in whole or in part, prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of Town's rights or Contractor's duties pursuant to these Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

B. ***Town's Responsibility.*** Town will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before Final Completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to complete the Work within the Contract Time.

11.4 Substantial Completion. For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to Town acceptance of the Project, except for warranty work performed under this Article.

Article 12 - Dispute Resolution

12.1 Claims. This Article applies to and provides the exclusive procedures for any Claim arising from or related to the Contract or performance of the Work.

A. ***Definition.*** "Claim" means a separate demand by Contractor, submitted in writing by registered or certified mail with return receipt requested, for a change in the Contract Time, including a time extension or relief from liquidated damages, or a change in the Contract Price, when the demand has previously been submitted to Town in accordance with the requirements of the Contract Documents, and which has been rejected or disputed by Town, in whole or in part. A Claim may also include that portion of a unilateral Change Order that is disputed by the Contractor.

B. ***Limitations.*** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and Town. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Contract Time or the Contract Price, which has not previously been submitted to Town in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by Town.

C. ***Scope of Article.*** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount and applies in addition to the provisions of Public Contract Code § 9204 and § 20104 et seq., which are incorporated by reference herein.

D. ***No Work Delay.*** Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work

pending resolution of a Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to the Claim or other dispute.

E. ***Informal Resolution.*** Contractor will make a good faith effort to informally resolve a dispute before initiating a Claim, preferably by face-to-face meeting between authorized representatives of Contractor and Town.

12.2 Claims Submission. A Claim must be submitted in writing by registered or certified mail with return receipt requested, and must comply with the following requirements:

A. ***Substantiation.*** The Claim must be submitted to Town in writing, clearly identified as a "Claim" submitted pursuant to this Article 12 and must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of Town's written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all known or estimated labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each component of claimed cost. Any Claim for an extension of time or delay costs must be substantiated with a schedule analysis and narrative depicting and explaining claimed time impacts.

B. ***Claim Format and Content.*** A Claim must be submitted submitted in writing by registered or certified mail with return receipt requested in the following format:

1. Provide a cover letter, specifically identifying the submission as a "Claim" submitted under this Article 12 and specifying the requested remedy (e.g., amount of proposed change to Contract Price and/or change to Contract Time).

2. Provide a summary of each Claim, including underlying facts and the basis for entitlement, and identify each specific demand at issue, including the specific Change Order request (by number and submittal date), and the date of Town's rejection of that demand, in whole or in part.

3. Provide a detailed explanation of each issue in dispute. For multiple issues included within a single Claim or for multiple Claims submitted concurrently, separately number and identify each individual issue or Claim, and include the following for <u>each</u> separate issue or Claim:

   a. A succinct statement of the matter in dispute, including Contractor's position and the basis for that position;

   b. Identify and attach all documents that substantiate the Claim, including relevant provisions of the Contract Documents, RFIs, calculations, and schedule analysis (see subsection (A), Substantiation, above);

   c. A chronology of relevant events; and

   d. Analysis and basis for claimed changes to Contract Price, Contract Time, or any other remedy requested.

4. Provide a summary of issues and corresponding claimed damages. If, by the time of the Claim submission deadline (below), the precise amount of the requested change in the Contract Price or Contract Time is not

yet known, Contractor must provide a good faith estimate, including the basis for that estimate, and must identify the date by which it is anticipated that the Claim will be updated to provide final amounts.

5. Include the following certification, executed by Contractor's authorized representative: "The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim submittal are true and correct. Contractor warrants that this Claim submittal is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay not included herein are deemed waived."

C. ***Submission Deadlines.***

1. A Claim disputing rejection of a request for a change in the Contract Time or Contract Price must be submitted within 30 days following the date that Town notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part. A Claim disputing the terms of a unilateral Change Order must be submitted within 30 days following the date of issuance of the unilateral Change Order. These Claim deadlines apply even if Contractor cannot yet quantify the total amount of any requested change in the Contract Time or Contract Price. If the Contractor cannot quantify those amounts, it must submit an estimate of the amounts claimed pending final determination of the requested remedy by Contractor.

2. With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment or will be deemed waived.

3. A Claim disputing the amount of Final Payment must be submitted within 30 days of the effective date of Final Payment, under Section 8.7, Final Payment.

4. Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. ***Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.***

12.3 Town's Response. Town will respond within 45 days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the 45-day period is extended by mutual agreement of Town and Contractor or as otherwise allowed under Public Contract Code § 9204. However, if Town determines that the Claim is not adequately substantiated pursuant to Section 12.2(A), Substantiation, Town may first request in writing, within 30 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that Town may have against the Claim.

A. ***Additional Information.*** If additional information is thereafter required, it may be requested and provided upon mutual agreement of Town and Contractor. If Contractor's Claim is based on estimated amounts, Contractor has a continuing duty to update its Claim as soon as possible with information on actual amounts in order to facilitate prompt and fair resolution of the Claim.

B. ***Non-Waiver.*** Any failure by Town to respond within the times specified above will not be construed as acceptance of the Claim, in whole or in part, or as a waiver of any provision of these Contract Documents.

12.4 Meet and Confer. If Contractor disputes Town's written response, or Town fails to respond within the specified time, within 15 days of receipt of Town's response or within 15 days of Town's failure to respond within the applicable 45-day time period under Section 12.3, respectively, Contractor may notify Town of the dispute in writing sent by

registered or certified mail, return receipt requested, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to notify Town of the dispute and demand an informal conference to meet and confer in writing within the specified time, Contractor's Claim will be deemed waived.

A. ***Schedule Meet and Confer.*** Upon receipt of the demand to meet and confer, Town will schedule the meet and confer conference to be held within 30 days, or later if needed to ensure the mutual availability of each of the individuals that each party requires to represent its interests at the meet and confer conference.

B. ***Location for Meet and Confer.*** The meet and confer conference will be scheduled at a location at or near Town's principal office.

C. ***Written Statement After Meet and Confer.*** Within ten working days after the meet and confer has concluded, Town will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.

D. ***Submission to Mediation.*** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days after the Town issues the written statement identifying any portion(s) of the Claim remaining in dispute, the Contractor may identify in writing disputed portion(s) of the Claim, which will be submitted for mediation, as set forth below.

12.5 Mediation and Government Code Claims.

A. ***Mediation.*** Within ten working days after the Town issues the written statement identifying any portion(s) of the Claim remaining in dispute following the meet and confer, Town and Contractor will mutually agree to a mediator, as provided under Public Contract Code § 9204. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. If there are multiple Claims in dispute, the parties may agree to schedule the mediation to address all outstanding Claims at the same time. The parties will share the costs of the mediator and mediation fees equally, but each party is otherwise solely and separately responsible for its own costs to prepare for and participate in the mediation, including costs for its legal counsel or any other consultants.

B. ***Government Code Claims*.**

1. Timely presentation of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract. Compliance with the Claim submission requirements in this Article 12 is a condition precedent to filing a Government Code Claim.

2. The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied in whole or in part at the conclusion of the meet and confer process, including any period of time used by the meet and confer process. However, if the Claim is submitted to mediation, the time for filing a Government Code Claim will be tolled until conclusion of the mediation, including any continuations, if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

12.6 Tort Claims. This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.

12.7 Arbitration. It is expressly agreed, under Code of Civil Procedure § 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.

12.8 Burden of Proof and Limitations. Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to speculative, special, or consequential damages, including home office overhead or any form of overhead not directly incurred at the Project site or any other Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract. The Eichleay Formula or similar formula will not be used for any recovery under the Contract. The Town will not be directly liable to any Subcontractor or supplier.

12.9 Legal Proceedings. In any legal proceeding that involves enforcement of any requirements of the Contract Documents, the finder of fact will receive detailed instructions on the meaning and operation of the Contract Documents, including conditions, limitations of liability, remedies, claim procedures, and other provisions bearing on the defenses and theories of liability. Detailed findings of fact will be requested to verify enforcement of the Contract Documents. All of the Town's remedies under the Contract Documents will be construed as cumulative, and not exclusive, and the Town reserves all rights to all remedies available under law or equity as to any dispute arising from or relating to the Contract Documents or performance of the Work.

12.10 Other Disputes. The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, including disputes regarding suspension or early termination of the Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by Town. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 - Suspension and Termination

13.1 Suspension for Cause. In addition to all other remedies available to Town, if Contractor fails to perform or correct Work in accordance with the Contract Documents, including non-compliance with applicable environmental or health and safety Laws, Town may immediately order the Work, or any portion of it, suspended until the circumstances giving rise to the suspension have been eliminated to Town's satisfaction.

A. ***Notice of Suspension.*** Upon receipt of Town's written notice to suspend the Work, in whole or in part, except as otherwise specified in the notice of suspension, Contractor and its Subcontractors must promptly stop Work as specified in the notice of suspension; comply with directions for cleaning and securing the Worksite; and protect the completed and in-progress Work and materials. Contractor is solely responsible for any damages or loss resulting from its failure to adequately secure and protect the Project.

B. ***Resumption of Work.*** Upon receipt of the Town's written notice to resume the suspended Work, in whole or in part, except as otherwise specified in the notice to resume, Contractor and its Subcontractors must promptly re-mobilize and resume the Work as specified; and within ten days from the date of the notice to resume, Contractor must submit a recovery schedule, prepared in accordance with the Contract Documents, showing how Contractor will complete the Work within the Contract Time.

C. ***Failure to Comply.*** Contractor will not be entitled to an increase in the Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.

D. ***No Duty to Suspend.*** Town's right to suspend the Work will not give rise to a duty to suspend the Work, and Town's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

13.2 Suspension for Convenience. Town reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for Town's convenience. Upon notice by Town pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work and secure the Project site as directed by Town except for taking measures to protect completed or in-progress Work as directed in the suspension notice, and subject to the provisions of Section 13.1(A) and (B), above. If Contractor submits a timely request for a Change Order in compliance with Articles 5 and 6, the Contract Price and the Contract Time will be equitably adjusted by Change Order pursuant to the terms of Articles 5 and 6 to reflect the cost and delay impact occasioned by such suspension for convenience, except to the extent that any such impacts were caused by Contractor's failure to comply with the Contract Documents or the terms of the suspension notice or notice to resume. However, the Contract Time will only be extended if the suspension causes or will cause unavoidable delay in Final Completion. If Contractor disputes the terms of a Change Order issued for such equitable adjustment due to suspension for convenience, its sole recourse is to comply with the Claim procedures in Article 12.

13.3 Termination for Default. Town may declare that Contractor is in default of the Contract for a material breach of or inability to fully, promptly, or satisfactorily perform its obligations under the Contract.

Default. Events giving rise to a declaration of default include Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; Contractor's refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct defective Work or damage; Contractor's failure to comply with Laws, or orders of any public agency with jurisdiction over the Project; evidence of Contractor's bankruptcy, insolvency, or lack of financial capacity to complete the Work as required within the Contract Time; suspension, revocation, or expiration and nonrenewal of Contractor's license or DIR registration; dissolution, liquidation, reorganization, or other major change in Contractor's organization, ownership, structure, or existence as a business entity; unauthorized assignment of Contractor's rights or duties under the Contract; or any material breach of the Contract requirements.

A. ***Notice of Default and Opportunity to Cure.*** Upon Town's declaration that Contractor is in default due to a material breach of the Contract Documents, if Town determines that the default is curable, Town will afford Contractor the opportunity to cure the default within ten days of Town's notice of default, or within a period of time reasonably necessary for such cure, including a shorter period of time if applicable.

B. ***Termination.*** If Contractor fails to cure the default or fails to expediently take steps reasonably calculated to cure the default within the time period specified in the notice of default, Town may issue written notice to Contractor and its performance bond surety of Town's termination of the Contract for default.

C. ***Waiver.*** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond within seven calendar days from the date of the notice of termination pursuant to paragraph (C), Town may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that Town determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by Town to complete the Work following termination, where "additional cost" means all cost in excess of the cost Town would have incurred if Contractor had timely completed Work without the default and termination. In addition, Town will have the right to immediate possession and use of any materials, supplies, and equipment procured for the Project and located at the Project site or any Worksite on Town property for the purposes of completing the remaining Work.

D. ***Compensation.*** Within 30 days of receipt of updated as-builts, all warranties, manuals, instructions, or other required documents for Work installed to date, and delivery to Town of all equipment and materials for the Project for which Contractor has already been compensated, Contractor will be compensated for the Work satisfactorily performed in compliance with the Contract Documents up to the effective date of the termination pursuant to the terms of Article 8, Payment, subject to Town's rights to withhold or deduct sums from payment otherwise due pursuant to Section 8.3, and excluding any costs Contractor incurs as a result of the termination, including any cancellation or restocking charges or fees due to third parties. If Contractor disputes the amount of compensation determined by Town, its sole recourse is to comply with the Claim Procedures in Article 12, by submitting a Claim no later than 30 days following notice from Town of the total compensation to be paid by Town.

E. ***Wrongful Termination.*** If Contractor disputes the termination, its sole recourse is to comply with the Claim procedures in Article 12. If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience under Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including special or consequential damages, lost opportunity costs, or lost profits, and any award of damages is subject to Section 12.8, Burden of Proof and Limitations.

13.4 Termination for Convenience. Town reserves the right, acting in its sole discretion, to terminate all or part of the Contract for convenience upon written notice to Contractor.

A. ***Compensation to Contractor.*** In the event of Town's termination for convenience, Contractor waives any claim for damages, including for loss of anticipated profits from the Project. The following will constitute full and fair compensation to Contractor, and Contractor will not be entitled to any additional claim or compensation:

1. *Completed Work.* The value of its Work satisfactorily performed as of the date notice of termination is received, based on Contractor's schedule of values and unpaid costs for items delivered to the Project site that were fabricated for incorporation in the Work;

2. *Demobilization.* Demobilization costs specified in the schedule of values, or if demobilization costs were not provided in a schedule of values pursuant to Section 8.1, then based on actual, reasonable, and fully documented demobilization costs; and

3. *Termination Markup.* Five percent of the total value of the Work performed as of the date of notice of termination, including reasonable, actual, and documented costs to comply with the direction in the notice of termination for convenience, and demobilization costs, which is deemed to cover all overhead and profit to date.

B. ***Disputes.*** If Contractor disputes the amount of compensation determined by Town pursuant to paragraph (A), above, its sole recourse is to comply with the Claim procedures in Article 12, by submitting a Claim no later than 30 days following notice from Town of total compensation to be paid by Town.

13.5 Actions Upon Termination for Default or Convenience. The following provisions apply to any termination under this Article, whether for default or convenience, and whether in whole or in part.

A. ***General.*** Upon termination, Town may immediately enter upon and take possession of the Project and the Work and all tools, equipment, appliances, materials, and supplies procured or fabricated for the Project. Contractor will transfer title to and deliver all completed Work and all Work in progress to Town.

B. ***Submittals.*** Unless otherwise specified in the notice of termination, Contractor must immediately submit to Town all designs, drawings, as-built drawings, Project records, contracts with vendors and Subcontractors, manufacturer warranties, manuals, and other such submittals or Work-related documents required under the terms of the Contract Documents, including incomplete documents or drafts.

C. ***Close Out Requirements.*** Except as otherwise specified in the notice of termination, Contractor must comply with all of the following:

1. Immediately stop the Work, except for any Work that must be completed pursuant to the notice of termination and comply with Town's instructions for cessation of labor and securing the Project and any other Worksite(s).
2. Comply with Town's instructions to protect the completed Work and materials, using best efforts to minimize further costs.
3. Contractor must not place further orders or enter into new subcontracts for materials, equipment, services or facilities, except as may be necessary to complete any portion of the Work that is not terminated.
4. As directed in the notice, Contractor must assign to Town or cancel existing subcontracts that relate to performance of the terminated Work, subject to any prior rights, if any, of the surety for Contractor's performance bond, and settle all outstanding liabilities and claims, subject to Town's approval.
5. As directed in the notice, Contractor must use its best efforts to sell any materials, supplies, or equipment intended solely for the terminated Work in a manner and at market rate prices acceptable to Town.

D. ***Payment Upon Termination.*** Upon completion of all termination obligations, as specified herein and in the notice of termination, Contractor will submit its request for Final Payment, including any amounts due following termination pursuant to this Article 13. Payment will be made in accordance with the provisions of Article 8, based on the portion of the Work satisfactorily completed, including the close out requirements, and consistent with the previously submitted schedule of values and unit pricing, including demobilization costs. Adjustments to Final Payment may include deductions for the cost of materials, supplies, or equipment retained by Contractor; payments received for sale of any such materials, supplies, or equipment, less re-stocking fees charged; and as otherwise specified in Section 8.3, Adjustment of Payment Application.

E. ***Continuing Obligations.*** Regardless of any Contract termination, Contractor's obligations for portions of the Work already performed will continue and the provisions of the Contract Documents will remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, record maintenance, or other such rights and obligations arising prior to the termination date.

Article 14 - Miscellaneous Provisions

14.1 Assignment of Unfair Business Practice Claims. Under Public Contract Code § 7103.5, Contractor and its Subcontractors agree to assign to Town all rights, title, and interest in and to all causes of action it may have under

section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or any subcontract. This assignment will be effective at the time Town tenders Final Payment to Contractor, without further acknowledgement by the parties.

14.2 Provisions Deemed Inserted. Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be deemed amended accordingly.

14.3 Waiver. Town's waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will not be effective unless it is in writing and signed by Town. Town's waiver of any breach, failure, right, or remedy will not be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by Town.

14.4 Titles, Headings, and Groupings. The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.

14.5 Statutory and Regulatory References. With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that bids were due.

14.6 Survival. The provisions that survive termination or expiration of this Contract include Contract Section 11, Notice, and subsections 12.1, 12.2, 12.3, 12.4, 12.5, and 12.6 of Section 12, General Provisions; and the following provisions in these General Conditions: Section 2.2(J), Contractor's Records, Section 2.3(C), Termination, Section 3.7, Ownership, Section 4.2, Indemnity, Article 12, Dispute Resolution, and Section 11.2, Warranty.

6. Special Conditions

Pre-Construction Conference. Town will designate a date and time for a pre-construction conference with Contractor following Contract execution. Project administration procedures and coordination between Town and Contractor will be discussed, and Contractor must present Town with the following information or documents at the meeting for Town's review and acceptance before the Work commences:

1. Name, 24-hour contact information, and qualifications of the proposed on-site superintendent;
2. List of all key Project personnel and their complete contact information, including email addresses and telephone numbers during regular hours and after hours;
3. Staging plans that identify the sequence of the Work, including any phases and alternative sequences or phases, with the goal of minimizing the impacts on residents, businesses and other operations in the Project vicinity;
4. If required, traffic control plans associated with the staging plans that are signed and stamped by a licensed traffic engineer;
5. Water Pollution Control Plan;

6. Draft baseline schedule for the Work as required under Section 5.2 of the General Conditions, to be finalized within ten days after Town issues the Notice to Proceed;
7. 2 week public notification letter;
8. 2 day (48 hour) notice letter;
9. "No Parking" Sign;
10. Breakdown of lump sum bid items, to be used for determining the value of Work completed for future progress payments to Contractor;
11. Schedule with list of Project submittals that require Town review, and list of the proposed material suppliers;
12. Plan for coordination with affected utility owner(s) and compliance with any related permit requirements;
13. Videotape and photographs recording the conditions throughout the pre-construction Project site, showing the existing improvements and current condition of the curbs, gutters, sidewalks, signs, landscaping, streetlights, structures near the Project such as building faces, canopies, shades and fences, and any other features within the Project area limits;
14. Any other documents specified in the Special Conditions or Notice of Potential Award.

Close Out Requirements. Contractor's close out requirements include the following, if applicable:

1. Contractor must replace, with thermoplastic, any existing striping within and adjacent to the Project site that is damaged during the Work. Partially damaged striping must be replaced in its entirety.
2. Contractor must replace any survey monuments that are damaged or removed during the Work, with a Record of Survey filed by a licensed land surveyor as required by California law.
3. Before removing any traffic control or street signs on the Project site, Contractor must take photographs showing their original locations. Upon completion of each phase of construction, Contractor must temporarily reset the signs at those locations. Contractor must then replace the signs permanently upon completion of the Work and the cost of their removal and replacement must be included in the Bid Proposal.
4. Contractor must maintain any rural mail boxes on the Project site and relocate them to their permanent locations as soon as possible in the course of the Work, to the satisfaction of the affected property owners and the postal service.

END OF SPECIAL CONDITIONS

7. General Constructions Requirements

7.1. General Constructions Requirements

Measurement and Payment
Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all of the work involved in compliance with the Plans, Specifications, and "General Construction Requirements" of the contract documents, shall be deemed included in the price paid for other contract items and no additional compensation shall be allowed therefore.

Project Plans
The attached "Locations of Work" found in **Attachment A** shall be considered as the Plans.

Mobilization
Mobilization shall not be separately paid for but shall be considered as included in the payments for other items of work. This shall include full compensation for furnishing all labor and materials, including tools, equipment and incidentals, and for performing all of the work involved in placing, removing, storing, maintaining, moving to new locations, replacing and disposing of equipment and materials as specified in the Standard Specifications, these Contract Documents and as directed by the Engineer.

Order of Work
Order of Work shall conform to the provisions in Section 5-1.02, "Contract Components," of the Standard Specifications and these Contract Documents.

At least five (5) working days before any work is started, the Contractor shall furnish to the Engineer a written schedule for the work, listing the dates on which individual areas are to be subject to project related work and the extent of impact caused by the work. Additionally, the Contractor shall submit any request for approval for special traffic consideration including but not limited to lane closures, etc. The Contractor shall thenceforth adhere diligently to said written schedule in the prosecution of the work.

Work for this project needs to be coordinated with the 2024 Annual Street Repair and Resurfacing Project. Resurfacing work will generally follow the concrete work but certain work may need to occur around the same time. The Engineer shall be the main contact for the coordination of the work.

The street may not be available for work if scheduling is not requested by the Contractor and approved by the Engineer (5) working days prior to the desired workday.

Cooperation
Attention is directed to Section 5-1.36C, "Nonhighway Facilities," of the Standard Specifications.

It is the Contractor's responsibility to work with utility companies to coordinate the removal, relocation, raising to grade, installation of the new facilities, or any other utility work as shown on the plans or indicated in the specifications with the appropriate utility company. The Contractor shall provide advance notification and shall allow sufficient time and work space for the utility company to complete the work necessary.

If in the opinion of the Engineer, the Contractor's operations are delayed by reason of utility facilities not being removed or relocated, the Contractor will be entitled to an extension of time only. The Contractor shall be entitled to no other compensation for such delay.

Progress Schedule
The Contractor shall submit a project progress schedule for approval by the Engineer within eight (8) Working Days, not including Saturdays, Sundays, and legal holidays from the date of the Notice of the Award of Contract or 3 days before the pre-construction conference, whichever comes first. Failure to submit an acceptable progress schedule shall result in rejection of the Contractor's proposal. The progress schedule shall be in the form specified below unless otherwise

specified in the Special Provision or approved by the Engineer. Updated progress schedules shall be provided by the Engineer monthly with the estimates of work required in Section 9-1.16, "Progress Payments," of the Standard Specifications. No partial payments will be made for any work until an updated schedule has been submitted and approved by the Engineer. Updated schedules shall incorporate all current schedule information, including actual progress, approved time adjustments, and proposed changes in sequence and logic.

The Contractor must furnish a computerized schedule prepared by the critical path method (CPM) which shows the order in which the Contractor proposes to carry out the work; the sequence and interdependence of construction activities; all salient features of the work (including procurement of materials and equipment); the dates on which the Contractor will start the salient features of the work; and the scheduled dates for completing the said salient features. The construction schedule shall include:

A. Time for submittals and reviews;

B. Time for fabrication and delivery of manufactured products for the work; and

C. The interdependence of procurement and construction activities.

The construction schedule shall:

A. Be a time scaled network diagram referenced to specific calendar dates;

B. Include time for the Engineer to review submittals or inspect the work; and

C. Identify the activities which constitute the controlling operations or critical path.

The construction schedule shall not contain multiple critical paths.

Scheduling of change order work is the responsibility of the Contractor. The Contractor shall revise the schedule to incorporate all activities involved in completing the change order work, and submit a new schedule to the Engineer for review.

Delays or changes to non-critical activities will not be considered for a contract time extension. Non-critical activities are those activities which when delayed, do not affect the contract completion time.

The project schedules submitted shall be consistent in all respects with the time and order of work requirements of the contract. The Engineer, at his or her sole discretion, retains the right to reject any and all construction schedules submitted by the Contractor, including when the Engineer determines that the Contractor has too many items on the Critical Path, or the logic of the schedule is in error, or if the Engineer determines salient items of work are missing from the schedule.

Subject to the above provisions, nothing herein shall preclude the Contractor from early completion of the contract.

The Contractor shall submit updated progress schedules to the Engineer as a condition of approval for the monthly progress payments and final acceptance.

Record Drawings

The Contractor shall keep and maintain on the job site, one record set of drawings. On these, the Contractor shall mark all project conditions, locations, configurations, and any other changes or deviations which may vary from the details represented on the original contract documents, including buried or concealed construction and utility features which are revealed during the course of construction. Final payment will not be approved until the Contractor prepared record drawings have been delivered to the Engineer.

General Measurement and Payment Requirements

The Contractor shall submit in all field quantities completed to date for payment with each monthly pay estimate. The Contractor shall provide, in writing, who from their team will be responsible for field measuring quantities with the Town's representative. Upon completion of a contract bid item, the Contractor's representative shall field measure the final quantities with the Town's representative. This agreed upon amount will be considered final and no re-measuring of these field quantities will be allowed without the approval of the Engineer. All supporting documentation required for payment of an item, shall be submitted by the Contractor within two pay periods following the work. Documentation submitted more than two pay periods after the work was completed will not be paid and the cost of this work shall be borne by the Contractor.

Truck Routes

Per the Town Ordinance Section 15.30.410, the following streets and highways or portions thereof within the Town limits are designated Truck Routes and are authorized for use by operators of trucks and other vehicles, which exceed a maximum gross weight of ten thousand (10,000) pounds:

- Highway 17
- Los Gatos-Saratoga Road (Highway 9)
- Los Gatos-Almaden Road
- Los Gatos Boulevard
- Blossom Hill Road
- Winchester Boulevard
- Lark Avenue

Other Town streets are unauthorized for truck routes unless otherwise approved by the Engineer.

Hours of Work

Unless otherwise approved in writing by the Engineer or specified in these Contract Documents, the hours of work for this project are Monday through Friday, 8:00 AM to 5:00 PM. No lane closures shall be allowed prior to 9 am and after 3 pm, or during a nearby school's early release hours, Monday through Friday, at the following locations unless otherwise approved by the Engineer:

- On Blossom Hill Road near Blossom Hill Elementary
- On Blossom Hill Road, Roberts Road East, and Fisher Avenue near Raymond J. Fisher Middle

When schools have early release day(s), the Contractor shall confirm the school's early release schedule, not plan any lane closure(s) during that time, and coordinate work hours with the Engineer.

The work hours will be strictly enforced. The Engineer has full authority to implement the working hours and completely shut down the construction operations outside the hours of work specified. Should the provisions of this section not be met, liquidated damages of One Thousand Dollars ($1,000.00) for every 60-minute time period (or portion thereof) beyond the hours of work allowable shall be withheld from moneys due to the Contractor.

24-Hour Contact Number

The Contractor shall assign a project superintendent who has the complete authority to make decisions on behalf of the

Contractor. The project superintendent shall be on the job at all times during construction and shall be available and on call 24 hours a day for the duration of the project. The Contractor shall provide to the Engineer and to the Los Gatos-Monte Sereno Police Department a 24-hour contact number for the project superintendent. This number shall not direct calls to a recorder or other message taking service.

Advance Public Notification

Two weeks prior to beginning any work in an area, the Contractor shall deliver written notice to all adjoining residents and businesses, tenants and other applicable parties listed below and all other properties where their only ingress and egress is through the project's work area. Individual or separate notices shall be given for general construction activity in an area as well as specific activities, which will, in any way, inconvenience the resident, property owner, or tenant and affect their operations or access to their properties. Such notices shall include the expected date for start of construction, a general description of the construction activity to take place, expected duration of the activity, and the name, address, and the contact number of the Contractor's superintendent. The Contractor shall provide accurate information regarding the construction schedule and activities to be incorporated into the "two-week" notification. The Contractor shall make every effort to coordinate work with individual residents and businesses whose access will be disrupted in order to minimize the disruption and impacts on the resident or business.

The Contractor shall also prove and hand-deliver a "two-day" notice. The notice shall be distributed two working days prior to the work beginning. The "two-day" notice shall be delivered to all adjoining residents and business, tenants, and other applicable parties listed below and any other properties who sole ingress and egress is through the project's work area.

Copies of all notices shall be provided to the Engineer for approval five (5) working days prior to the desired distribution date.

Should the Contractor's schedule change or differ in any capacity from the schedule initially mentioned in the notification to the resident, property owner, tenant, or from the updates to the Town website, the Contractor shall re-notify all applicable parties (residents, property owner, tenant, or businesses mentioned below) five (5) working days prior to the beginning of any work on that street.

The Contractor shall contact and coordinate the work with the following parties throughout the project. The "two-week" and "two-day" notification shall also be given to the following parties prior to beginning any work:

Santa Clara Valley Transportation Agency–(408) 321-2300
West Valley Recyles–(408) 283-9250
U.S. Postal Service–Post Master–(408) 395-7526
Los Gatos/Monte Sereno Police Department–(408) 354-8600
Santa Clara County Fire Department–(408) 378-4010

The Contractor shall also give written notice to residents/businesses for any driveway closures or anticipated service disruptions. The Contractor shall coordinate all disruptions with the appropriate utility, property owner, resident, business and the Town. Notice shall be given in advance and specify the duration of the disruption of any utility, and the temporary closure of access to any driveway. Such notice will comply with the requirements for closure of driveway access as specified under Special Provision Section 10-2, "Traffic Control Requirements."

Lack of proper advance notification and coordination shall result in the work being shut down. All costs associated with the stoppage of work shall be borne by the Contractor.

Line and Grade
The Contractor shall layout the project by providing all stakes and marks needed to establish the lines and grades required for completion of the work specified on the Plans and in these Contract Documents to the satisfaction of the Engineer.

Meetings
Prior to commencement of any work on the project, a pre-construction conference will be scheduled by the Town and held at the Town's Engineering Building or hosted via virtual meeting for the purpose of review and discussion of the project schedule and construction procedures. The Contractor's project manager and/or project superintendent and representatives from all listed subcontractors shall be required to attend the pre-construction conference. The Contractor shall prepare and submit at the pre-construction meeting the proposed project schedule, water pollution control plan, traffic control plan, public notification letter, and other submittals as specified under Special Conditions.

The Contractor shall also schedule and conduct weekly field meetings at locations to be determined by the Town. The meetings shall be held at the same time and place each week and shall include all subcontractors working on the project and discussions of scheduled work on the project during the week of the meeting. The Contractor shall notify the Engineer of the time, date, and location of these meetings 72 hours in advance of the first meeting. Detailed schedules for the following two weeks shall be submitted to the Engineer at each weekly meeting.

Waste Haulers and Recycling Operations
The Contractor shall not impair or impede waste hauler and recycling operations scheduled to be conducted within the project area. It is the Contractor's responsibility to determine which waste hauler and recycling operators are scheduled to operate within the project area, and to develop a project schedule that will not impair or impede the waste hauler or recycling operations.

Project Appearance and Street Sweeping
The Contractor shall maintain a clean work site. Debris developed during construction shall be disposed concurrently with its generation. Stockpiling of debris or construction materials shall not be allowed unless otherwise approved by the Engineer.

The Town prohibits the use of any public property or public right-of-way locations as construction staging points, unless specifically approved by the Engineer.

Right-of-Way
The Contractor shall operate within the public right-of-way only.

Work in Private Property
The Contractor shall secure right-of-entry agreements with each private property owners before any work in private properties. The language for the right-of-entry agreement must be approved by the Town.

Tree Protection
The Contractor shall comply with the Town Ordinance Chapter 29, Article 1, Division 2, "Tree Protection." The Contractor shall provide protective tree fencing per the Town Ordinance Sec. 29.10.1005, "Protection of trees during construction." The Engineer and Town Arborist shall be notified of any damages that occurs to a protected tree during construction.

Staging/Disposal Areas
The Contractor shall survey the area for construction staging. Staging areas shall not be located in a residential area.

The following requirements shall apply to the contractor's staging area:

- No stockpiles or staging area will be allowed in the right-of-way or on undeveloped lots unless specifically approved by the Engineer
- The staging area will be included in the Contractor's SWPPP
- The staging area will not be located in an environmentally or culturally sensitive area and/or impact water resources (rivers, streams, bays, inlets, lakes, drainage sloughs).
- The staging area will not be located in a regulatory floodway or within the base floodplain (100-year).
- The staging area will not affect access to properties or roadways.

The Contractor shall obtain the approval of the Engineer before staging equipment or storing materials in the public right-of-way or on Town property. In addition, the Contractor shall provide proof of an agreement when using private property for staging, if requested by the Engineer.

All debris shall be hauled off and disposed of the same working day in which the material was generated.

Personal vehicles of the Contractor's employees shall not be parked in the neighborhood or on the traveled way. When entering or leaving roadways carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic and shall travel in the normal direction of travel.

Dust Control
The following requirements shall be applicable to this contract in lieu of the requirements of Section 18, "Dust Palliatives," of the Standard Specifications:

A. The Contractor shall provide an acceptable plan for preventing the generation of dust due to the Contractor's operations in the construction zones, along the haul routes, or equipment parking areas. This plan may consist of water sprinkling sweepers or an equivalent service. No separate payment will be made for dust control and all costs in connection therewith shall be included in the payment items to which the work is incidental.

B. In the event the control of dust is not satisfactory to the Owner, the Owner shall take such measures as may be necessary to ensure satisfactory dust control and deduct the cost of such measures from any payments due to the Contractor.

Water for Construction
The costs of water as required for the construction and post-construction on this project, including dust control, shall be considered as included in the costs of items bid for applicable item of work and no separate payment will be made therefor. The Contractor shall conform to the requirements of the water company from which water is purchased. In no case shall the Contractor violate the Town's water conservation ordinance.

Sanitation
The Contractor shall provide for sanitary facilities for the use of the workers on the job. Such facilities shall be placed and maintained by the Contractor so as not to be a nuisance to the neighbors, nor offensive to the senses nor the community standards of decency. The Engineer shall be the sole judge of the adequacy of the facility, the placement, and the maintenance thereof. Upon notification by the Engineer of deficiencies in any of these areas, the Contractor shall make immediate corrections. Failure to take corrective action within 24 hours shall give the Engineer due cause to

stop the work in the contract and to order the corrective work to be done on the sanitary facility and to charge all costs of such work against the monies due or to become due to the Contractor.

Water Pollution Control

Water pollution control work shall conform to the provisions in Section 13, "Water Pollution Control," of the Standard Specifications and these Contract Documents, with the exception of payment. Payment shall be covered under "Measurement and Payment" under these Technical Specifications.

The Contractor shall be responsible for ensuring that all work conforms to the "Best Management Practices for the Construction Industry" found in the Storm Water Pollution Prevention Plan (SWPPP), the "Blueprint for a Clean Bay" handout found in **Attachment D**, and the Town Code found in **Attachment E**.

The Contractor shall comply with the requirements of the State Water Resource Control Board (SWRCB) National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharge Associated with Construction and Land Disturbance Activities.

The Contractor shall not violate any discharge prohibition contained in the California Regional Water Quality Control Board San Francisco Bay Basin Water Quality Control Plan ("Basin Plan").

7.2. Traffic Control Requirements

Measurement and Payment

Full compensation for preparing traffic control plans, temporary pavement delineation, providing construction, changeable message and detour signs, and for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all of the work involved in compliance with the Plans, Specifications, and "Traffic Control Requirements" of the Contract Documents, including any additional changeable message signs, shall be included and paid for in the appropriate bid item price.

Bid Item #1	**Traffic Control**	**L.S.**

General

Traffic control shall conform to the provisions of Section 12 "Temporary Traffic Control" of the Standard Specifications, Part 6, "Temporary Traffic Control," of the California Manual on Uniform Traffic Control Devices (CA MUTCD) with latest revisions, and these Technical Specifications. Nothing in these Technical Specifications shall be construed as relieving the Contractor from the responsibilities specified in Section 7-1.04, "Public Safety," of the Standard Specifications and these Contract Documents.

The traffic control plan shall be prepared in compliance with the Caltrans Standard Plans and/or CA MUTCD and shall be prepared by a certified traffic engineer or a qualified traffic control professional. The Contractor shall submit a scaled drawing with detailed information, such as lanes to be closed or narrowed, time and days of operation, transitions, cones and barricades, signs, arrow boards, pedestrian and bicycle provisions, etc. The traffic control plan should show length of transitions, cone spacing, sign spacing, etc. based on the posted speed limits or the posted construction zone speed limits. The traffic control plan shall also include a provision for the Contractor to contact and coordinate with the Valley Transportation Authority (VTA) if a bus stop is affected.

The Contractor shall maintain a safe workplace throughout the job including, but not limited to, providing all flaggers, safety equipment, flashing arrow boards, changeable message signs (minimum of two), traffic control devices;

maintenance of barricades, safe pedestrian passages along sidewalks, maintenance of handicap access throughout the project site where applicable and maintenance of pavement within the limits of the roadway and driveways with a suitable traffic bearing surface.

The Contractor shall provide and maintain all necessary traffic control devices to ensure safe pedestrian and vehicular access through and around the job site. Warning signs shall be installed at locations in accordance with the CA MUTCD, Part 6, “Temporary Traffic Control.” The Contractor shall fulfill the requirements of this section, 24 hours per day, seven days a week, including holidays, from the time the Notice to Proceed is issued until the project is formally accepted.

Should the Contractor fail to perform these duties, the Engineer, at the Engineer's sole discretion, may elect to have City, or contract forces, perform the duties, deducting the expenses incurred from any moneys that are due, or to become due, to the Contractor. By exercising this option, the Contractor is in no way relieved of the responsibility to perform these duties.

The Contractor shall provide a minimum of two competent and qualified flaggers dedicated solely to directing traffic if traffic lanes have been reduced to only one lane for two-way traffic, in and out of driveways and cross-streets and/or across the construction area as deemed to ensure safe traffic control during construction operations. Flaggers shall be equipped with all necessary tools to properly control the traffic.

Traffic Control/Management Plan
A traffic control plan shall be submitted by the Contractor to the Engineer a minimum of five (5) working days prior to any work commencing on the project. The traffic control plan shall be reviewed and accepted by the Engineer prior to any work commencing on the project. All traffic plans shall be prepared in accordance with the CA MUTCD, Part 6, “Temporary Traffic Control,” Section 12, “Temporary Traffic Control,” of the Standard Specifications, and these Contract Documents.

No Parking Signs
Prior to the start of work which requires parking restriction, the Contractor shall request approval to post and maintain temporary “No Parking” signs on each street where the operations will take place. It shall be the Contractor's responsibility to post "No Parking" signs in the areas where the Contractor's work will require restricted parking. The Town will provide signs for the Contractor's use. To be enforceable, the signs must be posted not less than 72 hours prior to the start of the work at a maximum spacing of 60 feet. The signs must clearly show the date(s) and hours of the parking prohibition, as well as the date and time the signs were posted, and the project name and contractor’s phone number. If the work is not performed during the timeframe indicated on the “No Parking” signs, the work will be rescheduled with at least five (5) working days advance notice. The Contractor shall perform all re-posting of “No Parking” signs and re-notification of businesses, tenants, and residents as a result of his failure to meet the posted schedule. Any delays caused by failure of the Contractor to adhere to the approved schedule will be at the Contractor’s sole expense. No additional compensation will be allowed for costs resulting from said delays.

The Contractor shall remove the “No Parking” signs immediately when they are no longer needed for use in the respective area of the project. The Contractor shall notify the Los Gatos/Monte Sereno Police Department directly after posting and immediately upon removal of the said signs at (408) 354-8600.

During the morning of each scheduled workday, the Contractor shall be responsible for calling the Los Gatos/Monte Sereno Police Department Police Dispatch to tow cars, if necessary, as approved by the Engineer. The Contractor shall have available for the police responding to the call photo documentation of the “No Parking” signs being posted if the signs were removed or vandalized the previous night.

Detours, Temporary Striping, and Barriers
Any approved detours or barriers, signing and striping necessary to complete the construction of the project shall be provided, installed, maintained, and removed by the Contractor at his expense. Temporary striping shall be self-sticking traffic marking tape, vinyl or otherwise, developed for such use, and shall be used for temporary striping as required, unless shown otherwise on the plans or specified in the Technical Specifications. No painted temporary striping or markings will be allowed unless the temporary markings will be entirely covered by the permanent markings.

Notify the Los Gatos/Monte Sereno Police Department daily at (408) 354-8600 of street or lane closures or detours within the roadway prior to setting up and upon removal of traffic control devices.

Additional Construction Area Signs and Controls
In addition to the requirements of the CA MUTCD, the following traffic controls will be required as specified by the Engineer. These additional requirements in no way relieve the Contractor from his obligation to comply with the standards set forth in that manual.

- "Road Work Ahead" (Type C-23(CA)) signs shall be posted in advance of the first major cross street before the start of the work zone to allow traffic to avoid the work zone prior to entering the zone. The signs shall also be posted at the approaches to the project site.
- "End Road Work" (Type G20-2) signs shall be placed at all public road exits from the project site.
- The Contractor shall provide, install and maintain a minimum of four (4) lighted barricades for each individual construction site for concrete improvements (i.e. for curb and gutter removal & replacement and for accessibility ramp installation).
- Changeable message signs will be used starting one (1) week prior to construction beginning and will be maintained in place until construction impacts to the public no longer exist as determined by the Engineer.
- “Bikes May Use Full Lane” (R4-11)–modified for temporary construction sign

The Contractor shall be responsible for locating existing poles on which to mount these signs or shall provide temporary stands or poles on which to place the required signs. The Engineer shall approve the method of attachment to existing poles prior to sign installation. No sign shall be mounted on decorative street light poles unless the Contractor can clearly show that the mounting method will not damage the finish on the poles.

Upon completion of the work, the signs and posts shall be removed and disposed of outside the public right of way in conformance with the provisions in the Standard Specifications.

Maintenance of Pedestrian Access and Circulation
Safe pedestrian access and circulation that is fully wheelchair accessible shall be maintained by the Contractor through or around the project area. All walkways, pedestrian crossings, ramps and other pedestrian facilities removed or blocked by the Contractor’s operations shall be replaced with temporary facilities unless otherwise approved by the Engineer.

Pedestrian access at each individual project site may be diverted for a maximum of five (5) calendar days with approved traffic control plan. Drop off from existing improvements to excavated areas shall be temporarily ramped. Ramps shall be maintained at 12:1 or flatter with compacted sub-grade or base rock material until final improvements are installed.

Lane Closures
Requests for lane closures shall be made a minimum of five working days prior to the proposed closure. Once the lane closure has been approved by the Town, the Contractor shall post a minimum of five (5) working days in advance of the proposed lane closure a changeable message sign at the limits of each closure or as specified by the Engineer. These changeable message signs shall also be used on the day of the actual closure. The changeable message signs shall indicate the days and hours of the proposed lane closure and the type of work being done during that lane closure.

Flashing arrow signs shall be used for all lane closures. The Contractor shall check with the Engineer to confirm any lane closure restrictions that may be in effect before closing any lanes.

The Contractor shall leave the streets open to traffic until just prior to starting the work, and will provide all barricades, signs and traffic control measures necessary to protect the work.

No work that interferes with public traffic shall be performed outside of the working hours, except as otherwise approved by the Engineer. All traffic lanes shall be open to traffic outside of the working hours.

A minimum of one paved, or surfaced traffic lanes and one paved bicycle lane, not less than fifteen (15) feet wide (10 foot wide for the traveled vehicle lane and 5 feet wide for the bicycle lane), shall be open for use by public traffic in each direction of travel. Traffic may not be routed over unpaved roadways unless authorized by the Engineer.

In addition, the full width of the traveled way on each street shall be open for public use on Saturdays and Sundays (except for those streets approved by the Engineer for weekend work), on designated legal holidays, and when construction operations are not actively in progress. Designated legal holidays are: January 1, the third Monday in January, the third Monday in February, June 19, the last Monday in May, July 4, the first Monday in September, the fourth Thursday of November, and December 25. When a designated holiday falls on a Saturday, the preceding Friday shall be treated as a legal holiday. When a designated holiday falls on a Sunday, the following Monday shall be treated as a legal holiday.

Deviations from the requirements of this section concerning hours of work, which do not change the cost of the work, may be permitted upon the written request of the Contractor, if in the opinion of the Engineer, the general public will be better served and the work expedited. Such deviations shall not be implemented until the Engineer has provided the Contractor with written approval to do so. All other modifications will be made by contract change order.

The Contractor shall pay the Town liquidated damages in the amount of $1,000 per hour (or part of an hour) for traffic control that is set-up before the designated and approved hours of work. Liquidated damages for failure to open streets by the required time shall be $1,000.00 per hour.

Traffic Control System for Lane Closure
A traffic control system shall consist of closing traffic lanes in accordance with the details shown on Caltrans Standard Plans T10, T10A, T11, T11A, T12, T13, T13A, and T13B as shown in **Attachment B**, the provisions of Section 12, “Temporary Traffic Control,” of the Standard Specifications, and these Contract Documents.

The provisions in this section will not relieve the Contractor from the responsibility to provide additional devices or take measures as may be necessary to comply with the provisions of Section 7-1.04, “Public Safety,” of the Standard Specifications.

Each vehicle used to place, maintain and remove components of a traffic control system on multilane roads shall be equipped with a Type II flashing arrow sign which shall be in operation when the vehicle is being used for placing, maintaining, or removing the components. Vehicles equipped with a Type II flashing arrow sign not involved in placing, maintaining, or removing the components when operated within a stationary type lane closure shall only display the caution display mode. The sign shall be controllable by the operator of the vehicle while the vehicle is in motion.

If any component of the traffic control system is displaced, or ceases to operate or function as specified from any cause, during the progress of the work, the Contractor shall immediately repair the component to its original condition or replace the component, and shall restore the component to its original location.

When lane closures are made for work periods only, at the end of each work period, all components of the traffic control system, except portable delineators placed along open trenches or excavations adjacent to the traveled way, shall be removed from the traveled way and shoulder. If the Contractor so elects, the components may be stored at selected central locations, approved by the Engineer.

Temporary Pavement Delineation
Temporary pavement delineation shall comply with these Technical Specifications and with Section 12-3, "Temporary Traffic Control Devices," of the Standard Specifications, CA MUTCD, and these Contract Documents.

Property Access Requirements
The Contractor shall maintain property access to all residents and businesses at all times unless otherwise approved by the Engineer. Upon approval by the Engineer, access to certain properties may be temporarily closed if all of the following conditions can be met:

A. No options exist to maintain property access and complete the project.

B. The Contractor has discussed the closure with the resident or business owner in person.

C. Residents or business owners has been notified, in writing, at least five (5) calendar days in advance of the time and length of closure

D. Resident or business owners have been reminded of the closure, in writing, at least two (2) working days prior to the actual closure.

E. The Contractor has provided the resident or business with a contractor name and number to call with questions regarding the closure.

F. Closure will last no longer than three (3) working days

Signalized Intersections
The Contractor shall be responsible for contacting and coordinating with the Town's signal maintenance contractor for any work at signalized intersections. No additional working days will be given due to the Contractor for not scheduling the work with the Town's signal maintenance contractor prior to the start of work.

8. Technical Specifications

8.1. Existing Facilities

Measurement and Payment

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all of the work in compliance with the Plans, Specifications, and "Existing Facilities," of the Special Provisions, shall be included and paid for in the appropriate bid item price.

Bid Item #2	**Adjust Frame and Grate to Grade**	**Ea.**
Bid Item #3	**Adjust Utility Box to Grade**	**Ea.**
Bid Item #4	**Adjust Water Meter Box to Grade**	**Ea.**

Bid Item #5	**Remove and Reinstall Bicycle Rack**	**Ea.**

General

Existing Facilities shall conform to Section 15, "Existing Facilities," of the Standard Specifications, the Plans, and these Special Provisions.

Protect Existing Facilities to Remain

The Contractor shall work around and protect all existing improvements to remain, including but not limited to existing utilities, monumentation, bench marks, storm drainage facilities, utility vaults, traffic detector loops, home runs and handholes, concrete and hot mix asphalt pavement, pavement markings, landscaping, irrigation facilities, and appurtenances that are within or adjacent to the construction areas.

The Contractor shall notify Underground Service Alert (USA) prior to beginning any work. Notification shall be in full compliance with USA. At the conclusion of the project, the Contractor must remove all USA markings from all paved and concrete surfaces throughout the job site without damaging said surfaces. The method of removing the USA markings is at the Contractor's discretion.

Existing utility lines are not shown on plans. The Contractor is responsible for locating and field verifying the locations of all existing utilities prior to all construction activities and protecting all facilities during construction. The Contractor shall protect existing electroliers when placing construction signs.

The Contractor shall immediately repair or remove and replace any item damaged or injured by his operations at his sole expense and to the satisfaction of the Engineer. The Contractor shall immediately notify the appropriate owner of the improvement or facility and the Engineer of any damage as a result of his operations to existing improvements or facilities. If the improvement belongs to a private residence and the property owner or occupant is not at home, such notification shall be attached to the front door of the property. All underground facilities that are damaged by the Contractor during construction shall be restored by the Contractor within two (2) hours after the damage is done.

All existing improvements, including but not limited to, irrigation systems, brick work, stone work, fences, mailboxes, turf and landscaping, on public right-of-way which are obstacles to forming operations may be removed as necessary for this type of work. The Contractor shall notify the adjacent property owner and the Engineer prior to removal of any existing improvements. After removing the forms, all the existing improvements shall be restored to their original condition at no additional cost to the Town. If the Contractor fails to comply in providing the necessary restoration work as defined, the Engineer may elect to have the Town or other contract forces perform all these duties, deducting all the expenses incurred from any moneys that are due, or to become due, to the Contractor. By exercising this option, the Contractor is in no way relieved of the responsibilities to perform these duties.

Adjust Facilities to Grade

All existing frame and grates, manholes, traffic signal boxes, handholes, utility covers, utility frames, utility boxes, water meter boxes, sewer cleanouts, cable boxes, vault covers, and monuments within the project limit of work area shall be adjusted to grade in accordance with Section 15, "Existing Facilities," of the Standard Specifications, the Plans, and these Special Provisions. Where existing facilities to be adjusted are located in traffic areas, said facilities shall be modified to handle traffic loads and retrofitted with traffic covers. Exact locations of survey monuments, etc. shall be field verified by the Contractor at the start of construction and field verified by the Engineer prior to the start of work

The Town shall be notified seven (7) working days prior to adjusting any facilities to grade. All work shall be done without any interruption to services provided by the facility.

Frames and covers shall be removed, transported, and stored without damage. Any items damaged shall be replaced at the Contractor's expense. Pre-existing damage must be brought to the Engineer's attention prior to commencement of any work. All facilities shall be adjusted to grade within fourteen (14) working days after the final hot mix asphalt overlay has been placed on each street. The covers shall be raised by excavating the frame and cover in a neat concentric circle with a diameter not greater than necessary to loosen and adjust the frame with the cover and the concrete collar.

At the direction of the Engineer, the Contractor shall use quick set concrete for all collars. Class A concrete mix (590 pounds cement per cubic yard concrete) shall be used to fill the void to an elevation 1" to 1.5" below finish grade. After three (3) days of concrete set, a tack coat of undiluted SS1h asphalt emulsion shall be applied to all concrete and vertical surfaces. The hot mix asphalt (HMA) surface course to be applied shall be 1/2", Type A, compacted to a minimum of 95 percent. Asphalt binder shall be PG 64-10. Any facilities that are adjusted to grade, but are not to the satisfaction of the Engineer, shall be removed and re-adjusted within four (4) working days of being notified to do so by the Engineer. All required hot mix asphalt, tack coat and concrete required for raising facilities to grade shall be paid for under this contract item.

Monument boxes in work areas shall be raised or adjusted to the new grade without disturbing the existing monument, or the Contractor shall be responsible for obtaining services of a registered Surveyor to tie out the existing monument, remark, and reset the monument following the raising of the box. The Contractor shall be responsible for filing the appropriate Corner Records as necessary for relocation of the monument and shall provide a copy of all recorded documentation to the Town prior to project acceptance.

New monument boxes, including frames and covers shall be installed to grade around those monuments that do not have existing boxes. Any new monument boxes, frames, and covers needed shall be provided by the Town. All covers shall be stable under traffic.

The Contractor shall clean all concrete, HMA debris, and tack oil off of utility covers caused by the Contractor's operation.

Cherry Blossom Ln. and Blossom Hill Rd.

A new frame and grate shall be provided by the Town for the Contractor to install. The Contractor shall coordinate with the Engineer for picking up the materials at 41 Miles Ave. prior to installation.

8.2. Clearing and Grubbing

Measurement and Payment

Full compensation for furnishing all labor, material, tools, equipment and all incidentals for doing all other work involved in compliance with the Plans, Specifications, and "Clearing and Grubbing," the Special Provisions, shall be included and paid for in the appropriate bid item price.

Bid Item #6	**Clearing and Grubbing**	**L.S.**

General

Clearing, grubbing and removal of obstructions shall conform to Section 17.2, "Clearing and Grubbing," of the Standard Specifications, the Plans, and these Special Provisions.

The work consists of removal of bushes, plants, and vegetation indicated on the plans; and removal and disposal or relocation/replacement of all other existing obstructions in the way of the improvements indicated on the Plans, Special Provisions, as directed by the Engineer, or as noted by the Contractor during the pre-bid site visit.

All existing improvements designated to be removed and replaced shall be replaced with like materials to match the existing improvements. Improvements designated to be removed and relocated shall not be damaged during the relocation. Those improvements that are damaged during removal and cannot be relocated will be replaced with like materials to match the existing improvements, at no additional cost to the Town.

All existing trees, bushes, vegetation, or other improvements not specifically identified on the Plans to be removed, reinstalled, or replaced to install new improvements shall remain in their original condition and location undisturbed. The Contractor shall protect trees and shrubs to remain and their root systems from damage. The Contractor shall replace any damaged tree, shrub, or other existing improvement intended to remain at no expense to the Town.

The Contractor, at no cost to the property owner or Town, shall replace any irrigation system that is damaged by the Contractor's operation. Replacement or repair shall occur within three (3) calendar days after damage has occurred. Liquidated damages will be assessed in the amount of $1,000 for each calendar day that any sprinkler or irrigation system repair work remains incomplete beyond the three (3) days allowed. Any irrigation lines within the area of new improvements shall be relocated or removed and capped at the right of way line as directed by the Engineer.

Landscaping Obstruction

In the event that there are landscaping obstructions such as ivy, lawn, juniper branches, grass, or other encroaching vegetation, the Contractor shall trim or prune such obstruction only to the extent necessary to conduct the installation of improvements in the public right-of-way. Landscaping or other improvements outside the limits of work shall be protected by the Contractor and shall be replaced in kind if the Contractor's operations damage the existing improvements. If the Contractor fails to comply in providing the necessary replacement as defined, the Engineer may elect to have the Town or contract forces perform all these duties deducting all the expenses incurred from any moneys that are due, or to become due, to the Contractor. By exercising this option, the Contractor is in no way relieved of the responsibilities to perform these duties.

Tree Trimming

If existing trees or shrubs, including median island plantings and private trees, encroach into the public right-of-way and threaten to obstruct the Contractor's operation, the Contractor shall request permission to trim the existing trees or shrubs from the Town Arborist, at least five (5) working days prior to the date of scheduled tree trimming. All tree and shrub trimming must have prior approval of the Town Arborist and shall be performed by a Contractor possessing a C-27 or a D-49 license. If required, the Contractor shall obtain Tree Permits from the Parks and Public Works Department. Tree permit fees shall be waived for the Town project. All costs for tree or shrub trimming and proper disposal shall be paid by the Contractor.

A special notice pertaining to the tree trimming shall be delivered to the adjacent home or business at least two working days before the tree is trimmed. The notice shall be reviewed and approved by the Engineer before delivery.

8.3. Concrete Improvements

Measurement and Payment

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all of the work in compliance with the Plans, Specifications, and "Concrete Improvements," of the Technical Specifications, shall be included and paid for in the appropriate bid item price.

Bid Item #7	**Remove and Replace Curb and Gutter**	**L.F.**
Bid Item #8	**Remove and Replace Sidewalk**	**S.F.**
Bid Item #9	**Remove and Replace Sidewalk (Villa Hermosa)**	**S.F.**
Bid Item #10	**Remove Hardscape and Replace with Topsoil**	**S.F.**
Bid Item #11	**Remove and Replace Residential Driveway (Revocable)**	**S.F.**
Bid Item #12	**Remove and Replace Commercial Driveway**	**S.F.**
Bid Item #13	**Install Detectable Warning Surface**	**L.F.**
Bid Item #14	**Install New Curb and Gutter**	**Ea.**
Bid Item #15	**Install New Sidewalk**	**S.F.**
Bid Item #16	**Install Curb Ramp-Case B**	**Ea.**
Bid Item #17	**Install Curb Ramp-Case B (Villa Hermosa)**	**Ea.**
Bid Item #18	**Install Curb Ramp-Case C**	**Ea.**
Bid Item #19	**Install Curb Ramp-Case C (Villa Hermosa)**	**Ea.**
Bid Item #20	**Install Curb Ramp-Case F**	**Ea.**
Bid Item #21	**Install Curb Ramp-Case G**	**Ea.**
Bid Item #22	**Install New Curb Ramp-Type A Passageway**	**Ea.**
Bid Item #23	**Install New Curb Ramp-Type C Passageway**	**Ea.**
Bid Item #24	**Remove Curb Ramp**	**Ea.**
Bid Item #A1.1	**Install Caltrans Type A1-8 Curb**	**L.F.**
Bid Item #A1.2	**Install Curb Ramp-Case A**	**Ea.**

General

The work described herein this section shall comply with Section 73, "Concrete Curbs and Sidewalks," and Section 90 "Portland Cement Concrete," of the Standard Specifications, the Plans, and these Special Provisions. New improvements shall be constructed in accordance to the detail sheets found in **Attachment B**.

The work includes, but is not limited to the following: the removal and disposal of existing concrete sidewalk, curb and gutter, curb ramp, pedestrian handrail and adjacent asphalt pavement and base material; the installation of Class 2 aggregate base; grading; compacting; installation of dowels; installation of rebar; installation and finishing of concrete sidewalk, curb, gutter, and driveway approach improvements; installation of topsoil; and the installation of the adjacent asphalt pavement restoration next to the adjacent curb and gutter, curb ramp, driveway approach, and sidewalk locations.

The installation of curb ramps shall include the installation of adjacent monolithic curb and gutter, necessary retaining curbs, and other replacement concrete improvements including but not limited to sidewalk and curb and gutter to the nearest joint or up to 10 feet on either side of the ramp to conform to the ramp, curb and gutter, rolled curb and gutter transitions, etc., abutting new curb ramps leading to the next score mark, and the installation of the detectable warning surface. The installation of the driveway approach shall include all necessary concrete improvements, including the curb, gutter, and sidewalk, located within the driveway approach limits.

The curb and gutter portion located within the limits shall be included in the price of driveway approach or curb ramp item.

Concrete for curb and gutter and sidewalks shall meet a minimum compressive strength of 3,000 psi at seven (7) days. Concrete for driveways and the portion of curb and gutter adjacent to the driveway shall have a minimum compressive strength of 4,000 psi at three (3) days (high-early strength).

New improvements shall be constructed within the footprint of the existing improvement unless otherwise directed by the Engineer.

Painted curbs removed and replaced by the Contractor shall be repainted at the Contractor's expense. Curbs and gutters, sidewalks, and curb ramps shall be constructed to the Town's standards including specified Class 2 aggregate base compacted to 95%.

The limits of removal and replacement of new curb and gutter, curb ramp, driveway, and sidewalk installation are found in the Project Plans found in **Attachment A**. All facilities shall meet current ADA requirements. The curb ramp pay item shall include all the sidewalk and curb and gutter removal, subgrade and base, installation of new sidewalk, curb and gutter, and curb ramp, including detectable warning surface, within the limit of the new curb ramp as shown in the Plans, unless otherwise indicated, and shall be included in the cost per each curb ramp installation and no additional compensation shall be allowed therefore.

Curb and gutter, curb ramp, driveway, and sidewalk removal and replacement shall be marked in the field by the Engineer and shall be confirmed by the Contractor prior to its removal and replacement.

Layout for the curb ramps shall be marked in the field by the Contractor and shall be reviewed by the Engineer prior to its removal and replacement.

The Contractor shall give the Engineer a minimum of one week's notice prior to actual removal and replacement of any concrete improvements. The limits of all removal and replacement shall be from score mark to score mark unless otherwise approved by the Engineer.

At locations where trees have been identified to be removed or have stump grinding, the Contractor shall give the Engineer a minimum of 24-hour notice prior to any concrete work is performed. The Town's contractor will remove trees, including tree roots and stumps, of the identified trees prior to the Contractor starting work at that location.

Replacement of concrete curb and gutter and sidewalk that is removed to the score mark from the edges of the curb ramp or driveway shall be considered as part of the new curb ramp or driveway installation and therefore shall be paid for under the associated curb ramp or driveway bid items as specified in these Special Provisions.

The subgrade for sidewalks, driveways, aprons, curb ramps, and similar structures below the aggregate shall be compacted to a relative compaction of 95 percent for a depth of 0.5 foot. The subgrade for curb and gutter below the aggregate shall be compacted to a relative compaction of 95 percent for a depth of 0.75 foot. Subgrade prep for concrete improvements shall be paid for under the appropriate bid items for concrete improvements.

Aggregate base for sidewalk, curb and gutter, and curb ramps shall be Class 2, 3/4" maximum and shall conform to the provisions in Section 26, "Aggregate Bases," of the Standard Specifications, the Plans, and these Special Provisions. Existing aggregate base shall be removed from the construction area and shall not be used as backfill material. The cost for aggregate base shall be included in the pay items for sidewalk, curb and gutter, and curb ramp and no additional compensation will be allowed therefore.

New improvements shall not be placed until forms and compaction requirements are inspected and approved by the Engineer. If new concrete improvements are not to the Town's standards and existing conforms are damaged due to new concrete installation, the Contractor shall repair, remove, or replace the deficiency at the Contractor's sole expense.

Portland Cement Concrete shall contain 1 lb. (min.) lamp black per cubic yard. The Contractor shall supply the Town a certificate of compliance that the concrete used on the project meets the required standard specifications. Driveways and adjacent improvements shall meet ADA requirements.

At locations where the sidewalk, curb and gutter, and curb ramps connect with existing improvements, steel dowels shall be installed. Dowels shall be 12" long, #4, grade 60, steel reinforcing bars or as indicated on the Plans. Dowels shall be firmly placed into existing improvement with a six-inch (6") embedment. Dowels shall be installed prior to placing new sidewalk, curb and gutter, and curb ramp.

Where rolled curb exists, curb ramp installation shall contain curb transitions not less than 10 feet long at both ends of the ramp.

Curb and gutter to be replaced, which are a part of the curb ramp or driveway approach, shall be constructed monolithically with a straight grade between existing improvements to remain. Flowlines for the curb and gutter and for curb and gutter attached to a curb ramp or driveway approach shall be verified and flow tested by the Contractor in the presence of the Engineer and shall be free from ponding prior to acceptance of the improvements. The Contractor shall replace new concrete improvements if the said improvements do not conform to the designed flowline.

New curb ramps shall be constructed to match the existing grade of the existing improvements that are to remain and shall be in compliance with the details found in the Plans and these Special Provisions.

The Contractor shall install 4" PVC (schedule 40) pipe, caps, and markers for irrigation within the parking strip at locations directed by the Engineer. The work and materials required to place the irrigation sleeves shall be deemed included in the price paid for other contract items and no additional compensation shall be allowed therefore.

New concrete shall be free of stamps, logos, names, graffiti, etc. Any concrete identified that is displaying a stamp or equal shall be removed and replaced at the Contractor's sole expense and no additional compensation shall be allowed therefore.

Materials Testing and Inspection
The Contractor shall coordinate with the Town to schedule materials testing and inspections for base rock compaction, concrete placement, and for other operations as instructed by the Engineer. The Contractor shall notify the Engineer, at minimum 72 hours in advance, of when compaction testing and concrete sampling for concrete pours are to be scheduled. Materials testing may occur daily during the duration of the project.

Detectable Warning Surface
The Contractor shall install detectable warning surfaces on all new curb ramps or onto existing curb ramps as indicated on the Plans. The color of the detectable warning surface shall match yellow color No. 33538 of AMS-STD-595. The minimum detectable warning surface shall be 4 feet wide by 3 feet deep or as specified in the Caltrans Standard Plans. Installation of the detectable warning surface on new ramps or passageways shall be included in the appropriate bid item and no additional compensation shall be allowed therefor.

For existing curb ramps, the detectable warning surface shall be cast-in-place and shall not be surface applied. The Contractor may be required to remove the concrete surface beyond the required detectable warning surface depth to conform to the landing. The limits of removal shall be field verified with the Engineer prior to saw cutting and shall be included in the appropriate bid item price and no additional compensation shall be allowed therefor.

Villa Hermosa Sidewalk

Locations of work located within the Downtown Commercial Areas are required to adhere to the Villa Hermosa sidewalk requirement. The Villa Hermosa area map and sidewalk standard are located in **Appendix B**. Bricks located within the curb ramp or sidewalk limits shall be included in the appropriate bid item and no additional compensation shall be allowed therefor. The bricks for Villa Hermosa pattern concrete sidewalk and curb ramps shall be McNear wire cut red solid jumbo bricks (3.5"x3.5"x11.5") or as approved by the Engineer. The Contractor shall submit the bricks to the Engineer for approval.

The Contractor shall give the Engineer a minimum of one week's notice prior to actual removal and replacement of any concrete improvements located within the Villa Hermosa area. The limits of all removal and replacement shall be from score mark to score mark unless otherwise approved by the Engineer.

Bricks located within the replaced Villa Hermosa sidewalks and curb ramps shall be new and placed to match the existing grades. The subgrade shall be compacted to 95% and the base placed per Town Standards.

The Contractor shall work to protect all bricks to remain adjacent to and located outside the remove and replace limits. Any bricks that are damaged due to the Contractor's operations and not marked by the Engineer prior for removal and replacement shall be replaced to the Engineer's satisfaction and at the Contractor's sole expense.

Hot Mix Asphalt Pavement Restoration
The hot mix asphalt pavement restoration adjacent to the curb and gutter, curb ramps, driveways, and sidewalk installations will be a minimum of 24-inches wide on all sides where the adjacent concrete is replaced. The Contractor shall remove a minimum depth of 8 inches or to the top of the native soil, whichever is greater. The replaced hot mix asphalt will be 4 inches thick, on top of a minimum of 4 inches of class 2 aggregate base, compacted to a relative compaction of 95% per the Town Standard Drawings. Compaction shall be achieved using a vibratory plate compactor.

The paving asphalt shall be PG 64-10. A tack coat of undiluted SS1h emulsified asphalt shall be placed on all exposed HMA and concrete surfaces prior to the placement of the new asphalt section.

The Contractor may elect to perform a 12-inch wide asphalt restoration that will be filled with 6 inches of a 2-sack sand/cement slurry and 2-inches of ½-inch, Type A hot mix asphalt. The Contractor may not place the new hot mix asphalt until the slurry cures and is approved by the Engineer to proceed with the final 2-inch asphalt lift.

The final, top layer of hot mix asphalt adjacent to the curb and gutter shall be ½-inch HMA, Type A, compacted to a relative compaction of 95%, and placed in two, 2-inch lifts. The Contractor is required to use a twin drum, 2.5-ton vibratory roller for compaction of the final lift of hot mix asphalt.

The hot mix asphalt pavement restoration for curb and gutter, curb ramps, driveways, and sidewalk shall be paid for under the associated bid items and shall comply with these Special Provisions. The area of any pavement restoration work will not be measured as part of the pay items. Any hot mix asphalt restoration required to conform to existing improvements beyond the limits outlined shall be paid for in the appropriate bid item price.

The Contractor shall ensure that connections to existing or previously laid surfacing shall conform to the requirements of surface smoothness under the Standard Specifications or the Contractor shall correct all these deficiencies to the satisfaction of the Engineer. The Engineer's decision whether the Contractor has met the requirements of surface smoothness shall be final.

8.4. Traffic Stripes, Pavement Markings, and Markers

Measurement and Payment

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all of the work in compliance with the Plans, Specifications, and "Traffic Stripes, Pavement Markings, and Markers," of the Special Provisions shall be measured and paid for in the appropriate bid item price.

Bid Item #25	**Paint Red Curb (Revocable)**	**L.F.**

General

Traffic stripes (traffic lines) and pavement markings (legends) shall conform to the following: Provisions of Section 84 of the Standard Specifications, the CA MUTCD, the striping tie out plans as generated by the Contractor and approved by the Engineer under Section 10-1.02D, "Pavement Marker, Thermoplastic Marking and Striping Removal," of the Standard Specifications. Traffic stripes and marking shall be installed as shown on the approved striping tie-out plans or as directed by the Engineer.

All traffic stripes and pavement markings shall be laid out in the field by the Contractor and reviewed and approved by the Engineer five (5) working days prior to any final installation. Any striping and/or marking installed by the Contractor that the Engineer has not pre-approved, and that the Engineer determines have been installed improperly or in the wrong locations, shall be removed and replaced to the satisfaction of the Engineer at the Contractor's sole expense.

Paint for Traffic Stripes

Paint for the traffic stripes, curb painting, and pavement markings shall be Rapid Dry Water Borne paint in accordance with Sections 84, "Markings," of the Standard Specifications and shall be applied in two coats.

Curbs shall be painted at locations shown on the Plans and as directed by the Engineer. Application shall consist of two coats of traffic paint of the appropriate color applied to the face and top of the curb.

Pavement markings shall be installed with stencils belonging to the Contractor that are determined to be identical to the Town's stencils.

The Contractor shall install the first coat of the paint within seven (7) calendar days of the final resurfacing. After fourteen (14) calendar days, the second coat of paint shall be applied after the final resurfacing.

Raised Pavement Markers

Pavement markers shall conform to Section 81, "Miscellaneous Traffic Control Devices," of the Standard Specifications, the CA MUTCD, and these Special Provisions. All non-reflective pavement markers shall be ceramic. Plastic pavement markers shall not be allowed.

Adhesive shall be hot melt bituminous adhesive conforming Section 81, "Miscellaneous Traffic Control Devices," of the Standard Specifications and these Special Provisions.

Markers shall not be placed on new hot mix asphalt surface until the surface has been open to public traffic for a period of not less than seven days when hot melt bituminous adhesive is used, and not less than 14 days when epoxy adhesive is used. Placement of pavement markers shall be completed within three weeks of application of the new resurfacing of the respective roadway.

All pavement markers in place (outside the limits of the work) shall be protected from damage and shall be clean and undamaged after completion of the project. Any damage to the newly placed or existing markers due to the failure of the Contractor to protect the work, and correction of errors, shall be repaired by the Contractor at no additional cost.

Blue reflective (Caltrans Type BB) fire hydrant pavement markers shall be installed conforming to the provisions of the CA MUTCD Section 3B.11, "Raised Pavement Markers," and Figure 3B-102 (CA).

A certificate of compliance shall be furnished as specified in Section 6-2.03C, "Certificates of Compliance," of the Standard Specifications for reflective pavement markers. The certificate of compliance shall also certify that the reflective pavement markers conform to the prequalified testing and approval of Caltrans, division of Traffic Operations, and where manufactured in accordance with the approved quality control program.

Thermoplastic Traffic Stripe and Pavement Marking

Thermoplastic traffic stripes (traffic lines) and pavement markings shall be applied in conformance with Section 84, " Markings," of the Standard Specifications and these Special Provisions.

Thermoplastic material shall be free of lead and chromium and shall conform to the requirements in State Specification PTH 02ALKYD or PTH-02SPRAY of the Standard Specifications.

Retroreflectivity of the thermoplastic traffic stripes and pavement markings shall conform to the requirements in ASTM D6359 99. White thermoplastic traffic stripes and pavement markings shall have a minimum initial retroreflectivity of 250 mc/m^2/lux. Yellow thermoplastic traffic stripes and pavement markings shall have a minimum initial retroreflectivity of 150 mcd/m^2/lux.

The color for green back symbols shall meet FHWA specifications for "green."

Where striping joins existing striping, as shown on the plans, the Contractor shall begin and end the transition from the existing striping pattern into or from the new striping pattern a sufficient distance to ensure continuity of the striping pattern.

Payment for crosswalks shall be measured from the edge of curb or edge of gutter, whichever is less, in linear feet, and shall include the ladder striping and no additional compensation shall be allowed therefore.

Thermoplastic traffic stripes and pavement markings shall be free of runs, bubbles, craters, drag luxmarks, stretch marks, and debris. Thermoplastic shall be extruded and placed in one coat and shall be placed five days after the final surfacing. Sprayable thermoplastic is not allowed after the installation of surface treatments (slurry seal, chip seal, rubber chip seal, or micro surfacing). Longitudinal limit lines shall be white and 12 inches in width. All pavement striping and markings shall be white unless otherwise indicated.

Application

Use preheaters with mixers having 360 degree rotation to preheat the thermoplastic material. Apply the thermoplastic in a single uniform layer by extrusion method. Completely coat and fill voids in the pavement surface with the thermoplastic.

Extruded Thermoplastic

Apply extruded thermoplastic at a temperature from 400 to 425°F, unless a different temperature is instructed by the manufacturer. Apply extruded thermoplastic for a traffic stripe at a rate of at least 0.20 lb./ft. of 4-inch wide solid stripe. The applied thermoplastic traffic stripe must be at least 0.060 inch thick. An applied thermoplastic pavement marking must be from 0.100 to 0.150 inch thick. Apply glass beads to the surface of the molten thermoplastic at a rate of at least 8 lb./100 sq. ft.

8.5. Root Prune and Root Barrier Installation

Measurement and Payment

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for performing all the work involved in compliance with the Plans, Specifications, and Section titled “Root Prune and Root Barrier Installation,” of the Technical Specifications, shall be included and paid for in the appropriate bid item price.

Bid Item #26	Root Prune and Install Root Barrier	L.F.

General

The work covered by this section includes all work, equipment, and materials necessary to root prune trees and install root barriers as directed by the Town Engineer. This includes saw cutting or other acceptable methods of cutting roots, to a depth of 18 inches, and for a length of up to 14 feet total, 7 feet on each side from center. Cut roots and contaminated base and subbase shall be removed within the limits prescribed. Any roots 2 inches or larger shall be cut with a Sawzall or equivalent. The Contractor shall install root barriers at all root prune sites per Town Standard Plan No. 234 and 235. The Contractor shall submit the root barrier for review and approval.

A special notice pertaining to the tree trimming shall be delivered to the adjacent home or business at least two working days before the tree is trimmed. The notice shall be reviewed and approved by the Engineer before delivery.

When large tap roots are exposed, the Contractor shall provide at least two (2) working days for the Engineer and Town Arborist to decide on the length of the root pruning. Should the Engineer and Town Arborist decide that root pruning will severely impact the tree and the tree should be removed, the Contractor shall provide ten (10) additional working days after the tree has been initially posted for removal for appropriate notification. During the public notification period, the Contractor shall not root prune the tree until notified by the Engineer.

The Contractor shall take every precaution necessary to protect and preserve the tree trunk during root pruning. Should the Town Arborist find that the tree trunk was damaged by the Contractor to the extent that the life of the tree is jeopardized, the Contractor shall replace the tree and the Contractor's sole expense.

8.6. Signage

Measurement and Payment

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for performing all the work involved in compliance with the Plans, Specifications, and "Signage," of the Technical Specifications, shall be included and paid for in the appropriate bid item price.

Bid Item #27	**Remove Sign and Post**	**Ea.**
Bid Item #28	**Remove and Reinstall Sign and Post**	**Ea.**
Bid Item #29	**Remove and Reinstall Sign on New Post**	**Ea.**
Bid Item #30	**Install New Sign on New Post**	**Ea.**

General

Work shall conform to Section 56, "Signs," of the Standard Specifications, the Plans, the CA MUTCD, and these Special Provisions except as noted herein.

The Contractor shall inventory existing sign locations prior to removal. Signs to be salvaged shall be removed, cleaned, and stored by the Contractor unless another location is specified. For locations where the Contractor is to remove and/or relocate existing signposts as shown on the Plans, the Contractor shall also remove the existing foundation and/or footing. Voids created by the removal shall be backfilled with cement slurry (2-sack mix) where concrete pavement is to be installed. Voids created by the removal of the signposts not in the concrete pavement area shall be backfilled with soil and compacted to at least 90% relative compaction or as specified by the Engineer.

The street signs that are obstructing the construction work shall be removed and signs shall be installed by the Contractor. New signs shall be placed on a new signpost. Prior to installation, the Engineer shall approve the location of the signs. The Contractor shall call Underground Service Alert (USA) at 1-800-227-2600 prior to digging for the sign pole installation. The Contractor shall neatly core the existing sidewalk, concrete pavement, etc. and shall install the signposts per the Town Standard Plans. The Contractor shall provide all fasteners required to install all signs as indicated on the Plans and as directed by the Engineer.

The Contractor, at the Contractor's sole expense, shall repair materials to be salvaged that are damaged as a result of the Contractor's operations or install a new sign per the Town of Los Gatos Standard Plans to the satisfaction of the Engineer.

Attachment A
Locations of Work

LOCATIONS OF WORK
#25-813-9921 2026 Annual Curb, Gutter, and Sidewalk Maintenance

No.	Street Name	Curb Ramp Location	Install Curb Ramp Type	Adjust Frame and Grate to Grade (Ea.)	Adjust Utility Box to Grade (Ea.)	Adjust Water Meter Box to Grade (Ea.)	Remove and Reinstall Bicycle Rack (Ea.)	R&R Curb and Gutter (L.F.)	R&R Sidewalk (S.F.)	R&R Sidewalk (Villa Hermosa) (S.F.)	Remove Hardscape and Replace with Topsoil (S.F.)	R&R Commercia l Driveway (S.F.)	Install Detectable Warning Surface (Ea.)	Install New Curb and Gutter (L.F.)	Install New Sidewalk (S.F.)	Remove Curb Ramp (Ea.)	Remove Sign and Post (Ea.)	Remove and Reinstall Sign and Post (Ea.)	Remove and Reinstall Sign on New Post (Ea.)	Install New Sign on New Post (Ea.)
	Albert Dr at Albert Ct	NE Corner	F																	
	Albert Dr at Albert Ct	SE Corner	F																	
105	Albert Ct								175											
117	Albert Ct								40											
298	Albert Dr							50												
301	Albert Dr							50												
	Alberto Wy (at 445 Alberto Wy)	NW Corner	B																	
	Alberto Wy (at 445 Alberto Wy)	SW Corner	G																	
	Alberto Wy (at 445 Alberto Wy)	NW Corner	G																	
	Alberto Wy (at 445 Alberto Wy)	SW Corner	B																	
	Alberto Wy (between 435 Alberto Wy and 439 Alberto Way)	NW Corner	G																	
	Alberto Wy (between 435 Alberto Wy and 439 Alberto Way)	SW Corner	G																	
	Alberto Wy and Cuesta De Los Gatos (near 100 Cuesta)	NE Corner	F																	
	Alberto Wy and Cuesta De Los Gatos (near 100 Cuesta)	SE Corner	F																	
	Alberto Wy and Cuesta De Los Gatos (near 198 Cuesta)	NE Corner	F																	
	Alberto Wy and Cuesta De Los Gatos (near 198 Cuesta)	SE Corner	C		1															
	Alberto Wy at Saratoga-Los Gatos Rd (Hwy. 9)	NE Corner	C		2															
	Alberto Wy at Saratoga-Los Gatos Rd (Hwy. 9)	NW Corner	C		1															
441	Alberto Way								100											
453	Alberto Way								136											
498	Bird Ave							10												
491	Bird Ave							5												
	Bird Ave (491 Woodland Avenue)							10												
800	Blossom Hill Rd (at the corner of Cherry Blossom Ln)	SW Corner		1																
	Brooklyn Av (17 Pleasant St)	SW Corner	G											80	16					1
99	Calfhill Ct								100											
101	Calfhill Ct							40												
841	Cherrystone Dr								200											
	Chester St at Bird Av	SW Corner	B																	
	Chester St at Wraight Av	SE Corner	G																	
	Chester St at Wraight Av	SW Corner	B																	
56	Chester St							30												
66	Chester St							22												
54	Chester St							4												
47	Chester St							20												
59	Chester St							25												
	Chester St (500 University Ave)							30	150											
	Church St at E Main St	NE Corner	B (Villa Hermosa)		1			20	140											
	Church St at Mill St	NE Corner	G																	
	Church St at Mill St	NW Corner	G																	

LOCATIONS OF WORK

#25-813-9921 2026 Annual Curb, Gutter, and Sidewalk Maintenance

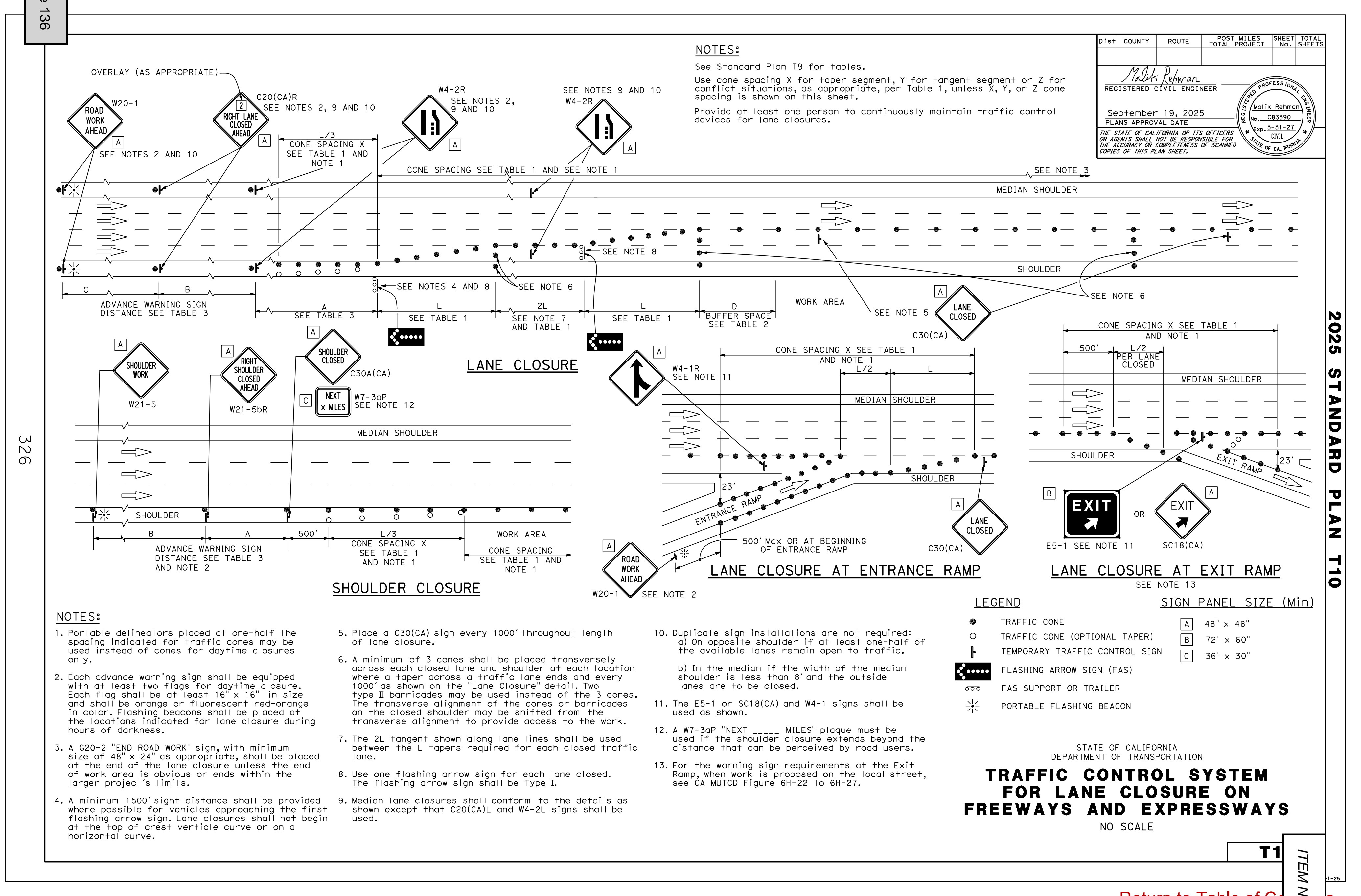
No.	Street Name	Curb Ramp Location	Install Curb Ramp Type	Adjust Frame and Grate to Grade (Ea.)	Adjust Utility Box to Grade (Ea.)	Adjust Water Meter Box to Grade (Ea.)	Remove and Reinstall Bicycle Rack (Ea.)	R&R Curb and Gutter (L.F.)	R&R Sidewalk (S.F.)	R&R Sidewalk (Villa Hermosa) (S.F.)	Remove Hardscape and Replace with Topsoil (S.F.)	R&R Commercia l Driveway (S.F.)	Install Detectable Warning Surface (Ea.)	Install New Curb and Gutter (L.F.)	Install New Sidewalk (S.F.)	Remove Curb Ramp (Ea.)	Remove Sign and Post (Ea.)	Remove and Reinstall Sign and Post (Ea.)	Remove and Reinstall Sign on New Post (Ea.)	Install New Sign on New Post (Ea.)
111	Church Street								145									1		
110	Church Street							25	175											
	Cooper Ct at University Av	NE Corner	F																	
	Cooper Ct at University Av	SE Corner	F																	
140	Escobar Ave	SW Corner	F																	
	Fisher Ave at Nino Ave	NE Corner	B					20	100											
	Fisher Ave at Mitchell Ave							21	470							1	1			
19195	Fisher Ave								270											
	Fisher Ave (Building 9 - 16345 Los Gatos Boulevard)							20												
	Fisher Ave (Building 10 - 16345 Los Gatos Boulevard)							10												
	Fisher Ave (Building 11 - 16345 Los Gatos Boulevard)							30												
	High School Ct at Church St	NW Corner	B																	
	High School Ct at Church St	SW Corner	C (Villa Hermosa)																	
	20 High School Ct (on High School Ct)								255											
16735	Lark Ave (on Lark Ave)					1	1	100	1,200			150							1	
	Los Gatos Almaden Rd at Chirco Dr	NW Corner	B																	
	Los Gatos Almaden Rd at Chirco Dr	NW Corner	Type C Passageway																	
	Los Gatos Almaden Rd at Chirco Dr	SW Corner	B																	
	Lundy Ln at W Main St	NE Corner	B (Villa Hermosa)																	
	Lundy Ln at W Main St	NW Corner	B (Villa Hermosa)																	
	Lundy Ln at W Main St	NE Corner	F																	
101	Mary Ave	SW Corner	B					45	350		130									
	Nino at Fisher (S/E Corner)							20							50	1				
	Nino Ave at Los Gatos Blvd	NE Corner	B																	
	Nino Ave at Los Gatos Blvd	SE Corner	B																	
	Nino Ave (Building 44 - 16345 Los Gatos Boulevard)								30											
	Nino Ave (Building 45 - 16345 Los Gatos Boulevard)								40											
	Nino Ave (16445 Los Gatos Boulevard)								725											
504	Nino Ave								110											
500	Nino Ave							40												
	Ohlone Ct at Roberts Rd W	NE Corner	C																	
	Ohlone Ct at Roberts Rd W	SE Corner	G																	
128	Ohlone Ct								50											
	Park Ave (between 18 Park Ave and 20 Park Ave)		C (Villa Hermosa)						150											
18	Park Ave									120										
	Roberts Rd East at Cilker Ct	NE Corner	F																	
	Roberts Rd East at Cilker Ct	NW Corner	F																	
	Roberts Rd East at Fisher Ave	NW Corner	F																	
	Roberts Rd East at Los Gatos Blvd	NW Corner	B																	

LOCATIONS OF WORK

#25-813-9921 2026 Annual Curb, Gutter, and Sidewalk Maintenance

No.	Street Name	Curb Ramp Location	Install Curb Ramp Type	Adjust Frame and Grate to Grade (Ea.)	Adjust Utility Box to Grade (Ea.)	Adjust Water Meter Box to Grade (Ea.)	Remove and Reinstall Bicycle Rack (Ea.)	R&R Curb and Gutter (L.F.)	R&R Sidewalk (S.F.)	R&R Sidewalk (Villa Hermosa) (S.F.)	Remove Hardscape and Replace with Topsoil (S.F.)	R&R Commercial Driveway (S.F.)	Install Detectable Warning Surface (Ea.)	Install New Curb and Gutter (L.F.)	Install New Sidewalk (S.F.)	Remove Curb Ramp (Ea.)	Remove Sign and Post (Ea.)	Remove and Reinstall Sign and Post (Ea.)	Remove and Reinstall Sign on New Post (Ea.)	Install New Sign on New Post (Ea.)
	Roberts Rd East at Serra Ct	SE Corner	G																	
	Roberts Rd East at Serra Ct	SW Corner	G																	
	Roberts Rd (16206 Los Gatos Blvd)							10	385											
16945	Roberts Rd								30			385								
16965	Roberts Rd								120											
859	University Ave							100	1,620											
	Woodland Ave (East Curb)							340												
489	Woodland Ave							140	50											
	Woodland Av at Saratoga-Los Gatos Rd (Hwy. 9)	NE Corner	C																	
41	Woodland Ave (41 Chester St)							74												
	Wraight Av at Saratoga-Los Gatos Rd (Hwy 9)	NW Corner	C																	
	Wraight Av at Saratoga-Los Gatos Rd (Hwy 9)	NE Corner	Type A Passageway																	
467	Wraight Ave				3				72											
470	Wraight Ave							35												
484	Wraight Ave							30												
492	Wraight Ave							5												
494	Wraight Ave							10												
411	Miles Ave							135	700											
			Total:	**1**	**8**	**1**	**1**	**1,526**	**8,087**	**120**	**130**	**535**	**0**	**80**	**66**	**2**	**1**	**1**	**1**	**1**

Attachment B
Standard Plans



NOTES:

See Standard Plan T9 for tables.

Use cone spacing X for taper segment, Y for tangent segment or Z for conflict situations, as appropriate, per Table 1, unless X, Y, or Z cone spacing is shown on this sheet.

Provide at least one person to continuously maintain traffic control devices for lane closures.

Dist	COUNTY	ROUTE	POST MILES TOTAL PROJECT	SHEET No.	TOTAL SHEETS

Malik Rehman
REGISTERED CIVIL ENGINEER

September 19, 2025
PLANS APPROVAL DATE

REGISTERED PROFESSIONAL ENGINEER — Malik Rehman — No. C83390 — Exp. 3-31-27 — CIVIL — STATE OF CALIFORNIA

THE STATE OF CALIFORNIA OR ITS OFFICERS OR AGENTS SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS OF SCANNED COPIES OF THIS PLAN SHEET.

NOTES:

1. Portable delineators placed at one-half the spacing indicated for traffic cones may be used instead of cones for daytime closures only.
2. Each advance warning sign shall be equipped with at least two flags for daytime closure. Each flag shall be at least 16" x 16" in size and shall be orange or fluorescent red-orange in color. Flashing beacons shall be placed at the locations indicated for lane closure during hours of darkness.
3. A G20-2 "END ROAD WORK" sign, with minimum size of 48" x 24" as appropriate, shall be placed at the end of the lane closure unless the end of work area is obvious or ends within the larger project's limits.
4. A minimum 1500' sight distance shall be provided where possible for vehicles approaching the first flashing arrow sign. Lane closures shall not begin at the top of crest verticle curve or on a horizontal curve.
5. Place a C30(CA) sign every 1000' throughout length of lane closure.
6. A minimum of 3 cones shall be placed transversely across each closed lane and shoulder at each location where a taper across a traffic lane ends and every 1000' as shown on the "Lane Closure" detail. Two type II barricades may be used instead of the 3 cones. The transverse alignment of the cones or barricades on the closed shoulder may be shifted from the transverse alignment to provide access to the work.
7. The 2L tangent shown along lane lines shall be used between the L tapers required for each closed traffic lane.
8. Use one flashing arrow sign for each lane closed. The flashing arrow sign shall be Type I.
9. Median lane closures shall conform to the details as shown except that C20(CA)L and W4-2L signs shall be used.
10. Duplicate sign installations are not required:
    a) On opposite shoulder if at least one-half of the available lanes remain open to traffic.

    b) In the median if the width of the median shoulder is less than 8' and the outside lanes are to be closed.
11. The E5-1 or SC18(CA) and W4-1 signs shall be used as shown.
12. A W7-3aP "NEXT _____ MILES" plaque must be used if the shoulder closure extends beyond the distance that can be perceived by road users.
13. For the warning sign requirements at the Exit Ramp, when work is proposed on the local street, see CA MUTCD Figure 6H-22 to 6H-27.

LEGEND

- ● TRAFFIC CONE
- ○ TRAFFIC CONE (OPTIONAL TAPER)
- TEMPORARY TRAFFIC CONTROL SIGN
- FLASHING ARROW SIGN (FAS)
- FAS SUPPORT OR TRAILER
- PORTABLE FLASHING BEACON

SIGN PANEL SIZE (Min)

A	48" x 48"
B	72" x 60"
C	36" x 30"

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

TRAFFIC CONTROL SYSTEM FOR LANE CLOSURE ON FREEWAYS AND EXPRESSWAYS

NO SCALE

T1

ITEM NO. 5.

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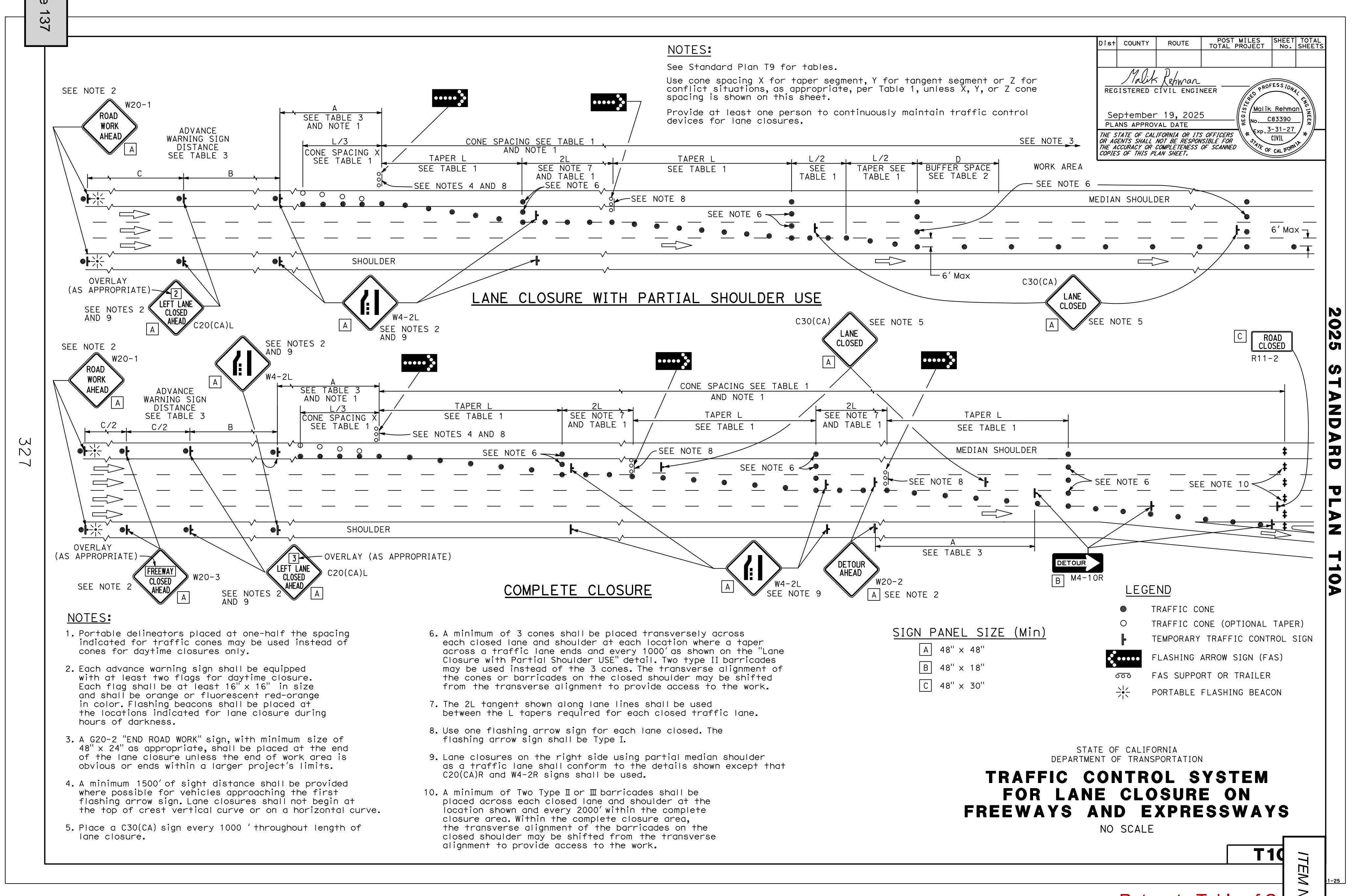
2025 STANDARD PLAN T10A



Dist	COUNTY	ROUTE	POST MILES TOTAL PROJECT	SHEET No.	TOTAL SHEETS

Malik Rehman
REGISTERED CIVIL ENGINEER

September 19, 2025
PLANS APPROVAL DATE

REGISTERED PROFESSIONAL ENGINEER
Malik Rehman
No. C83390
Exp. 3-31-27
CIVIL
STATE OF CALIFORNIA

THE STATE OF CALIFORNIA OR ITS OFFICERS OR AGENTS SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS OF SCANNED COPIES OF THIS PLAN SHEET.

NOTES:

See Standard Plan T9 for tables.

Use cone spacing X for taper segment, Y for tangent segment or Z for conflict situations, as appropriate, per Table 1, unless X, Y, or Z cone spacing is shown on this sheet.

Provide at least one person to continuously maintain traffic control devices for lane closures.

LEGEND

- ● TRAFFIC CONE
- ○ TRAFFIC CONE (OPTIONAL TAPER)
- TEMPORARY TRAFFIC CONTROL SIGN
- FLASHING ARROW SIGN (FAS)
- FAS SUPPORT OR TRAILER
- PORTABLE FLASHING BEACON

SIGN PANEL SIZE (Min)

- [A] 48" x 48"
- [B] 48" x 18"
- [C] 48" x 30"

NOTES:

1. Portable delineators placed at one-half the spacing indicated for traffic cones may be used instead of cones for daytime closures only.
2. Each advance warning sign shall be equipped with at least two flags for daytime closure. Each flag shall be at least 16" x 16" in size and shall be orange or fluorescent red-orange in color. Flashing beacons shall be placed at the locations indicated for lane closure during hours of darkness.
3. A G20-2 "END ROAD WORK" sign, with minimum size of 48" x 24" as appropriate, shall be placed at the end of the lane closure unless the end of work area is obvious or ends within a larger project's limits.
4. A minimum 1500' of sight distance shall be provided where possible for vehicles approaching the first flashing arrow sign. Lane closures shall not begin at the top of crest vertical curve or on a horizontal curve.
5. Place a C30(CA) sign every 1000 ' throughout length of lane closure.
6. A minimum of 3 cones shall be placed transversely across each closed lane and shoulder at each location where a taper across a traffic lane ends and every 1000' as shown on the "Lane Closure with Partial Shoulder USE" detail. Two type II barricades may be used instead of the 3 cones. The transverse alignment of the cones or barricades on the closed shoulder may be shifted from the transverse alignment to provide access to the work.
7. The 2L tangent shown along lane lines shall be used between the L tapers required for each closed traffic lane.
8. Use one flashing arrow sign for each lane closed. The flashing arrow sign shall be Type I.
9. Lane closures on the right side using partial median shoulder as a traffic lane shall conform to the details shown except that C20(CA)R and W4-2R signs shall be used.
10. A minimum of Two Type II or III barricades shall be placed across each closed lane and shoulder at the location shown and every 2000' within the complete closure area. Within the complete closure area, the transverse alignment of the barricades on the closed shoulder may be shifted from the transverse alignment to provide access to the work.

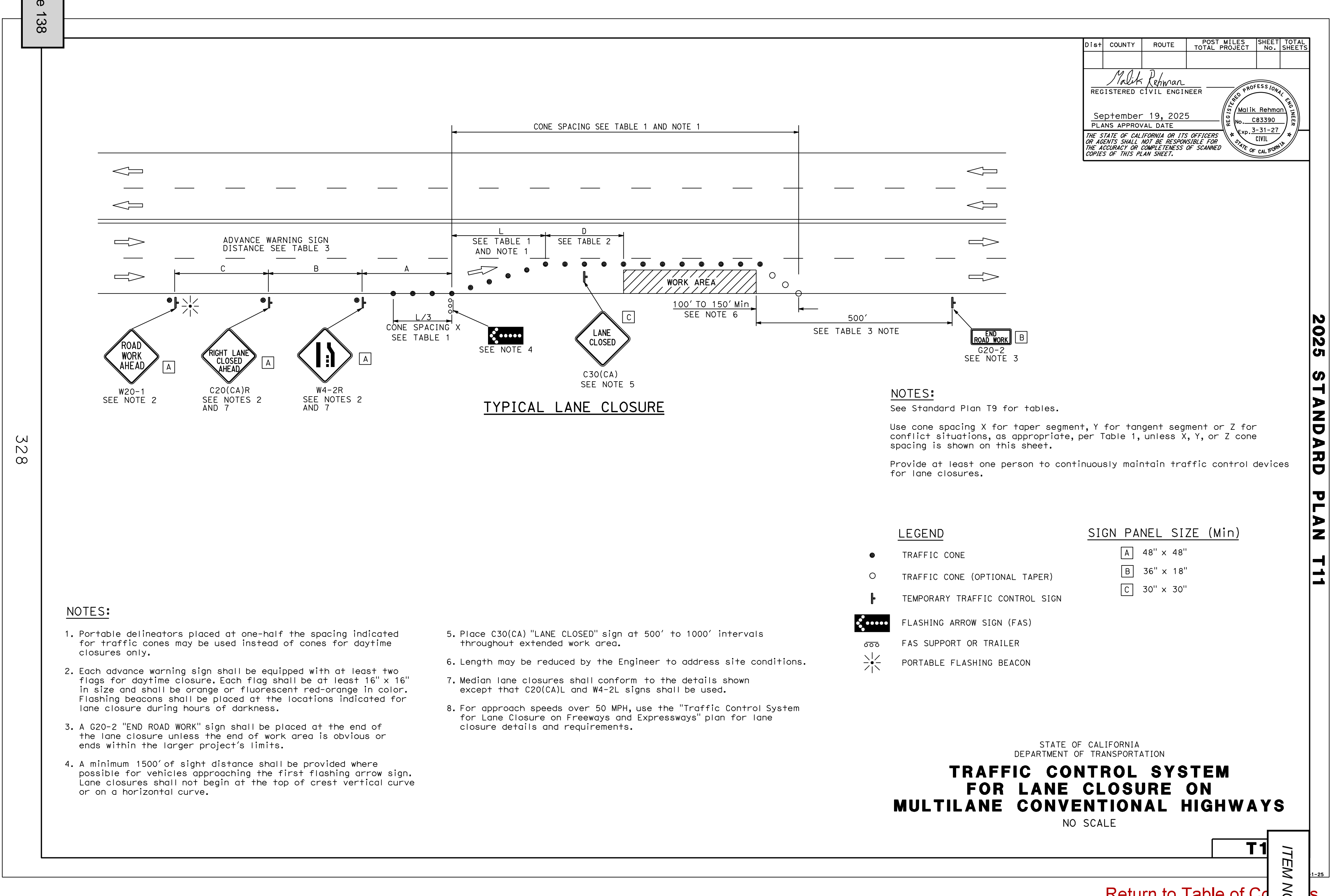
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

TRAFFIC CONTROL SYSTEM FOR LANE CLOSURE ON FREEWAYS AND EXPRESSWAYS

NO SCALE

T10

Return to Table of Co...s


2025 STANDARD PLAN T11
ITEM NO. 5.
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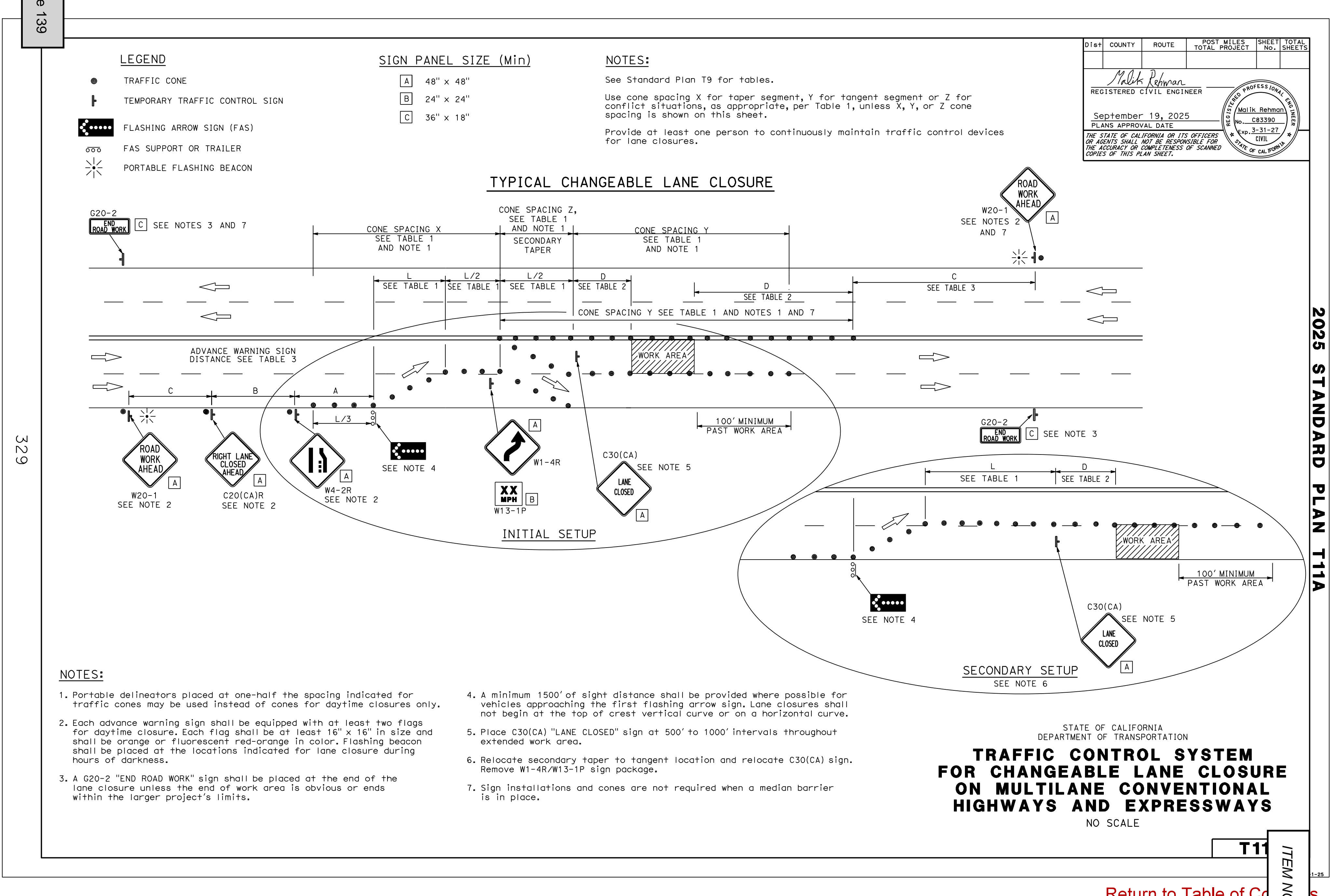
Dist | COUNTY | ROUTE | POST MILES TOTAL PROJECT | SHEET No. | TOTAL SHEETS
Malik Rehman
REGISTERED CIVIL ENGINEER
September 19, 2025
PLANS APPROVAL DATE
THE STATE OF CALIFORNIA OR ITS OFFICERS OR AGENTS SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS OF SCANNED COPIES OF THIS PLAN SHEET.
REGISTERED PROFESSIONAL ENGINEER
Malik Rehman
No. C83390
Exp. 3-31-27
CIVIL
STATE OF CALIFORNIA
CONE SPACING SEE TABLE 1 AND NOTE 1
ADVANCE WARNING SIGN DISTANCE SEE TABLE 3
C
B
A
L
SEE TABLE 1 AND NOTE 1
D
SEE TABLE 2
WORK AREA
100' TO 150' Min
SEE NOTE 6
500'
SEE TABLE 3 NOTE
L/3
CONE SPACING X
SEE TABLE 1
SEE NOTE 4
ROAD WORK AHEAD
A
W20-1
SEE NOTE 2
RIGHT LANE CLOSED AHEAD
A
C20(CA)R
SEE NOTES 2 AND 7
A
W4-2R
SEE NOTES 2 AND 7
LANE CLOSED
C
C30(CA)
SEE NOTE 5
END ROAD WORK
B
G20-2
SEE NOTE 3
TYPICAL LANE CLOSURE
NOTES:
See Standard Plan T9 for tables.
Use cone spacing X for taper segment, Y for tangent segment or Z for conflict situations, as appropriate, per Table 1, unless X, Y, or Z cone spacing is shown on this sheet.
Provide at least one person to continuously maintain traffic control devices for lane closures.
LEGEND
TRAFFIC CONE
TRAFFIC CONE (OPTIONAL TAPER)
TEMPORARY TRAFFIC CONTROL SIGN
FLASHING ARROW SIGN (FAS)
FAS SUPPORT OR TRAILER
PORTABLE FLASHING BEACON
SIGN PANEL SIZE (Min)
A 48" x 48"
B 36" x 18"
C 30" x 30"
NOTES:
1. Portable delineators placed at one-half the spacing indicated for traffic cones may be used instead of cones for daytime closures only.
2. Each advance warning sign shall be equipped with at least two flags for daytime closure. Each flag shall be at least 16" x 16" in size and shall be orange or fluorescent red-orange in color. Flashing beacons shall be placed at the locations indicated for lane closure during hours of darkness.
3. A G20-2 "END ROAD WORK" sign shall be placed at the end of the lane closure unless the end of work area is obvious or ends within the larger project's limits.
4. A minimum 1500' of sight distance shall be provided where possible for vehicles approaching the first flashing arrow sign. Lane closures shall not begin at the top of crest vertical curve or on a horizontal curve.
5. Place C30(CA) "LANE CLOSED" sign at 500' to 1000' intervals throughout extended work area.
6. Length may be reduced by the Engineer to address site conditions.
7. Median lane closures shall conform to the details shown except that C20(CA)L and W4-2L signs shall be used.
8. For approach speeds over 50 MPH, use the "Traffic Control System for Lane Closure on Freeways and Expressways" plan for lane closure details and requirements.
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
TRAFFIC CONTROL SYSTEM FOR LANE CLOSURE ON MULTILANE CONVENTIONAL HIGHWAYS
NO SCALE
T1



2025 STANDARD PLAN T11A
LEGEND
TRAFFIC CONE
TEMPORARY TRAFFIC CONTROL SIGN
FLASHING ARROW SIGN (FAS)
FAS SUPPORT OR TRAILER
PORTABLE FLASHING BEACON
SIGN PANEL SIZE (Min)
A 48" x 48"
B 24" x 24"
C 36" x 18"
NOTES:
See Standard Plan T9 for tables.
Use cone spacing X for taper segment, Y for tangent segment or Z for conflict situations, as appropriate, per Table 1, unless X, Y, or Z cone spacing is shown on this sheet.
Provide at least one person to continuously maintain traffic control devices for lane closures.
Dist COUNTY ROUTE POST MILES TOTAL PROJECT SHEET No. TOTAL SHEETS
REGISTERED CIVIL ENGINEER
September 19, 2025
PLANS APPROVAL DATE
THE STATE OF CALIFORNIA OR ITS OFFICERS OR AGENTS SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS OF SCANNED COPIES OF THIS PLAN SHEET.
REGISTERED PROFESSIONAL ENGINEER
Malik Rehman
No. C83390
Exp. 3-31-27
CIVIL
STATE OF CALIFORNIA
TYPICAL CHANGEABLE LANE CLOSURE
G20-2
END ROAD WORK
C SEE NOTES 3 AND 7
CONE SPACING X SEE TABLE 1 AND NOTE 1
CONE SPACING Z, SEE TABLE 1 AND NOTE 1
SECONDARY TAPER
CONE SPACING Y SEE TABLE 1 AND NOTE 1
ROAD WORK AHEAD
W20-1
SEE NOTES 2 AND 7
L SEE TABLE 1
L/2 SEE TABLE 1
L/2 SEE TABLE 1
D SEE TABLE 2
D SEE TABLE 2
C SEE TABLE 3
CONE SPACING Y SEE TABLE 1 AND NOTES 1 AND 7
ADVANCE WARNING SIGN DISTANCE SEE TABLE 3
WORK AREA
C B A
L/3
100' MINIMUM PAST WORK AREA
G20-2
END ROAD WORK
C SEE NOTE 3
ROAD WORK AHEAD
W20-1
SEE NOTE 2
RIGHT LANE CLOSED AHEAD
C20(CA)R
SEE NOTE 2
W4-2R
SEE NOTE 2
SEE NOTE 4
W1-4R
XX MPH
W13-1P
C30(CA)
SEE NOTE 5
LANE CLOSED
INITIAL SETUP
L SEE TABLE 1
D SEE TABLE 2
WORK AREA
100' MINIMUM PAST WORK AREA
SEE NOTE 4
C30(CA)
SEE NOTE 5
LANE CLOSED
SECONDARY SETUP
SEE NOTE 6
NOTES:
1. Portable delineators placed at one-half the spacing indicated for traffic cones may be used instead of cones for daytime closures only.
2. Each advance warning sign shall be equipped with at least two flags for daytime closure. Each flag shall be at least 16" x 16" in size and shall be orange or fluorescent red-orange in color. Flashing beacon shall be placed at the locations indicated for lane closure during hours of darkness.
3. A G20-2 "END ROAD WORK" sign shall be placed at the end of the lane closure unless the end of work area is obvious or ends within the larger project's limits.
4. A minimum 1500' of sight distance shall be provided where possible for vehicles approaching the first flashing arrow sign. Lane closures shall not begin at the top of crest vertical curve or on a horizontal curve.
5. Place C30(CA) "LANE CLOSED" sign at 500' to 1000' intervals throughout extended work area.
6. Relocate secondary taper to tangent location and relocate C30(CA) sign. Remove W1-4R/W13-1P sign package.
7. Sign installations and cones are not required when a median barrier is in place.
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
TRAFFIC CONTROL SYSTEM
FOR CHANGEABLE LANE CLOSURE
ON MULTILANE CONVENTIONAL
HIGHWAYS AND EXPRESSWAYS
NO SCALE
T11
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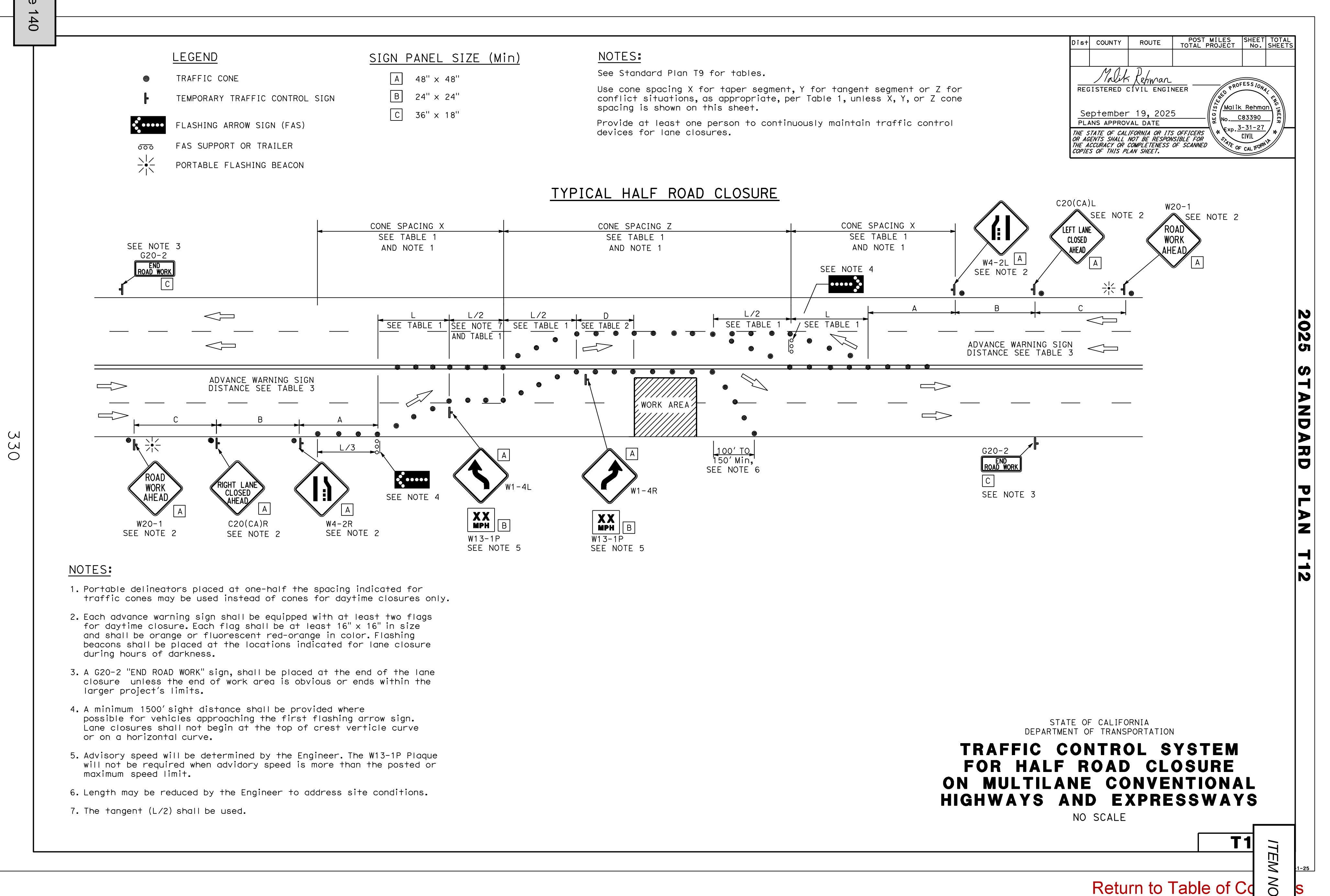

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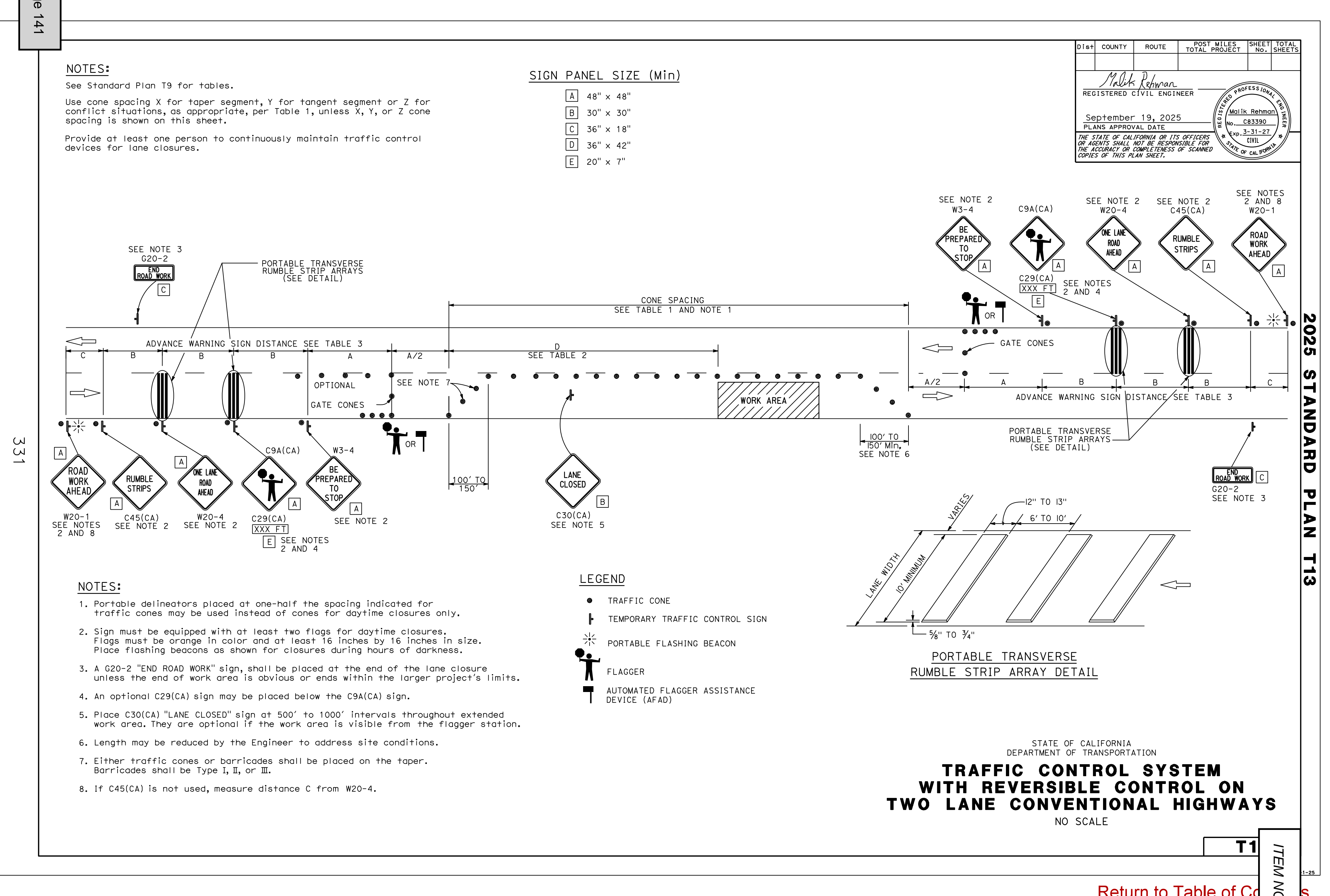
2025 STANDARD PLAN T13



NOTES:

See Standard Plan T9 for tables.

Use cone spacing X for taper segment, Y for tangent segment or Z for conflict situations, as appropriate, per Table 1, unless X, Y, or Z cone spacing is shown on this sheet.

Provide at least one person to continuously maintain traffic control devices for lane closures.

SIGN PANEL SIZE (Min)

- A 48" x 48"
- B 30" x 30"
- C 36" x 18"
- D 36" x 42"
- E 20" x 7"

NOTES:

1. Portable delineators placed at one-half the spacing indicated for traffic cones may be used instead of cones for daytime closures only.
2. Sign must be equipped with at least two flags for daytime closures. Flags must be orange in color and at least 16 inches by 16 inches in size. Place flashing beacons as shown for closures during hours of darkness.
3. A G20-2 "END ROAD WORK" sign, shall be placed at the end of the lane closure unless the end of work area is obvious or ends within the larger project's limits.
4. An optional C29(CA) sign may be placed below the C9A(CA) sign.
5. Place C30(CA) "LANE CLOSED" sign at 500' to 1000' intervals throughout extended work area. They are optional if the work area is visible from the flagger station.
6. Length may be reduced by the Engineer to address site conditions.
7. Either traffic cones or barricades shall be placed on the taper. Barricades shall be Type I, II, or III.
8. If C45(CA) is not used, measure distance C from W20-4.

LEGEND

- TRAFFIC CONE
- TEMPORARY TRAFFIC CONTROL SIGN
- PORTABLE FLASHING BEACON
- FLAGGER
- AUTOMATED FLAGGER ASSISTANCE DEVICE (AFAD)

PORTABLE TRANSVERSE RUMBLE STRIP ARRAY DETAIL

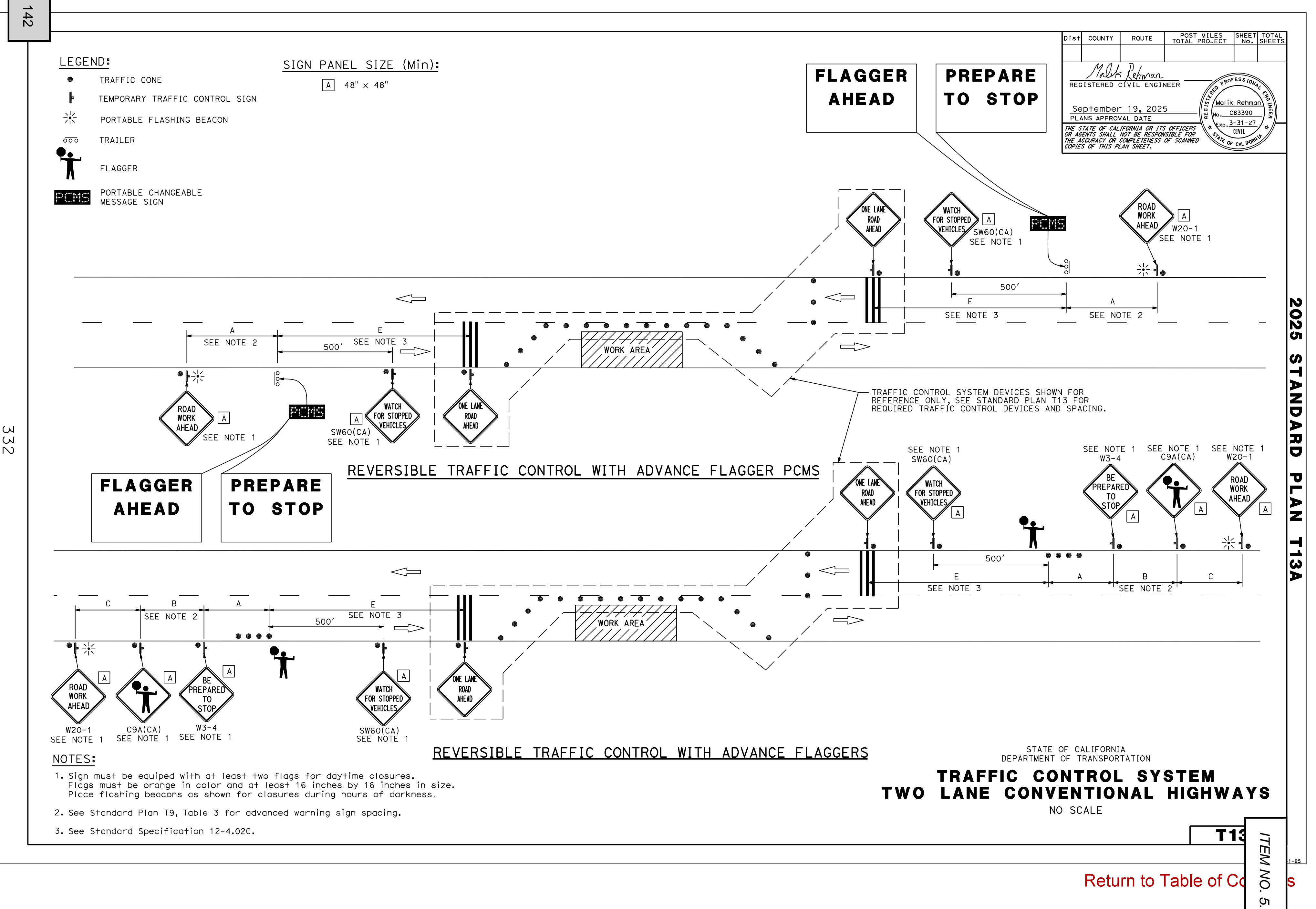
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

TRAFFIC CONTROL SYSTEM WITH REVERSIBLE CONTROL ON TWO LANE CONVENTIONAL HIGHWAYS

NO SCALE

T1

Return to Table of Co s



NOTES:

1. Sign must be equiped with at least two flags for daytime closures. Flags must be orange in color and at least 16 inches by 16 inches in size. Place flashing beacons as shown for closures during hours of darkness.
2. See Standard Plan T9, Table 3 for advanced warning sign spacing.
3. See Standard Specification 12-4.02C.

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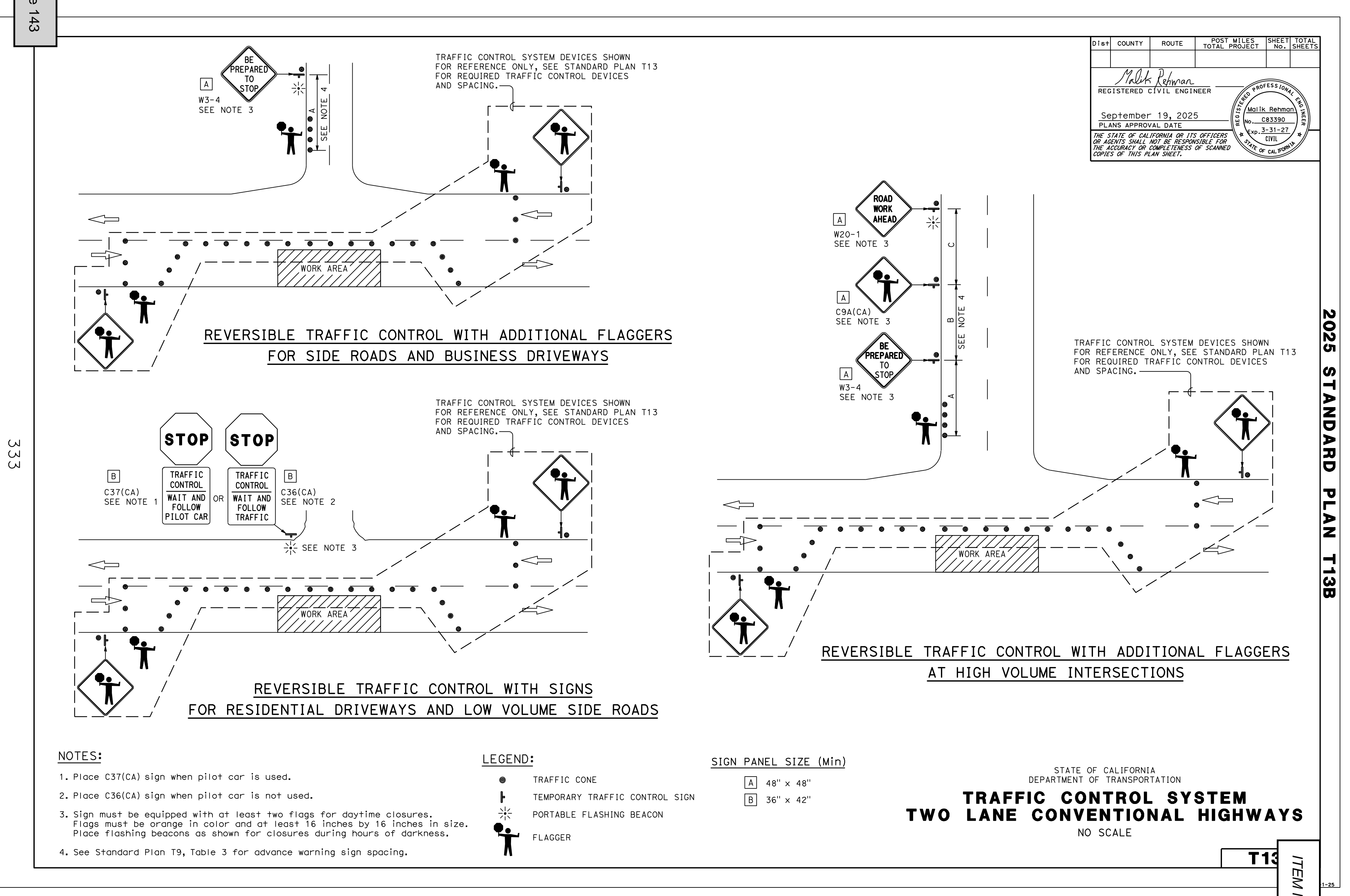

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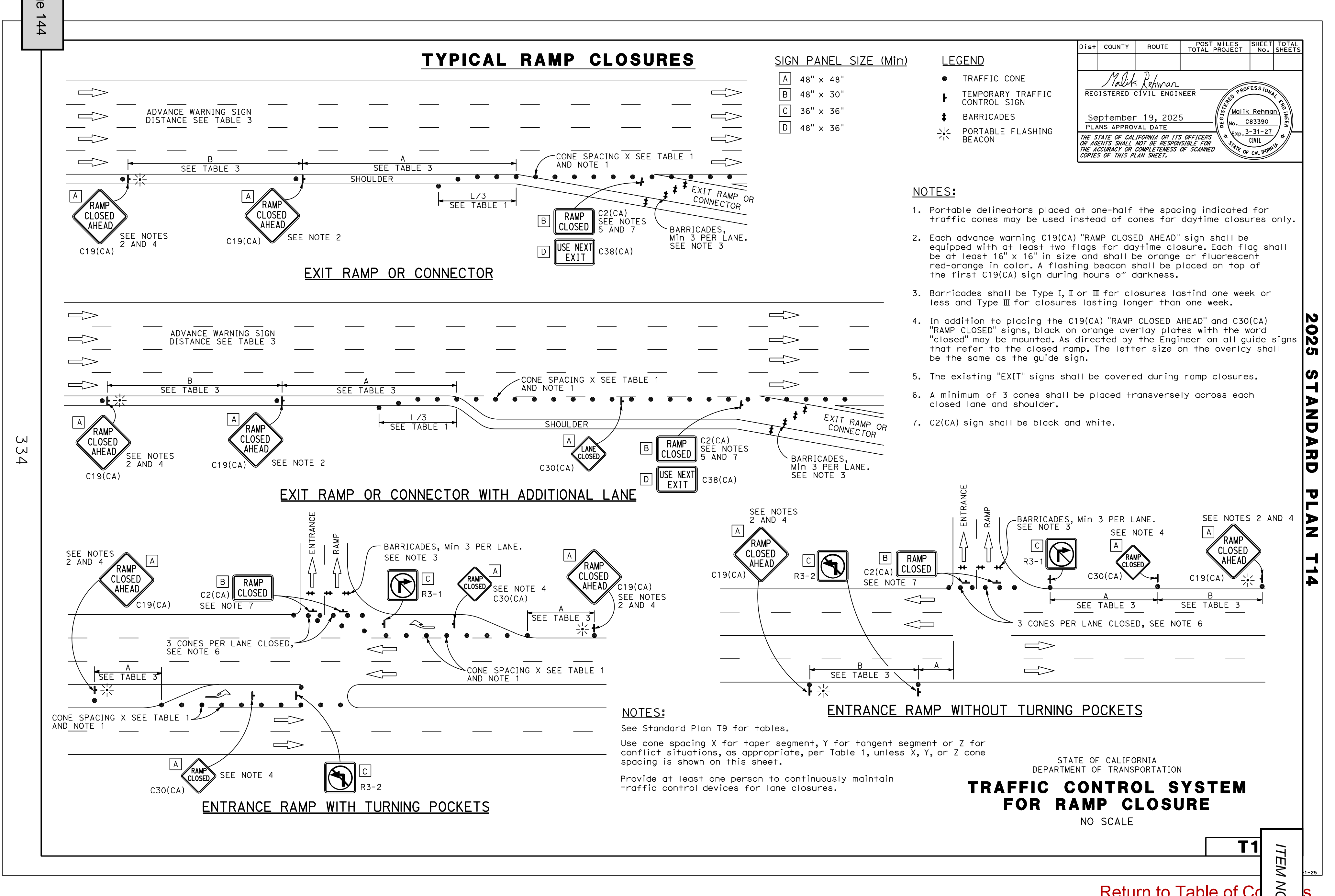

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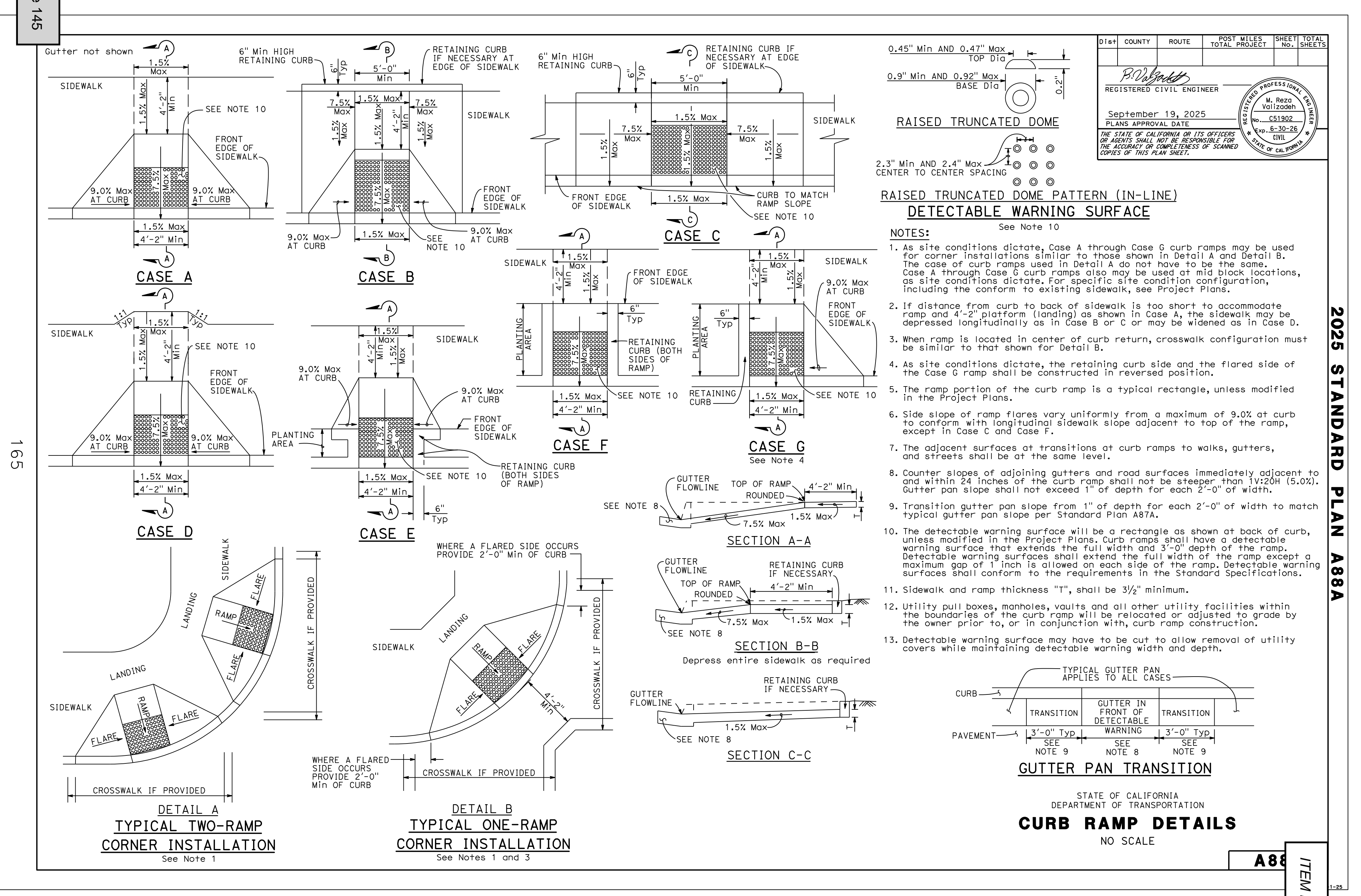

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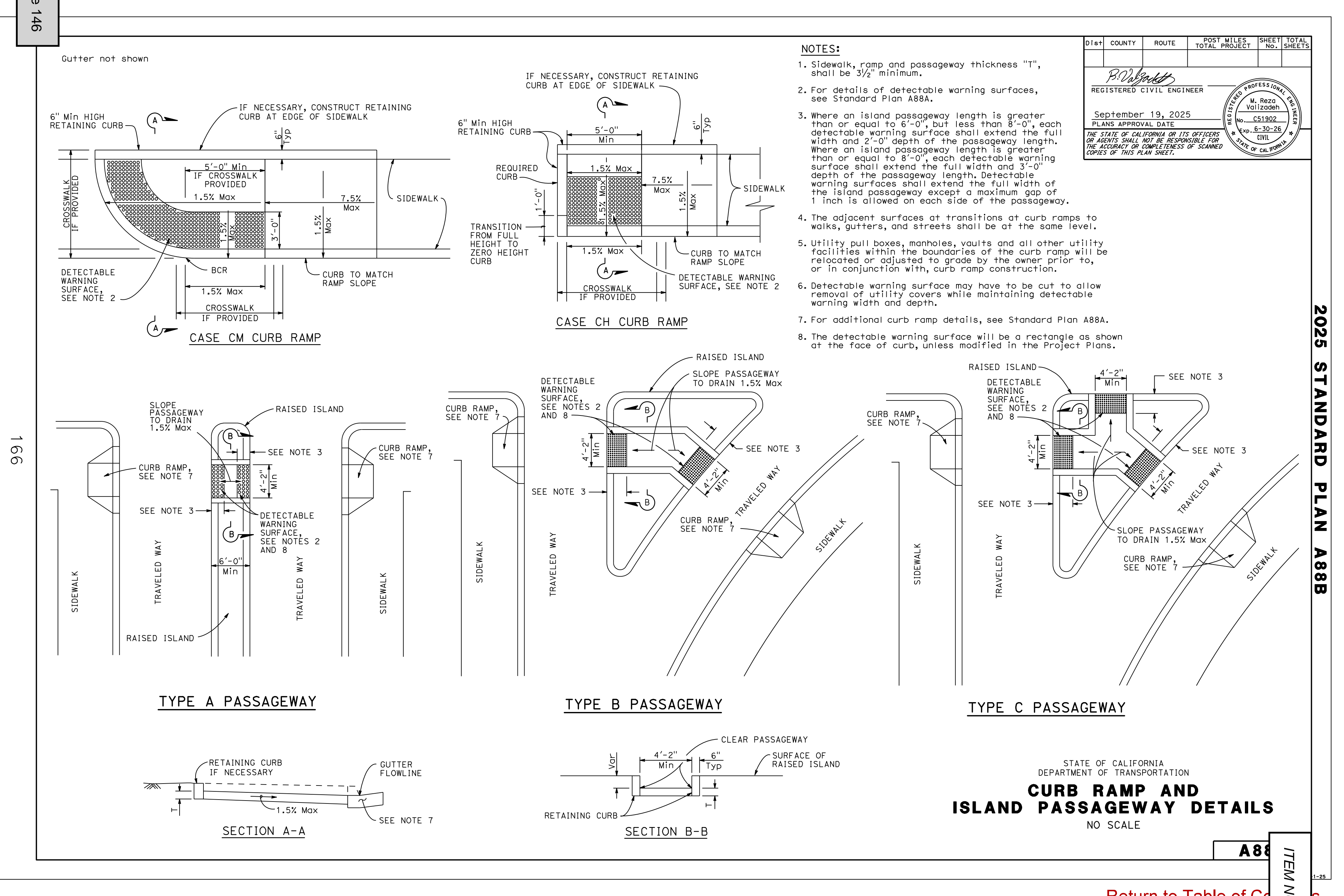
2025 STANDARD PLAN A88B



NOTES:

1. Sidewalk, ramp and passageway thickness "T", shall be 3½" minimum.
2. For details of detectable warning surfaces, see Standard Plan A88A.
3. Where an island passageway length is greater than or equal to 6'-0", but less than 8'-0", each detectable warning surface shall extend the full width and 2'-0" depth of the passageway length. Where an island passageway length is greater than or equal to 8'-0", each detectable warning surface shall extend the full width and 3'-0" depth of the passageway length. Detectable warning surfaces shall extend the full width of the island passageway except a maximum gap of 1 inch is allowed on each side of the passageway.
4. The adjacent surfaces at transitions at curb ramps to walks, gutters, and streets shall be at the same level.
5. Utility pull boxes, manholes, vaults and all other utility facilities within the boundaries of the curb ramp will be relocated or adjusted to grade by the owner prior to, or in conjunction with, curb ramp construction.
6. Detectable warning surface may have to be cut to allow removal of utility covers while maintaining detectable warning width and depth.
7. For additional curb ramp details, see Standard Plan A88A.
8. The detectable warning surface will be a rectangle as shown at the face of curb, unless modified in the Project Plans.

Dist	COUNTY	ROUTE	POST MILES TOTAL PROJECT	SHEET No.	TOTAL SHEETS

REGISTERED CIVIL ENGINEER

September 19, 2025
PLANS APPROVAL DATE

REGISTERED PROFESSIONAL ENGINEER — M. Reza Valizadeh — No. C51902 — Exp. 6-30-26 — CIVIL — STATE OF CALIFORNIA

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STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

CURB RAMP AND ISLAND PASSAGEWAY DETAILS

NO SCALE

A88

Return to Table of Co[obscured]s

CURB TRANSITION DETAIL

R=30"
12"
12"
3/4" LIP
R=30"

6' MIN. TRANSITION SEE NOTE 5 (4" THICK SECTION)
PROPERTY LINE
EX. BACK OF WALK
EX. SIDEWALK
REVERSE CURVE
EX. CURB
EX. GUTTER
SCORE MARKS SEE NOTE 2 (TYPICAL)
COLD JOINT DOWELS REQ'D SEE DETAIL ST-18
LIMITS OF DRIVEWAY (6" THICK SECTION)
WEAKENED PLANE (W.P.) JOINTS SEE NOTE 1
SIDEWALK
DRIVEWAY APPROACH
VARIES SEE NOTE 4 (4" THICK SECTION)
PROPERTY LINE
FLARE (TYP.)
6"R (TYP.)
A
A
SEE NOTE 3
2'
WIDTH VARIES WITH TYPE OF USE OR ZONING SEE TABLE BELOW
COLD JOINT DOWELS REQ'D SEE DETAIL ST-18
2'
3' MIN. <12' MAX. SEE NOTE 4

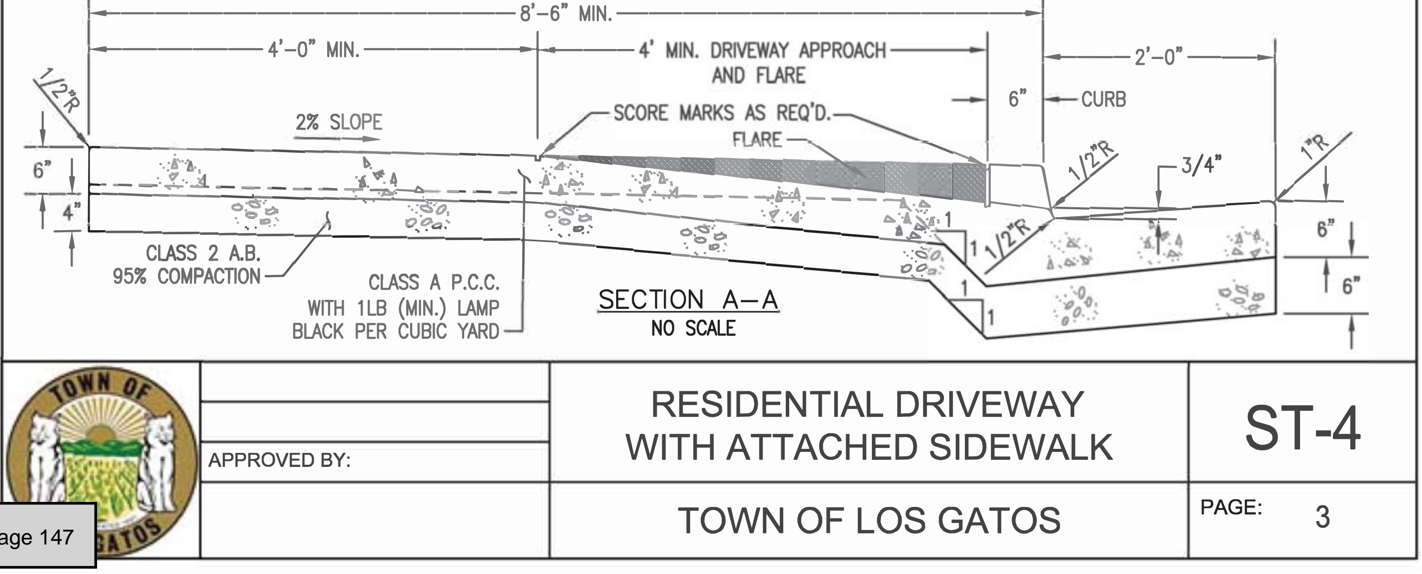
DRIVEWAY
NO SCALE

USE OR ZONING TABLE	MIN.	MAX.
RESIDENTIAL–SINGLE FAMILY	14'	30'
* RESIDENTIAL–MULTIPLE, 5 UNITS OR LESS	24'	30'

* MULTIPLE RESIDENTIAL DRIVEWAY WITH 6 UNITS OR MORE SHALL USE COMMERCIAL DRIVEWAY.

NOTES:

1. W.P. JOINTS REQUIRED ON CENTERLINE FOR DRIVEWAYS 14' TO 20' WIDE. DRIVEWAYS 20' TO 30' WIDE SHALL HAVE 2 W.P. JOINTS EVENLY SPACED (AT 1/3 AND 2/3 POINTS).
2. PLACE SCORE MARKS AT 1/4 POINTS ON DRIVEWAYS 14' TO 20' WIDE AND AT 1/6 POINTS ON DRIVEWAYS 20' TO 30' WIDE. SCORE MARK REQUIRED AT DRIVEWAY SLOPE BREAK PARALLEL TO EXISTING FACE OF CURB.
3. 24" WIDE BAND OF PAVEMENT SHALL BE REMOVED AND REPLACED. SEE NOTE 5 OF GENERAL NOTES (APPENDIX) FOR REQUIREMENTS.
4. WHERE THE DISTANCE BETWEEN NEW DRIVEWAY LIMIT AND PROPERTY LINE IS LESS THAN 6 FEET AT THE BACK OF DRIVEWAY AND THERE IS AN ADJACENT DRIVEWAY LESS THAN 12 FEET DISTANCE AWAY, THE SIDEWALK SHALL NOT TRANSITION. NEW SIDEWALK SHALL TERMINATE AT PROPERTY LINE OR ADJACENT DRIVEWAY TO MAINTAIN ADA PATHWAY.
5. WHERE THE DISTANCE BETWEEN NEW DRIVEWAY LIMIT AND PROPERTY LINE IS EQUAL TO OR GREATER THAN 6 FEET AT THE BACK OF DRIVEWAY AND THERE IS NO ADJACENT DRIVEWAY WITHIN 12 FEET DISTANCE OF NEW DRIVEWAY, THE SIDEWALK SHALL TRANSITION FROM BACK OF DRIVEWAY TO EXISTING SIDEWALK.



TOWN OF LOS GATOS

APPROVED BY:

RESIDENTIAL DRIVEWAY WITH ATTACHED SIDEWALK

ST-4

TOWN OF LOS GATOS

PAGE: 3

COLD JOINT
DOWELS REQ'D.
SEE DETAIL ST-18

SCORE MARKS
SEE NOTE 2
(TYPICAL)

EX. BACK OF WALK

WEAKENED PLANE
(W.P.) JOINTS
SEE NOTE 1

EX. 5' SIDEWALK

LIMITS OF DRIVEWAY
(6" THICK SECTION)

PLANTER STRIP
EX. CURB
EX. GUTTER

COLD JOINT
DOWELS REQ'D.
SEE DETAIL ST-18

A

2% MAX

FLARE (TYP.)

SIDEWALK

12% MAX

DRIVEWAY APPROACH

6"R (TYP.)

SEE NOTE 3

2'

A

EX. 5' SIDEWALK

DRIVEWAY
NO SCALE

WIDTH VARIES WITH
TYPE OF USE OR ZONING
SEE TABLE BELOW

PLANTER STRIP
EX. CURB
EX. GUTTER

2'

USE OR ZONING TABLE	MIN.	MAX.
RESIDENTIAL–SINGLE FAMILY	14'	30'
* RESIDENTIAL–MULTIPLE, 5 UNITS OR LESS	24'	30'

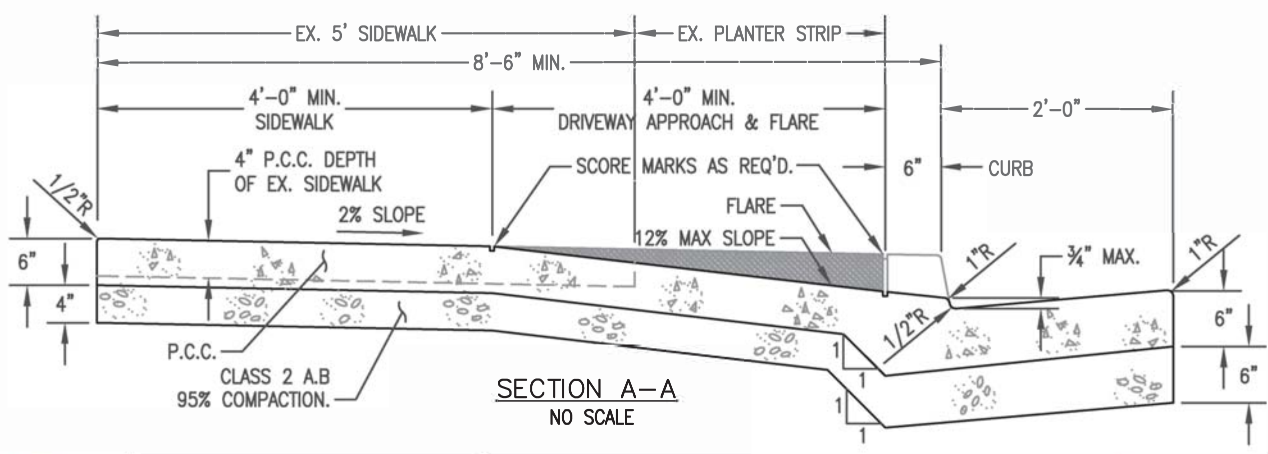
* MULTIPLE RESIDENTIAL DRIVEWAY WITH 6 UNITS OR MORE SHALL USE COMMERCIAL DRIVEWAY.

NOTES:

1. W.P. JOINTS REQUIRED ON CENTERLINE FOR DRIVEWAYS 14' TO 20' WIDE. DRIVEWAYS 24' TO 30' WIDE SHALL HAVE 2 W.P. JOINTS EVENLY SPACED (AT 1/3 AND 2/3 POINTS).

2. PLACE SCORE MARKS AT 1/4 POINTS ON DRIVEWAYS 14' TO 20' WIDE AND AT 1/6 POINTS ON DRIVEWAYS 24' TO 30' WIDE. SCORE MARK REQUIRED AT DRIVEWAY SLOPE BREAK PARALLEL TO EXISTING FACE OF CURB.

3. 24" WIDE BAND OF PAVEMENT SHALL BE REMOVED AND REPLACED. SEE NOTE 5 OF GENERAL NOTES (APPENDIX) FOR REQUIREMENTS.



SECTION A–A
NO SCALE

APPROVED BY:

RESIDENTIAL DRIVEWAY WITH SEPARATED SIDEWALK

ST-5

TOWN OF LOS GATOS

PAGE: 4

CURB TRANSITION DETAIL

R=30"

12" 12"

3/4" LIP

R=30"

SCORE MARKS SEE NOTE 2 (TYPICAL)

EX. BACK OF WALK

EX. 5' SIDEWALK

COLD JOINT DOWELS REQ'D. SEE DETAIL ST-18

LIMITS OF 6" THICK SECTION (SEE NOTE 4 FOR THICKNESS)

WEAKENED PLANE (W.P.) JOINTS SEE NOTE 1

EX. CURB

EX. GUTTER

SCORE MARKS SEE NOTE 2 (TYPICAL)

ON-SITE DRIVEWAY SHALL CONFORM TO THE BACK OF DEPRESSED DRIVEWAY

RAMP 8.33% MAX.

12% MAX.

6" CURB AT BACK OF RAMP (OPTIONAL)

DEPRESSED DRIVEWAY

DRIVEWAY APPROACH

2% MAX.

FLARE (TYP.)

VARIES

SEE NOTE 3

RAMP 8.33% MAX.

COLD JOINT DOWELS REQ'D. SEE DETAIL ST-18

DRIVEWAY
NO SCALE

WIDTH VARIES WITH TYPE OF USE OR ZONING SEE TABLE BELOW

EX. 5' SIDEWALK

EX. CURB

EX. GUTTER

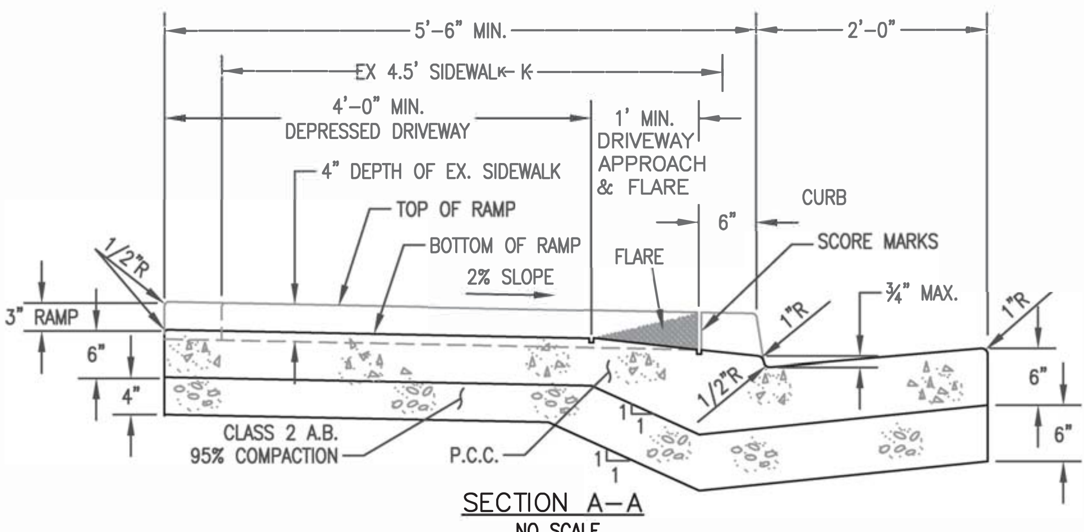
VARIES

USE OR ZONING TABLE	MIN.	MAX.
RESIDENTIAL–SINGLE FAMILY	14'	30'
* RESIDENTIAL–MULTIPLE, 5 UNITS OR LESS	24'	30'

* MULTIPLE RESIDENTIAL DRIVEWAY WITH 6 UNITS OR MORE SHALL USE COMMERCIAL DRIVEWAY.

NOTES:

1. W.P. JOINTS REQUIRED ON CENTERLINE FOR DRIVEWAYS 14' TO 20' WIDE. DRIVEWAYS 20' TO 30' WIDE SHALL HAVE 2 W.P. JOINTS EVENLY SPACED (AT 1/3 AND 2/3 POINTS).
2. PLACE SCORE MARKS AT 1/4 POINTS ON DRIVEWAYS 14' TO 20' WIDE AND AT 1/6 POINTS ON DRIVEWAYS 20' TO 30' WIDE.
3. 24" WIDE BAND OF PAVEMENT SHALL BE REMOVED AND REPLACED. SEE NOTE 5 OF GENERAL NOTES (APPENDIX) FOR REQUIREMENTS.
4. DEPRESSED DRIVEWAY, DRIVEWAY APPROACH, GROOVED BORDERS, AND RAMPS SHALL HAVE A THICKNESS OF 6" P.C.C. OVER 4" A.B. GROOVED BORDERS, RAMPS, DEPRESSED DRIVEWAY, DRIVEWAY APPROACH, CURB AND GUTTER SHALL BE MONOLITHIC.



SECTION A–A
NO SCALE

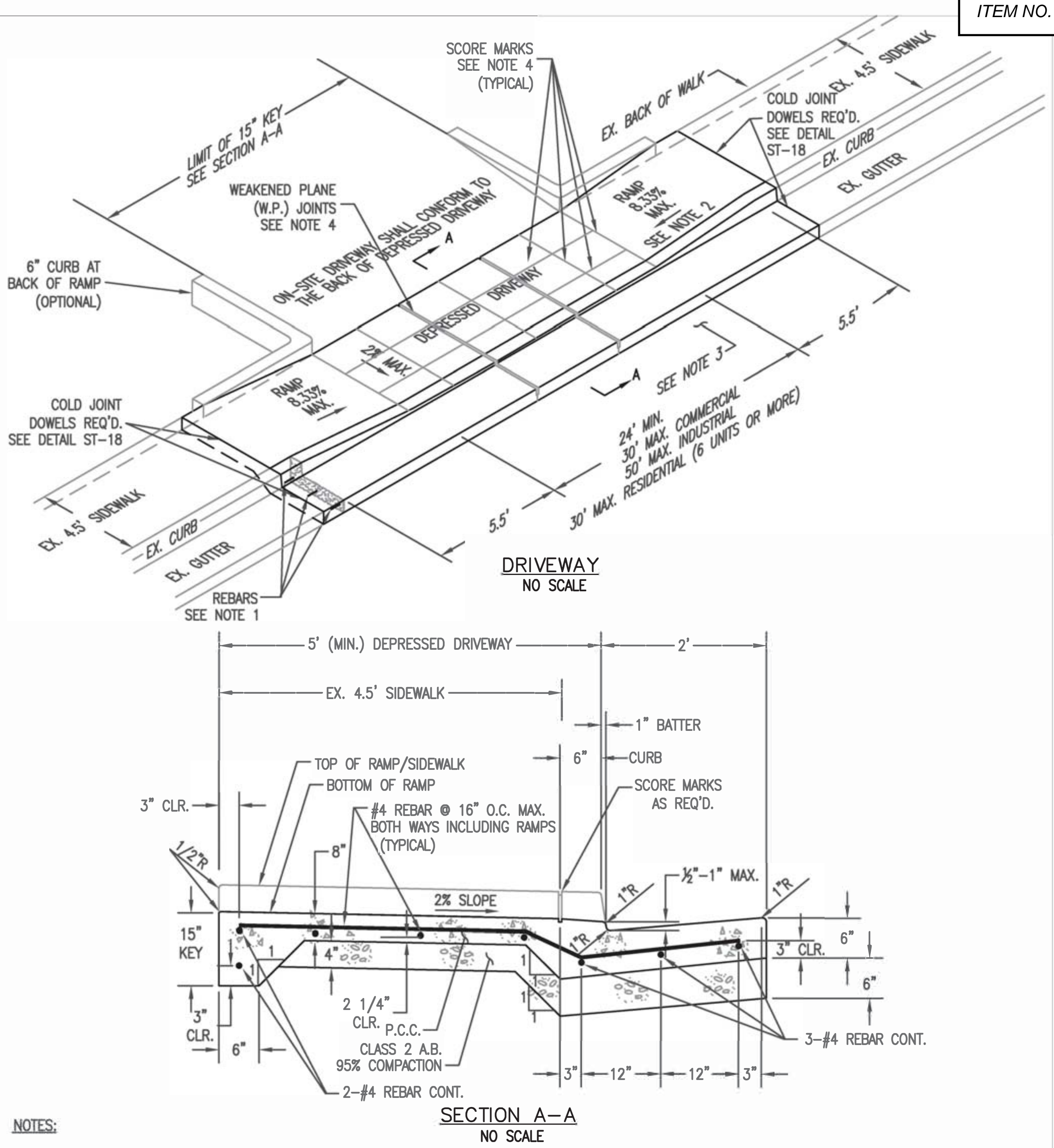
APPROVED BY:

DEPRESSED RESIDENTIAL DRIVEWAY FOR EX. 5' ATTACHED SIDEWALK

ST-6

TOWN OF LOS GATOS

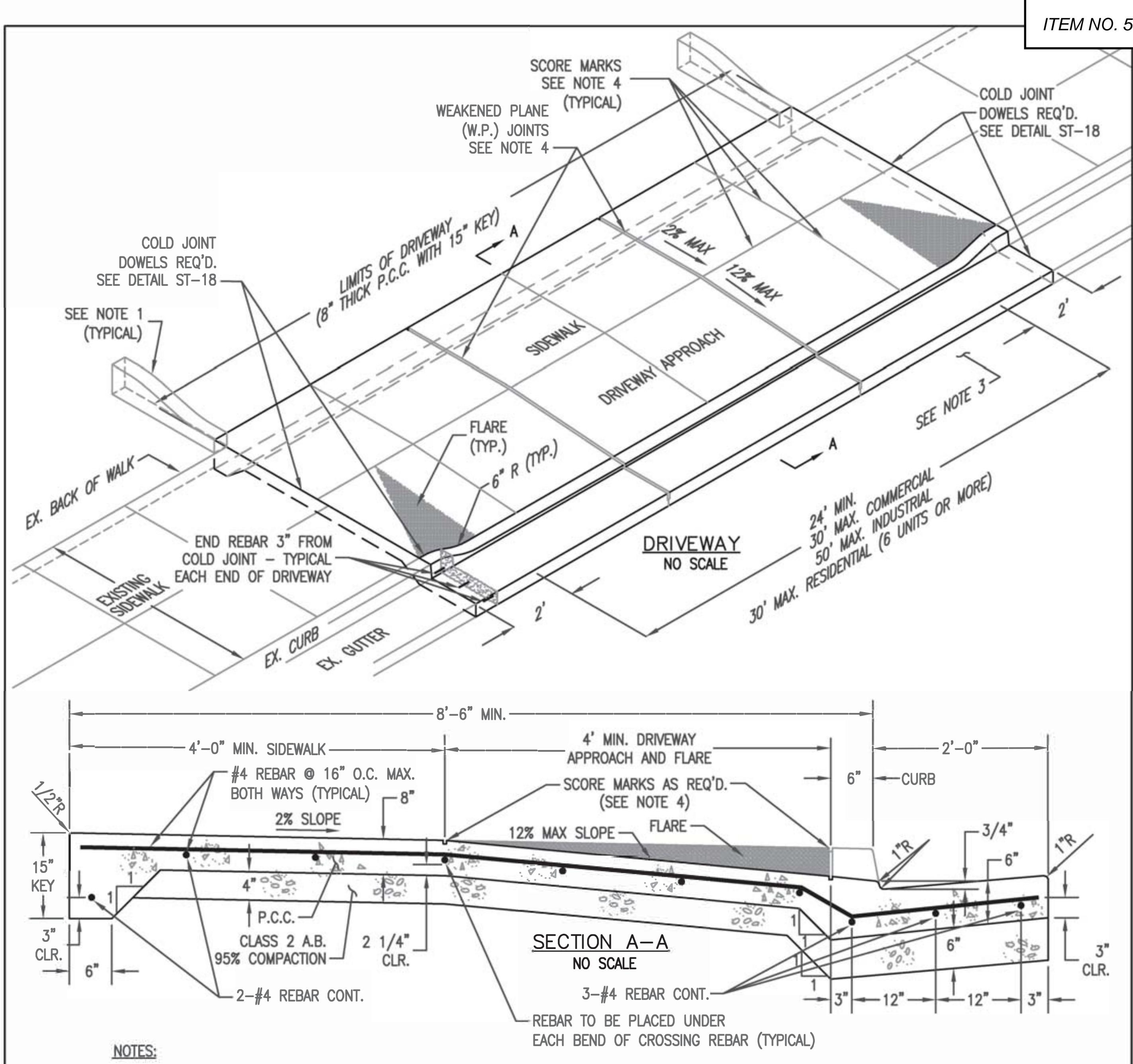
PAGE: 5



NOTES:

1. END REBAR 3" FROM COLD JOINT FOR GUTTER AND 12" FROM COLD JOINT FOR RAMPS.
2. DEPRESSED DRIVEWAY, DRIVEWAY APPROACH, AND RAMPS SHALL HAVE A THICKNESS OF 8" P.C.C. OVER 4" A.B. RAMPS, DEPRESSED DRIVEWAY, DRIVEWAY APPROACH, CURB AND GUTTER SHALL BE MONOLITHIC.
3. 24" WIDE BAND OF PAVEMENT SHALL BE REMOVED AND REPLACED. SEE NOTE 5 OF GENERAL NOTES (APPENDIX) FOR REQUIREMENTS.
4. JOINT/SCORE MARK: SEE TABLE ON DETAIL ST-8.
5. USE OF DETAIL ST-7 IS ALLOWED ONLY WITH WRITTEN APPROVAL OF TOWN ENGINEER.
6. IF THE EXISTING ON-SITE IMPROVEMENTS DO NOT MATCH THE GRADE OF THE REAR OF THE NEW DRIVEWAY, SUFFICIENT EXISTING IMPROVEMENTS SHALL BE RECONSTRUCTED TO PRODUCE A SMOOTH, USABLE SURFACE WITH A CHANGE IN GRADE NOT EXCEEDING 10%.

	APPROVED BY:	DEPRESSED COMMERCIAL DRIVEWAY FOR EX. 5' ATTACHED SIDEWALK	ST-7
	DATE:	TOWN OF LOS GATOS	PAGE: 7



NOTES:

1. CONCRETE CURB SHALL NOT ENCROACH INTO PUBLIC RIGHT-OF-WAY AND SHALL BE FLUSH AT BACK OF WALK.
2. COMMERCIAL DRIVEWAY SHALL BE INSTALLED IN ZONES DESIGNATED COMMERCIAL, INDUSTRIAL, AND RESIDENTIAL WITH 6 UNITS OR MORE.
3. 24" WIDE BAND OF PAVEMENT SHALL BE REMOVED AND REPLACED. SEE NOTE 5 OF GENERAL NOTES (APPENDIX) FOR REQUIREMENTS.
4. JOINT/SCORE MARK TABLE:

DRIVEWAY WIDTH		WEAKENED PLANE JOINT		SCORE MARKS	
MIN.	MAX.	NO. OF JOINTS	LOCATION POINT	NO. OF MARKS	LOCATION POINT
24'	30'	2	1/3, 2/3	3	1/6, 1/2, 5/6
>30'	40'	3	1/4, 1/2, 3/4	4	1/8, 3/8, 5/8, 7/8
>40'	50'	4	1/5, 2/5, 3/5, 4/5	5	1/10, 3/10, 1/2, 7/10, 9/10
		SCORE MARK REQUIRED AT DRIVEWAY SLOPE BREAK PARALLEL TO EXISTING FACE OF CURB			

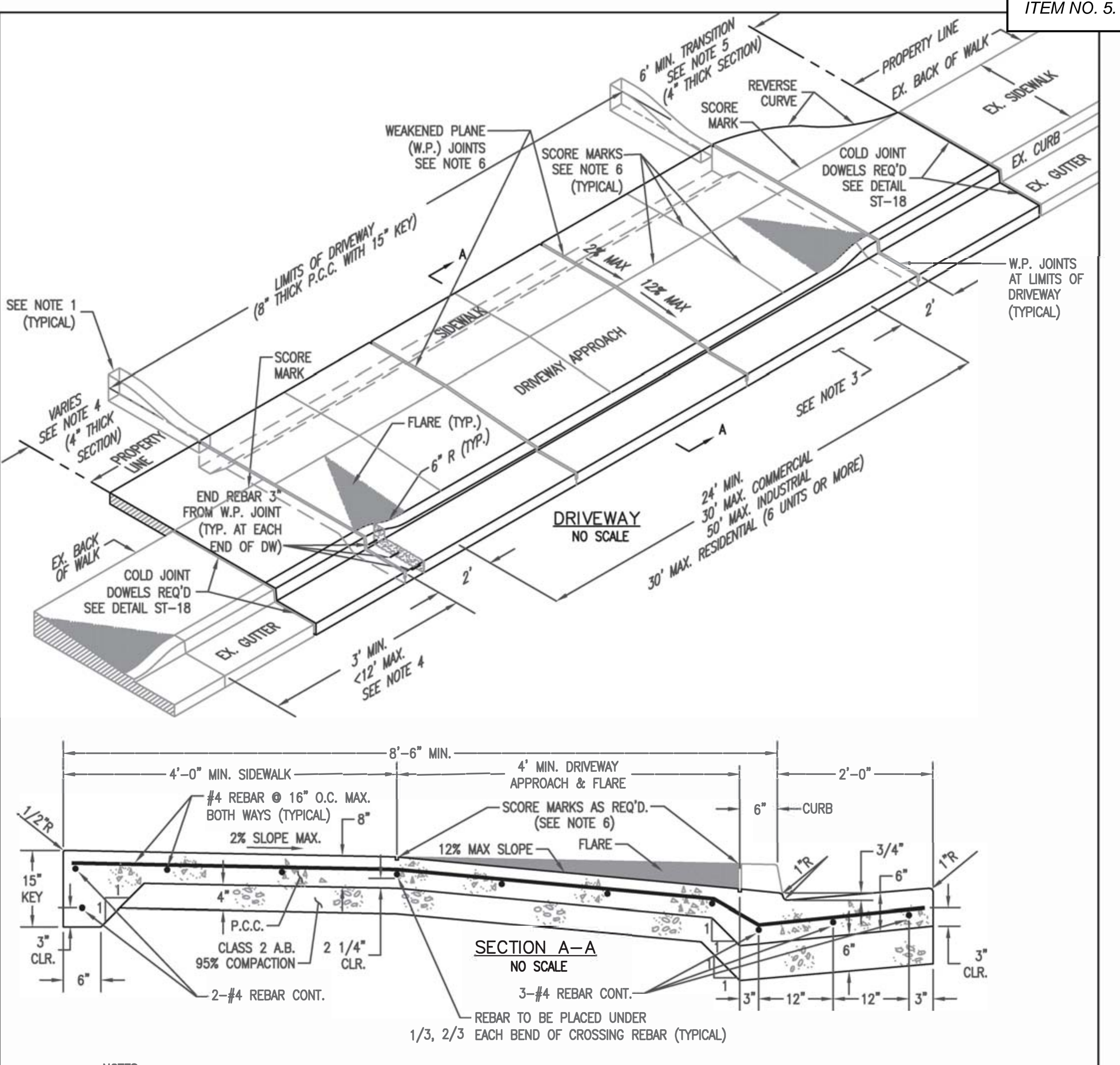
APPROVED BY:

COMMERCIAL DRIVEWAY WITH/ WITHOUT SEPARATED SIDEWALK

ST-8

TOWN OF LOS GATOS

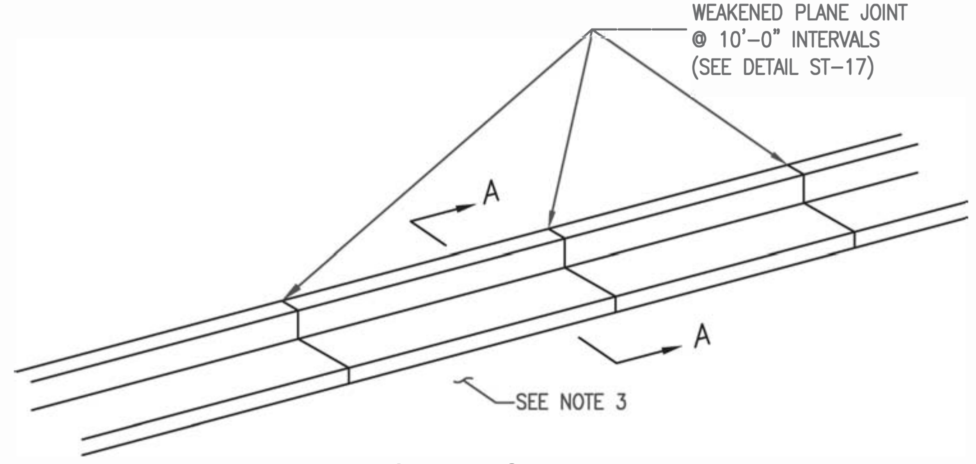
PAGE: 8



NOTES:

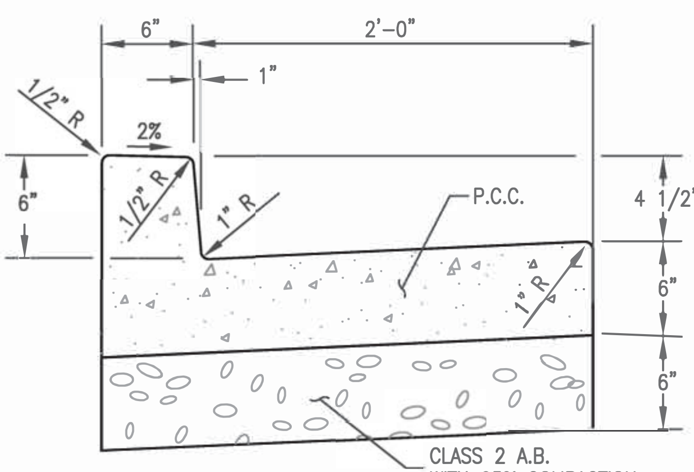
1. CONCRETE CURB SHALL NOT ENCROACH INTO PUBLIC RIGHT-OF-WAY AND SHALL BE FLUSH AT BACK OF WALK.
2. COMMERCIAL DRIVEWAY SHALL BE INSTALLED IN ZONES DESIGNATED COMMERCIAL, INDUSTRIAL, AND RESIDENTIAL WITH 6 UNITS OR MORE.
3. 24" WIDE BAND OF PAVEMENT SHALL BE REMOVED AND REPLACED. SEE NOTE 5 OF GENERAL NOTES (APPENDIX) FOR REQUIREMENTS.
4. WHERE THE DISTANCE BETWEEN NEW DRIVEWAY LIMIT AND PROPERTY LINE IS LESS THAN 6 FEET AT THE BACK OF DRIVEWAY OR LESS THAN 12 FEET FROM AN ADJACENT DRIVEWAY LIMIT AT THE BACK OF DRIVEWAY, THE SIDEWALK SHALL NOT TRANSITION. NEW SIDEWALK SHALL TERMINATE AT PROPERTY LINE OR ADJACENT DRIVEWAY TO MAINTAIN ADA PATHWAY.
5. WHERE THE DISTANCE BETWEEN NEW DRIVEWAY LIMIT AND PROPERTY LINE IS EQUAL TO OR GREATER THAN 6 FEET AT THE BACK OF DRIVEWAY OR EQUAL TO OR GREATER THAN 12 FEET FROM AN ADJACENT DRIVEWAY LIMIT AT THE BACK OF DRIVEWAY, THE SIDEWALK SHALL TRANSITION FROM BACK OF DRIVEWAY TO EXISTING SIDEWALK.
6. JOINT/SCORE MARK: SEE TABLE ON DETAIL ST-8.

TOWN OF LOS GATOS (seal)	APPROVED BY:	COMMERCIAL DRIVEWAY WITH ATTACHED SIDEWALK	ST-9
		TOWN OF LOS GATOS	PAGE: 9



CURB GUTTER

NO SCALE



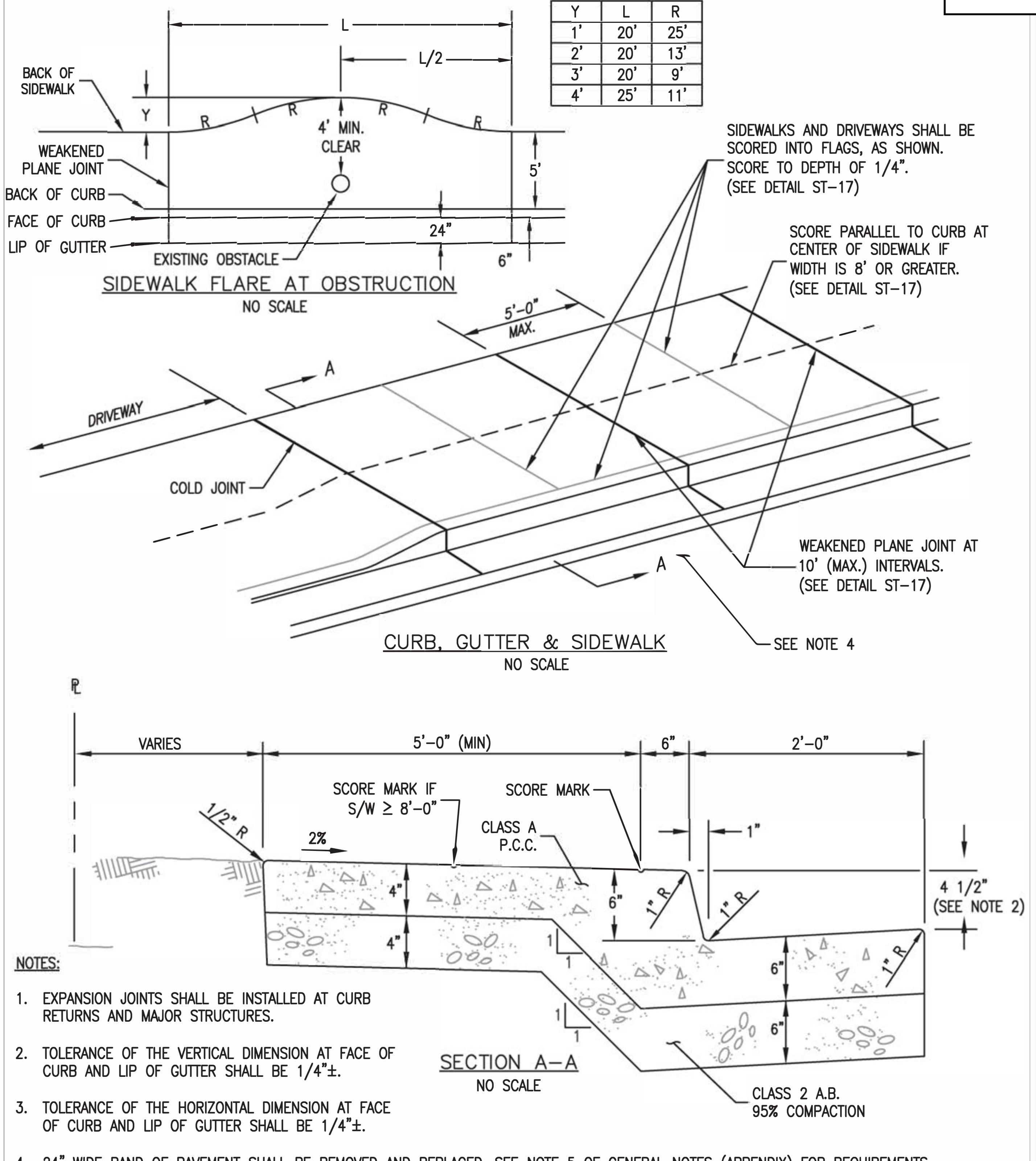
SECTION A–A

NO SCALE

NOTES:

1. EXPANSION JOINTS (SEE DETAIL ST–17) SHALL BE INSTALLED AT MAJOR STRUCTURES AND CURB RETURNS.
2. TOLERANCE OF THE VERTICAL DIMENSION AT FACE OF CURB AND LIP OF GUTTER SHALL BE 1/4"±.
3. 24" WIDE BAND OF PAVEMENT SHALL BE REMOVED AND REPLACED. SEE NOTE 5 OF GENERAL NOTES (APPENDIX) FOR REQUIREMENTS.
4. ALL RADII LESS THAN 100' SHALL USE FLEXIBLE WOOD OR METAL FORMS TO ELIMINATE ANGULAR POINTS AT 10' SECTION POINTS.
5. SAWCUT AND REMOVE 24 IN. (MIN.) STREET SECTION FOR CURB AND GUTTER INSTALLATION ON EXISTING STREETS.
6. THRU JOINTS SHALL BE PLACED ADJACENT TO CATCH BASINS, INLETS AT POINTS OF TANGENCY ON STREETS, AND AT ALLEY AND DRIVEWAY RETURNS. MAXIMUM SPACING SHALL BE 30' PRE–MOLDED, JOINT FILLER SHALL BE 1/2" WIDE AND CONFORM TO AASHTO DESIGN M213. DUMMY JOINTS SHALL BE PLACED EVERY 10'.
7. FINISHED WORK SHALL NOT VARY MORE THAN 1/8" IN GRADE AND 1/4" IN ALIGNMENT.
8. THE FINISHED CURB SHALL IMMEDIATELY BE SPRAYED WITH A TRANSPARENT CURING COMPOUND. CURB SHALL BE COVERED BY WATERPROOF PAPER OR PLASTIC MEMBRANE IN THE EVENT OF RAIN OR OTHER UNSUITABLE WEATHER. CURING TIME SHALL BE A MINIMUM OF 72 HOURS.
9. ALL CURB AND GUTTER SHALL BE PLACED ON A MIN. OF 4" AGGREGATE BASE CLASS II 95% MAX. RELATIVE COMPACTION ASTM D1557.
10. GUTTER PAN SLOPE SHALL NOT EXCEED 5% SLOPE AT PEDESTRIAN CURB RAMP ENTRY LOCATIONS. CONTRACTOR SHALL USE 1.2" (MAX.) BETWEEN LIP OF GUTTER AND FLOWLINE AT THESE LOCATIONS.
11. ALL CONCRETE SHALL INCLUDE ONE (1) POUND OF LAMP BLACK PER CUBIC YARD OF CONCRETE.

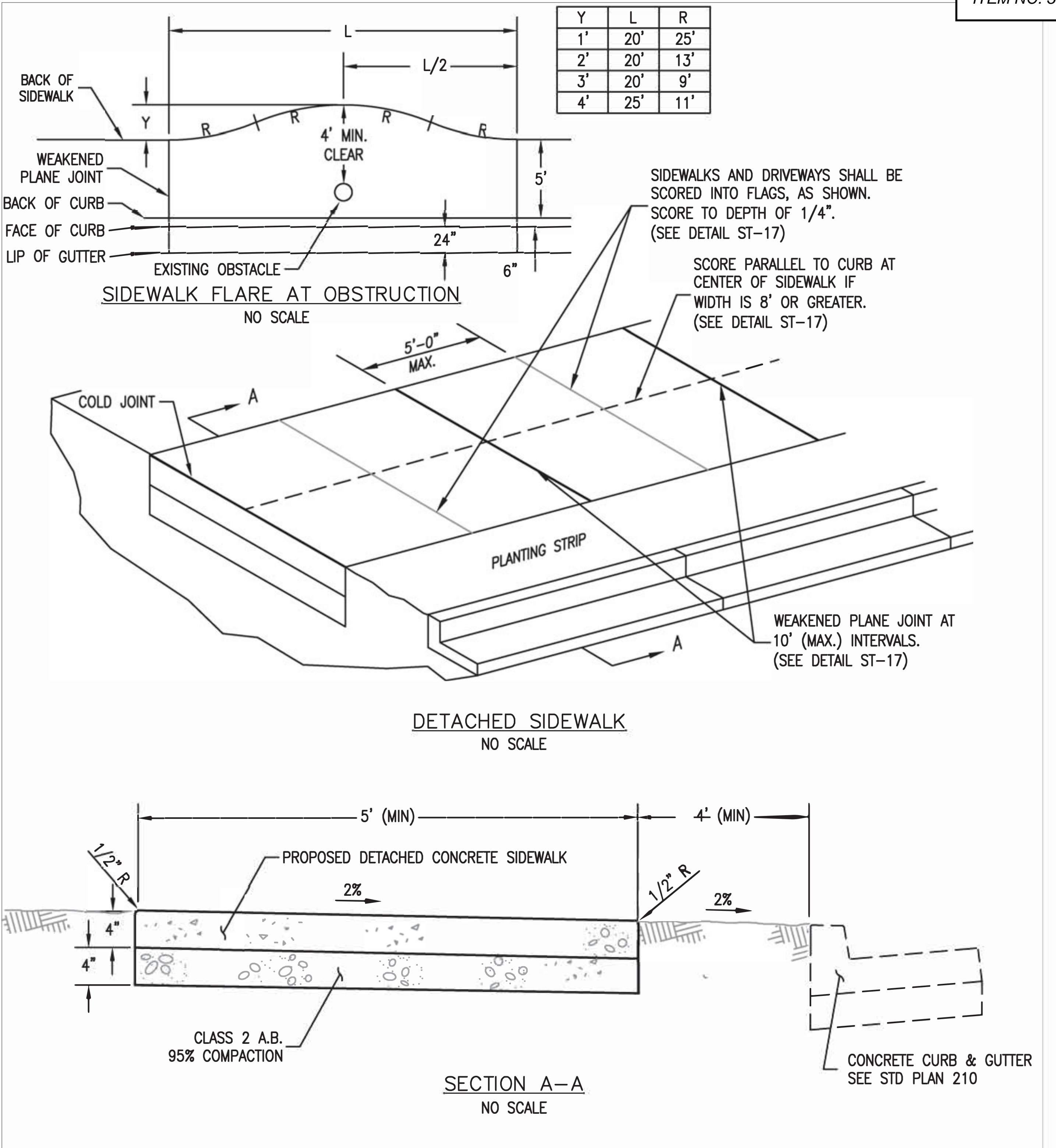
TOWN OF LOS GATOS (seal)	APPROVED BY:	CURB AND GUTTER	ST-11
		TOWN OF LOS GATOS	PAGE: 10



NOTES:

1. EXPANSION JOINTS SHALL BE INSTALLED AT CURB RETURNS AND MAJOR STRUCTURES.
2. TOLERANCE OF THE VERTICAL DIMENSION AT FACE OF CURB AND LIP OF GUTTER SHALL BE 1/4"±.
3. TOLERANCE OF THE HORIZONTAL DIMENSION AT FACE OF CURB AND LIP OF GUTTER SHALL BE 1/4"±.
4. 24" WIDE BAND OF PAVEMENT SHALL BE REMOVED AND REPLACED. SEE NOTE 5 OF GENERAL NOTES (APPENDIX) FOR REQUIREMENTS.
5. SIDEWALK SHALL BE AT LEAST 6" THICK BEHIND RESIDENTIAL DRIVEWAYS AND BEHIND ROLL-CURB AND 8" THICK BEHIND COMMERCIAL DRIVEWAYS.
6. CONCRETE SHALL INCLUDE ONE (1) POUND OF LAMP BLACK PER CUBIC YARD ON CONCRETE.

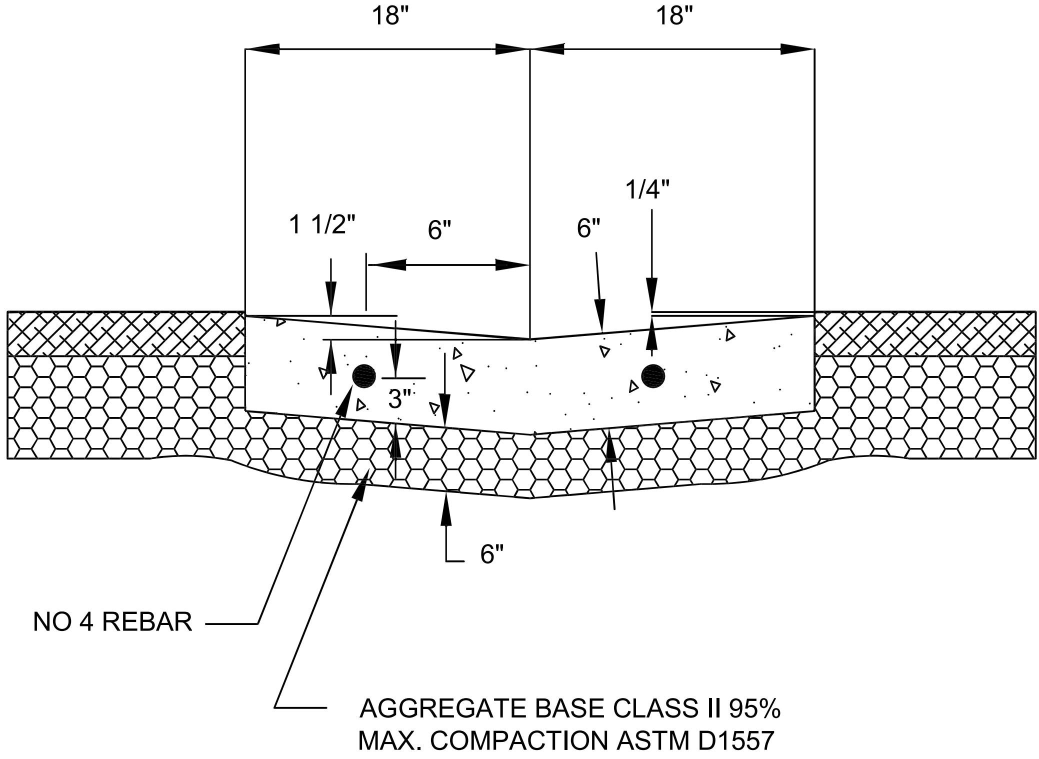
TOWN OF LOS GATOS	APPROVED BY:	MONOLITHIC CURB, GUTTER AND SIDEWALK	ST-12A
		TOWN OF LOS GATOS	PAGE: 11



NOTES:

1. SIDEWALKS SHALL BE A MINIMUM OF 4" THICK, AND SHALL BE CLASS A PORTLAND CEMENT CONCRETE.
2. SUBGRADE SHALL HAVE 95% MAXIMUM COMPACTION ASTM D1557.
3. CONCRETE SHALL INCLUDE ONE (1) POUND OF LAMP BLACK PER CUBIC YARD ON CONCRETE.

TOWN OF LOS GATOS (seal)	APPROVED BY:	DETACHED SIDEWALK & PLANTER STRIP	ST-12B
		TOWN OF LOS GATOS	PAGE: 12



NOTES:

1. EXPANSION JOINTS WITH 1/2" x 12" SLIP.
2. DOWELS AT 20 FEET INTERVALS.
3. CONCRETE SHALL BE CLASS A.
4. ALL CONCRETE SHALL INCLUDE ONE (1) POUND OF LAMP BLACK PER CUBIC YARD OF CONCRETE.

NOT TO SCALE

APPROVED BY	DATE	TOWN OF LOS GATOS	CONCRETE VALLEY GUTTER	STD. PLAN NO.
Kevin Rohani	NOVEMBER 2010			ST-212
TOWN ENGINEER				

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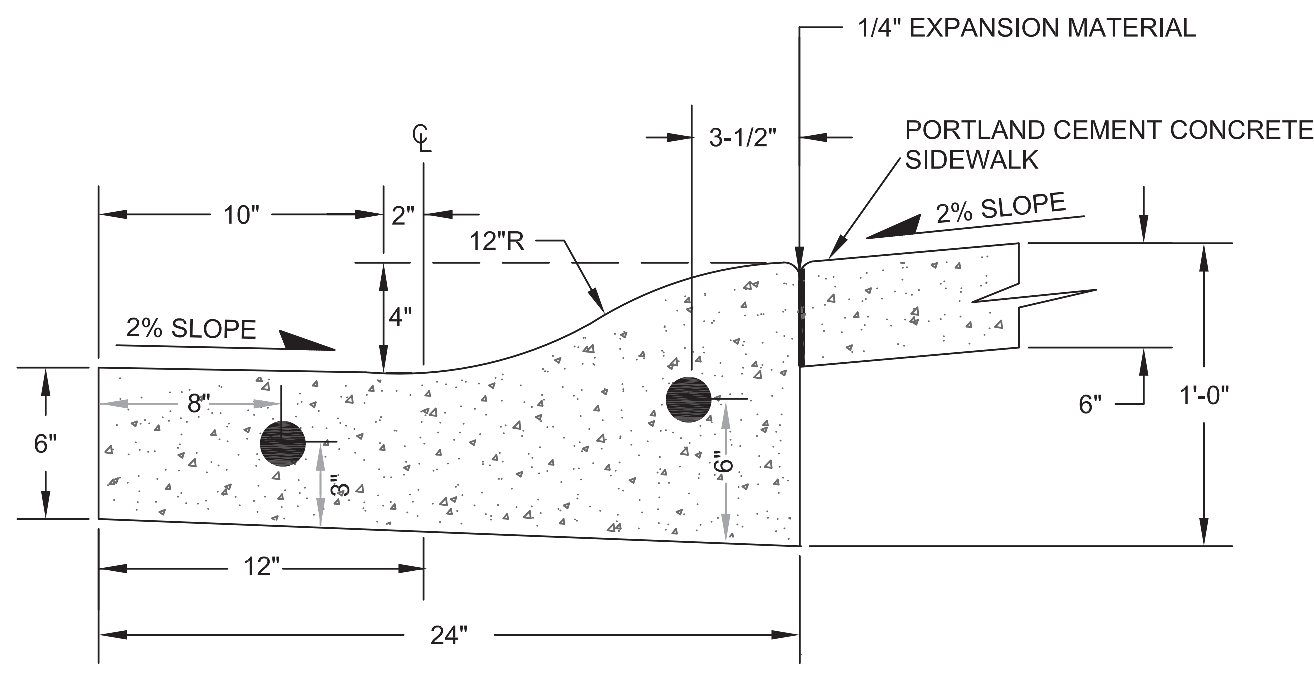


NOTES:

1. CONTRACTION JOINTS OF ONE OF THESE TYPES SHOWN ABOVE TO BE PLACED 10' C/C. COMPLETELY SEVER THE STRUCTURE TO THE POINTS SHOWN. JOINTS MAY BE MADE BY INSERTING MIN. 3/16" BITUMINOUS FILLER DUMMY JOINTS. JOINTS SHALL BE CLEANED AND EDGED.

2. FINISHED WORK SHALL NOT VARY MORE THAN 1/8 " IN GRADE AND 1/4" IN ALIGNMENT.

3. EXPOSED SURFACES SHALL BE LIGHT BROOM FINISH.

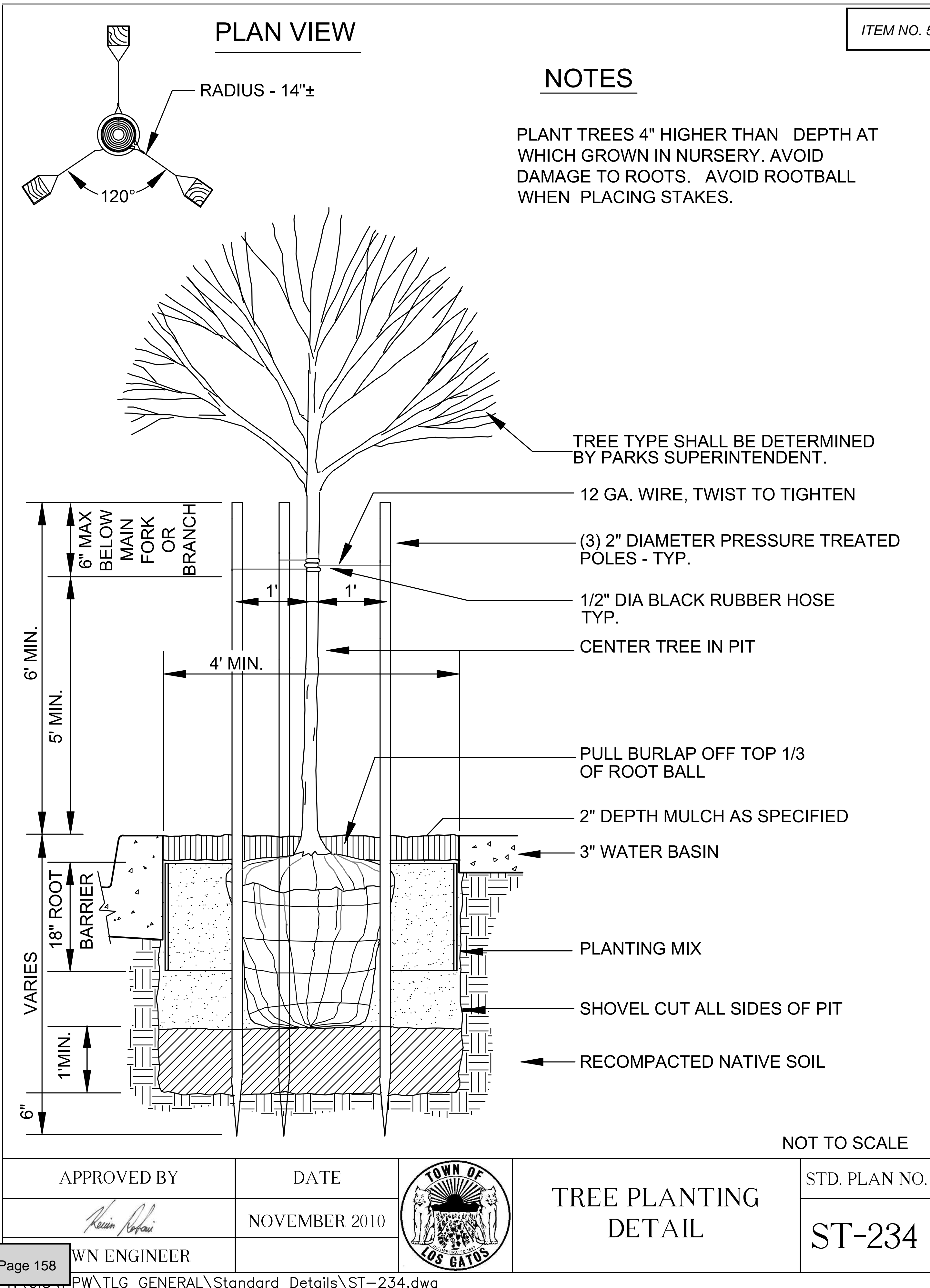
4. SIDEWALKS BEHIND ROLLED CURBS SHALL BE A MINIMUM OF 6" THICK.

5. CONCRETE SHALL INCLUDE ONE (1) POUND OF LAMP BLACK PER CUBIC YARD OF CONCRETE.

6. #4 REBAR SHALL BE EXTENDED ALONG LENGTH OF GUTTER.

NOT TO SCALE

	DRAWN BY: CCS	CONCRETE ROLLED CURB	ST-215
	CHECKED BY: DRAFT		
	APPROVED BY:		
	DATE: 2021	TOWN OF LOS GATOS	PAGE: XX



APPROVED BY	DATE		TREE PLANTING DETAIL	STD. PLAN NO.
[signature]	NOVEMBER 2010			ST-234
TOWN ENGINEER				

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TREE SPECIFICATIONS

All 15 gal. trees must meet the following minimum specifications:

1. HEIGHT: 7 - 8 feet high planted in the ground.
2. CALIPER: 1-1/2 inches, measured 6 inches from the base.
3. BRANCHING NEED: Minimum spread of 2 - 3 feet.

Any exception to the above must be approved by the Town Arborist.

All planting stock must must have the approval of the Town Arborist.

PLANTING SEQUENCE

1. Dig the hole twice as large in diameter and 1-1/2 times as deep as the container in which the plant was delivered. Provide a 6 inch minimum clearance all around the rootball.

2. The existing soil area is to be removed to a depth of 2 feet and replaced with U.C. Ag. mix or approved equivalent. U.C. Ag. mix shall be combined with existing soil, 1/3 mix, 2/3 native soil.

3. Fill hole with the backfill mix to a level 1 inch below the curb.

4. Place 3 Agriform Planting Tablets per tree at equidistant spacing. Tablets shall be 21 grams each with a guaranteed test analysis of 20-10-5.

5. Remove the rootball carefully from the container by supporting it from below. Sever any circling roots (3/16 inch or greater) with sharp shears or knife. If the rootball is dense or compacted, carefully loosen the roots at the side and bottom of the rootball. Do not pull the rootball apart. The severing of large roots will encourage new roots initiating at the cuts.

6. Fill around the rootball with backfill and pack the soil with the shovel handle as you fill. Be careful not to disturb the rootball itself.

7. Use the remaining native soil to create a basin appropriate to the site.

APPROVED BY	DATE	TOWN OF LOS GATOS	TREE PLANTING SPECIFICATIONS	STD. PLAN NO.
[signature]	NOVEMBER 2010			ST-235
TOWN ENGINEER				

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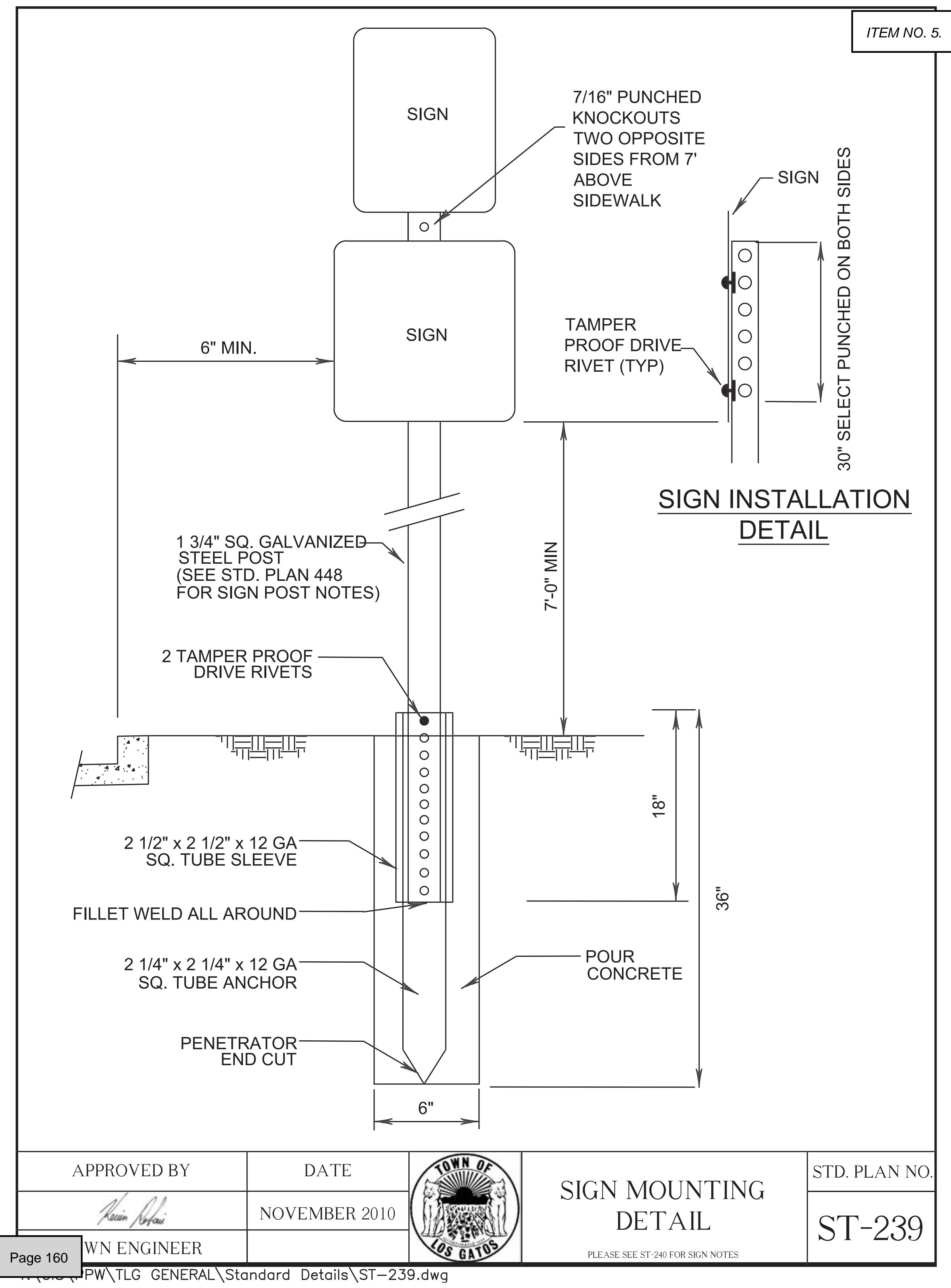
SIGN
7/16" PUNCHED KNOCKOUTS TWO OPPOSITE SIDES FROM 7' ABOVE SIDEWALK
SIGN
SIGN
30" SELECT PUNCHED ON BOTH SIDES
6" MIN.
TAMPER PROOF DRIVE RIVET (TYP)
SIGN INSTALLATION DETAIL
1 3/4" SQ. GALVANIZED STEEL POST (SEE STD. PLAN 448 FOR SIGN POST NOTES)
7'-0" MIN
2 TAMPER PROOF DRIVE RIVETS
18"
2 1/2" x 2 1/2" x 12 GA SQ. TUBE SLEEVE
36"
FILLET WELD ALL AROUND
2 1/4" x 2 1/4" x 12 GA SQ. TUBE ANCHOR
POUR CONCRETE
PENETRATOR END CUT
6"
APPROVED BY
DATE
NOVEMBER 2010
TOWN ENGINEER
TOWN OF LOS GATOS
SIGN MOUNTING DETAIL
PLEASE SEE ST-240 FOR SIGN NOTES
STD. PLAN NO.
ST-239
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NOTES:

1 SIDEWALKS AND PAVED AREAS SHALL BE CORE DRILLED BEFORE ATTEMPTING SIGN INSTALLATION.

2 SIGNS SHALL HAVE A MIN. HEIGHT OF 7' FROM THE NEAR EDGE OF SIGN TO THE SIDEWALK GRADE, OR TOP OF CURB, AND A 2' LATERAL CLEARANCE FROM THE FACE OF CURB TO THE NEAR EDGE OF SIGN. SIGN LOCATION SHALL BE AS SHOWN ON THE PLANS AND PER M.U.T.C.D.

3 REFLECTIVE SHEETING SHALL BE MANUFACTURED BY 3M TRAFFIC CONTROL MATERIALS DIVISION.

a. REGULATORY AND WARNING SIGNS SHEETING SHALL BE 3M DIAMOND GRADE VIP TYPE MATERIAL OR EQUIVALENT. SIZE OF SIGNS SHALL BE NO LESS THAN 30x30 UNLESS SPECIFIED BY THE TOWN ENGINEER.

SIGN POST NOTES:

4 ALL TUBING MATERIAL SHALL BE "ULTI-MATE" SELECT PUNCH TYPE GALVANIZED STEEL (ASTM A70 GRADE 33) OR APPROVED EQUIVALENT. POST SHALL BE POWDER-COATED BLACK.

5 TUBING SHALL BE ROLL FORMED FROM STEEL CONFORMING TO STANDARD SPECIFICATIONS FOR STEEL SHEET, A.S.T.M. DESIGNATION A653-94, STRUCTURAL QUALITY, GRADE 50 MODIFIED TO GRADE 55.

6 MATERIAL SHALL BE HOT-DIP GALVANIZED (ZINC COATED), COATING DESIGNATION G-90, WITH ADDED CHEMICAL TREATMENT FOR ENHANCED CORROSION PROTECTION.

7 THE CROSS SECTION OF THE POST SHALL BE SQUARE TUBING, CAREFULLY FORMED FROM 14 GA. STEEL SHEET AND WELDED SO AS THE WELD FLASH DOES NOT INTERFERE WITH THE TELESCOPING PROPERTIES. SIZE OF POST SHALL BE 1.75" x 1.75".

8 HOLE DIAMETER SHALL BE 7/16" (PLUS OR MINUS 1/64") ON 1" CENTERS ON TWO OPPOSITE SIDES. HOLES SHALL BE ON CENTERLINE OF EACH SIDE IN TRUE ALIGNMENT AND OPPOSITE TO EACH OTHER. TOLERANCE ON THE HOLE SPACING IS PLUS OR MINUS 1/8" IN 20'. FIRST SET OF HOLES SHALL BE 1/2" FROM THE TOP OF THE ANCHOR. ANCHOR SHALL HAVE EITHER 6 OR 12 SETS OF HOLES. THE BOTTOM OF THE ANCHOR SHALL HAVE A PENETRATOR POINT.

9 CONCRETE SHALL BE POURED AROUND POST.

APPROVED BY	DATE	TOWN OF LOS GATOS	SIGN NOTES	STD. PLAN NO.
[signature]	NOVEMBER 2010			ST-240
TOWN ENGINEER				

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Attachment C
Sample Contract

Contract

This public works contract ("Contract") is entered into by and between the Town of Los Gatos ("Town") and ______________________________________ ("Contractor"), for work on the <Project Title> ("Project").

The parties agree as follows:

1. Award of Contract. In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On _____________, 20___, Town authorized award of this Contract to Contractor for the amount set forth in Section 4, below. Town has elected to include the following Project alternate(s) in the Contract: _____________________________________ <If the bid documents request bid alternates and Town elects to include alternates in the Contract, identify the additive or deductive alternates. If the Contract does not include alternates, write "No alternates" in the space above.>

2. Contract Documents. The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.

- **2.1** Notice Inviting Bids;
- **2.2** Instructions to Bidders;
- **2.3** Addenda, if any;
- **2.4** Bid Proposal and attachments thereto;
- **2.5** Contract;
- **2.6** Payment and Performance Bonds;
- **2.7** General Conditions;
- **2.8** Special Conditions;
- **2.9** Project Plans and Specifications;
- **2.10** Change Orders, if any;
- **2.11** Notice of Potential Award;
- **2.12** Notice to Proceed;
- **2.13** Locations of Work (**Appendix A**); and
- **2.14** Standard Plans (**Appendix B**); and
- **2.15** The 2010 Caltrans Standard Specifications, as revised.

3. Contractor's Obligations. Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional

and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, Town will pay Contractor $___________________ ("Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.

5. **Time for Completion.** Contractor will fully complete the Work for the Project, meeting all requirements for Final Completion, within 60 Working Days from the start date set forth in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.

6. **Liquidated Damages.** As further specified in Section 5.4 of the General Conditions, if Contractor fails to complete the Work within the Contract Time, Town will assess liquidated damages in the amount of $XXXX per day for each day of unexcused delay in achieving Final Completion, and such liquidated damages may be deducted from Town's payments due or to become due to Contractor under this Contract.

7. **Labor Code Compliance.**

 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.

 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at http://www.dir.ca.gov/DLSR.

 7.3 **DIR Registration.** Town may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.

8. **Workers' Compensation Certification.** Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that

code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. **Conflicts of Interest.** Contractor, its employees, Subcontractors, and agents may not have, maintain, or acquire a conflict of interest in relation to this Contract in violation of any Town ordinance or requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.

10. **Independent Contractor.** Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of Town and are not entitled to participate in any health, retirement, or any other employee benefits from Town.

11. **Notice.** Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

Town:

Finance Department
Town of Los Gatos
110 E. Main St.
Los Gatos, CA 95030
AP@losgatosca.gov

Copy to: Janice Chin, Assistant Engineer
jchin@losgatosca.gov

Contractor:

Name: ______________________________________
Address: ____________________________________
Town/State/Zip: ________________________________
Phone: ______________________________________
Attn: ____
Email: _______________________________________
Copy to: _____________________________________

12. **General Provisions.**

12.1 Assignment and Successors. Contractor may not assign its rights or obligations under this Contract, in part or in whole, without Town's written consent. This Contract is binding on Contractor's and Town's lawful heirs, successors and permitted assigns.

12.2 Third Party Beneficiaries. There are no intended third party beneficiaries to this Contract.

12.3 Governing Law and Venue. This Contract will be governed by California law and venue will be in the Santa Clara County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure § 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Santa Clara County, California.

12.4 Amendment. No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

12.5 Integration. This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between Town and Contractor.

12.6 Severability. If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.

12.7 Iran Contracting Act. If the Contract Price exceeds $1,000,000, Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.

12.8 Authorization. Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporations Code § 313.

[Signatures are on the following page.]

The parties agree to this Contract as witnessed by the signatures below:

TOWN:

s/________________________________

____
Name, Title

Date: ___________________________

Approved as to form:

s/__________________________________

____
Name, Title

Date: ______________________________

Attest:

s/________________________________

____
Name, Title

Date: ___________________________

CONTRACTOR: ____
Business Name

s/________________________________

Seal:

____
Name, Title

Date: ____________________________

Second Signature (See Section 12.8):

s/________________________________

____
Name, Title

Date: ____________________________

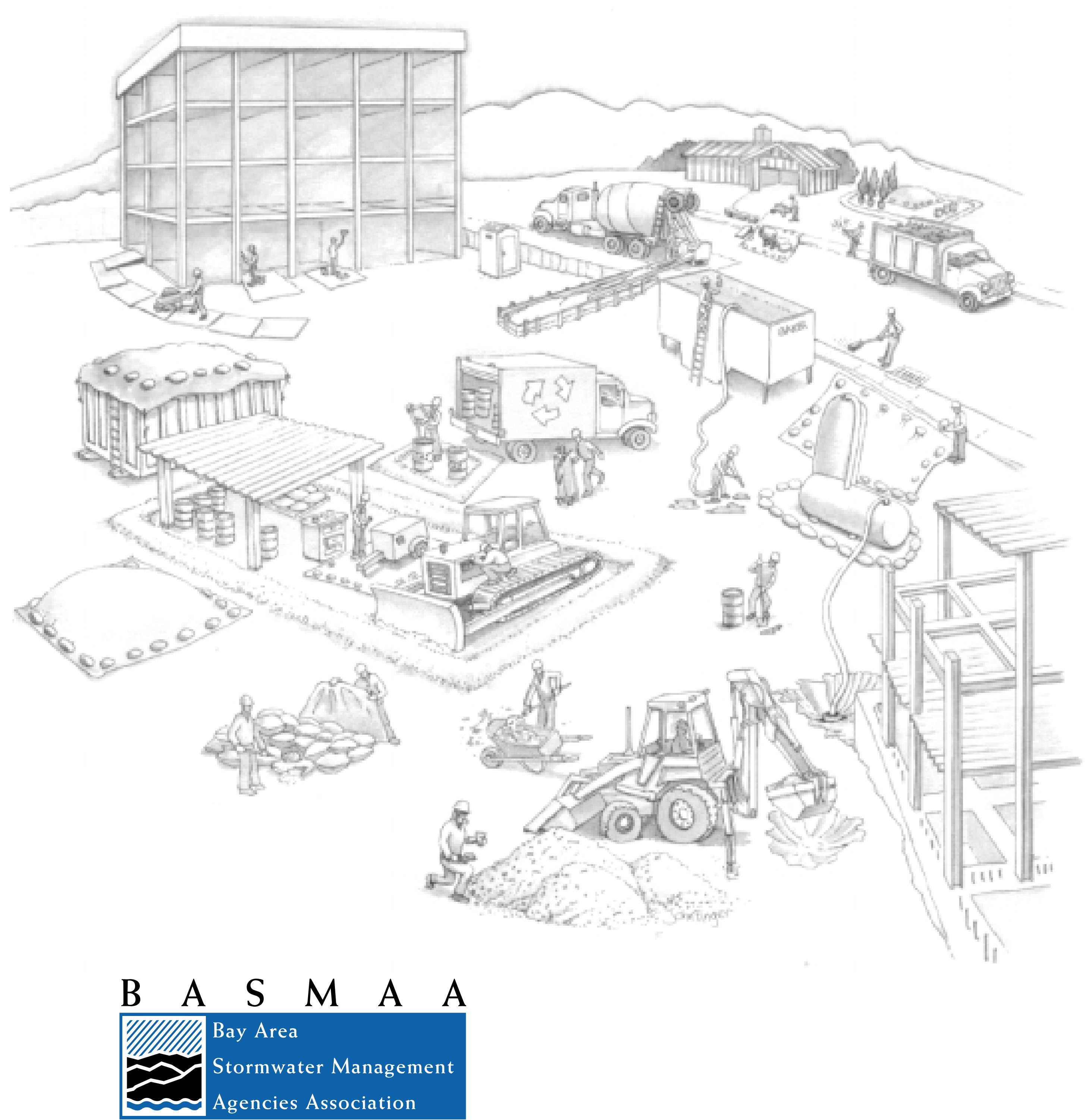
____
Contractor's California License Number(s) and Expiration Date(s)

END OF CONTRACT

Attachment D
Blueprint for a Clean Bay

Blueprint for a Clean Bay

Best Management Practices to Prevent Stormwater Pollution from Construction-Related Activities



B A S M A A

Bay Area
Stormwater Management
Agencies Association

The Bay Area Stormwater Management Agencies Association (BASMAA), a consortium of Bay Area municipalities in Alameda, Contra Costa, Marin, San Mateo, Santa Clara, Solano, and Sonoma Counties, developed this booklet as a resource for all general contractors, home builders, and subcontractors working on construction sites.

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Introduction

Stormwater pollution is a national environmental problem. In California, stormwater runoff is a major source of water pollution. To help combat the problems of stormwater pollution, federal and state governments have developed a program for monitoring and permitting discharges to municipal storm drain systems, creeks, and water bodies such as San Francisco Bay.

Municipalities in the Bay Area are required by the Clean Water Act to develop stormwater management programs that include requirements for construction activities. Your construction project will need to comply with local municipal requirements. If your construction activity will disturb one acre or more, you must also obtain coverage under the General Construction Activity Permit (see Requirements for Dischargers).

Blueprint for a Clean Bay is an introductory guide to stormwater quality control on construction sites. It contains several principles and techniques that you can use to help prevent stormwater pollution. BASMAA has developed this booklet as a resource for all general contractors, home builders, and subcontractors working on construction sites.

Blueprint for a Clean Bay is not a design manual or a Stormwater Pollution Prevention Plan (SWPPP) (see Requirements for Dischargers). For more information on the General Permit, designing stormwater quality controls, or producing a Stormwater Pollution Prevention Plan, please refer to:

- ❏ the California Stormwater Quality Association (CASQA) Stormwater Best Management Practice Handbook for Construction,
- ❏ the Regional Water Quality Control Board's (RWQCB) Guidelines for Construction Projects, or
- ❏ consult your local program or the State Water Resources Control Board (SWRCB) (see below).

Please note that this booklet is concerned only with the management of construction sites and activities during construction.

Stormwater Pollution

Storm Drain System

Stormwater or runoff from sources like sprinklers and hoses flows over the ground into the storm drain system. In the San Francisco Bay Area, storm drain systems consist of gutters, storm drains, underground pipes, open channels, culverts, and creeks. Storm drain systems are designed to drain directly to the Bay, Delta, or Pacific Ocean with no treatment.

Pollution From Construction Sites

Stormwater runoff is part of a natural hydrologic process. However, land development and construction activities can significantly alter natural drainage patterns and pollute stormwater runoff. Runoff picks up pollutants as it flows over the ground or paved areas and carries these pollutants into the storm drain system. Common sources of pollutants from construction sites include: sediments from soil erosion; construction materials and waste (e.g., paint, solvents, concrete, drywall); landscaping runoff containing fertilizers and pesticides; and spilled oil, fuel, and other fluids from construction vehicles and heavy equipment.

Adverse Effects from Stormwater Pollution

Stormwater pollution is a major source of water pollution in California. It can cause declines in fisheries, damage habitats, and limit water recreation activities. Stormwater pollution poses a serious threat to the overall health of the ecosystem.

For more information on stormwater requirements, call the State Water Resources Control Board's Stormwater Information Line at (916) 341-5537 or your local program.

Requirements for Dischargers

Municipal Stormwater Program

Municipalities in the Bay Area are required by federal regulations to develop programs to control the discharge of pollutants to the storm drain system, including the discharge of pollutants from construction sites and areas of new development or significant redevelopment. As a result, your development and construction projects are subject to new requirements designed to improve stormwater quality such as, expanded plan check and review, contract specifications, stormwater treatment measures, runoff monitoring, and increased site inspection. For more information on municipal requirements, please contact the municipal representative listed on the back cover of this booklet.

Projects Equal To Or Greater Than 1 Acre

If your construction activity will disturb one acre or more, you must obtain coverage under the General Construc-tion Activity Storm Water Permit (General Construction Permit) issued by the SWRCB for stormwater discharges associated with construction activity. To obtain coverage under the General Permit, a Notice of Intent (NOI) must be filed with the SWRCB. The General Construction Permit requires you to prepare and carry out a “Stormwater Pollution Prevention Plan” or SWPPP. Your SWPPP must identify appropriate stormwater pollution prevention measures or best management practices (BMPs), like the ones described in this booklet, to reduce pollutants in stormwater discharges from the construction site both during and after construction is complete. A best management practice or BMP is defined as any program, technology, process, practice, operating method, measure, or device that controls, prevents, removes, or reduces pollution. The General Permit also requires permanent stormwater quality controls (see BASMAA’s Start at the Source manual and CASQA’s BMP Handbooks New Development and Redevelopment for examples). You should keep a copy of your SWPPP readily available onsite throughout construction.

Projects Less Than 1 Acre

If your project is less than one acre, you may still need to use BMPs to comply with local municipal requirements. Check with the local stormwater program (listed on back cover), or planning or engineering department for details.

Best Management Practic

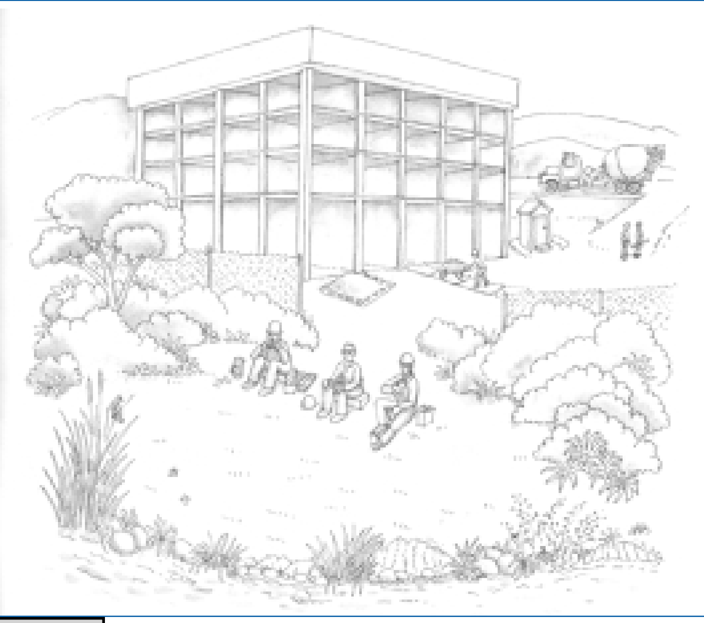
General Practices

The following are some general principles that can significantly reduce pollution from construction activity and help make compliance with stormwater regulations easy:

- ❑ Identify all storm drains, drainage swales and creeks located near the construction site and make sure all subcontractors are aware of their locations to prevent pollutants from entering them.
- ❑ Clean up leaks, drips, and other spills immediately so they do not contact stormwater.
- ❑ Refuel vehicles and heavy equipment in one designated location on the site and take care to clean up spills immediately.
- ❑ Wash vehicles at an appropriate off-site facility. If equipment must be washed on-site, do not use soaps, solvents, degreasers, or steam cleaning equipment, and prevent wash water from entering the storm drain. If possible, direct wash water to a low point where it can evaporate and/or infiltrate.
- ❑ Never wash down pavement or surfaces where materials have spilled. Use dry cleanup methods whenever possible.
- ❑ Avoid contaminating clean runoff from areas adjacent to your site by using berms and/or temporary or permanent drainage ditches to divert water flow around the site. Reduce stormwater runoff velocities by constructing temporary check dams and/or berms where appropriate.
- ❑ Protect all storm drain inlets using filter fabric cloth or other best management practices to prevent sediments from entering the storm drainage system during construction activities.
- ❑ Keep materials out of the rain — prevent runoff pollution at the source. Schedule clearing or heavy earth moving activities for periods of dry weather. Cover exposed piles of soil, construction materials and wastes with plastic sheeting or temporary roofs. Before it rains, sweep and remove materials from surfaces that drain to storm drains, creeks, or channels.

For more information on the General Permits, call the State Water Resources Control Board’s Stormwater Information Line at (916) 341-5537 or your local program.

- ❑ Keep pollutants off exposed surfaces. Place trash cans around the site to reduce litter. Dispose of non-hazardous construction wastes in covered dumpsters or recycling receptacles.
- ❑ Practice source reduction — reduce waste by ordering only the amount you need to finish the job.
- ❑ Do not over-apply pesticides or fertilizers and follow manufacturers instructions for mixing and applying materials.
- ❑ Recycle leftover materials whenever possible. Materials such as concrete, asphalt, scrap metal, solvents, degreasers, cleared vegetation, paper, rock, and vehicle maintenance materials such as used oil, antifreeze, batteries, and tires are recyclable (check with the local planning or building department for more information).
- ❑ Dispose of all wastes properly. Materials that cannot be reused or recycled must be taken to an appropriate landfill or may require disposal as hazardous waste. Never throw debris into channels, creeks or into wetland areas. Never store or leave debris in the street or near a creek where it may contact runoff.
- ❑ Illegal dumping is a violation subject to a fine and/or time in jail. Be sure that trailers carrying your materials are covered during transit. If not, the hauler may be cited and fined.
- ❑ Train your employees and inform subcontractors about the stormwater requirements and their own responsibilities.



Specific Practices

Following is a summary of specific best management practices for erosion and sediment control and contractor activities. For more information on erosion and sediment control BMPs and their design, please refer to the RWQCB Erosion and Sediment Control Field Manual (August 2002), the CASQA Stormwater Best Management Practice Handbook for Construction (January 2003), and the Association of Bay Area Governments (ABAG) Manual of Standards for Erosion & Sediment Control Measures (May 1995).

Erosion Prevention and Sediment Control

Prevent erosion

Soil erosion is the process by which soil particles are removed from the land surface, by wind, water and/or gravity. Soil particles removed by stormwater runoff are pollutants that when deposited in local creeks, lakes, Bay or Delta, can have negative impacts on aquatic habitat. Exposed soil after clearing, grading, or excavation is easily eroded by wind or water. The following practices will help prevent erosion from occurring on the construction site:

- ❑ Plan the development to fit the topography, soils, drainage pattern and natural vegetation of the site.
- ❑ Delineate clearing limits, easements, setbacks, sensitive or critical areas, trees, drainage courses, and buffer zones to prevent excessive or unnecessary disturbances and exposure.
- ❑ Phase grading operations to reduce disturbed areas and time of exposure.
- ❑ Avoid excavation and grading during wet weather.
- ❑ Limit on-site construction routes and stabilize construction entrance(s) and exit(s).
- ❑ Remove existing vegetation only when absolutely necessary.
- ❑ Construct diversion dikes and drainage swales to channel runoff around the site.
- ❑ Use berms and drainage ditches to divert runoff around exposed areas. Place diversion ditches across the top of cut slopes.

- ❑ Plant vegetation on exposed slopes. Where replanting is not feasible, use erosion control blankets (e.g., jute or straw matting, glass fiber or excelsior matting, mulch netting).
- ❑ Consider slope terracing with cross drains to increase soil stability.
- ❑ Cover stockpiled soil and landscaping materials with secured plastic sheeting and divert runoff around them.
- ❑ As a back-up measure, protect drainage courses, creeks, or catch basins with fiber rolls, silt fences, sand/gravel bags and/or temporary drainage swales.
- ❑ Once grading is completed, stabilize the disturbed areas using permanent vegetation as soon as possible. Use temporary erosion controls until vegetation is established.
- ❑ Conduct routine inspections of erosion control measures especially before and immediately after rainstorms, and repair if necessary.

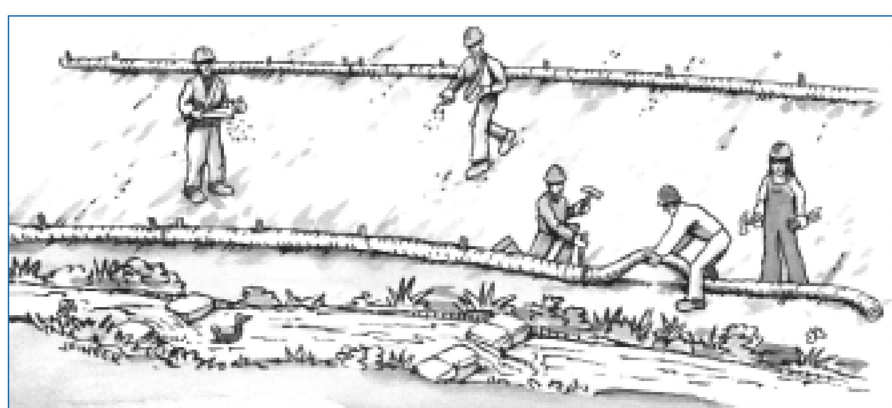
Control sediment

Sedimentation is defined as the process of depositing sediments carried away by runoff. Sediments consist of soil particles, clays, sands, and other minerals. The purpose of sediment control practices is to remove sediments from stormwater before they are transported off-site or reach a storm drain inlet or nearby creek. The most effective sediment control practices reduce runoff velocity and trap or detain runoff allowing sediments to settle out.

- ❑ Use terracing, rip rap, sand/gravel bags, rocks, fiber rolls, and/or temporary vegetation on slopes to reduce runoff velocity and trap sediments. Do not use asphalt rubble or other demolition debris for this purpose.
- ❑ Use check dams in temporary drains and swales to reduce runoff velocity and promote sedimentation.
- ❑ Protect storm drain inlets from sediment-laden runoff. Storm drain inlet protection devices include sand/gravel bag barriers, filter fabric fences, block and gravel filters, catch basin filter inserts, excavated drop inlet sediment traps, or a combination of these.
- ❑ Collect and detain sediment-laden runoff in sediment traps (an excavated or bermed area or constructed device) to allow sediments to settle out prior to discharge.
- ❑ Use sediment controls and filtration to remove sediments from dewatering discharges.
- ❑ Prevent construction vehicle tires from tracking soil onto adjacent streets by constructing a temporary stone pad with a filter fabric underliner near the site exit where dirt and mud can be removed.
- ❑ When cleaning sediments from streets, driveways and paved areas on construction sites, use dry sweeping methods where possible. If water must be used to flush pavement, collect runoff to settle out sediments and protect storm drain inlets.

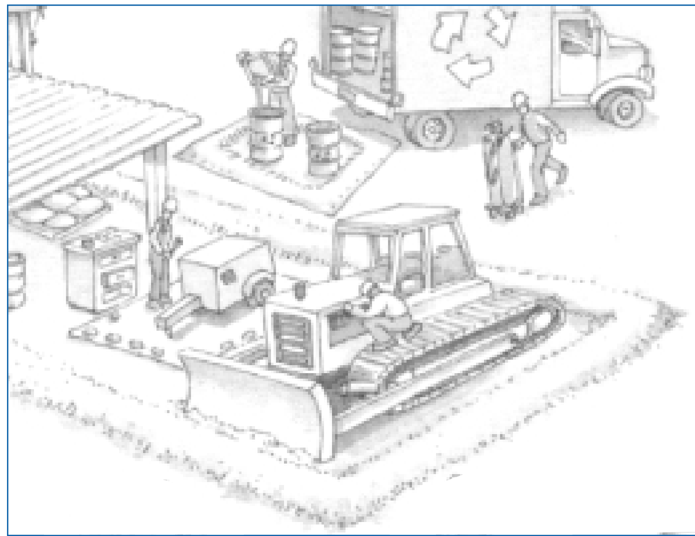
Note: Performance of erosion and sediment controls is dependent on proper installation, routine inspections and maintenance of the controls. Straw bale barriers are an example of a BMP that has not been as effective as expected due to improper use. Most of the BMPs described above are temporary and if left alone can quickly fall into disrepair and/or become ineffective. Routine inspections and maintenance, particularly before and after a storm event, must be part of any erosion and sediment control plan.

The RWQCB's Field Manual, the CASQA Stormwater Best Management Practice Handbook for Construction, and the ABAG Manual of Standards for Erosion and Sediment Control provide specific details and design criteria for erosion and sediment control plans.



Drainage swales channel runoff around a construction site. Planting temporary vegetation on freshly graded areas, and trenching and staking fiber rolls and/or silt fences downslope are common techniques for preventing erosion and controlling sediment.

Best Management Practices



Make sure equipment repair area is bermed or well away from creeks and storm drains.

General Site Maintenance

Prevent spills and leaks

Poorly maintained vehicles and heavy equipment leaking fuel, oil, antifreeze, or other fluids on the construction site are common sources of stormwater pollution and soil contamination. Construction material spills can also cause serious problems. Careful site planning, preventive maintenance, and good materials handling practices can eliminate most spills and leaks.

- ❑ Maintain all vehicles and heavy equipment. Inspect frequently for and repair leaks.
- ❑ Designate specific areas of the construction site, well away from creeks or storm drain inlets, for vehicle and equipment parking and routine maintenance.
- ❑ Perform major maintenance, repair jobs and vehicle and equipment washing off-site when feasible, or in designated and controlled areas on-site.
- ❑ If you must drain and replace motor oil, radiator coolant, or other fluids on-site, use drip pans or drop cloths to catch drips and spills. Collect all spent fluids, store in labeled separate containers, and recycle whenever possible. Note that in order to be recyclable, such liquids must not be mixed with other fluids. Non-recycled fluids generally must be disposed of as hazardous wastes.

Clean up spills immediately after they happen

When vehicle fluids or materials such as paints or solvents are spilled, cleanup should be immediate, automatic, and routine.

- ❑ Sweep up spilled dry materials (e.g., cement, mortar, or fertilizer) immediately. Never attempt to "wash them away" with water, or bury them. Use only minimal water for dust control.
- ❑ Clean up liquid spills on paved or impermeable surfaces using "dry" cleanup methods (e.g., absorbent materials like cat litter, sand or rags).
- ❑ Clean up spills on dirt areas by digging up and properly disposing of the contaminated soil.

Clean up spills on dirt areas by removing contaminated soil.

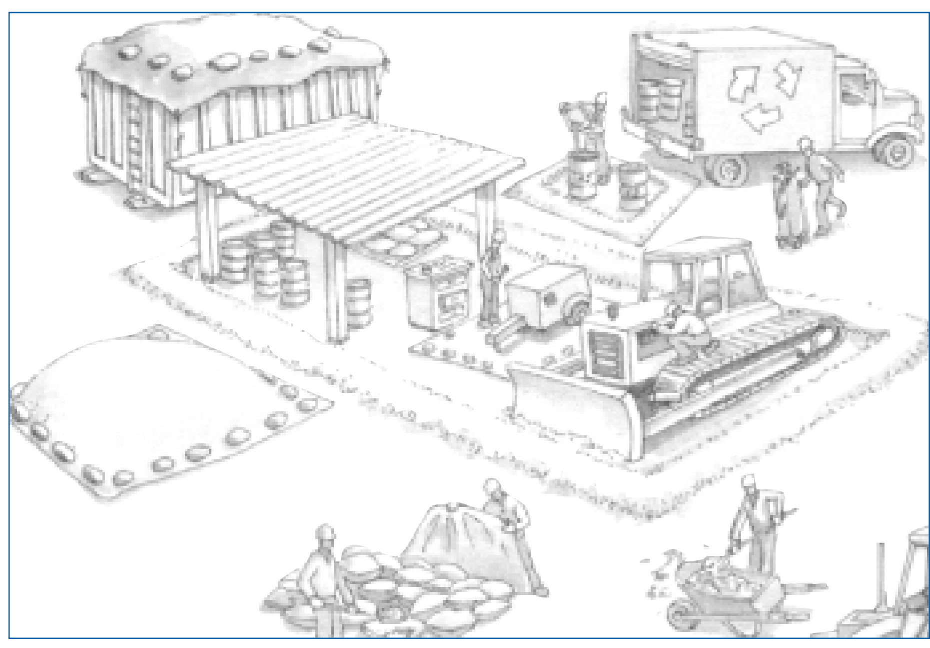
- ❑ Report significant spills to the appropriate spill response agencies immediately (See reference list on the back cover of this booklet for more information).

Note: Used cleanup rags that have absorbed hazardous materials must either be sent to a certified industrial laundry or dry cleaner, or disposed of through a licensed hazardous waste disposal company.

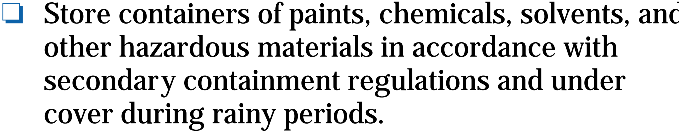
Store materials under cover

Wet and dry building materials with the potential to pollute runoff should be stored under cover and/or surrounded by berms when rain is forecast or during wet weather.

- ❑ Store stockpiled materials and wastes under a temporary roof or secured plastic sheeting or tarp.
- ❑ Berm around storage areas to prevent contact with runoff.
- ❑ Plaster or other powders can create large quantities of suspended solids in runoff, which may be toxic to aquatic life and cause serious environmental harm even if the materials are inert. Store all such potentially polluting dry materials —especially open bags— under a temporary roof or inside a building, or cover securely with an impermeable tarp. By properly storing dry materials, you may also help protect air quality, as well as water quality.



Store building materials under cover. Make sure dumpsters are properly covered to keep out rain.



- ❑ Store containers of paints, chemicals, solvents, and other hazardous materials in accordance with secondary containment regulations and under cover during rainy periods.

Cover and maintain dumpsters

Open and/or leaking dumpsters can be a source of stormwater pollution.

- ❑ Cover open dumpsters with plastic sheeting or a tarp. Secure the sheeting or tarp around the outside of the dumpster. If your dumpster has a cover, close it.
- ❑ If a dumpster is leaking, contain and collect leaking material. Return the dumpster to the leasing company for repair/exchange.
- ❑ Do not clean dumpsters on-site. Return to leasing company for periodic cleaning, if necessary.

Collect and properly dispose of paint removal wastes

Paint removal wastes include chemical paint stripping residues, paint chips and dust, sand blasting material and wash water. These wastes contain chemicals that are harmful to the wildlife in our creeks and the water bodies they flow to. Keep all paint wastes away from the gutter, street, and storm drains.

- ❑ Non-hazardous paint chips and dust from dry stripping and sand blasting may be swept up or collected in plastic drop cloths and disposed of as trash. Chemical paint stripping residue and chips and dust from marine paints or paints containing lead or tributyl tin must be disposed of as a hazardous waste.
- ❑ When stripping or cleaning building exteriors with high-pressure water, cover or berm storm drain inlets. If possible (and allowed by your local waste-water treatment plant), collect (mop or vacuum) building cleaning water and discharge to the sanitary sewer. Alternatively, discharge non-contaminated wash water onto a dirt area and spade into the soil. Be sure to shovel or sweep up any debris that remains in the gutter and dispose of as garbage.

Clean up paints, solvents, adhesives, and cleaning solutions properly

Although many paint materials can and should be recycled, liquid residues from paints, thinners, solvents, glues, and cleaning fluids are hazardous wastes. When

they are thoroughly dry, empty paint cans, used brushes, rags, absorbent materials, and drop cloths are no longer hazardous and may be disposed of as garbage.

- ❑ Never clean brushes or rinse paint containers into a street, gutter, storm drain, or creek.
- ❑ For water-based paints, paint out brushes to the extent possible and rinse to a drain leading to the sanitary sewer (i.e., indoor plumbing).
- ❑ For oil-based paints, paint out brushes to the extent possible, and filter and reuse thinners and solvents. Dispose of unusable thinners and residue as hazardous waste.
- ❑ Recycle, return to supplier or donate unwanted water-based (latex) paint. You may be able to recycle clean empty dry paint cans as metal (check with the local planning or building department for more information).
- ❑ Dried latex paint may be disposed of in the garbage.
- ❑ Unwanted paint (that is not recycled), thinners, and sludges must be disposed of as hazardous waste.
- ❑ More and more paint companies are recycling excess latex paint (check with the local planning or building department for more information).

Keep fresh concrete and cement mortars out of gutters, storm drains, and creeks

Concrete and cement-related mortars that wash into gutters and storm drains are toxic to fish and the aquatic environment.

- ❑ Locate mortar/stucco mixers inside bermed areas to avoid discharge to street or storm drains.
- ❑ Avoid mixing excess amounts of fresh concrete or cement mortar.
- ❑ Store dry and wet materials under cover, protected from rainfall and runoff.
- ❑ Wash out concrete transit mixers only in designated wash-out areas where the water will flow into settling ponds or onto dirt or stockpiles of aggregate base or sand. Pump water from settling ponds to the sanitary sewer, where allowed. Whenever possible, recycle washout by pumping back into mixers for reuse. Never dispose of washout into the street, storm drains, drainage ditches, or creeks.
- ❑ Whenever possible, return contents of mixer barrel to the yard for recycling. Dispose of small amounts of excess concrete, grout, and mortar in the trash.

Service and maintain portable toilets

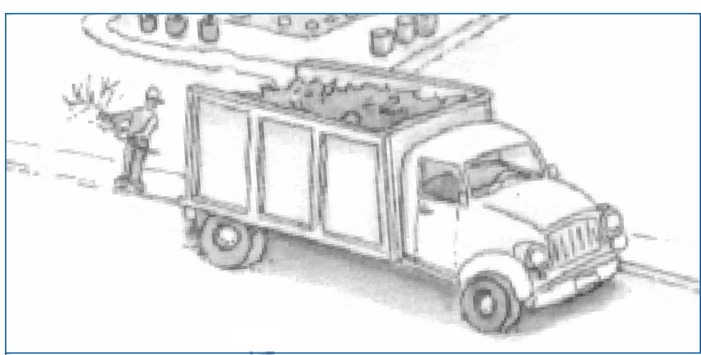
Leaking portable toilets are a potential health and environmental hazard.

- ❑ Inspect portable toilets for leaks.
- ❑ Be sure the leasing company adequately maintains, promptly repairs, and replaces units as needed.
- ❑ The leasing company must have a permit to dispose of waste to the sanitary sewer.
- ❑ Do not place on or near storm drain inlets.

Dispose of cleared vegetation properly

Cleared vegetation, tree trimmings, and other plant material can cause environmental damage if it gets into creeks. Such "organic" material requires large quantities of oxygen to decompose, which reduces the oxygen available for fish and other aquatic life.

- ❑ Do not dispose of plant material in a creek or drainage facility or leave it in a roadway where it can clog storm drain inlets.
- ❑ Avoid disposal of plant material in trash dumpsters or mixing it with other wastes. Compost plant material or take it to a landfill or other facility that composts yard waste (check with the local planning or building department for more information).



Recycle yard waste and tree prunings at a landfill that chips and composts plant material.

Demolition Waste Management

Make sure all demolition waste is properly disposed of

Demolition debris that is left in the street or pushed over a bank into a creek bed or drainage facility causes serious problems for flood control, storm drain maintenance, and the health of our environment. Different types of materials have different disposal requirements or recycling options.

- ❏ Materials that can be recycled from demolition projects include: metal framing, wood, concrete, asphalt, and plate glass.
- ❏ Materials that can be salvaged for reuse from old structures include: doors, banisters, floorboards, windows, 2x4s, and other old, dense lumber.
- ❏ Unusable, unrecycleable debris should be confined to dumpsters, covered at night and during wet weather, and taken to a landfill for disposal.
- ❏ Hazardous debris such as asbestos must be handled in accordance with specific laws and regulations and disposed of as a hazardous waste. For more information of asbestos handling and disposal regulations, contact the Bay Area Air Quality Management District.
- ❏ Arrange for an adequate debris disposal schedule to ensure that dumpsters do not overflow.
- ❏ Most local planning or building departments have lists of recycling and disposal services for construction and demolition debris.

Roadwork and Pavement Construction

Plan roadwork and pavement construction to avoid stormwater pollution

Road paving, surfacing, and asphalt removal happen right in the street, with numerous opportunities for stormwater pollution from the asphalt mix, saw-cut slurry, or excavated material. Properly proportioned asphalt mix and well-compacted pavement avoid a host of water pollution problems.

- ❏ Apply concrete, asphalt, and seal coat during dry weather to prevent contaminants from contacting stormwater runoff.
- ❏ Cover storm drain inlets and manholes when paving or applying seal coat, slurry seal, fog seal, etc.
- ❏ Always park paving machines over drip pans or absorbent materials, since they tend to drip continuously.
- ❏ When making saw-cuts in pavement, use as little water as possible. Cover each catch basin completely with filter fabric during the sawing operation and contain the slurry by placing sand/gravel bags around the catch basin. After the liquid drains or evaporates, shovel or vacuum the slurry residue from the pavement or gutter and remove from site.
- ❏ Wash down exposed aggregate concrete only when the wash water can: (1) flow onto a dirt area; (2) drain onto a bermed surface from which it can be pumped and disposed of properly; or (3) be vacuumed from a catchment created by blocking a storm drain inlet. If necessary, divert runoff with temporary berms. Make sure runoff does not reach gutters or storm drains.
- ❏ Allow aggregate rinse to settle, and pump the water to the sanitary sewer if allowed by your local wastewater authority.
- ❏ Never wash sweepings from exposed aggregate concrete into a street or storm drain. Collect and return to aggregate base stockpile, or dispose with trash.
- ❏ Recycle broken concrete and asphalt (check with the local planning or building department for more information).

Contaminated Ponded Stormwater, Groundwater, and Soil Guidance

Look for ponded stormwater, groundwater, and/or soil contamination

Ponded stormwater, groundwater and soil may become contaminated if exposed to hazardous materials. If any of the following conditions apply, contaminated ponded stormwater, groundwater, and/or soil may be present and pose a potential health and environmental hazard:

- ❏ The project site is in an area of previous commercial/industrial activity;
- ❏ There is a history of illegal dumping on the site or adjacent properties;
- ❏ The construction site is subject to a Superfund, state, or local cleanup order;
- ❏ Ponded stormwater, groundwater and/or water generated by dewatering exhibits an oily-sheen and/or smells of petroleum;
- ❏ Soil appears discolored, smells of petroleum and/or exhibits other unusual properties;
- ❏ Abandoned underground storage tanks, drums, or other buried debris are encountered during construction activities; or
- ❏ Spills have occurred on the site or adjacent properties involving pesticides and herbicides; fertilizers; detergents; plaster and other products; petroleum products such as fuel, oil, and grease; or other hazardous chemicals such as acids, lime, glues, paints, solvents, and curing compounds.

Take appropriate action

Ponded stormwater, groundwater, or water generated by dewatering that is contaminated cannot be discharged to a street, gutter, or storm drain. If contamination is suspected, the water should be contained and held for testing. Call the appropriate local agency and/or the Regional Water Quality Control Board for further guidance (See reference list on the back cover of this booklet for more information).

Remember: The property owner and the contractor share ultimate responsibility for the activities that occur on a construction site. You may be held responsible for any environmental damage caused by your subcontractors or employees.

Pollution Control Agencies and Sources of Information

Storm water quality management programs

Alameda Countywide Clean Water Program
951 Turner Court, Hayward, CA 94545
(510) 670-5543
www.cleanwaterprogram.com

Contra Costa Clean Water Program
255 Glacier Drive, Martinez, CA 94553-4897 (925) 313-2392
(800) NO DUMPING
www.cccleanwater.org

Fairfield-Suisun Urban Runoff Management Program
1010 Chadbourne Road
Fairfield, CA 94534 (707) 429-8930

Marin County Stormwater Pollution Prevention Program
3501 Civic Center Drive, Room 304,
San Rafael, CA 94903 (415) 499-6528
www.mcstoppp.org

San Francisco Stormwater Management Program
3801 3rd Street, Suite 600
San Francisco, CA 94124 (415) 695-7310
http://stormwater.sfwater.org

San Mateo Countywide Stormwater Pollution Prevention Program
555 County Center, Fifth Floor
Redwood City, CA 94063
(650) 363-4305
www.flowstobay.org

Santa Clara Valley Urban Runoff Pollution Prevention Program
699 Town & Country Village
Sunnyvale, CA 94086 (800) 794-2482
www.scvurppp.org

Sonoma County Water Agency
2150 West College Avenue
Santa Rosa, CA 95401
(707) 526-5370
www.scwa.org

Vallejo Sanitation and Flood Control District
450 Ryder Street, Vallejo, CA 94590
(707) 644-8949
www.vsfcd.com

Bay Area Stormwater Management Agencies Association (BASMAA)
1515 Clay Street, Suite 1400,
Oakland, CA 94612 (510) 622-2326
(888)BayWise www.basmaa.org

Agencies to call in the event of a spill

You are required by law to report all significant releases or suspected significant releases of hazardous materials, including oil.

To report a spill, call the following agencies:

1. Dial 911 or your local emergency response number.

2. Call the Governor's Office of Emergency Services Warning Center, (800) 852-7550 (24 hours).

For spills of "Federal Reportable Quantities" of oil, chemicals, or other hazardous materials to land, air, or water, notify the National Response Center (800-424-8802). If you are not sure whether the spill is of a "reportable quantity," call the federal Environmental Protection Agency (800) 424-9340 for clarification.

For further information, see *California Hazardous Material Spill/ Release Notification Guidance* (State Office of Emergency Services, Hazardous Materials Division).

Agencies to call if you find or suspect contaminated soil or groundwater

Regional Water Quality Control Board:

San Francisco Bay Region
(510) 622-2300

Central Valley Region
(916) 255-3000

California Environmental Protection Agency (Cal EPA), Department of Toxic Substances Control (DTSC)
(510) 540-3732

Documents and available resources

From State Water Resources Control Board (SWRCB)
(916) 341-5537
www.swrcb.ca.gov

General Construction Activity Storm Water Permit

From Friends of the San Francisco Estuary
(510) 622-2465
www.abag.ca.gov/bayarea/sfep

Field Manual

Guidelines for Construction Projects

Hold On to Your Dirt – Video

Keep it Clean – Video

From Association of Bay Area Governments (ABAG)
(510) 464-7900
www.abag.ca.gov

Manual of Standards for Erosion and Sediment Control Measures

From Cal EPA, DTSC
(916) 322-3670
www.dtsc.ca.gov

Waste Minimization for the Building Construction Industry - Fact Sheet

From California Stormwater Quality Association (CASQA)
www.cabmphandooks.com

Stormwater Best Management Practice Handbook – Construction

THANKS

BASMAA adapted this booklet from one originally developed and generously shared by the Santa Clara Valley Nonpoint Source Pollution Control Program.

Illustrations by John Finger

Printed on Recycled Paper

Attachment E
Town of Los Gatos
Storm Water Pollution Control Ordinance

Sec. 22.30.010. - Definitions.

The following words and phrases, when used in this article, shall be as defined herein. Words and phrases used in this article and not otherwise defined shall be as defined in the regulations promulgated by the U.S. Environmental Protection Agency to implement the requirements of the federal Clean Water Act, or as defined by the State Water Resources Control Board to implement the California Water Code.

Applicable materials means all materials used in industrial or commercial establishments that are stored outdoors, that may be exposed to storm water, and that have the reasonable potential to degrade the quality of runoff from the site. These include, but are not limited to, all materials containing cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, and zinc, which are pollutants that have specifically been identified as known to contribute to impairment of applicable water quality standards.

Deemed complete means that a project applicant has submitted a development application package for discretionary approval that is determined to be a complete and acceptable application by the development review committee. For public projects (funded and owned by the town), projects are deemed complete if funding has been approved by the town council and construction has been scheduled by October 15, 2003.

Discharge means the discharge, addition, placement, deposit, release or dumping of any pollutant or combination of pollutants to surface waters from any point source. This definition includes, but is not limited to, additions of pollutants into waters from: surface runoff and discharges through pipes, sewers, channels, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works.

Grease means, and includes, fats, oils, waxes, or other related constituents. Grease may be of mineral origin, including kerosenes, lubricating oil, and road oil. Grease may also be of vegetable or animal origin, including butter, lard, margarine, vegetable fats and oils, fats in meats, cereals, seeds, nuts, and certain fruits. Grease is generally present as, but need not be, a floatable solid, a liquid, a colloid, an emulsion, or in a solution.

Grease generating activity means any commercial or industrial activity that uses or produces grease on an ongoing basis.

Grease removal device means an interceptor or other mechanical device designed, constructed, and intended to remove, hold, or otherwise prevent the passage of grease to the (sanitary sewer or) municipal storm drain system.

Impervious surface means a constructed or modified surface that does not allow rainfall to perc through to the subsoil and thus creates storm water runoff. Impervious surface includes, but is not limited to, building rooftops, pavement, sidewalks, patios, driveways or other hardscape where such surfaces are not constructed with pervious materials and/or are not designed so as to have zero (0) storm water discharge.

Interceptor means a receptacle or trap designed and constructed to intercept, separate, and prevent the passage of prohibited substances into the (sanitary sewer or) municipal storm drain system.

Major development or redevelopment project means a project that creates, adds, or replaces one (1) acre (forty-three thousand five hundred sixty (43,560) square feet) or more of impervious surface, for those project applications that are deemed complete on or after October 15, 2003. For those project applications that are deemed complete on or after April 15, 2005, a major development or redevelopment project means a project that creates, adds, or replaces ten thousand (10,000) square feet or more of impervious surface.

Municipal storm drain system means and includes, but shall not be limited to, those facilities within the municipality by which storm water may be conveyed to waters of the United States, including any roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels or storm drains, which are not part of a publicly owned treatment works (POTW).

NPDES permit means a valid National Pollutant Discharge Elimination System permit issued by the California Regional Water Quality Control Board, San Francisco Bay Region, in accordance with regulations promulgated by the U.S. Environmental Protection Agency to implement the requirements of the federal Clean Water Act.

Pollutants mean and include all sewage, sewage sludge, garbage, biological materials, radioactive materials, and chemical, industrial, and agricultural waste discharged into water.

Project with significant pollution potential means any project determined by the town to be likely to have sources of pollutants on-site and/or to contribute pollutants to stormwater after project completion, based on a review of the proposed uses of or activities planned for the site.

Storm water means all rainfall runoff, surface runoff, and drainage.

Watercourses mean and include all natural waterways and definite channels and depressions in the earth that carry water, even though such waterways may only carry water during rains and storms and may not carry storm water at and during all times and seasons. Watercourses include facilities owned and operated by the Santa Clara Valley Water District.

(Ord. No. 1940, § I, 5-3-93; Ord. No. 2125, § I, 1-20-04)

Sec. 22.30.015. - Requirements for non-storm water discharges.

a) *Discharge prohibition.* No person shall discharge or cause to be discharged into the municipal

storm drain system or watercourses any materials other than storm water. In addition, n
shall discharge or cause to be discharged into the municipal storm drain system or watercourses, any pollutants or waters containing any pollutants that cause or threaten to contribute to a violation of applicable water quality standards. It shall also be unlawful to discharge, or cause to be discharged into any storm drain or natural outlet or channel, any sewage, industrial waste or other polluted waters or materials without a valid NPDES permit or written authority from the U.S. Environmental Protection Agency or its designated enforcement agent.

(b) *Exceptions to discharge prohibition.* The preceding discharge prohibition shall not apply to any discharge that is specifically authorized by an NPDES permit to flow to a storm drain or natural outlet or channel. In addition, the California Regional Water Quality Control Board, San Francisco Bay Region, has determined that the discharge prohibition shall not apply to the following "permissible" activities: water line flushing, landscape irrigation/lawn watering, uncontaminated foundation drains, uncontaminated non-industrial roof drains, irrigation water, uncontaminated groundwater infiltration, residential car washings, flows from fire fighting, flows from potable water sources, and dechlorinated swimming pool waters.

(c) *Protection against accidental discharge.* The owner or operator of a commercial or industrial establishment shall provide reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses. Facilities to prevent accidental discharge of prohibited materials or other wastes shall be provided and maintained at the owner or operator's expense.

(d) *Report of accidental discharges.* Where an accidental discharge of prohibited materials or other wastes has entered the municipal storm drain system or a watercourse, such incident shall be reported to West Valley Sanitation District as soon as possible, but in no event later than twenty-four (24) hours after such a discharge. An accidental discharge of toxics must be reported immediately to Central Fire District—Phone 911. If the accidental discharge of prohibited materials or other wastes emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years. A notice shall be permanently posted in a conspicuous place on the premises of each commercial or industrial establishment advising employees of the department or agency to call in case of such an accidental discharge.

(Ord. No. 1940, § I, 5-3-93)

Sec. 22.30.020. - Water protection.

(a) *Watercourse protection requirements.* Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the

watercourse within the property reasonably free of trash, debris, excessive vegetation, and obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. The owner or lessee shall not remove healthy bank vegetation beyond that actually necessary for maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the watercourse to erosion.

(b) *Acts requiring permit.* No person shall commit or cause to be committed any of the following acts unless a written permit has first been obtained from the building and engineering services department:

(1) Discharge into or connect any pipe or channel to a watercourse;

(2) Modify the natural flow of water in a watercourse;

(3) Carry out development within a setback designed in whole or in part to protect a watercourse;

(4) Deposit in, plant in, or remove any material from, a watercourse, including its banks, except as required for necessary maintenance;

(5) Construct, alter, enlarge, connect to, change, or remove any structure in a watercourse; or

(6) Place any loose or unconsolidated material along the side of or within a watercourse or so close to a side as to cause a diversion of the flow, or to cause a probability of such material being carried away by storm water passing through such watercourse.

(Ord. No. 1940, § I, 5-3-93)

Sec. 22.30.025. - Outdoor storage of materials.

(a) *Proper outdoor storage of materials required.* All applicable materials stored outdoors at a commercial or industrial establishment shall be managed in a manner that minimizes the discharge of pollutants to storm water and as is required to meet water quality standards. Establishments covered by the general NPDES permit for storm water discharges "associated with industrial activities" that has been promulgated for Santa Clara County by the California Regional Water Quality Control Board, San Francisco Bay Region, shall address this requirement in applicable provisions of their storm water pollution prevention plan.

(b) *Protection against accidental discharge.* The owner or operator of a commercial or industrial establishment shall provide reasonable protection from accidental discharge of applicable materials to the municipal storm drain system or watercourses. Specifically, secondary containment systems or equivalent measures approved by Building and Engineering Services

Department shall be provided for all applicable materials that are liquids. All facilities to the accidental discharge of applicable materials to the municipal storm drain system and watercourses shall be provided and maintained at the owner or operator's expense.

(c) *Report of accidental discharge to the storm drain.* Where applicable materials have entered the municipal storm drain system or a watercourse due to an accidental discharge at a commercial or industrial establishment, the owner or operator of such establishment shall report such incident to Central Fire Protection District as soon as possible, but in no event later than twenty-four (24) hours after such a discharge. The owner or operator of such establishment shall also retain an on-site written record of all accidental discharges of applicable materials (whether or not such discharge actually entered the municipal storm drain system or a watercourse) and the actions taken to prevent their recurrence. Such records shall be retained for at least five (5) years. A notice shall be permanently posted in a conspicuous place on the premises of each commercial or industrial establishment advising employees of the department or agency to call in case of such an accidental discharge.

(Ord. No. 1940, § I, 5-3-93)

Sec. 22.30.030. - Grease disposal and control.

(a) *Grease disposal prohibited.* No person shall dispose of any grease, or cause any grease to be disposed, by discharge into any drainage piping, (any public or private sanitary sewer), any part of the municipal storm drain system, or any land, street, public way, river, stream, or other watercourse.

(b) *Grease removal device required.* The owner or operator of every newly constructed, remodeled, or converted commercial or industrial establishment with one (1) or more grease generating activities shall install or cause to be installed for each grease generating activity, a grease removal device (of an approved design) for preventing the passage of grease to the municipal storm drain system and watercourses.

(c) *Maintenance of grease removal devices required.* The contents of all grease removal devices shall be removed periodically as necessary to prevent a violation of this chapter. At a minimum, the contents shall be removed every ninety (90) days. All grease removal devices shall be kept in good repair, and shall be maintained in continuous operation at the owner or operator's expense.

(Ord. No. 1940, § I, 5-3-93)

Sec. 22.30.035. - New development/redevelopment.

(a) *Storm water management required for major projects.* Every applicant for a building permit and/or grading permit for a major development or redevelopment project shall identify the potential for storm water to be discharged from the project site following completion of

construction activity and shall demonstrate that the plans, drawings, or specifications fo[r the] project include the installation of management techniques, practices, and control measures designed to mitigate the potential adverse impacts of storm water that may be discharged from the project site on an ongoing basis, including storm water treatment measures. In addition, applicants for building and/or grading permits for projects with significant pollution potential may be required to demonstrate that sources of pollutants will be controlled onsite with appropriate measures. The storm water management techniques, practices, and control measures ("mitigation measures") shall be selected, designed, and maintained in accordance with the town's current NPDES storm water discharge permit, and the town's policy for storm water management requirements for new development and redevelopment projects.

(b) *Issuance of permits.* The town shall not issue a building permit or a grading permit for a major development or redevelopment project or a project with significant pollution potential until it has reviewed the mitigation measures proposed by the applicant pursuant to the preceding paragraph and determined that they are sufficient to address the potential adverse impacts of storm water that may be discharged from the project site on an ongoing basis.

(c) *Occupancy.* The town shall not issue a certificate of occupancy for a major development or redevelopment project or a project with significant pollution potential until it has determined that the mitigation measures identified in the building permit and/or the grading permit issued for such project have been adequately implemented and that appropriate arrangements have been made to ensure that these management techniques, practices, and control measures will be maintained on an ongoing basis, in accordance with the town's current NPDES storm water discharge permit and the town's policy for storm water management requirements for new development and redevelopment project.

(Ord. No. 1940, § I, 5-3-93; Ord. No. 2125, § II, 1-20-04)

Sec. 22.30.040. - Enforcement.

(a) *Criminal penalties.* Any person who knowingly violates any provision of this article shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by imprisonment in the county jail for a term not to exceed six (6) months or by a fine not to exceed one thousand dollars ($1,000.00) or by both. Each and every violation of this article shall constitute a separate offense. Every day each such violation continues shall be an additional offense.

(b) *Civil penalties.* Any person who discharges any applicable materials, greases or pollutants into a watercourse or the municipal storm drain system in violations of any provision of this article shall be civilly liable to the Town of Los Gatos in a sum not to exceed two thousand dollars ($2,000.00) per day for each day in which the violation occurs. In determining the amount of such award, the

court shall consider proof of such matters as justice may require. Subsequent or repeated violation, which are not committed contemporaneously with the initial violation, shall be treated as separate cause of action and shall be subject to a separate award of damages.

(c) *Civil liability.* Any person who violates any provision of this article shall be civilly liable to the Town of Los Gatos for all costs, including attorneys fees, associated with the investigation, elimination and remediation of environmental conditions caused by the discharge of pollutants into the municipal storm drain system or a watercourse in violation of this article.

(d) *Remedies cumulative.* The remedies provided for in this article are cumulative and not exclusive and shall be in addition to any and all other remedies available to the Town of Los Gatos under state and federal law.

(Ord. No. 1940, § I, 5-3-93)

Sec. 22.30.045. - Inspection and right of entry.

(a) Whenever deemed necessary to make an inspection to ensure compliance with the requirements of this article or to enforce any provision of this article, or whenever the Town officer or agent, has reasonable cause to believe that there may be any condition upon any property or in any structure that may violate the requirements of this article, the authorized Town officer or agent may enter such property or structure at all reasonable times to inspect the same or to perform any duty imposed upon the Town officer or agent by this article. Should entry be refused, the officer or agent shall have recourse to every remedy provided by law to gain entry.

(b) When a Town officer or agent has first obtained a property inspection or search warrant or other remedy provided by law to secure entry, no person having charge, care or control of any building or property shall fail or neglect after proper request is made as herein provided, to promptly permit entry by the authorized officer or agents. Violation of this subsection shall be a misdemeanor.

(Ord. No. 1990, § II, 10-17-94)

Addendum 1

ITEM NO. 5.
LOUISE VAN METER
ELEMENTARY SCHOOL
PROTECT UTILITY BOXES IN PLACE
INSTALL CURB RAMP - CASE F
PER CALTRANS STD DETAIL A88A
PROTECT TREE IN PLACE
REMOVE AND REINSTALL SIGN AND POST
20'
8'
INSTALL 20' DRIVEWAY
PER TOWN STD DETAIL ST-9
INSTALL TYPE A PASSAGEWAY PER
CALTRANS STD DETAIL A88B
R = 2'
2'
5'
INSTALL 25' CURB AND GUTTER
PER TOWN STD DETAIL ST-11
PCC PER TOWN STD DETAIL ST-12B
INSTALL A1-8 CURB PER CALTRANS
STD DETAIL A87A
INSTALL 8' SIDEWALK WIDENING PER
CITY OF SAN FRANCISCO STD DETAIL 87175
NINO AVE
20'
INSTALL CURB RAMP - CASE A
PER CALTRANS STD DETAIL A88A
R = 10'
INSTALL 45' CURB AND GUTTER
PER TOWN STD DETAIL ST-11
INSTALL SIDEWALK PER TOWN
STD DETAIL ST-12B
INSTALL CURB RAMP - CASE A
PER CALTRANS STD DETAIL A88A
FISHER AVE
RAYMOND J. FISHER
MIDDLE SCHOOL
N
0 10 20
CURB EXTENSION
FISHER AVE & NINO AVE
SITE MAP
Date 03-04-2026
Scale SN
Design SN
Drawn SN
Check
Engr.
Proj. No
REVISION NO. BY DATE
REV1-CURB EXTENSION SN 3/4/26
Drawing Number:
1
OF 1
TOWN OF LOS GATOS
REGISTERED PROFESSIONAL ENGINEER SAURABH NIJHAWAN No. 84814 Exp. 03-26-26 CIVIL STATE OF CALIFORNIA
CONTRACTOR AGREES THAT HE SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THIS PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY; THAT THIS REQUIREMENT SHALL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS; AND THAT THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD THE OWNER AND THE ENGINEER HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT, EXCEPTING FOR LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE OWNER OR THE ENGINEER.

3. Bid Schedule

This Bid Schedule must be completed and included with the Bid Proposal. Pricing must be provided for each Bid Item as indicated. Items marked "(SW)" are Specialty Work that must be performed by a qualified Subcontractor. The lump sum or unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead. The sum of all amounts entered in the "Extended Total Amount" column must be identical to the Base Bid price entered in Section 1 of the Bid Proposal form.

AL = Allowance CF = Cubic Feet CY = Cubic Yard EA = Each LB = Pounds
LF = Linear Foot LS = Lump Sum SF = Square Feet TON = Ton (2000 lbs)

SCHEDULE OF QUANTITIES

Item	Description	Unit	Quantity	Unit Cost	Total
1.	Traffic Control	L.S.	1		
2.	Adjust Frame and Grate to Grade	Ea.	1		
3.	Adjust Utility Box to Grade	Ea.	8		
4.	Adjust Water Meter Box to Grade	Ea.	1		
5.	Remove and Reinstall Bicycle Rack	Ea.	1		
6.	Clearing and Grubbing	L.S.	1		
7.	Remove and Replace Curb and Gutter	L.F.	1,~~526~~595		
8.	Remove and Replace Sidewalk	S.F.	8,~~087~~717		
9.	Remove and Replace Sidewalk (Villa Hermosa)	S.F.	120		
10.	Remove Hardscape and Replace with Topsoil	S.F.	130		
11.	Remove and Replace Residential Driveway (Revocable)	S.F.	100		
12.	Remove and Replace Commercial Driveway	S.F.	~~535~~775		
13.	Install Detectable Warning Surface	Ea.	1		
14.	Install New Curb and Gutter	L.F.	80		

Item	Description	Unit	Quantity	Unit Cost	Total
15.	Install New Sidewalk	S.F.	66		
16.	Install Curb Ramp-Case B	Ea.	12		
17.	Install Curb Ramp-Case B (Villa Hermosa)	Ea.	3		
18.	Install Curb Ramp-Case C	Ea.	6		
19.	Install Curb Ramp-Case C (Villa Hermosa)	Ea.	2		
20.	Install Curb Ramp-Case F	Ea.	~~12~~13		
21.	Install Curb Ramp-Case G	Ea.	11		
22.	Install New Curb Ramp-Type A Passageway	Ea.	~~1~~2		
23.	Install New Curb Ramp-Type C Passageway	Ea.	1		
24.	Remove Curb Ramp	Ea.	2		
25.	Paint Red Curb (Revocable)	L.F.	100		
26.	Root Prune and Install Root Barrier	L.F.	100		
27.	Remove Sign and Post	Ea.	1		
28.	Remove and Reinstall Sign and Post	Ea.	~~1~~2		
29.	Remove and Reinstall Sign on New Post	Ea.	1		
30.	Install New Sign on New Post	Ea.	1		
A1.1	Install Caltrans Type A1-8 Curb	L.F.	60		
A1.2	Install Curb Ramp-Case A	Ea.	2		
TOTAL					

AGREEMENT FOR PROFESSIONAL SERVICES

Materials Testing for 2026 Annual Curb, Gutter, and Sidewalk Maintenance Project

PREAMBLE

THIS AGREEMENT is by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and Ninyo & Moore Geotechnical & Environmental Sciences Consultants ("Contractor"), a Corporation whose address is 5710 Ruffin Road, San Diego, CA 92123. This Agreement is made with reference to the following facts.

I. RECITALS

A. Town desires to engage Consultant to provide materials testing services for the 2026 Annual Curb, Gutter, and Sidewalk Maintenance Project

B. Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement.

C. 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 the Consultant.

II. AGREEMENT

A. Scope of Services. Consultant shall provide services as described in the Scope of Services, which is hereby incorporated by reference and attached as Exhibit A.

B. Term. The term of this Agreement shall be from upon execution to Thursday, December 31, 2026.

C. 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 the Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license as required in Chapter 14 of the Code of the Town of Los Gatos.

D. Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.

E. 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 services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at Town's risk, unless the 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.

F. Compensation: Compensation for Consultant's professional services **shall not exceed $18,390.00** at the rates set forth in Exhibit A which is attached and incorporated by reference. Payment shall be based upon Town approval of each task.

G. 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
Email (preferred): AP@losgatosca.gov

H. 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 offices during business hours upon written request of the Town.

I. 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.

J. 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.

K. 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.

L. Non-Discrimination. 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

A. Minimum Scope of Insurance:

1. 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: two million dollars ($2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
2. 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.
3. Consultant 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.
4. 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.

B. General Liability:

1. 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 Consultant; products and completed operations of Consultant, premises owned or used by the Consultant.
2. The Consultant'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 agents shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or agents.

4. 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.

C. 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.

D. 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. As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than one million dollars ($1,000,000) per accident for bodily injury or disease.

E. Indemnification. The Consultant shall indemnify the Town its elected and appointed officials, employees and agents 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 any act or omissions of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant. Consultant shall defend the Town against any such claims.

IV. GENERAL TERMS

A. 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.

B. 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.

C. Mediation. Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties. In the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a blind draw. The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

D. 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 Service Provider. 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.

E. 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.

F. 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

Ninyo & Moore Geotechnical & Environmental Sciences Consultants
5710 Ruffin Road, San Diego, CA 92123

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

G. 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.

H. 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:

SIGNATURE

Chris Constantin
FULL NAME

Town Manager
TITLE

DATE SIGNED

NINYO & MOORE GEOTECHNICAL & ENVIRONMENTAL SCIENCES CONSULTANTS:

SIGNATURE

Lothus Hennefer
ENTER CONSULTANT SIGNATORY'S NAME

Principal/Construction Services
ENTER CONSULTANT SIGNATORY'S TITLE

DATE SIGNED

Approved as to form:

SIGNATURE

Gabrielle Whelan
FULL NAME

Town Attorney
TITLE

DATE SIGNED

The execution date is the date on which the last party has signed.

Attachments:

A - Scope of Services

AGREEMENT FOR SERVICES

AGREEMENT FOR SERVICES

PREAMBLE

THIS AGREEMENT is by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and PrecisionWorks LLC DBA Precision Concrete Cutting ("Contractor"), a Limited Liability Company and whose address is 6607 San Leandro St, Oakland, CA, 94621. This Agreement is made with reference to the following facts.

I. RECITALS

A. For the services described in this Agreement, Contractor was selected as a Sole Source supplier for this purchase.

B. Contractor represents and affirms that it is willing to perform the desired work pursuant to this Agreement.

C. Town desires to engage Contractor to provide services to maintain sidewalks using horizontal concrete saw cutting.

D. Contractor warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Contractor acknowledges Town has relied upon these warranties to retain the Contractor.

II. AGREEMENT

A. Scope of Services. Contractor shall provide services as described in the Scope of Services, which is hereby incorporated by reference and attached as Exhibit A.

B. Term. The term of this Agreement shall be from upon execution to Thursday, December 31, 2026.

C. Compliance with Laws. The Contractor shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Contractor represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for the Contractor to practice its profession. Contractor shall maintain a Town of Los Gatos business license as required in Chapter 14 of the Code of the Town of Los Gatos.

D. Sole Responsibility. Contractor shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.

E. Information/Report Handling. All documents furnished to the Contractor by the Town and all reports and supportive data prepared by the Contractor 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 the Contractor in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Contractor shall not make any of these documents or information available to any individual or organization not employed by the Contractor or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Contractor 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 Contractor in connection with other projects shall be solely at Town's risk, unless Contractor expressly

consents to such use in writing. Town further agrees that it will not appropriate any methodology or t[illegible] of Contractor which is and has been confirmed in writing by Contractor to be a trade secret of the Contractor.

F. Compensation: Compensation for services at the rates set forth in Exhibit A and in the amount **not to exceed $90,000.00**, inclusive of all costs subject to appropriation of funds, notwithstanding any other provision in this agreement. Payment shall be based upon Town approval of each task.

G. 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
Email (preferred): AP@losgatosca.gov

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

I. Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Contractor. No portion of these services shall be assigned or subcontracted without the written consent of the Town.

J. Independent Contractor. It is understood that the Contractor, 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 Contractor 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. Contractor agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Contractor 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 Contractor or is based on allegations of Contractor's negligent performance or wrongdoing.

K. Conflict of Interest. Contractor understands that its professional responsibilities are solely to the Town. The Contractor has and shall not obtain any holding or interest within the Town of Los Gatos. Contractor has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives, nor shall it enter into any such holdings or agreements. In addition, the Contractor 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. Contractor shall not knowingly

and shall take reasonable steps to ensure that it does not employ a person having such an interest in the performance of this Agreement. If after employment of a person Contractor discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Contractor shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.

L. Non-Discrimination. Contractor warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither the Contractor 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

A. Minimum Scope of Insurance:

1. Contractor 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.
2. Contractor 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.
3. Contractor shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Contractor agrees that all certificates and endorsements are to be received and approved by the Town before work commences.

B. General Liability:

1. 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 Contractor; products and completed operations of the Contractor, premises owned or used by the Contractor.
2. The Contractor'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 agents shall be excess of the Contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or agents.
4. The Contractor'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.

C. 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 i[nsurance] shall be kept on file at all times during the term of this agreement with the Town Clerk.

D. Workers' Compensation. In addition to these policies, Contractor 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, Contractor shall ensure that all subcontractors employed by Contractor provide the required Workers' Compensation insurance for their respective employees. As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than one million dollars ($1,000,000) per accident for bodily injury or disease.

E. Indemnification. The Contractor shall indemnify the Town its elected and appointed officials, employees and agents 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 any act or omissions of the Contractor, or any of the Contractor's officers, employees, or agents or any subcontractor. Contractor shall defend the Town against any such claims.

IV. GENERAL TERMS

A. 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.

B. 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.

C. Termination of Agreement. The Town and the Contractor 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 Contractor shall deliver to the Town all plans, files, documents, reports, performed to date by the Contractor. In the event of such termination, Town shall pay Contractor 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.

D. 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.

1. The applicable California prevailing wage rate can be found at www.dir.ca.gov and are on file with the Town of Los Gatos Parks and Public Works Department, which shall be available to any interested party upon

request. The contractor is also required to have a copy of the applicable wage determination pos[ted and] available at each jobsite.

2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime, weekend and holiday pay, and shift pay must be paid pursuant to applicable Labor Code section.

3. The public entity for which work is being performed or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to $200 per day per worker for each wage violations identified; $100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and $25 per day per worker for any overtime violation.

4. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, the contractor agrees to present to the TOWN, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term “certified payroll” shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the Agency or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

5. In addition to submitting the certified payrolls and related documentation to the TOWN, the contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and final payment.

6. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
   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.

7. 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.
   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 a[nd] penalties under the contract.

E. Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Contractor.

F. 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

PrecisionWorks LLC DBA Precision Concrete Cutting
6607 San Leandro St, Oakland, CA, 94621

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

G. 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.

H. Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and the Contractor. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

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

TOWN OF LOS GATOS:

SIGNATURE

Chris Constantin

FULL NAME

Town Manager

TITLE

DATE SIGNED

PRECISIONWORKS LLC DBA PRECISION CONCRETE CUTTING:

SIGNATURE

Joseph Ortega

VENDOR SIGNATORY'S FULL NAME

Vice President

VENDOR SIGNATORY'S TITLE

DATE SIGNED

Approved as to form:

SIGNATURE

Gabrielle Whelan

FULL NAME

Town Attorney

TITLE

DATE SIGNED

The execution date is the date on which the last party has signed.

Attachments:

A - Scope of Services

B - Locations of Work

TOWN OF LOS GATOS
COUNCIL AGENDA REPORT

MEETING DATE: 04/21/2026
ITEM NO: 6

DATE: April 21, 2026

TO: Mayor and Town Council

FROM: Chris Constantin, Town Manager

SUBJECT: **Adopt a Resolution Describing Improvements and Directing the Preparation of the Town Engineer's Report for Fiscal Year 2026-27 for Landscape and Lighting Assessment Districts No. 1 and 2**

RECOMMENDATION: Adopt a Resolution describing improvements and directing the preparation of the Town Engineer's Report for Fiscal Year 2026-27 for Landscape and Lighting Assessment Districts No. 1 and 2.

FISCAL IMPACT:

The Town's Landscape and Lighting Assessment Districts are funded through assessments levied on property owners and do not impact the Town's General Fund. This action initiates the annual Engineer's Report process and does not establish or modify assessment rates. Any proposed changes to district budgets or assessment rates will be presented in the Engineer's Report for Council consideration.

STRATEGIC PRIORITY:

This item does not directly address a Strategic Priority; however, it aligns with the Core Goal of Fiscal Stability. Specifically, property owners are assessed for the specific benefit they derive from open space and public space near their residence, reducing the General Fund burden for these services.

PREPARED BY: Paul Gonia
Project Analyst

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Administrative Services Director

BACKGROUND:

The California Landscaping and Lighting Act of 1972 (Streets and Highways Code Section 22500-22679) (Act) 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 1990s, the Town established two Landscape and Lighting Districts (Districts), consisting of six benefit zones. District No. 1 includes five benefit zones: Blackwell Drive, Hillbrook, Kennedy Meadows, Santa Rosa Heights, and Vasona Heights. District No. 2 includes the Gemini Court Benefit Zone. Diagrams of each zone are included in Exhibit A of Attachment 1. Property owners within each district pay an annual assessment on their property tax bill to fund the maintenance of common area landscaping and lighting.

Each year, the Town Council levies the assessments and reauthorizes the districts through the adoption of resolutions following a public hearing. This annual process is required by the Landscaping and Lighting Act and includes the following steps and proposed schedule.

1. Council considers the adoption of a Resolution describing the improvements and directing the preparation of the Engineer's Report for Fiscal Year 2026-27 – **April 21, 2026**.
2. Council considers the adoption of Resolutions Approving the Fiscal Year 2026-27 Engineer's Report, stating the Intention to Levy and Collect Assessments, and Setting a Public Hearing to Consider the Proposed Assessments – **May 5, 2026**.
3. Council conducts the public hearing and then considers the adoption of a resolution confirming the assessment diagrams and authorizing the levy and collection of assessments for Fiscal Year 2026-27 – **June 16, 2026**.

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, 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 2026-27 property tax roll.

SUBJECT: Adopt a Resolution Describing Improvements and Direct Preparation of the Town Engineer's Report for Fiscal Year 2026-27 for Landscape and Lighting Assessment Districts No. 1 and 2
DATE: April 21, 2026

DISCUSSION:

The Landscaping and Lighting Act requires the Town Council to adopt a resolution describing any proposed new improvements or substantial changes to existing improvements and directing the preparation of an Engineer's Report. The Engineer's Report shall identify the assessment district and applicable fiscal year, and include: (1) plans and specifications for proposed improvements, (2) estimated improvement costs, (3) a diagram of the assessment district, (4) an assessment allocating those costs, and (5) if applicable, the estimated principal amount of any bonds or notes to be issued.

For FY 2026-27, no new improvements or substantial changes to existing improvements are proposed for any of the Assessment Districts. The Districts will continue to fund ongoing public landscaping and lighting services within their respective boundaries.

In accordance with Streets and Highways Code Section 22622, the attached resolution confirms the existing improvements (services) and directs the preparation of the Engineer's Report for FY 2026-27.

CONCLUSION:

Staff recommends that Town Council adopt a Resolution describing improvements and directing the preparation of the Town Engineer's Report for Fiscal Year 2026-27 for Landscape and Lighting Assessment Districts No. 1 and 2 in compliance with California Streets and Highways Code section 22622.

ENVIRONMENTAL ASSESSMENT:

This action is not a project under CEQA pursuant to CEQA Guidelines sections 15378(b)(4) and 15378(b)(5) because it initiates the annual assessment district reporting process and does not commit the Town to a specific physical project or physical change in the environment.

Attachments:
1. Resolution Describing Improvements and Directing Preparation of Engineer's Report for Fiscal Year 2026-27 with Exhibit A

RESOLUTION 2026-XX

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DESCRIBING IMPROVEMENTS AND DIRECTING PREPARATION OF ENGINEER'S REPORT FOR FISCAL YEAR 2026-27 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 2026-27; 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:

DRAFT

a. Plans and specifications 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.

DRAFT

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 21st day of April, 2026, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

____
MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

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

DRAFT

EXHIBIT A

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

1. General Description of Improvements:

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

2. Specific Descriptions of Improvements:

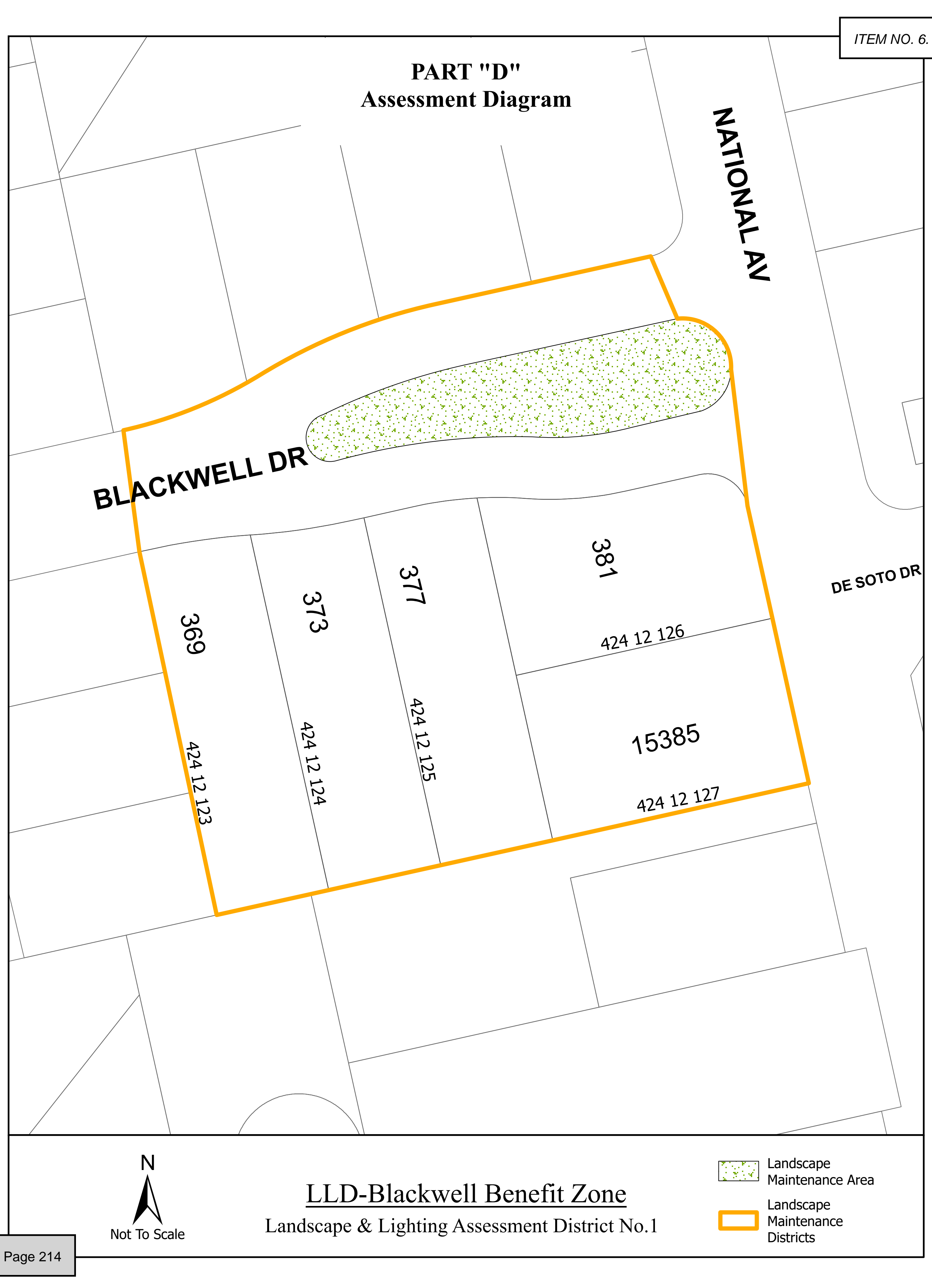
Blackwell Drive Benefit Zone - Maintenance of the landscaping in the median island on Blackwell Drive constructed as a part of the public improvements required of Tract No. 8306, and maintenance of the street lights installed along Blackwell Drive and National Avenue installed as a part of the public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

Hillbrook Benefit Zone - The maintenance of trees, landscaping, irrigation systems, hardscape and fences as currently exist on APN 523-11-028, located at the southeast corner of Blossom Hill Road and Hillbrook Drive.

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

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

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


PART "D"
Assessment Diagram
NATIONAL AV
BLACKWELL DR
DE SOTO DR
369
424 12 123
373
424 12 124
377
424 12 125
381
424 12 126
15385
424 12 127
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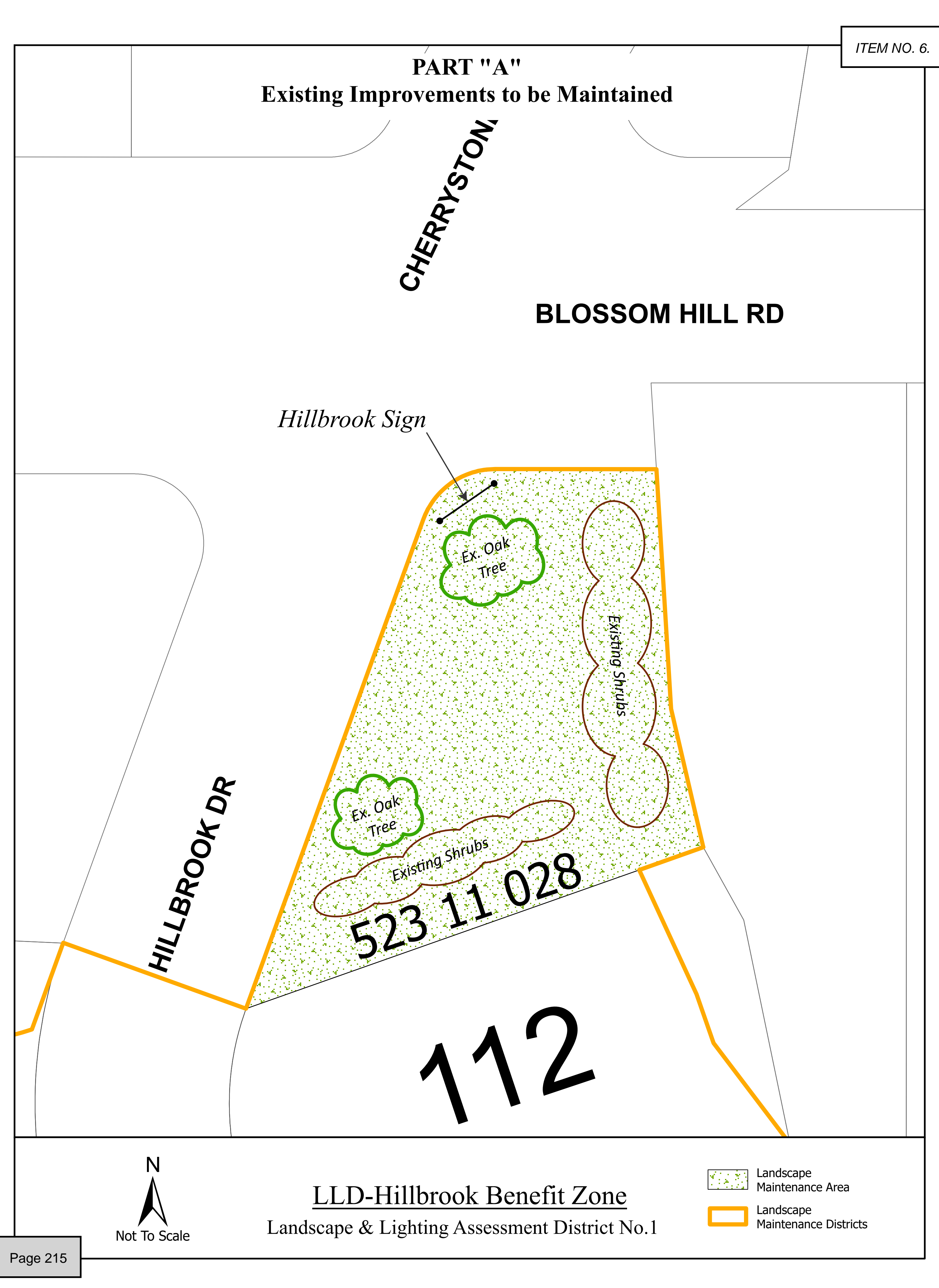
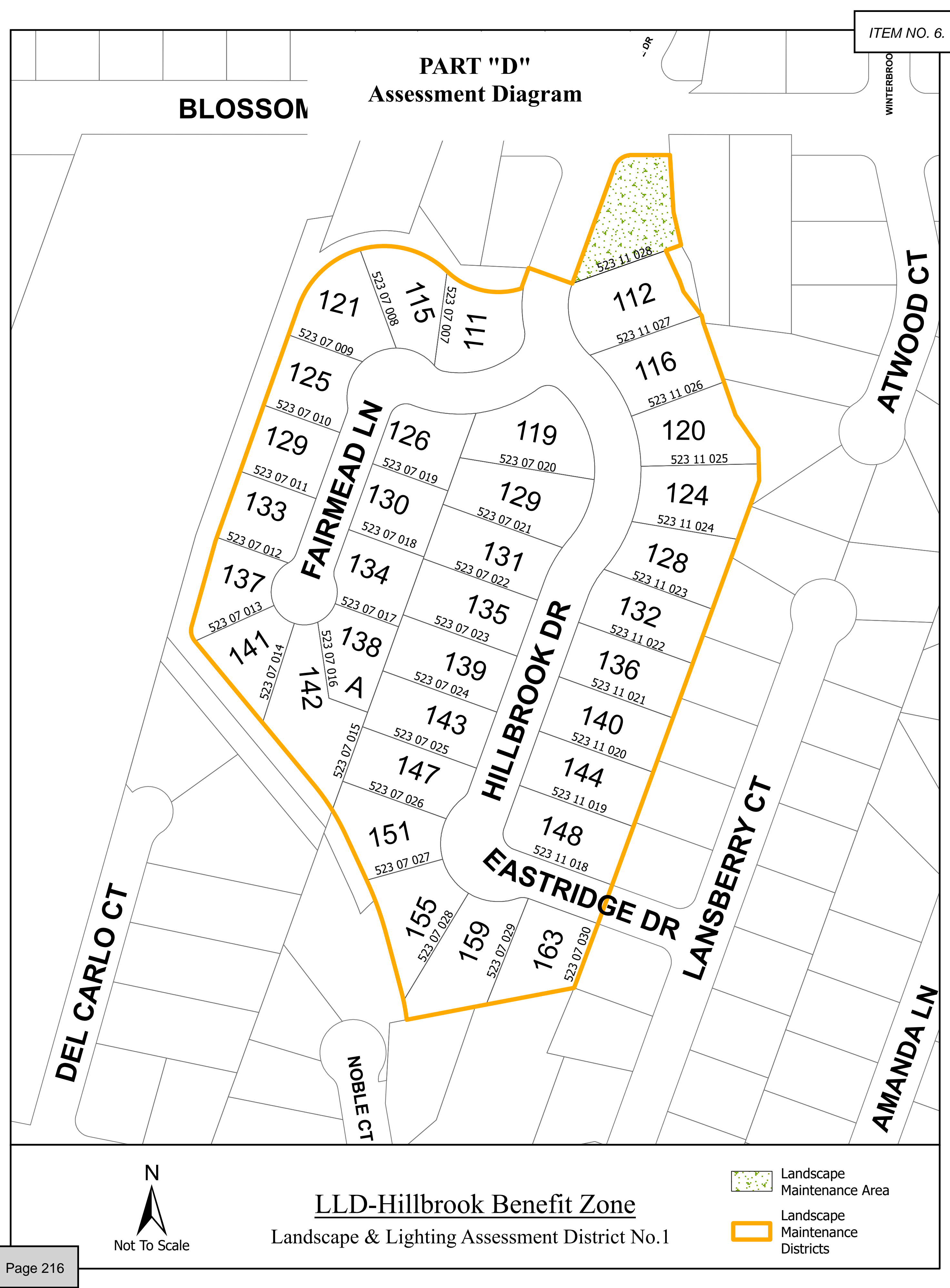
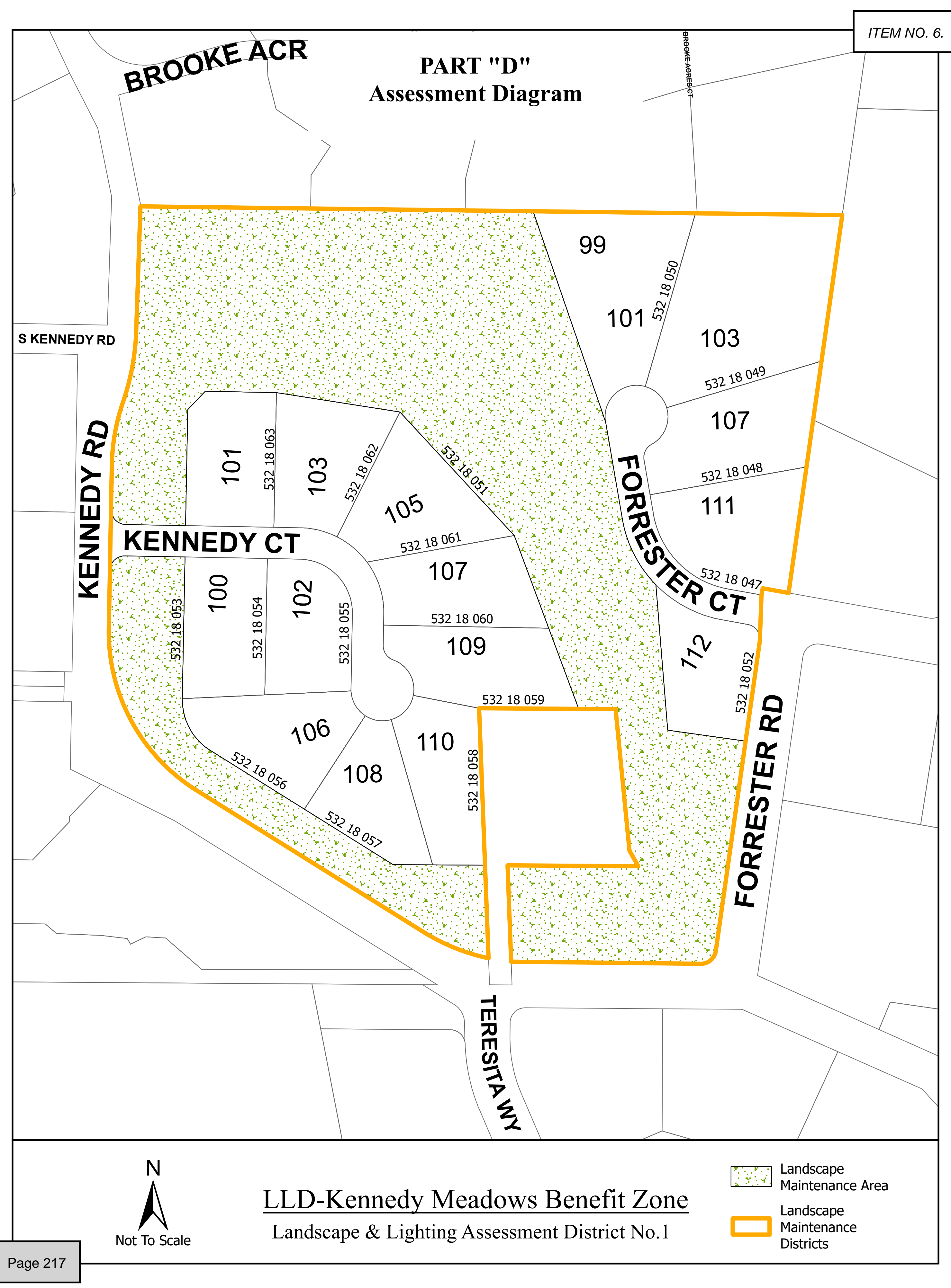
Not To Scale
LLD-Blackwell Benefit Zone
Landscape & Lighting Assessment District No.1
Landscape Maintenance Area
Landscape Maintenance Districts

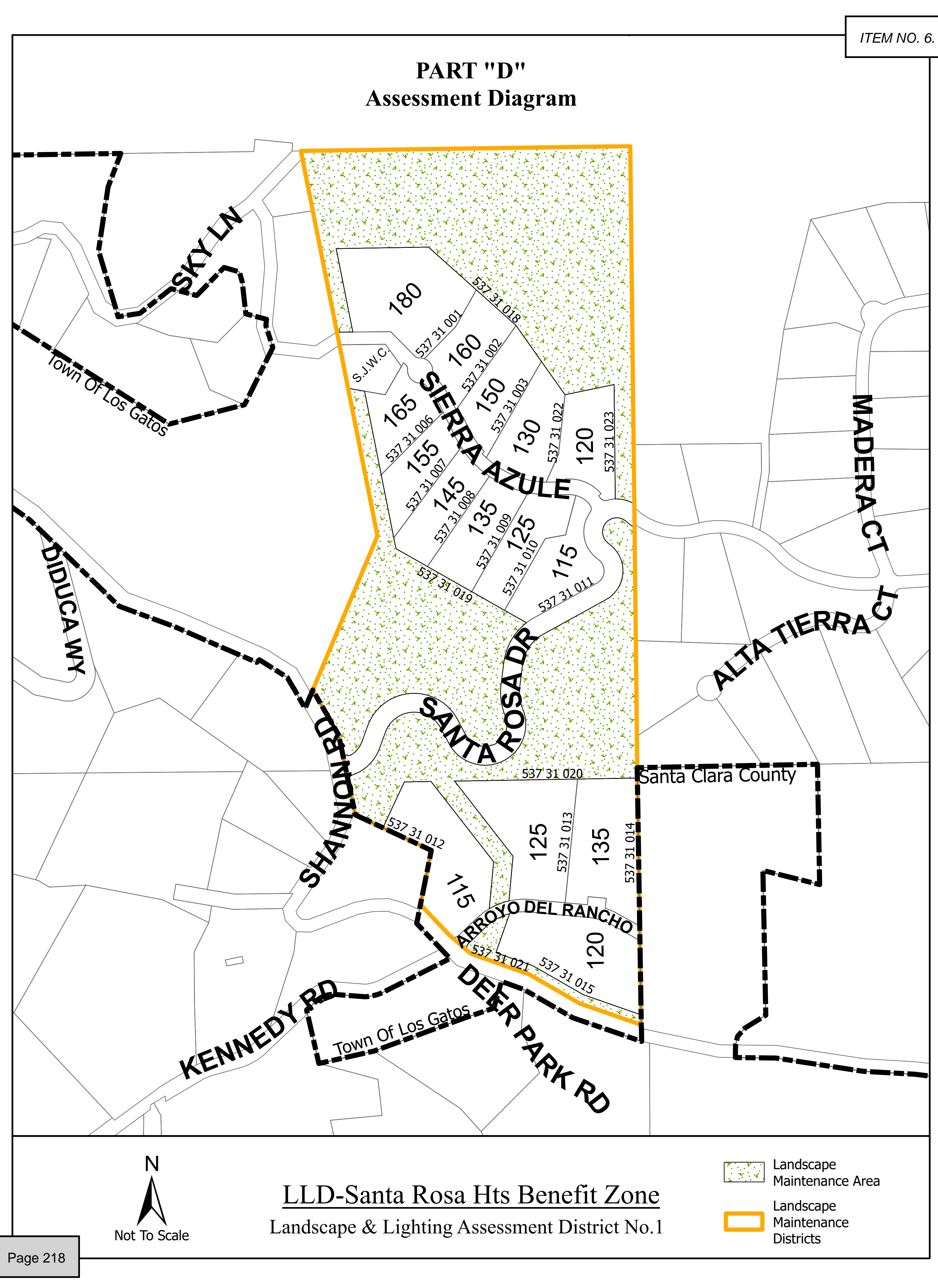

PART "A"
Existing Improvements to be Maintained
CHERRYSTON
BLOSSOM HILL RD
Hillbrook Sign
Ex. Oak Tree
Existing Shrubs
Ex. Oak Tree
Existing Shrubs
HILLBROOK DR
523 11 028
112
N
Not To Scale
LLD-Hillbrook Benefit Zone
Landscape & Lighting Assessment District No.1
Landscape Maintenance Area
Landscape Maintenance Districts



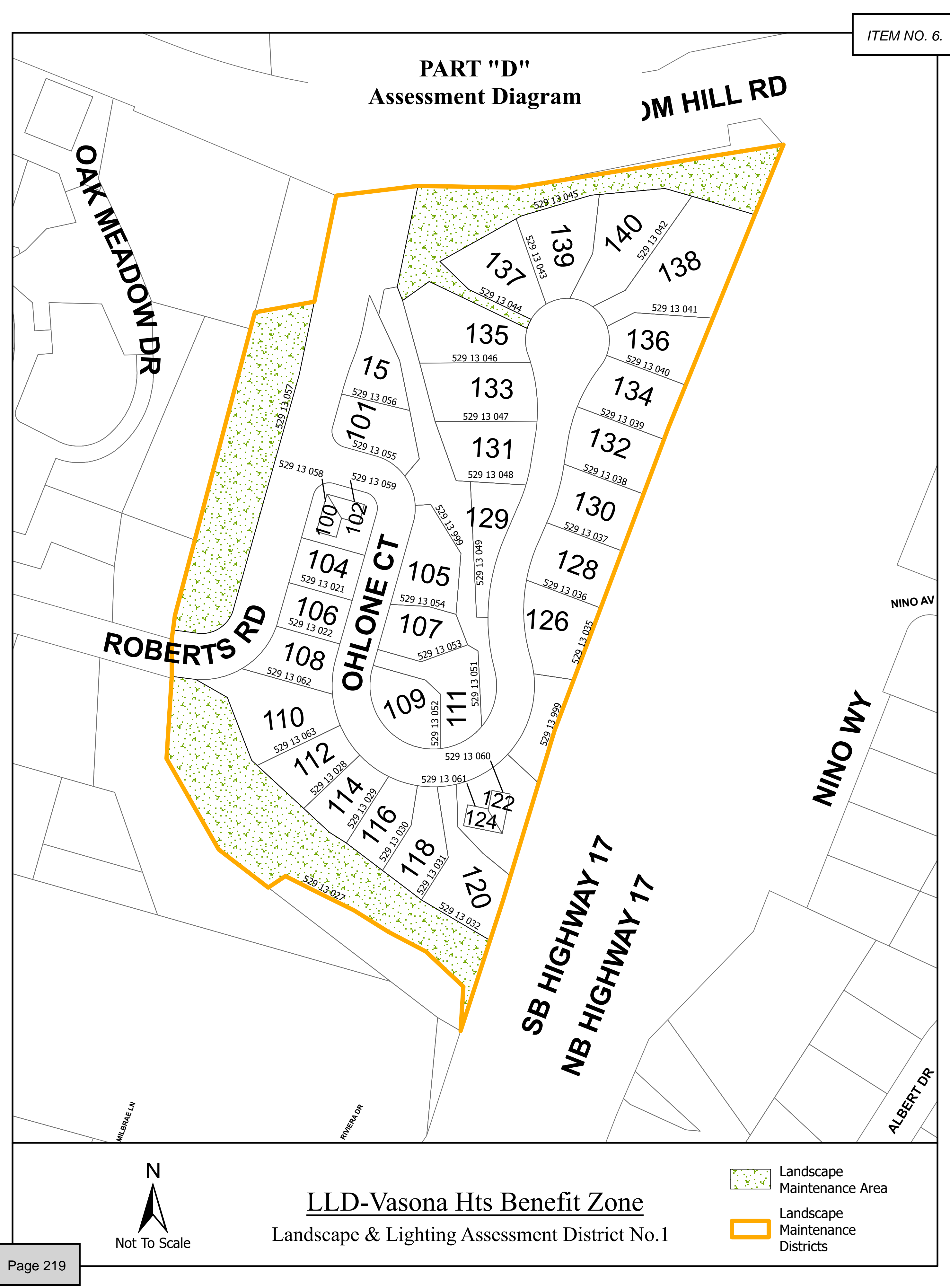
LLD-Hillbrook Benefit Zone

Landscape & Lighting Assessment District No.1


PART "D"
Assessment Diagram
BROOKE ACR
BROOKE ACRES CT
S KENNEDY RD
KENNEDY RD
KENNEDY CT
FORRESTER CT
FORRESTER RD
TERESITA WY
99
101
532 18 050
103
532 18 049
107
532 18 048
111
532 18 047
112
532 18 052
101
532 18 063
103
532 18 062
105
532 18 051
532 18 061
107
532 18 060
109
532 18 059
110
532 18 058
108
532 18 057
106
532 18 056
100
532 18 053
532 18 054
102
532 18 055
N
Not To Scale
LLD-Kennedy Meadows Benefit Zone
Landscape & Lighting Assessment District No.1
Landscape Maintenance Area
Landscape Maintenance Districts



PART "D"
Assessment Diagram
SKY LN
Town Of Los Gatos
DIDUCA WY
SHANNON RD
SIERRA AZULE
SANTA ROSA DR
MADERA CT
ALTA TIERRA CT
ARROYO DEL RANCHO
KENNEDY RD
DEER PARK RD
Santa Clara County
S.J.W.C.
180
537 31 001
537 31 018
160
537 31 002
150
537 31 003
130
537 31 022
120
537 31 023
165
537 31 006
155
537 31 007
145
537 31 008
135
537 31 009
125
537 31 010
115
537 31 011
537 31 019
537 31 020
537 31 012
115
125
537 31 013
135
537 31 014
120
537 31 021
537 31 015
N
Not To Scale
LLD-Santa Rosa Hts Benefit Zone
Landscape & Lighting Assessment District No.1
Landscape Maintenance Area
Landscape Maintenance Districts



LLD-Vasona Hts Benefit Zone

Landscape & Lighting Assessment District No.1

EXHIBIT A

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

1. General Description of Improvements:

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

2. Specific Description of Improvements:

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

PART "D"
Assessment Diagram
BLOSSOM
HARWOOD RD
GEMINI CT
JAMIE CT
BEGONIA DR
LOBELIA LN
MORNING GLORY LN
PEONY LN
Town Of Los Gatos
City of San Jose
Pedestrian Walkway
157
567 64 045
158
567 64 044
153
567 64 046
154
567 64 054
149
567 64 047
150
567 64 053
145
567 64 048
146
567 64 052
141
567 64 049
142
567 64 042
137
567 64 050
138
567 64 041
133
567 64 051
134
567 64 040
130
567 64 039
126
567 64 038
122
567 64 037
118
567 64 036
114
567 64 035
110
567 64 034
N
Not To Scale
LLD-Gemini Ct Benefit Zone
Landscape & Lighting Assessment District No.2
Landscape Maintenance Area
Landscape Maintenance Districts

TOWN OF LOS GATOS
COUNCIL AGENDA REPORT

MEETING DATE: 04/21/2026
ITEM NO: 7

DATE: March 30, 2026

TO: Mayor and Town Council

FROM: Chris Constantin, Town Manager

SUBJECT: **Authorize the Town Manager to Execute a Three-Year Agreement for Professional Services with Disability Access Consultants, LLC, in an Amount Not to Exceed $50,000 Annually and $150,000 Total**

RECOMMENDATION: Authorize the Town Manager to execute a three-year agreement for Professional Services with Disability Access Consultants, LLC, for ADA Transition Plan implementation and support services in an amount not to exceed $50,000 annually and $150,000 total.

FISCAL IMPACT:

The proposed agreement represents a continuation of existing ADA consulting services and does not increase the overall service level beyond current operations. Funding for these services is included in the adopted FY 2025-26 Capital Improvement Program Budget for the Annual ADA Compliance Work Project (CIP No. 821-2013, 4118734-82303). Funding for subsequent fiscal years will be requested through the annual Operating Budget process and is subject to Town Council approval.

STRATEGIC PRIORITY:

This item does not directly address a Strategic Priority; however, it aligns with the Core Goal of Quality Public.

BACKGROUND:

The federal statute on *Nondiscrimination on the Basis of Disability in State and Local Government Services* (28 CFR § 35.150 – Existing Facilities) requires a public entity that employs

PREPARED BY: Gary Heap
Town Engineer

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Administrative Services Director

50 or more persons to develop a transition plan setting forth the steps necessary to achieve program accessibility and reasonable modifications to eliminate barriers for persons with disabilities. In addition, Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against people with disabilities in programs that receive federal financial assistance.

The Town's previous ADA Transition Plan (the 1993 Plan) was adopted by the Town Council in 1993, identified improvements needed for accessibility compliance, and prioritized them to occur over a three-year time frame. After the adoption of the 1993 Plan, the Town constructed numerous projects and infrastructure to address the ADA requirements identified. However, ADA standards are ever evolving at the federal and state levels with broader rulings and regulation requirements.

On April 5, 2021, the Town entered into an agreement with Disability Access Consultants (DAC) to develop an updated Americans with Disabilities Act (ADA) Transition Plan (the 2023 Transition Plan). The legally required 2023 Transition Plan identifies required improvements to the Town's programs, services, activities, and assets to achieve compliance with the ADA. The 2023 Plan was completed in spring 2023. The current contract with DAC expires on June 30, 2026, and the Town desires to continue the working relationship with the consultant through a single source procurement mechanism. The selection complies with the Town's Purchasing Policy and applicable procurement requirements.

DISCUSSION:

ADA compliance is a federally mandated requirement, and failure to maintain compliance may expose the Town to legal liability, including complaints, litigation, and potential loss of eligibility for certain federal funding sources. Ongoing consultant support ensures the Town maintains up-to-date policies, responds appropriately to accessibility requests and grievances, and continues implementation of the ADA Transition Plan in a consistent and legally defensible manner. Services include ADA/504 Coordinator support, grievance response, accessibility policy updates, federal compliance support (including Caltrans, FHWA, HUD, and CDBG requirements), website accessibility review (WCAG 2.1 AA), annual reporting, and ongoing transition plan implementation tracking.

Since the initial contract with DAC in 2021, staff have continued to implement necessary ADA improvements when possible. Examples of this ADA work include our Annual Curb, Gutter, Sidewalk Project (CIP 813-9921), where select sidewalks and curb ramps are replaced annually to comply with ADA standards. The Town also contracts annually with Precision Concrete Cutting (PCC) to focus on the removal of trip hazards on sidewalks around the Town in high pedestrian areas. In completing this work, staff coordinates with DAC to update the database of needed improvements and demonstrate compliance with the ADA.

With the requested action, staff is proposing a new three-year agreement with DAC to continue to provide ADA Transition Plan services through June 30, 2029. DAC will continue to assist the

Town in the prioritization of future Town programs and projects and provide as-needed consultation services to support the implementation of the 2023 Transition Plan.

CONCLUSION:

Staff recommends that the Town Council authorize the Town Manager to execute the proposed agreement to continue ADA consulting services and support implementation of the 2023 ADA Transition Plan.

COORDINATION:

This report was coordinated with the Finance Department and the Attorney's Office.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:
1. Agreement for Consultant Services - Disability Access Consultants, LLC

AGREEMENT FOR PROFESSIONAL SERVICES

ITEM NO. 7.

Services for Implementation of American Disability Act (ADA) Transition Plan

PREAMBLE

THIS AGREEMENT is by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and Disability Access Consultants, LLC ("Consultant"), a Limited Liability Company whose address is 2862 Olive Highway, Suite D, Oroville, CA 95966. This Agreement is made with reference to the following facts.

I. RECITALS

A. Town desires to engage Consultant to provide American Disability Act (ADA) transition plan implementation services in support of the 2023 ADA Transition Plan

B. Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement.

C. 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 the Consultant.

II. AGREEMENT

A. Scope of Services. Consultant shall provide services as described in the Scope of Services, which is hereby incorporated by reference and attached as Exhibit A.

B. Term. The term of this Agreement shall be from July 1, 2026 to Saturday, June 30, 2029.

C. 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 the Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license as required in Chapter 14 of the Code of the Town of Los Gatos.

D. Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.

E. 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 services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at Town's risk, unless the 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.

F. Compensation: Compensation for Consultant's professional services **shall not exceed $150,000.00** at the rates set forth in Exhibit A which is attached and incorporated by reference. Payment shall be based upon Town approval of each task.

G. 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
Email (preferred): AP@losgatosca.gov

H. 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 offices during business hours upon written request of the Town.

I. 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.

J. 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.

K. 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.

L. Non-Discrimination. 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

A. Minimum Scope of Insurance:

1. 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: two million dollars ($2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
2. 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.
3. Consultant 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.
4. 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.

B. General Liability:

1. 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 Consultant; products and completed operations of Consultant, premises owned or used by the Consultant.
2. The Consultant'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 agents shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or agents.

4. 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.

C. 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.

D. 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. As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than one million dollars ($1,000,000) per accident for bodily injury or disease.

E. Indemnification. The Consultant shall indemnify the Town its elected and appointed officials, employees and agents 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 any act or omissions of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant. Consultant shall defend the Town against any such claims.

IV. GENERAL TERMS

A. 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.

B. 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.

C. Mediation. Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties. In the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a blind draw. The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

D. 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 Service Provider. 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.

E. 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.

F. 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

Disability Access Consultants, LLC
2862 Olive Highway, Suite D, Oroville, CA 95966

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

G. 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.

H. 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.

Attachments:

A - Scope of Services

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

TOWN OF LOS GATOS:	DISABILITY ACCESS CONSULTANTS, LLC:
SIGNATURE	**SIGNATURE**
Chris Constantin	Tim Mahoney
FULL NAME	**ENTER CONSULTANT SIGNATORY'S NAME**
Town Manager	General Manager and Managing Member
TITLE	**ENTER CONSULTANT SIGNATORY'S TITLE**
DATE SIGNED	**DATE SIGNED**

Approved as to form:

SIGNATURE

Gabrielle Whelan

FULL NAME

Town Attorney

TITLE

DATE SIGNED

The execution date is the date on which the last party has signed.

Exhibits List

A - Scope of Services

Exhibit A

Scope of Services

Proposal for On-Call and Fixed Fee Consultation Services – Town of Los Gatos

1. ADA Support Services (Fixed Fee) $42,240

DAC would assist the Town by providing ADA support and ADA coordinator support functions, services and tasks to the Town. DAC services would include, but are not limited to:

a. ADA/504 Coordinator Support Services (Fixed Fee)

- Public accommodation requests and review
- Accommodation solutions - research and options (braille, TTY, ASL interpreter, etc.)
- Complaint or grievance review and response
- Review and update notices and postings
- Review and update of Town's accessibility policies, procedures and practices
- Review and update of Town's accommodation statements and policies
- Review and update of Town's grievance policy and procedures
- Review and update of Town's accessibility training practices
- Assistance with Caltrans, FHWA, HUD, CDBG audits, inquiries and responses
- Review of Town's website and report of compliance with WCAG 2.1 AA standards

Subtask budget for 1a: $1,755/month and $21,060 per year

b. ADA self-evaluation and transition plan documentation, planning and update services

Per the ADA coordinator responsibilities, DAC would assist and collaborate with Town to ensure that the Town's current ADA self-evaluation transition progress is routinely updated, documented and remains current. DAC services would include, but are not limited to:

- Transition Plan Implementation Strategies and Review: DAC will provide the Town with on-going implementation strategies, evaluation and tools to assist the Town on the development and updating of the Town's transition plan.
- Quarterly Report and Review: DACTrak Data entry for project upcoming project planning
- Annual Progress Report/Summary: Annual summary and report of progress and future plans
- Annual Data Entry/Planning: Provide DACTrak data entry for projects that have been implemented for the prior year.

Subtask budget for 1b: $1,765/month and $21,180 per year

2. Accessibility Services (On-call, as-needed) $7,760

Disability Access Consultants, LLC (DAC) will provide the following "on-call" services, including but not limited to the following, as requested by Town.

- Plan review and project specifications, including but not limited to:
  - new construction projects
  - remodeling projects
- Expert witness services

- Accessibility complaint, ADA Grievance and legal assistance
- Staff Training
- Review construction design standards and make recommendations for revisions.
- Other ADA and accessibility-related consulting services, as requested.
- Site Inspections, as requested

General On-Call Services Budget: $7,760 (as needed for contract term)

Compensation
As this is an agreement for both on-call consultation and fixed fee for services, the exact level of effort and specific activities to complete the scope of work cannot be identified at this time.

Compensation for fixed services will be invoiced monthly. On-call consultant services will be on an as-needed basis and will be invoiced at the end of the month the services were completed.

Please see the following hourly rate schedule for DAC to complete on-call services. All expenses are included in the hourly rate.

Total proposal is for a not-to-exceed of amount of **$50,000** annually for a not-to-exceed total of **$150,000** for the entire contract term.

Contract term is for thirty-six (36) months. Hourly costs are firm for thirty-six (36) months.

DAC Hourly Rate Sheet

Title		Hourly Rate
Senior and Lead Consultant	Barb Thorpe	$170
Senior Director of Accessibility Services & CASp	Mike Boga	$170
General Manager	Tim Mahoney	$150
Director of Professional Services	Jennie Grover	$150
Director of Accessibility Services & CASp	Candice Pursch	$150
Accessibility Specialists	Various	$100
Administrative Analysts	Various	$100
Information Technology Specialist, if requested	Sri Talasila	No fee

TOWN OF LOS GATOS
COUNCIL AGENDA REPORT

MEETING DATE: 04/21/2026

ITEM NO: 8

DATE: April 3, 2026

TO: Mayor and Town Council

FROM: Gabrielle Whelan, Town Attorney

SUBJECT: **Authorize the Town Manager or Designee to Enter into a Second Amendment to the Contract for Litigation Legal Services for FY 2025-26 with Goldfarb and Lipman to Increase the Contract Amount by $100,000, for a Total Contract Amount Not to Exceed $450,000**

RECOMMENDATION: Authorize the Town Manager or designee to enter into a Second Amendment to the Contract for Litigation Legal Services for FY 2025-26 with Goldfarb and Lipman in an amount not to exceed $450,000.

FISCAL IMPACT:

The proposed action will authorize a second contract amendment in the amount of $100,000 for Land Use Litigation services in Fiscal Year 2025-26, which increases the current not to exceed amount from $350,000 to $450,000. Funds have been budgeted for these services in account 1111301-63215, and sufficient funds are available for this increase. The Town Attorney's office is not seeking a budget adjustment at this time.

STRATEGIC PRIORITY:

The item supports a top strategic priority of providing a range of housing opportunities while diligently maintaining and implementing the Housing Element.

BACKGROUND:

In July 2022, the Town Attorney's Office entered into an agreement with Goldfarb & Lipman LLP to provide specialized housing law legal services. Over the past three years, the firm has assisted the Town with legal issues related to Housing Element certification and SB 330

PREPARED BY: Bridgette Falconio
Administrative Technician

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Administrative Services Director

development proposals, as well as representing the Town in land use litigation. Due to current land use litigation, continued representation remains necessary.

The Town Attorney's Office retains Goldfarb and Lipman as a single source vendor pursuant to Town Code section 2.50.130(b)(2).

DISCUSSION:

The proposed second amendment to the Legal Services Agreement will cover legal representation in land use litigation, specifically defending a pending case filed by an SB 330 applicant. The funds will be used for the preparation of Town briefs, court appearances, and potentially the preparation of an administrative record. Goldfarb & Lipman is recognized statewide as an expert in Housing Element law and is uniquely qualified to represent the Town in these matters.

The second contract amendment for FY 2025-26, with a not-to-exceed amount of $450,000, ensures the Town has the necessary resources to address pending litigation matters.

CONCLUSION:

Staff recommends that the Town Council authorize the Town Manager or designee to enter into a Second Amendment to the Contract for Litigation Legal Services for FY 2025-26 with Goldfarb and Lipman in an amount not to exceed $450,000.

COORDINATION:

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

ENVIRONMENTAL ASSESSMENT:

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

Attachments:
1. Second Amendment
2. First Amendment and Land Use Litigation Agreement

SECOND AMENDMENT TO AGREEMENT

This Second AMENDMENT TO AGREEMENT amends that certain agreement titled agreement for Professional Services dated July 1, 2025, made by and between the Town of Los Gatos, ("Town,") and Goldfarb & Lipman LLP ("Consultant"), a Limited Liability Partnership and whose address is 1300 Clay St, Oakland, CA 94612.

RECITALS

A. Town and Consultant entered into an Agreement for Professional Services on July 1, 2025 ("Agreement").

B. The parties entered into First Amendment to Agreement for Professional Services on December 2, 2025.

C. The parties desire to amend the Agreement in order to increase the not-to-exceed amount of compensation by $100,000.00.

AMENDMENT

A. The "not to exceed" amount in the Compensation Section is amended to $450,000.00.

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

TOWN OF LOS GATOS	CONTRACTOR: Goldfarb & Lipman LLP
SIGNATURE	**SIGNATURE**
Chris Constantin	Celia W. Lee
FULL NAME	**CONTRACTOR SIGNATORY'S FULL NAME**
Town Manager	Esquire
TITLE	**CONTRACTOR SIGNATORY'S TITLE**
DATE SIGNED	**DATE SIGNED**

Approved as to form:

SIGNATURE

Gabrielle Whelan

FULL NAME

Town Attorney

TITLE

DATE SIGNED

The execution date is the date on which the last party has signed.

Docusign Envelope ID: 07142FF8-5BC1-4ECC-BE01-69B123B1742B

AMENDMENT TO AGREEMENT

This AMENDMENT TO AGREEMENT is dated for identification this 2nd day of December, 2025 and amends that certain agreement for Professional Services dated July 1, 2025, made by and between the Town of Los Gatos, ("Town,") and Goldfarb & Lipman LLP.("Consultant.")

RECITALS

A. Town and Consultant entered into an Agreement for Professional Services on July 1, 2025, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.

B. To cover ongoing SB 330 Land Use Litigation expenses, the parties wish to increase the compensation amount.

AMENDMENT

1. The "not to exceed" amount in the Compensation Section is amended be $350,000.00.
2. All other terms and conditions of the Agreement remain in full force and effect.

Town of Los Gatos

By: Signed by: Chris Constantin 12/16/2025
3EF03F232F1B428...
Chris Constantin, Town Manager

Approved as to Consent:

By: Signed by: Celia W. Lee 12/5/2025
27CF9CFB9CCF445...
Celia W. Lee, Esquire

Approved as to Form:

Signed by: Gabrielle Whelan 12/16/2025
EFD6738A5534428...
Gabrielle Whelan, Town Attorney

ATTACHMENT 2

Docusign Envelope ID: 07142FF8-5BC1-4ECC-BE01-69B123B1742B

goldfarb
lipman
attorneys

1300 Clay Street, Eleventh Floor
Oakland, California 94612
510 836-6336

M David Kroot
Lynn Hutchins
Karen M. Tiedemann
Thomas H. Webber
Dianne Jackson McLean
Robert C. Mills
Isabel L. Brown
James T. Diamond, Jr.
Margaret F. Jung
Heather J. Gould
William F. DiCamillo
Amy DeVaudreuil
Barbara E. Kautz
Rafael Yaquián
Celia W. Lee
Dolores Bastian Dalton
Joshua J. Mason
Jeffrey A. Streiffer
Elizabeth R. Klueck
Jhaila R. Brown
Gabrielle B. Janssens
Rye P. Murphy
Benjamin Funk
Aileen T. Nguyen
Katie Dahlinghaus
Brandon V. Stracener
Matthew S. Heaton
Nazanin Salehi
Erin C. Lapeyrolerie
Minda Bautista Hickey
Jocelyn A. Portales
Colleen A. Wisel
Thomas J. Levendosky

Los Angeles
213 627-6336
San Diego
619 239-6336
Goldfarb & Lipman LLP

August 27, 2025

via electronic mail

Gabrielle Whelan, Town Attorney
Town of Los Gatos
110 East Main Street
Los Gatos, CA 95030
GWhelan@losgatosca.gov

Re: **Legal Services – Town of Los Gatos– Land Use Litigation**

Dear Gabrielle:

Goldfarb & Lipman LLP would be pleased to provide legal services to the Town of Los Gatos (the Town) in connection with the following land use litigation matters as authorized in writing by the Town for the period from July 1, 2025 to June 30, 2026:

a) *The Town of Los Gatos, a California municipal corporation vs Arya Properties, LLC et al* Case Number: 25CV462276 (Arya Matter)

b) *Los Gatos LLC vs The Town of Los Gatos*, Case Number: 25CV467536 (Capri Matter)

Dolores Bastian Dalton will have primary responsibility for our work on the Arya matter and Celia W. Lee will have primary responsibility on the Capri matter. Barbara E. Kautz, Brandon V. Stracener and Nazanin Salehi will provide assistance in both matters. Our goal is to provide you with quality legal services, on schedule and at a reasonable cost. To that end, we may also draw on the services of other colleagues as needed to provide the most cost-effective services.

Our fees will be billed on an hourly basis at the rates set forth in the attached Rate Schedule, and payable monthly based on the number of hours expended on the matter with a maximum of $200,000 for the period from July 1, 2025 to June 30, 2026. Our billing rates for this matter reflect our discounted rates for legal advice and representation for public entity clients and are subject to the increases described in attached Goldfarb & Lipman's Legal Representation Policies and Procedures. Our hourly rates are adjusted from time to time and may change during the course of our engagement upon sixty (60) days prior written notice to you. If you choose not to consent to the increased rates, you may terminate our services by written notice effective when received by us. The time charged will include, but is not limited to, the time spent on telephone calls, emails and other electronic communications relating to the transaction, including calls and emails with Town staff and other parties and attorneys. The legal personnel

4051296.1

ATTACHMENT 1

Docusign Envelope ID: 07142FF8-5BC1-4ECC-BE01-69B123B1742B

assigned to this transaction may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. If more than one of the legal personnel participates in a call or attends a meeting, each may charge for the time spent as appropriate. We do not anticipate the need for any travel during this engagement.

Goldfarb & Lipman may withdraw with your consent or for good cause or if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law. Among the circumstances under which we may withdraw are: (a) with your consent; (b) if your conduct renders it unreasonably difficult for the firm to carry out the legal services effectively; and/or (c) if you fail to pay fees or costs as required by this Agreement. Notwithstanding the withdrawal, you will remain obligated to pay Goldfarb & Lipman at the agreed rates for all services provided and to reimburse for all costs advanced during the term of our engagement.

Nothing in this Agreement and nothing in our statements to you will be construed as a promise or guarantee about the outcome of the representation. Goldfarb & Lipman makes no such promises or guarantees. Goldfarb & Lipman's comments about the outcome of the representation are expressions of opinion only, are neither promises nor guarantees, and will not be construed as promises or guarantees. Any estimate of fees given by Goldfarb & Lipman is not a representation of a flat fee and will not be a limitation on fees or a guarantee that fees and costs will not exceed the amount of any deposit or estimate. Actual fees may vary from estimates given.

When signed by an authorized agent on behalf of the Town, this letter constitutes the written fee agreement with Goldfarb & Lipman LLP in connection with the work described above. This agreement does not cover litigation services of any kind, whether in court, arbitration, administrative hearings, or government agency hearings. A separate written agreement for these services or services in any other matter not described above will be required.

Please call me if you have any questions or concerns about this proposal. If the arrangement described in this letter is satisfactory, then please sign the letter in the space provided on the following page and email an electronic copy to us at: ddalton@goldfarblipman.com and clee@goldfarblipman.com and keep a copy for your files.

We appreciate the opportunity to work with you and Town staff members and look forward to representing the Town of Los Gatos on this matter.

Very truly yours,

DOLORES BASTIAN DALTON

051296.1

CELIA W. LEE

Enclosures: Rate Schedule; Billing Policies and Procedures

ACCEPTED AND AGREED:

TOWN OF LOS GATOS

Signed by:
By: Gabrielle Whelan
EFD6738A5534428...
Gabrielle Whelan

Its: Town Attorney

Date: 9/8/2025

 051296.1

Docusign Envelope ID: 07142FF8-5BC1-4ECC-BE01-69B123B1742B

Goldfarb & Lipman LLP
Billing Rates Per Hour

Partner	\$370-\$390
Senior Counsel	\$365-\$390
Associate	\$275-\$365
Senior Law Clerk	\$260
Law Clerk	\$210
Project Coordinator	\$210

051296.1

Docusign Envelope ID: 07142FF8-5BC1-4ECC-BE01-69B123B1742B

GOLDFARB & LIPMAN LLP
LEGAL REPRESENTATION POLICIES AND PROCEDURES

Dear Client:

Experience has shown that the attorney-client relationship works best when there is a mutual understanding about fees and payment terms. Accordingly, this letter is intended to briefly explain our billing policies and procedures. We encourage you to discuss with us any questions you may have concerning these policies and procedures.

To determine the value of our services, we require each of our lawyers and legal assistants to maintain time records for each client and matter. The time records are reviewed monthly by the responsible billing attorney. Our billing rates for services rendered for partners, associates, and for paralegals are attached. Our hourly rates are adjusted from time-to-time (generally once a year) and may change during the course of our engagement upon 60 days prior written notice to you.

It is our policy to serve you with the most effective support systems available. Therefore, in addition to our fees for legal services, we may also charge the actual costs for messengers, delivery other than by US postal service, court costs, and other costs and expenses incurred on your behalf that are reasonably necessary for our representation of you.

Our billing statements are due and payable upon receipt. Clients whose statements are not paid within 30 days of the statement date may be assessed a late charge on the unpaid balance at the rate of one-and-a-half percent per month.

We carry professional liability insurance above the limits required by law.

It is our policy to retain and ultimately destroy all files, documents, records, and writings relating to each engagement for which we have been retained without notifying clients or former clients of the destruction of these items. At the termination of services and conclusion of a matter covered by this agreement, we will release promptly upon your request all of your client papers and property, subject to any protective order, state statute, or nondisclosure agreement. After seven years have passed since the conclusion of such matter, we may dispose of your client papers and property. If you wish to have us retain your papers and property beyond seven years after the conclusion of such matter, you must make separate written arrangements with us. Client papers and property include: electronic and hard copy versions of any correspondence, pleadings, deposition transcripts, exhibits, experts' reports, legal documents, physical evidence, and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

In closing, let us assure you that it has always been and will continue to be our goal to provide legal services to you on the most efficient and cost effective bases possible. If you have any questions or comments regarding our billing policies, please feel free to contact us. Thank you for your continued cooperation.

Very truly yours,

GOLDFARB & LIPMAN LLP

 051296.1

TOWN OF LOS GATOS
COUNCIL AGENDA REPORT

MEETING DATE: 04/21/2026
ITEM NO: 9

DATE: April 16, 2026

TO: Mayor and Town Council

FROM: Gabrielle Whelan, Town Attorney

SUBJECT: **Following a Court Order, Hear the Appeals Submitted by Applicants for (1) Luxe and (2) Arya Projects Regarding Government Code Section 65941.1's Deadline for Submittal of Complete Planning Applications for Proposed Projects at (1) 14849 Los Gatos Boulevard, and (2) 15300 and 15330 Los Gatos Boulevard**

RECOMMENDATION: Following a court order, hear the appeals regarding Government Code Section 65941.1's deadline for submittal of complete Planning Applications for proposed projects at (1) 14849 Los Gatos Boulevard (Architecture and Site Application S-24-008 and Subdivision Application M-24-005) and (2) 15300 and 15330 Los Gatos Boulevard (Architecture and Site Application S-24-018, Conditional Use Permit Application U-24-007, and Subdivision Application M-24-009) and adopt Resolutions applying the Superior Court determination that multiple 90-Day resubmission periods to respond to successive incompleteness determinations are allowed.

FISCAL IMPACT:

Applying the court's determination will not have a fiscal impact.

STRATEGIC PRIORITY:

This supports the Town's strategic priority of implementing its Housing Element in accordance with state law.

PREPARED BY: Gabrielle Whelan
Town Attorney

Reviewed by: Town Manager, Assistant Town Manager, Community Development Director, and Administrative Services Director

BACKGROUND:

This hearing has been scheduled for the limited purpose of considering two appeals concerning the proper interpretation of Government Code Section 65941.1. The merits of either planning application are not part of this hearing.

Government Code Section 65941.1 authorizes housing project applicants to submit a Senate Bill 330 (SB 330) "preliminary application." An SB 330 "preliminary application" vests an applicant to the Town regulations that were in effect at the time that the preliminary application was deemed submitted. [Government Code Section 65589.5(o)].

Government Code Section 65941.1(e)(1) provides: "Within 180 calendar days after submitting a preliminary application with all of the information required . . . to a city . . . , the development proponent shall apply for a development project that includes all of the information required to process the development application consistent with Sections 65940, 65941, and 65941.5."

Government Code Section 65941.1(e)(2) further provides: "If the public agency determines that the application for a development project is not complete pursuant to Section 65943, the development proponent shall submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information. If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force or effect."

The Town read Section 65941.1(e)(2) to provide for a single 90-day period following the initial 180-day period in which to render a planning application complete and retain vesting. However, the Town recognized that the statute was not clear. Therefore, the Town filed an action for declaratory relief on March 28, 2025, in order to obtain a court's determination on this question.

After receiving correspondence from the Town stating that two planning applications remained incomplete (Attachments 1 and 2), the architect for both projects called Town staff to inquire about the import of that incompleteness determination. Town staff stated that they believed it was possible that the project vesting had expired. After that conversation, on January 30, 2025, the Town received the appeals of that statement, which are attached to this report (Attachments 3 and 4). After receiving the appeals, the Town Attorney contacted counsel for the applicants to let them know that the Town would hear the appeals after obtaining the court's determination and that, in the meantime, the Town would continue to process the planning applications. A copy of that letter is attached as Attachment 5.

DISCUSSION:

Status of Projects

14849 Los Gatos Boulevard (Luxe)
A preliminary application for the Luxe project was submitted on August 30, 2023, and a formal planning application for a 120-unit mixed-use development (Architecture and Site Application S-24-008 and Subdivision Application M-24-005) was submitted on March 8, 2024, and deemed complete on April 16, 2025. The project has also continued to be processed. The applicant has paid the deposit for an Initial Study to be prepared by the Town's environmental consultant. On February 10, 2026, and March 23, 2026, staff informed the applicant that completion of the Initial Study is pending the applicant's providing the following items:

1) Re-submit the traffic report based on peer review comments provided by the Town's consultant, because the environmental consultant cannot complete the technical analyses for noise and air quality/greenhouse gas/energy until the traffic report, or at least the trip generation and intersection volumes are finalized; and
2) Provide the items requested by the visual simulation consultant in order to complete the renderings.

On March 25, 2026, the applicant provided the items requested by the visual simulations consultant. The renderings are currently being processed by the consultant.

On April 9, 2026, the applicant resubmitted the traffic report. Peer review by the Town's consultant is currently underway.

15300 and 15330 Los Gatos Boulevard (Arya)
A preliminary application for the Arya project was submitted on November 7, 2023, and a formal planning application for a 175-unit mixed-use development (Architecture and Site Application S-24-018, Conditional Use Permit Application U-24-007, and Subdivision Application M-24-009) was submitted on May 10, 2024, and deemed complete on April 16, 2025.

The project has continued to be processed. Environmental review for the project is currently underway through the preparation of an environmental impact report. Photo simulations for the project were completed on August 13, 2025. On August 26, 2025, staff provided peer review comments on the project's traffic analysis.

On January 19, 2026, the applicant's team notified staff that proposed modifications to the project are forthcoming, including potential changes to circulation, parking, floor plans, and building elevations. Staff is awaiting the applicant's resubmittal.

On April 6, 2026, the applicant provided staff with a response to peer review comments. The revisions are currently being reviewed by the Town's traffic consultant to complete the technical reports required for the EIR.

Appeal of Town's Interpretation of Government Code Section 65941.1

The Superior Court issued its order on January 29, 2026, ruling Government Code Section 65941.1(e)(2) "allows for multiple 90-day resubmission periods for a project proponent to respond to successive incompleteness determinations without losing the project vesting conferred by a preliminary application as provided at section 65941.1, subdivision (e)(1)" (Attachment 6).

Having obtained the Court's determination, the Town has scheduled this public hearing to hear the applicants' appeals for these two projects. Draft resolutions are attached as Attachment 1.

Notice of this public hearing was published in a newspaper of general circulation in the Town on April 10, 2026, and posted on the Town's website.

CONCLUSION:

Based on the Court's determination, Town staff recommends that the Town Council adopt the resolutions (Attachments 7 and 8) granting the appeals and finding that multiple 90-day resubmission periods are allowed to respond to successive incompleteness determinations.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required, because applying a trial court determination will not have a significant impact upon the environment.

Attachments:
1. Incompleteness Letter for 14849 Los Gatos Boulevard
2. Incompleteness Letter for 15300 and 15330 Los Gatos Boulevard
3. Appeal Submitted for 14840 Los Gatos Boulevard
4. Appeal Submitted for 15300 and 15330 Los Gatos Boulevard
5. Correspondence from Town Attorney to Counsel for Applicants
6. Superior Court Order
7. Resolution Granting Appeal for 14849 Los Gatos Boulevard
8. Resolution Granting Appeal for 15300 and 15330 Los Gatos Boulevard

TOWN OF LOS GATOS
PLANNING DIVISION

January 30, 2025

Kurt Anderson, AIA
Anderson Architects, Inc.
120 W. Campbell Avenue, Suite D
Campbell, CA 95008

Subject: SB330 Application Incompleteness Determination Appeal Process
14849 Los Gatos Boulevard

Dear Mr. Anderson,

Please note that in accordance with Government Code Section 65943, you may appeal the incompleteness determination, of the Senate Bill 330 application for the property located at 14849 Los Gatos Boulevard to the Town Council by paying the required appeal fee and submitting a written appeal to the Town Clerk on the attached appeal form within 10 days of the date of this letter.

The application's incompleteness determination was provided to the applicant's team on November 19, 2024, as part of the Staff Technical Review Committee comments, and discussed at the November 20, 2024, Staff Technical Review Committee meeting.

If you have questions, please contact Jocelyn Shoopman, Senior Planner, by email at JShoopman@losgatosca.gov.

Sincerely,

Joel Paulson
Community Development Director

cc: Ali Moayed, Los Gatos Boulevard Properties, LLC , 16400 Lark Avenue, Suite 400, Los Gatos, CA 95032

ATTACHMENT 1

Planning Division • 110 E. Main Street, Los Gatos, CA 95030
408.354.6872 • www.losgatosca.gov • www.facebook.com/losgatosca

TOWN OF LOS GATOS
PLANNING DIVISION

January 30, 2025

Kurt Anderson, AIA
Anderson Architects, Inc.
120 W. Campbell Avenue, Suite D
Campbell, CA 95008

Subject: SB330 Application Incompleteness Determination Appeal Process
15300 and 15330 Los Gatos Boulevard

Dear Mr. Anderson,

Please note that in accordance with Government Code Section 65943, you may appeal the incompleteness determination, of the Senate Bill 330 application for the properties located at 15300 and 15330 Los Gatos Boulevard to the Town Council by paying the required appeal fee and submitting a written appeal to the Town Clerk on the attached appeal form within 10 days of the date of this letter.

The application's incompleteness determination was provided to the applicant's team on December 23, 2024, as part of the Staff Technical Review Committee comments, and discussed at the January 8, 2025, Staff Technical Review Committee meeting.

If you have questions, please contact Erin Walters, Senior Planner, by email at ewalters@losgatosca.gov.

Sincerely,

Joel Paulson
Community Development Director

Cc: Ali Moayed, Arya Properties, LLC , 16400 Lark Avenue, Suite 400, Los Gatos, CA 95032

Planning Division • 110 E. Main Street, Los Gatos, CA 95030
408.354.6872 • www.losgatosca.gov • www.facebook.com/losgatosca

TOWN OF LOS GATOS
COMMUNITY DEVELOPMENT DEPARTMENT

110 E. Main Street
Los Gatos, CA 95030

APPEAL OF THE DECISION OF DEVELOPMENT REVIEW COMMITTEE

PLEASE TYPE or PRINT NEATLY

I, the undersigned, do hereby appeal a decision of the DEVELOPMENT REVIEW COMMITTEE as follows:

DATE OF DECISION: January 30, 2025

PROJECT/APPLICATION: The Luxe Builder's Remedy Project

LOCATION: 14849 Los Gatos Blvd (APN 424-07-064)

Pursuant to the Town Code, any interested person as defined in Section 29.10.020 may appeal to the Planning Commission any decision of the Development Review Committee.

Interested person means:

1. *Residential projects.* Any person or persons or entity or entities who own property or reside within 1,000 feet of a property for which a decision has been rendered, and can demonstrate that their property will be injured by the decision.
2. *Non-residential and mixed-use projects.* Any person or persons or entity or entities who can demonstrate that their property will be injured by the decision.

LIST REASONS WHY THE APPEAL SHOULD BE GRANTED:

Please find the attached correspondence from Travis A. Brooks, Esq., Miller Starr Regalia. As noted in the letter, the Applicant is not appealing

IMPORTANT:

1. Appeal must be filed not more than ten (10) days after the decision is rendered by the Development Review Committee. If the tenth (10th) day is a Saturday, Sunday, or Town holiday, then the appeal may be filed on the workday immediately following the tenth (10th) day, usually a Friday. Appeals are due by 4:00 P.M. ***If an appeal is filed on a Friday, they must be submitted by 1:00 P.M.***
2. The appeal shall be set for the first regular meeting of the Planning Commission which the business of the Planning Commission will permit, more than five (5) days after the date of the filing of the appeal. The Planning Commission may hear the matter a new and render a new decision in the matter.
3. You will be notified, in writing, of the appeal date.
4. Contact the project planner to determine what material is required to be submitted for the public hearing.

RETURN APPEAL FORM TO COMMUNITY DEVELOPMENT DEPARTMENT

PRINT NAME: ALI MOAYED SIGNATURE: [signature]

DATE: 02-07-2025 ADDRESS: 16400 LARK AVE, STE 400 LOS GATOS, CA 95032

PHONE: (408) 515-4699 EMAIL: alimoayed@msn.com

****

OFFICE USE ONLY

DATE OF PLANNING COMMISSION HEARING: ______

COMMISSION ACTION: 1. ______ DATE: ______
2. ______ DATE: ______
3. ______ DATE: ______

PLAPPEAL $ 264.00 Residential
PLAPPEAL $ 1,052.00 Commercial
PLAPPEAL $ 107.00 Tree Appeals

N:\DEV\FORMS\Planning\2024-25 Forms (Effective July 1, 2024)\Appeals\Word Docs\Appeal - DRC.docx 06/2024

ATTACHMENT 3

1331 N. California Blvd.
Suite 600
Walnut Creek, CA 94596

T 925 935 9400
F 925 933 4126
www.msrlegal.com

Travis Brooks
travis.brooks@msrlegal.com

February 7, 2025

VIA E-MAIL AND HAND DELIVERY

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

Re: 14849 Los Gatos Boulevard
Request For Appeal Of Town Planning Director's Apparent Determination, in Violation of Housing Accountability Act and Permit Streamlining Act, That Preliminary Application Expired
APNs 424-07-64
Architecture and Site Application S-24-008
Subdivision Application M-24-005

Dear Mr. Paulson:

On behalf of Los Gatos Boulevard Properties, LLC ("LGB Properties" or the "Applicant"), this letter is a formal request to appeal an erroneous January 30, 2025 statement (and potential formal determination) by Town staff that the Senate Bill 330 ("SB 330") Preliminary Application for LGB Properties' above-referenced Builder's Remedy project at 14849 Los Gatos Blvd (the "Project"), has expired.[1]

On January 30, 2025, you in your capacity as Town Community Development Director ("Community Development Director" or "CDD") sent the Applicant a letter (**Exhibit A**) with a determination that LGB Properties' Project application remains incomplete after its most recent timely resubmittal under the Permit Streamlining Act and Senate Bill 330 ("PSA", Gov. Code § 65920 et seq., "SB 330", Gov. Code § 65941.1(e)(2)). As referenced above, the same day, in a conversation to discuss your letter, the Town Planning Director ("Planning Director") verbally communicated to the Applicant his/Town staff's belief that the Project's Preliminary Application, submitted on September 12, 2023, expired because LGB Properties' application remained

[1] LGB Properties reserves its right to submit additional information and materials to the Town in support of this request for appeal in advance of any hearing on the appeal.

incomplete after a second resubmittal.[2] If this communication reflects a final determination by you or the Planning Director, it is incorrect. If confirmed by the Town, it would amount to an improper denial of the Project in plain violation of the PSA, SB 330, and the HAA. As described further below, the Project is protected by the Builder's Remedy of the HAA and denial of it – including an improper determination that the Preliminary Application has "expired" – would expose the Town to liability under the HAA.[3]

Although we do not believe it necessary to appeal your unwritten, verbal statement regarding the "expiration" of the Preliminary Application, we file this appeal out of an abundance of caution to ensure that LGB Properties has exhausted all of its administrative remedies. <u>If the Planning Director's January 30 statement was a formal determination that LGB Properties' Preliminary Application expired and that position has not changed, please provide LGB Properties with written confirmation of this determination immediately</u>.

To be clear, although the CDD's January 30, 2025 letter determined LGB Properties' application to be incomplete, we are not requesting review of that decision for purposes of application completeness. And LGB Properties does not need to do so to preserve the Preliminary Application or the Project's robust protections under the Builder's Remedy, the HAA, and SB 330. Consistent with state law, LGB Properties will submit additional materials to make its formal application complete within the timeframes required by SB 330 and Section 65943 of the PSA.

I. <u>SB 330 And The PSA As Applied To LGB Properties' Application</u>

As you know, SB 330 (Gov. Code § 65941.1.) allows an applicant for a housing development project to submit a "Preliminary Application" under state law. Submittal of a Preliminary Application vests an applicant's rights to proceed under the applicable development standards adopted and in effect at the time the Preliminary Application was submitted, even if those standards later change. (Gov. Code § 65589.5(o).)

Within 180 days after submittal of a Preliminary Application, the applicant must submit a formal development application. (Gov. Code § 65941.1(e)(1) (formerly (d)(1)).) Upon submittal of a formal development application, the process of determining whether a housing development application is complete begins as set forth in

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[2] In other words, your apparent determination that the Preliminary Application expired was not included in the CDD's January 30 letter, which only determined the application was incomplete. Moreover, the Applicant already received planning staff's written, third notice of incompleteness multiple weeks earlier, which included no indication that the Preliminary Application had expired.

[3] As discussed below, such a determination would also directly conflict with multiple guidance letters from HCD, including an August 30, 2024 Technical Assistance letter *to the Town*, as well as the one trial court decision opining on this issue. All of these clearly state that the 90-day resubmittal deadline in Gov. Code 65941.1(e)(2) "resets" after each of what may be *multiple* notices that a timely resubmitted application is incomplete.

Government Code section 65943. Within 30 days of receiving the application materials, the Town must determine in writing whether the application is complete. (Gov. Code § 65943(a).) Upon receipt of an incompleteness determination, the applicant may then resubmit the application, giving the Town another 30-day period to make a completeness determination. (Gov. Code § 65943(b).) Government Code section 65941.1(e)(2) (formerly (d)(2)), requires an applicant to respond to a city's incompleteness determination by resubmitting the application materials as described in Section 65943(b) within 90 days, or else the Preliminary Application will expire. The PSA contemplates a potentially unlimited number of resubmission periods to make an application complete.

Here, the Applicant submitted a Preliminary Application for the Project on September 12, 2023. At that time, the Town did not have an adopted and compliant housing element under state law and was subject to the "Builder's Remedy" of the HAA (Gov. Code § 65589.5(d)(6) (formerly (d)(5).). Under the Builder's Remedy, a town may not disapprove or unreasonably condition any housing development project containing the required percentage of affordable units, even if the project is inconsistent with the Town's General Plan or zoning ordinance.[4] Because LGB Properties' project contains the required percentage of affordable units, and it submitted the Preliminary Application at a time when the Town did not have a compliant housing element, the Project is protected by the Builder's Remedy.

The Applicant timely filed its formal application, pursuant to the Builder's Remedy, on March 8, 2024. The Town responded with a letter dated April 3, 2024, determining the application to be incomplete. The Applicant responded to the Town's April 3 incompleteness letter within 90 days by resubmitting its application materials on July 1, 2024. The Town then issued a subsequent incompleteness letter on July 24, 2024, which the Applicant responded to with a resubmittal on October 21, 2024. On November 20, 2024, the Town provided the Applicant with a third incompleteness letter which said nothing about the Project application expiring. On January 30, 2025, without a request for a review of staff's letter from the Applicant, the Community Development Director issued his own incompleteness determination and that same date the Planning Director communicated his erroneous belief that the Project's SB 330 Preliminary Application had expired.

II. <u>There Is No Limit On The Number Of 90-Day Resubmission Periods Under SB 330 And The PSA</u>

At this stage in the Project's application completeness process, the only manner which LGB Properties' Preliminary Application could "expire" pursuant to SB 330 and the PSA is found in Government Code section 65941.1(e)(2).

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[4] Recently enacted Assembly Bill 1886 confirms the Town is subject to the Builder's Remedy because it did not have a compliant housing element at the time a Preliminary Application was submitted. (Gov. Code § 65589.55(a).)

The Town appears to interpret Section 65941.1(e)(2) to mean that if a formal application is not determined to be complete after two resubmittals – made within each respective 90 day resubmission period – the Preliminary Application expires. This is a plainly erroneous interpretation of the law that conflicts with the language, spirit, and intent of state housing law. It has been squarely rejected by the California Department of Housing and Community Development (HCD) multiple times – including an August 30, 2024 technical advisory memo *directed to the Town* – and the only court to have considered this statutory language so far. (HCD Letter of Technical Assistance to the Town of Los Gatos, dated August 30, 2024, enclosed hereto as **Exhibit B**; HCD Notice of Violation to the City of Beverly Hills, enclosed hereto as **Exhibit C**; Judgment Granting Petition for Writ of Mandate, Sup. Ct. of Cal., County. of Los Angeles, *Jha v. City of Los Angeles* (Case No. 23STCP03499), filed September 17, 2024; ("*Jha*"), enclosed hereto as **Exhibit D**.)

The *Jha* Court correctly reasoned that Gov. Code section 65941.1(e)(2)(then (d)(2)) cross-references the PSA, Gov. Code section 65943, which calls for an iterative completeness process in which the applicant is entitled to an unlimited number of 90-day windows to resubmit an application the jurisdiction determines to be incomplete. *Jha* at 23-24. As the Court held, "[t]he statute supports [the applicant's] reading that the submission and completeness evaluation for an application is an iterative process *with no limit on the number of submissions*.") (*Id.*) (emphasis added). The Court further stressed that a court "'is not dealing with the PSA in a vacuum, but rather in its relation to the HAA,' and the Legislature has mandated the HAA must be interpreted to 'afford the fullest possible weight to the interest of, and the approval and provision of, housing.'" (*Id.* (quoting *Save Lafayette v. City of Lafayette* (2022) 85 Cal. App. 5th 842 855, and Gov. Code § 65589.5(a)(1)(L).)

In its August 30, 2024 letter of technical assistance to the Town, HCD echoed this same analysis:

> [t]he 90 day deadline restarts with each subsequent resubmittal by the applicant. Subdivision (d) [now (e)(2)] of Government Code section 65941.1 references section 65943, which provides for an iterative process in which deadlines reset upon resubmittal. Because of that reference, it is reasonable to conclude that the subdivision envisions a similar back-and-forth process... Furthermore requiring a single 90-day review period would limit the completeness determination process to only one *or two resubmittals*, making the process more difficult for diligent applicants seeking to use the protections of the preliminary application system...
>
> *The 90-day review period for completeness determination under the PSA is not finite and, rather, resets for subsequent resubmittals....*

(emphasis added.)

Finally, HCD's NOV letter to the City of Beverly Hills advised the City that it would violate the HAA, PSA, and SB 330 if it refused to process the applicant's Builder's Remedy project on the grounds that its Preliminary Application had expired due to the formal application being incomplete 90 days after an initial incompleteness determination. "HCD reminds the City… that the 90-day deadline resets after each incompleteness determination. A project with multiple incompleteness letters and responses may have *multiple* 90-day periods." (Beverly Hills Letter at 3, emphasis added.)

We have yet to receive a *written* determination that the Preliminary Application has expired, let alone *any* justification from the Town why the Legislature would have intended a contrary result here, because there is none. It would be an absurd reading of SB 330 to conclude that the Legislature provided an iterative process for completeness determinations for standard development projects under the PSA with unlimited resubmission windows, and then enacted SB 330, expressly cross-referencing the PSA, only allowing for two 90-day completeness periods for the Applicant to maintain vesting – a limitation nowhere referenced or allowed under state law. That result is especially absurd given the intent of the HAA to maximize the production of housing and the intent of the PSA to *reduce* barriers to an application achieving completeness. (*See* Gov. Code § 65589.5(a)(1)(L); *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1438 (purpose of PSA is "to relieve permit applicants from protracted and unjustified delays in processing their permit applications")). The Town's reading of SB 330 would only encourage cities to engage in gamesmanship with completeness determinations by developing onerous and convoluted application requirements or falsely determining applications to be incomplete so they can then argue that a SB 330 Preliminary Application has expired.

III. A Determination By The Town That The Preliminary Application Expired Would Be An Improper Denial Of The Project Under The HAA

Since the time of the *Jha* case, HCD's technical assistance letter to Los Gatos, and HCD's NOV letter to Beverly Hills, the Legislature subsequently enacted legislation confirming that a jurisdiction's improper determination that a Preliminary Application has expired is a disapproval of the project under the HAA. (*See* Gov. Code section 65589.5(h)(6)(H) (defining disapproval to include "mak[ing] a written determination that a preliminary application described in subdivision (a) of Section 65941.1 has expired or that the applicant has otherwise lost its vested rights under the preliminary application for any reason other than those described in subdivisions (c) and (d) of Section 65941.1"); *see also* Gov. Code § 65589.5(h)(6)(D); (6)(F) (expanding definition of disapproval to include improper incompleteness determinations and courses of conduct intended to harass or delay). As demonstrated above, determining a Preliminary Application to have expired after two 90-day resubmission windows is an incorrect reading of section 65941.1(e)(2), and therefore not a basis upon which a Preliminary Application can be determined to have expired. As a result, if the statement relayed in the Applicant's January 30, 2025 conversation with the

Planning Director was a formal determination that the Preliminary Application has expired and it is upheld on review, it will be a denial of the Project as a matter of law, entitling LGB Properties to bring action in court for the Town's violation of the HAA.

A court will undoubtedly hold that the denial of this project is improper, because LGB Properties' Project is protected by the Builder's Remedy of the HAA and therefore cannot be denied. As you are likely aware, local governments bear a heavy burden of proof in Builder's Remedy lawsuits under the HAA (See Gov. Code §§ 65589.5(d); 65589.6) and are subject to substantial penalties and fees. If a plaintiff wins an HAA lawsuit against a local government, the local government is required to pay the applicant's attorney's fees and other costs incurred in bringing the suit, absent extraordinary circumstances. If the local government loses the suit, it has 60 days to comply with the HAA, or it will be fined a minimum of $10,000 per dwelling unit in the proposed housing development project. If the local government acts in bad faith, that fine would be multiplied by five (i.e., $50,000 per dwelling unit in the proposed housing development project).

For all these reasons, we are formally requesting that the CDD first confirm in writing whether the Planning Director's January 30, 2025 statement reflects his or your formal (albeit erroneous) determination that the Preliminary Application expired. If so, we request that you (as Community Development Director) or the Planning Commission direct the Planning Director to reverse his determination that the Preliminary Application has expired and continue processing the Project application consistent with its protections under the Builder's Remedy and the PSA. If such determination is not overturned, we will seek all available remedies under the HAA for an improper denial of the Project.

We would much prefer to work with Town staff in processing the Project application in a manner consistent with the PSA, the HAA, and SB 330 to complete the Project application and prepare the Project for a hearing on the merits. Ultimately, LGB Properties looks forward to delivering the Project and its critically needed new homes to the community.

Please feel free to contact me regarding the contents of this letter. I can be reached by e-mail at travis.brooks@msrlegal.com.

Very truly yours,

MILLER STARR REGALIA

Travis Brooks

Travis Brooks

TZB:kli
Attachments: Exhibits A-D

cc: Gabrielle Whelan, Esq., Town Attorney, GWhelan@losgatosca.gov
Sean Mullin, Planning Director, SMullin@losgatosca.gov
Jocelyn Shoopman, Senior Planner, JShoopman@losgatosca.gov
Client

EXHIBIT A

TOWN OF LOS GATOS
PLANNING DIVISION

January 30, 2025

Kurt Anderson, AIA
Anderson Architects, Inc.
120 W. Campbell Avenue, Suite D
Campbell, CA 95008

Subject: SB330 Application Incompleteness Determination Appeal Process
14849 Los Gatos Boulevard

Dear Mr. Anderson,

Please note that in accordance with Government Code Section 65943, you may appeal the incompleteness determination, of the Senate Bill 330 application for the property located at 14849 Los Gatos Boulevard to the Town Council by paying the required appeal fee and submitting a written appeal to the Town Clerk on the attached appeal form within 10 days of the date of this letter.

The application's incompleteness determination was provided to the applicant's team on November 19, 2024, as part of the Staff Technical Review Committee comments, and discussed at the November 20, 2024, Staff Technical Review Committee meeting.

If you have questions, please contact Jocelyn Shoopman, Senior Planner, by email at JShoopman@losgatosca.gov.

Sincerely,

Joel Paulson
Community Development Director

cc: Ali Moayed, Los Gatos Boulevard Properties, LLC , 16400 Lark Avenue, Suite 400, Los Gatos, CA 95032

EXHIBIT B

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY GAVIN NEWSOM, *Governor*

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
651 Bannon Street, Ste. 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

August 30, 2024

Jennifer Armer, Planning Manager
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

Dear Jennifer Armer:

RE: Town of Los Gatos – Saratoga Road Project – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received a request for technical assistance from Arielle Harris of Cox Castle (CC) on behalf of SummerHill Homes (SHH) on April 17, 2024 regarding the application of the Permit Streamlining Act (PSA) (Gov. Code, §§ 65941.1, 65943) and the State Density Bonus Law (SDBL) (Gov. Code, § 65915). The PSA governs the timing of development applications, while the SDBL allows certain housing developments to obtain incentives/concessions in development standards by providing affordable housing, among other provisions. The purpose of this letter is to provide technical assistance for the benefit of the Town of Los Gatos (Town), CC, and SHH regarding eligibility under the law.

Project Description and Background

HCD understands that the proposed project involves the construction of 155 units, of which 18 percent are affordable (28 units) to lower-income households, on an 8.82-acre site. On June 30, 2023, SHH submitted a preliminary application to vest rights for the project under the HAA, followed by a full application on December 15, 2023. The Town issued an invoice for the full application on December 19, which SHH paid the following day. CC has posed the following questions:

<u>Question #1</u>: When is an "application for a development project" deemed "submitted" under Government Code section 65941.1, subdivision (d)(1), where the local agency intake process does not offer a means of concurrent fee payment?

HCD understands that when development project applications are submitted to the Town, a Town staff person first checks to verify the appropriate type of permit being sought, then generates the invoice accordingly. Because this process requires action on the part of the staff person, it is not procedurally possible for an applicant to submit an application and associated fee at the same time. While in most instances this practice creates an insignificant delay, it is a matter of great concern to an applicant that is

attempting to submit a full application with the 180-day submittal window to maintain vesting under a Preliminary Application.[1] For the purposes of meeting PSA review deadlines for the full application[2], the Town considers the 30-day application completeness clock to have started when the invoice is paid, not when the application is submitted.

While it is reasonable for the Town to start its review of the project – and with it the application completeness clock – after its fees are paid, the inconsistent lag time between application submittal and invoice payment is concerning. The Legislature found and declared with the passing of the PSA that "there is a statewide need to ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects".[3] The intent of the PSA is to ensure that applicants are provided clear instructions and that local jurisdictions are consistently processing projects in accordance with the specific timelines outlined in the statute to streamline development. Considering the current housing crisis in California, delays in permitting processes and approval times add constraints to the cost of residential construction. Therefore, compliance with the PSA is even more pertinent today to meet the urgent housing needs across California.

As mentioned above, it is critically important for an applicant to be able to submit a full application within the 180-day submittal window to maintain vesting under a Preliminary Application. The Town should explore modifying its intake procedures for development applications of this type to provide an option for the applicant to pay the fee associated with the type of application being sought. If the applicant has misidentified the type of application, the Town can subsequently charge or refund the applicant the difference between the fees. Alternatively, the Town might consider amending its municipal code or other adopted procedures to address the circumstance encountered by the subject project (i.e., establish that procedural delays for which the Town is responsible are not a basis to lose Preliminary Application vesting status).

Question #2: Does the 90-day deadline provided in Government Code section 65941.1, subdivision (d)(2), of the Permit Streamlining Act require the housing development project applicant to achieve "application completeness" within 90 days of the agency's first incompleteness determination to avoid expiration of the preliminary application, or does it allow for multiple rounds of completeness review and resubmittals as long as the applicant responds within 90 days of each incompleteness determination, consistent with Government Code section 65943?

The 90-day deadline restarts with each subsequent resubmittal by the applicant. Subdivision (d) of Government Code section 65941.1 references section 65943, which provides for an iterative process in which deadlines reset upon resubmittal. Because of that reference, it is reasonable to conclude that the subdivision envisions a similar back-

[1] Gov. Code, § 65941.1, subd. (d)(1).
[2] Gov. Code, § 65943, subd. (a).
[3] Gov. Code, § 65921.

and-forth process. Nothing in the subdivision explicitly precludes this. Furthermore, requiring a single 90-day review period would limit the completeness determination process to only one or two resubmittals, making the process more difficult for diligent applicants seeking to use the protections of the preliminary application system. An interpretation that there is a single finite 90-day review period is inconsistent with both the intent of the PSA and the Legislature when it introduced this system in Senate Bill 330 (Chapter 654, Statutes of 2019). This interpretation is also inconsistent with a recent Los Angeles Superior Court ruling which concluded "that when an applicant receives **an** incompleteness determination pursuant to section 65943 – not just the **first** incompleteness determination – an applicant has 90 days to respond." (*Janet Jha v. City of Los Angeles, et al.,* (Super. Ct. L.A. County, 2024, No. 23STCP03499).)

Question #3: Can a housing development project applicant and a city or county mutually agree to an extension of the 90-day time limit provided in Government Code section 65941.1, subdivision (d)(2)?

Yes. As mentioned above, subdivision (d)(1) links its process to that of section 65943, which provides in its subdivision (d) that the timelines for submittal do not preclude "an applicant and a public agency from mutually agreeing to an extension of any time limit provided by this section." It logically follows that if a project is in a situation where section 65943 is applicable because the application is not complete, then the local government and the applicant should be able to extend the submittal timelines by mutual agreement. HCD encourages local governments and applicants to work together to successfully realize residential development projects.

Conclusion

In conclusion, while applications under Government Code section 65941.1, subdivision (d)(1), are deemed "submitted" upon submission of required materials and payment of applicable fees, cities should make it possible for applicants to submit all materials and payments concurrently to maximize efficiency. The 90-day review period for completeness determination under the PSA is not finite and, rather, resets for subsequent resubmittals, and when mutually agreement upon by both applicants and local governments, the 90-day time limit may be extended. HCD remains committed to supporting the Town of Los Gatos in facilitating housing at all income levels and hopes the Town finds this clarification helpful. If you have questions or need additional information, please contact David Ying at David.Ying@hcd.ca.gov.

Sincerely,

Shannan West
Housing Accountability Unit Chief

EXHIBIT C

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY GAVIN NEWSOM, *Governor*

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
651 Bannon Street, Suite 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

December 2, 2024

Michael Forbes
Director of Community Development
City of Beverly Hills
Via: mforbes@beverlyhills.org
455 N Rexford Drive
Beverly Hills, CA 90210

Dear Michael Forbes:

RE: Beverly Hills Builder's Remedy Applications – Notice of Violation

On June 26, 2024, the California Department of Housing and Community Development (HCD) issued a Letter of Support and Technical Assistance to the City of Beverly Hills (City) regarding compliance with Government Code section 65589.5, subdivision (d)(5), known colloquially as the "Builder's Remedy," pertaining to the proposed development at 125-129 Linden Drive (Linden Project). On August 22, 2024, HCD issued a Notice of Violation (NOV) to the City pertaining to the City Council's denial of the applicant's appeal of the City's incompleteness finding regarding the Linden Project, based on the finding that a General Plan Amendment and Zoning Change (GPA/ZC) are required for the submittal.

In addition to the Linden Project, HCD is aware of nine additional "Builder's Remedy" applications where the City has issued incompleteness determinations on the basis that a GPA/ZC is required. The ten projects in question represent a total of 981 units, including 198 units affordable to low-income households. Along with reiterating HCD's position that a GPA/ZC is not required for "Builder's Remedy" projects, HCD would like to expand further on two positions outlined in the August NOV:

(1) the iterative nature of the 90-day deadline described in Government Code section 65941.1, subdivision (d)(2), (i.e., the deadline resets each time the City makes an incompleteness determination);[1] and

(2) that an SB 330 preliminary application remains vested unless the number of residential units or square footage of construction changes by 20 percent or more.[2]

[1] Gov. Code, § 65941.1, subd. (d)(2).
[2] Gov. Code, § 65941.1, subd. (c).

Background and Summary

Following the issuance of the August NOV regarding the Linden Project, HCD received requests for technical assistance for nine other Builder's Remedy projects in Beverly Hills. HCD has reviewed the projects and has determined that each qualifies for the benefits described in Government Code section 65589.5, subdivision (d)(5). In each case, HCD understands that the applicant submitted a preliminary application pursuant to Government Code section 65941.1 prior to May 1, 2024, when HCD certified that the City's housing element was substantially compliant with state law.

HCD understands that the City rejects each application's vesting and status as a Builder's Remedy project. The consistent issue across all projects appears to be the City's requirement for a GPA/ZC. As stated in the previous NOV to the City and reiterated below, the Housing Accountability Act (HAA) and the Permit Streamlining Act (PSA) prohibit the City from requiring a GPA/ZC for projects qualifying under Government Code section 65589.5, subdivision (d)(5).

In addition to the requirement for a GPA/ZC, HCD also finds the City's liberal interpretation of what may disqualify a project from the vested rights protected under Government Code section 65941.1 to be problematic. Finally, HCD rejects the City's claim that the PSA only provides one 90-day period for a developer to submit all of the information necessary for its full application to be deemed complete. The remainder of this letter outlines these thematic issues and provides a summary of the projects in question.

General Plan Amendment and the Housing Accountability Act's Builder's Remedy

The HAA is clear that a project protected by the Builder's Remedy may not be disapproved for inconsistency with a jurisdiction's general plan land use designation and zoning ordinance.[3] Accordingly, a jurisdiction that refuses to process or approve a project subject to the Builder's Remedy due to the applicant's refusal to submit a GPA/ZC (requested or required by the jurisdiction to resolve such an inconsistency) violates the HAA.

Indeed, where a jurisdiction cannot lawfully disapprove a project for inconsistency with the general plan land use designation or zoning ordinance, it would be illogical if the jurisdiction could lawfully disapprove a project for failing to resolve that very inconsistency. In other words, the City's requirement for a GPA/ZC is essentially a requirement for consistency, and disapproving the Project for failure to resolve that inconsistency is effectively a disapproval on the grounds of inconsistency. The HAA prohibits such a disapproval.

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[3] Gov. Code, § 65589.5, subd. (d)(5).

Determining Application Completeness under the Permit Streamlining Act

Even if the City were permitted to require a GPA/ZC under the HAA, the PSA[4] prohibits the City from using the absence of the GPA/ZC application as a reason to determine that a project application is incomplete, if the item is not explicitly required on the submittal requirement checklist. The City cannot determine that an application is incomplete on the basis that it does not include a request for a GPA/ZC unless the City's submittal requirement checklist requires the applicant to submit such a request. When issuing an incompleteness determination, the City must provide a list of items that were not complete and "[t]hat list shall be limited to those items actually required on the lead agency's submittal requirement checklist."[5]

Here, the City's submittal checklist did not include a requirement for a GPA/ZC at the time of submittal, and therefore, the City cannot deem these applications incomplete for failing to include a GPA/ZC.

Vesting under Government Code Section 65941.1

HCD would also like to inform the City of other obligations under Government Code section 65941.1 that protect the vested rights of a project.

If the City determines that the application for a development project is not complete pursuant to Government Code section 65943, the development proponent is required to submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information.[6] If the applicant does not submit the information within the 90-day period, the preliminary application expires.[7] However, this 90-day deadline resets after each incompleteness determination. A project with multiple incompleteness letters and responses may have multiple 90-day periods.

In the recent case of *Jha v. City of Los Angeles,* the Superior Court held that multiple 90-day submission periods are permitted under the PSA:

> Section 65941.1(d)(2) expressly refers to completeness pursuant to section 65943. In turn, section 65943(a) refers to "any subsequent review of the application determined to be incomplete", "any resubmittal of the application", and "a new 30-day period." The use of the words "any" and "new" in section 65943(a) indicate that multiple resubmissions of an application may be made. This statute supports [the developer's] reading that the submission and completeness evaluation for an application is an iterative process with no limit on the number of submissions.[8]

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[4] Gov. Code, § 65920 et seq.
[5] Gov. Code, § 65943, subd. (a).
[6] Gov. Code, § 65941.1, subd. (d)(2).
[7] *Ibid.*
[8] *Jha v. City of Los Angeles,* Decision on Petition for Writ of Mandate (July 24, 2024, Los Angeles Superior Court Case No. 23STCP03499), p. 23.

The court went on to conclude that the PSA should not be interpreted in a vacuum, but rather in its relation to the HAA, and the Legislature has mandated that the HAA must be interpreted to "afford the fullest possible weight to the interest of, and the approval and provision of, housing."[9]

In addition, as explained in our June 26, 2024 letter, the preliminary application remains vested unless the number of residential units or square footage of construction proposed in the full application changes from the preliminary application by 20 percent or more (subject to certain conditions as listed in the statute).[10]

In HCD's review of the "Builder's Remedy" projects listed in the "Summary of Projects" section below, HCD found that the City improperly deemed preliminary applications void and of no effect due to changes that neither materially altered the project described in the full application from that contemplated in the preliminary application nor fell outside of the 20 percent provision of the PSA. These modifications include, but are not limited to, adding State Density Bonus Law (SDBL) concessions and waivers that did not change the unit count or square footage by more than 20 percent, requesting approval under the Subdivision Map Act because the project changed from apartments to condominiums, text contained in a submitted Zoning Change application that should not be considered in a completeness determination for a Builder's Remedy project anyway, and the addition of a commercial use that did not change the unit count or square footage by more than 20 percent. These modifications do not justify disturbing the vesting of the preliminary applications.

A full summary and explanation of the projects and HCD's understanding of the City's reasons for lost vesting under Government Code section 65941.1 are found below.

Summary of Projects

- **125 Linden Drive**
    - 165 units (33 affordable)
    - Preliminary application submitted: October 24, 2022
    - Application status: Appeal denied
    - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration, preliminary application divests because of addition of commercial use
- **346 Maple Drive**
    - 65 units (13 affordable)
    - Preliminary application submitted: October 6, 2023
    - Application status: Second Incomplete Letter issued
    - Issues raised by City Incomplete Letter(s): GPA/ZC,[11] 90-day expiration[12]

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[9] *Ibid.* (quoting *Save Lafayette v. City of Lafayette* (2022) 85 Cal.App.5th 842, 855).
[10] Gov. Code, § 65941.1, subd. (c).
[11] Refers to the City's requirement for a GPA/ZC application as part of the submittal.
[12] Refers to the project losing vesting rights due to expiration of a single 90-day period.

- **401 Oakhurst Drive**
  - 25 units (5 affordable)
  - Preliminary application submitted: October 30, 2023
  - Application status: Second Incomplete Letter issued
  - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration
- **232 South Tower Drive**
  - 55 units (11 affordable)
  - Preliminary application submitted: October 5, 2023
  - Application status: Second Incomplete Letter issued
  - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration
- **9229 Wilshire Boulevard**
  - 116 units (24 affordable), Mixed Use project
  - Preliminary application submitted: December 13, 2023
  - Application status: Developer filed appeal to Beverly Hills City Council regarding second Incomplete Letter issued
  - Issues raised by City Incomplete Letter(s): GPA/ZC, preliminary application vesting lost because of additional SDBL waivers and concessions[13]
- **145 South Rodeo Drive**
  - 30 units (6 affordable), Mixed Use project
  - Preliminary application submitted: February 23, 2024
  - Application status: First Incomplete Letter issued
  - Issues raised by City Incomplete Letter(s): GPA/ZC, preliminary application vesting lost because of additional SDBL waivers and concessions and submission of request under Subdivision Map Act[14]
- **140 South Camden Avenue**
  - 27 units (6 affordable)
  - Preliminary application submitted: March 15, 2024
  - Application status: First Incomplete Letter issued
  - Issues raised by City Incomplete Letter(s): GPA/ZC, preliminary application vesting lost because of additional SDBL waivers and concessions and submission of request under Subdivision Map Act
- **214 Hamilton Drive**
  - 90 units (18 affordable)
  - Preliminary application submitted: October 30, 2023
  - Application status: Second Incomplete Letter received
  - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration, compliance with City development standards[15]

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[13] The City claims the project lost vesting due to adding concessions and waivers that were not included in the preliminary application.
[14] The City claims the project lost vesting due to adding a subdivision map request that was not included in the preliminary application.
[15] Compliance with development standards is not an application checklist item under Government Code section 65941.1, subdivision (a).

- **8844 Burton Way**
  - 200 units (40 affordable); Mixed-Use project
  - Preliminary application submitted: December 15, 2023
  - Application status: Second Incomplete Letter received
  - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration, compliance with City development standards
- **211 Hamilton Drive**
  - 210 units (42 affordable)
  - Preliminary application submitted: October 31, 2023
  - Application status: Second Incomplete Letter received
  - Issues raised by City Incomplete Letter(s): Preliminary application vesting lost because the change in the theoretical maximum density of the parcel indicated in the ZC application exceeded 20 percent[16]

Conclusion

The City's failure to accept the applications for processing due to the lack of a GPA/ZC is in violation of the HAA and PSA. Furthermore, the City's submittal checklist did not include a requirement for a GPA/ZC at the time of submittal and the PSA prohibits the City from deeming an application incomplete for items not on the checklist. City staff must process all projects contained in this letter without further delay and without imposing a requirement for a GPA/ZC.

The City must also consider its obligations under Government Code section 65941.1 that retain each project's vested rights. First, the 90-day period to submit information to complete a full application reset after each incompleteness determination, and the preliminary application remains vested during these 90-day periods. Second, the modifications mentioned in the project summaries above do not void the vesting created by the preliminary application submittal.

Under Government Code section 65585, HCD must notify a local government when that local government takes actions that violate the HAA and the PSA and may notify the California Office of the Attorney General.[17]

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[16] The unit count of the project did not change between the preliminary application and full submittal. The theoretical maximum density proposed in a ZC application does not fall under the 20 percent change provision under Government Code section 65941.1, subdivision (c). Moreover, any information contained in a GPA or ZC application does not void vesting because those applications should not have been required for a Builder's Remedy project.
[17] Gov. Code, § 65585, subds. (i)(1), (j).

The City has until December 20, 2024, to provide a written response to this letter. HCD will consider any written response before taking further action authorized by Government Code section 65585, subdivision (j), including, but not limited to, referral to the California Office of the Attorney General.

If you have any questions regarding the content of this letter or would like additional technical assistance, please contact Bentley Regehr at bentley.regehr@hcd.ca.gov.

Sincerely,

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

EXHIBIT D

ITEM NO. 9.

Electronically Received 09/16/2024 05:35 PM

PATTERSON & O'NEILL, PC
235 MONTGOMERY STREET, SUITE 950
SAN FRANCISCO, CALIFORNIA 94104

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JANET JHA

FILED
Superior Court of California
County of Los Angeles
09/17/2024
David W. Slayton, Executive Officer / Clerk of Court
By: J. De Luna Deputy

SUPERIOR COURT – STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – UNLIMITED CIVIL JURISDICTION

JANET JHA, Petitioner and Plaintiff, vs. CITY OF LOS ANGELES; CITY COUNCIL OF THE CITY OF LOS ANGELES; and DOES 1-25, Respondents and Defendants,	Case No. 23STCP03499 **~~[PROPOSED]~~ JUDGMENT GRANTING PETITION FOR WRIT OF MANDATE** Dept: 85 Judge: Hon. James Chalfant

PATTERSON & O'NEILL, PC
235 MONTGOMERY STREET, SUITE 950
SAN FRANCISCO, CALIFORNIA 94104

1 **WHEREAS**, on September 21, 2023, Petitioner Janet Jha filed a Verified Petition for
2 Writ of Mandate and Complaint for Declaratory Relief (the "Petition") against Respondents
3 City of Los Angeles and the City Council of the City of Los Angeles ("Respondents") alleging
4 causes of action under the Permit Streamlining Act ("PSA"), Density Bonus Law ("DBL"), and
5 the Housing Accountability Act ("HAA") arising out of the disapproval by Respondents of
6 Petitioner Jha's proposed 40-unit housing development project at 13916 W. Polk Street (the
7 "Project");

8 **WHEREAS,** the Petition came for trial on July 18, 2024, in Department 85 of this
9 Court. Petitioner Jha appeared through her counsel, Ryan J. Patterson and Brian O'Neill of
10 Patterson & O'Neill, PC, and Respondents appeared through their counsel, Donna Wong and
11 Kaiulani Lie of the Office of the Los Angeles City Attorney;

12 **WHEREAS,** after taking the matter under submission at the conclusion of the trial, the
13 Court adopted a ruling on July 24, 2024, regarding the Petition (the "Court's Ruling");

14 **WHEREAS**, the Court, having read the submissions of the parties to this action,
15 including the Petition, briefs, and matters judicially noticed, and having read and considered
16 the administrative record and the arguments of counsel;

17 **THE COURT DOES HEREBY ORDER, ADJUDGE, AND DECREE**, as follows:

18 1. Judgment is entered in favor of Petitioner for the reasons set forth in the Court's
19 Ruling, attached hereto as **Exhibit 1**. However, the complaint for declaratory relief is denied.

20 2. A writ of mandate shall issue as follows:

21 a. Respondents must set aside, vacate, and annul the City Council's June 27, 2023
22 action (Council File 23-0525), which the Court found was a disapproval of the Project;
23 and

24 b. Respondents must set aside, vacate, and annul the Planning Department's May
25 16, 2023 Loss of Vesting Rights Letter, and Respondents must recognize that Petitioner
26 Jha's preliminary application, dated June 23, 2022, remains valid and in effect pursuant
27 to the Court's Ruling; and

28 c. The Project does not require any general plan amendments or rezoning

applications, and the Project's application as of June 27, 2023 should be processed consistent with the Court's Ruling; and

d. The Project is eligible for regulatory incentives, concessions, and waivers under State Density Bonus Law (Gov. Code § 65915) in compliance with this Court's Ruling; and

e. The Project is eligible for the Builder's Remedy (Gov. Code § 65589.5(d)(5)) in compliance with this Court's Ruling; and

f. Respondents must review and process the Project pursuant to the PSA, the HAA, and the DBL as interpreted in the Court's ruling within 60 days after service of the writ.

3. This matter shall be remanded for further proceedings in compliance with the writ of mandate.

4. Similarly situated parties shall take nothing by this action.

5. Nothing in this writ shall limit or control any discretion legally vested in Respondents, including but not limited to, the request, receipt, and consideration of further information related to the California Environmental Quality Act or other applicable laws.

6. As the prevailing party, Petitioner shall recover her costs of suit from Respondents pursuant to applicable law. Petitioner may bring a motion for attorney's fees pursuant to applicable law.

7. The Court hereby retains jurisdiction in this action until there has been full compliance with the writ.

IT IS SO ORDERED.

Dated: 09/17/2024

James C. Chalfant / Judge

Hon. James C. Chalfant
Judge of the Superior Court

PATTERSON & O'NEILL, PC
235 MONTGOMERY STREET, SUITE 950
SAN FRANCISCO, CALIFORNIA 94104

Exhibit A

FILED
Superior Court of California
County of Los Angeles
JUL 24 2024
David W. Slayton, Executive Officer/Clerk of Court
By: J. De Luna, Deputy

Janet Jha v. City of Los Angeles et al., 23STCP03499

Decision on petition for writ of mandate: granted with remand

Petitioner Janet Jha ("Jha") seeks a writ of mandate compelling the Respondents City of Los Angeles and its City Council (collectively, "City") to review and process her development application pursuant to the Permit Streamlining Act ("PSA"), the Housing Accountability Act ("HAA"), and the Density Bonus Law ("DBL").

The court has read and considered the moving papers, oppositions, and replies, heard argument on July 18, 2024, and renders the following decision.

A. Statement of the Case

1. The Petition

Petitioner Jha filed the Petition against the City on September 21, 2023, alleging mandamus based on violations of the PSA, the HAA, and the DBL, and for declaratory relief. The Petition alleges in pertinent part as follows.

a. Housing Element Law

When the Legislature enacted the Housing Element Law, it declared that local governments need to designate and maintain a supply of land and adequate sites for the development of housing sufficient to meet the locality's housing need for all income levels. Pet., ¶21.

The HAA provides an avenue for developers to provide housing for very low, low-, or moderate-income households[1] when a local government fails to adopt a housing element in substantial compliance with the Housing Element Law. Pet., ¶22. The local government shall approve housing, and not condition that approval in a matter rendering that housing project infeasible, unless the local government can make certain written findings based upon a preponderance of the evidence. Pet., ¶23.

A local jurisdiction cannot determine whether its adopted element is in substantial compliance with the Housing Element Law. Pet., ¶25. It must submit a draft housing element to the State Department of Housing and Community Development ("HCD"), which must issue findings before the local jurisdiction adopts the housing element. Pet., ¶25. If HCD finds the draft element is not substantially compliant, the local jurisdiction must either revise the draft to address any issues or adopt the draft housing element with written findings explaining why it substantially complies with the Housing Element Law. Pet., ¶25. It must then submit the adopted housing element to HCD for it to find whether it substantially complies with the Housing Element Law. Pet., ¶25. In a March 16, 2023 memorandum, HCD advised that a local jurisdiction's housing element is only in substantial compliance with the Housing Element Law on the date HCD issues a letter finding to that effect. Pet., ¶26.

The Housing Element Law requires local governments to update their housing element in eight-year cycles. Pet., ¶27. The City had not adopted a substantially compliant housing element by the time the current cycle began on October 15, 2021. Pet., ¶27. Although it drafted a housing element on November 24, 2021, HCD found on February 22, 2022 that it was not substantially

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[1] For convenience, very low, low-, and moderate-income households are sometimes referred to herein as "low-cost housing".

compliant. Pet., ¶28. The City revised and resubmitted the draft housing element on April 28, 2022, and HCD found it substantially compliant on May 11, 2022. Pet., ¶28. The City adopted the housing element on June 14, 2022, and HCD certified its compliance with the Housing Element Law on June 29, 2022. Pet., ¶28.

Under Government Code[1] sections 65589.5(o)(1) and 65941.1(a), a housing development applicant who submits a complete preliminary application is vested with the zoning and general plan standards in effect at the time of submission. Pet., ¶30. This includes entitlement to the HAA's builder's remedy if submitted when the jurisdiction does not have a compliant housing element, even if it adopts one during the entitlement process. Pet., ¶31. HCD confirmed as much in a June 2023 Notice of Violation issued to the City of La Cañada Flintridge and in an October 2023 Letter of Technical Assistance to the City of Santa Monica. Pet., ¶32, Ex. A.

b. The Project

On June 23, 2022, Jha submitted a preliminary application for a 40-unit project with 20% set aside as affordable to lower-income households at 13916 W. Polk Street (the "Project"). Pet., ¶53. Because the City found the preliminary application for the Project was complete on June 24, 2022, development rights in effect on that date vested for the Project. Pet., ¶54.

Jha proposed a housing project that reserved 20% of the units for low-cost housing while the City was out of compliance with the Housing Element Law. Pet., ¶55. Under the builder's remedy, the City was barred from disapproving the Project unless it made one of the written findings required under section 65589.5(d). Pet., ¶55.

On August 11, 2022, Jha filed an Affordable Housing Referral Form with the Affordable Housing Services Section of the City's Planning Department ("Planning"). Pet., ¶57. The City signed this form on December 12, 2023. Pet., ¶64. After a meeting with City staff on December 9, 2022, Jha was allowed to submit a PSA development application. Pet., ¶66. Jha submitted the application and paid the fees on December 21, 2022. Pet., ¶66.

On January 26, 2023, the City sent Jha a 39-page Project Review letter. Pet., ¶67. The Project Review asserted the application was incomplete and did not comply with objective zoning standards. Pet., ¶67. The Project Review further said that, although the Project was eligible for the builder's remedy, HAA does not specify the entitlement process that a local government can require. Pet., ¶68. Planning's position was that a general plan amendment ("GPA") and rezoning were the proper entitlement path. Pet., ¶68. This is not an entitlement at all, but rather a legislative action. Pet., ¶68.

Section 65589.5(d) does provide an entitlement path. Pet., ¶71. If HCD does not find a local jurisdiction's housing element substantially compliant by the jurisdiction's statutory deadline, the local jurisdiction may not use section 65589.5(d)(5) to deny a qualifying affordable housing project. Pet., ¶72. HCD's Notice of Violation to La Cañada Flintridge explained that a jurisdiction shall not disapprove a housing development project for low-cost housing, or condition approval in a manner that renders the housing development project infeasible for development for such households, without one of five written findings. Pet., ¶71, Ex. A.

On April 5, 2023, Jha resubmitted revised application materials in response to the Project Review. Pet., ¶81. The City sent a second Project Review asserting the application was incomplete for failure to comply with City code standards. Pet., ¶¶ 82-83. The letter emphasized that the City would not process the development application unless Jha sought legislative rezoning that she did not want. Pet., ¶85.

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Jha appealed the City's incompleteness determination of her application. Pet., ¶86. The City Council's Planning and Land Use Management Committee ("PLUM") recommended denial of the appeal, and the City Council denied it on June 27, 2023. Pet., ¶¶ 92-93.

On May 16, 2023, the City wrote Jha a letter asserting that the preliminary application's submittal had expired and that Jha's vested rights therefore had terminated. Pet., ¶95. Section 65941.1(d)(2) states that if a public agency determines that the application for the development project is incomplete, the development proponent shall submit the specific information necessary to complete the application within 90 days of receiving the agency's written identification of the necessary information. Pet., ¶99. This means that the 90-day period resets with every new completeness determination. Pet., ¶99. The City wrongly interpreted the statute to mean that an applicant has only a single 90-day clock after the first written incompleteness determination. Pet., ¶100. Planning argued that, even if Jha were entitled to approval pursuant to the builder's remedy, it no longer applied because Jha's vesting rights had expired and the City's Housing Element was now in substantial compliance with the Housing Element Law. Pet., ¶104.

After Jha received the City's May 16 letter, she asked HCD to clarify the preliminary application expiration provision. Pet., ¶103. HCD confirmed that the application remains valid after a second incompleteness determination so long as the applicant resubmits within 90 days of that determination. Pet., ¶103.

c. <u>Causes of Action</u>

The first cause of action seeks mandamus for violation of the PSA. The PSA requires public agencies to compile lists of the information required from an applicant for a development project. Pet., ¶109. It also has strict timelines when an agency must determine whether an application is complete. Pet., ¶109. Agencies can only judge whether an application is complete based on the items in the checklist. Pet., ¶109.

The City's Project Review letters violated the PSA because they treated project consistency with a zoning ordinance or general plan as an item necessary for an application to be complete. Pet., ¶110. The City refuses to process an application when it makes a substantive decision regarding project consistency. Pet., ¶110. Section 65931 defines a development "project" as an activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. Pet. ¶111. This does not include rezonings or GPAs. Pet., ¶111. Courts have held that applicants cannot use the PSA to compel legislative changes to a zoning ordinance or a general plan. Pet., ¶111. Conversely, the City cannot demand that an applicant seek such changes through a PSA completeness determination. Pet., ¶111. The City refused to accept Jha's development application based on purported non-compliance with substantive zoning standards and criteria, not because of incomplete information. Pet., ¶114.

The second cause of action seeks mandamus for violation of the HAA. The City unlawfully disapproved the Project and failed to proceed in the manner required by law. Pet., ¶117. The City disapproved the low-cost housing Project without making one of the findings under section 65589.5(d)(1)-(5), and also did not support such findings by a preponderance of evidence in the record. Pet., ¶121. Although Jha submitted the preliminary application before the City's Housing Element was deemed substantially compliant with the Housing Element Law, the City attempted to deny her the builder's remedy. Pet., ¶122.

The third cause of action seeks mandamus for violation of the DBL. The Project reserved 20% of the units for low-cost housing. Pet., ¶128. This entitled the Project to two incentives or

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concessions and a waiver or reduction of any development standards that will physically preclude the Project at the proposed density. Pet., ¶128. The City denied Jha those incentives without making the public health and safety findings required under the HAA. Pet., ¶129.

The fourth cause of action seeks declaratory relief. The City has avoided its obligations under state law through its refusal to process housing development projects that qualify under the builder's remedy. Pet., ¶132.

d. Prayer for Relief

Jha seeks a writ of mandate compelling the City to review and process development applications pursuant to the PSA and SB 330. Pet. Prayer, ¶¶ 1-2. Jha also seeks a writ of mandate (1) voiding the June 27, 2023 denial of the PSA appeal based on violation of section 655589.5(d), (2) compelling Planning to accept and process the Project application, and (3) compelling the City and Planning to take all steps necessary to process the application, approve the Project, and issue all related approvals within 60 days. Pet. Prayer, ¶3. Jha seeks a declaration concerning the City's violations. Pet. Prayer, ¶7. Jha also seeks attorneys' fees, costs, and fines under section 65589.5. Pet. Prayer, ¶¶ 8-10.

2. Course of Proceedings

On September 25, 2023, Jha served the City with the Petition and Summons.

On November 6, 2023, the parties stipulated to extend the deadline for all responsive pleading to February 1, 2024.

On March 5, 2024, the Court overruled the City's demurrer and denied its motion to strike.

On March 22, 2024, the City filed its Answer.

B. Governing Law

1. The Housing Element Law

The Legislature finds that the provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government. §65580(c). The Housing Element Law details the substantive requirements that each housing element must include. §65583(a)-(c).

At least 90 days prior to adoption of a revision of its housing element, or 60 days prior to the adoption of a subsequent amendment thereto, the local jurisdiction agency shall submit a draft element revision or draft amendment to HCD. §65585(b)(1). In the preparation of review findings, HCD may consult with any public agency, group, or person and shall receive and consider any written comments from such entities regarding the draft or adopted element or amendment under review. §65585(c).

HCD shall review the draft and report its written findings to the planning agency within 90 days of its receipt of the first draft submittal for each housing element revision, or 60 days of its receipt of a subsequent draft amendment or an adopted revision or adopted amendment to an element. §65585(b)(3). In its written findings, HCD shall determine whether the draft element or draft amendment substantially complies with the Housing Element Law. §65585(d).

Prior to the adoption of its draft element or draft amendment, the legislative body shall consider the findings made by HCD if they become available within the time limits set in section 65585. §65585(e).

If HCD finds that the draft element or draft amendment does not substantially comply with this article, the legislative body shall either change the draft element or amendment to so comply or adopt the draft element or draft amendment without changes. §65585(f). If the legislative body

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adopts without changes, it shall include in its resolution of adoption written findings that explain why the legislative body believes the draft element or draft amendment substantially complies with the Housing Element Law despite HCD's findings. §65585(f)(2).

The legislative body shall submit a copy to HCD promptly after adopting the element. §65585(g). HCD shall then review it and report its findings to the planning agency within 60 days of submission. §65585(h).

"Despite the mandatory nature of many of the Housing Element Law's provisions compliance has been mixed statewide." Martinez v. City of Clovis, (2023) 90 Cal.App.5th 193, 226. The Legislature has amended the Housing Element Law multiple times since 2017, and a 2018 amendment, AB 72, increased HCD's oversight powers. Id. AB 72 added HCD's ability to review any local government action that is inconsistent with an adopted housing element and to revoke its findings of substantial compliance until the local jurisdiction complies. Id. at 226, n. 9; §65585(i), (j).

The Housing Element Law provides that a local government that fails to adopt a housing element that has been found to be in substantial compliance within 120 days of the statutory deadline is required to complete mandatory rezoning within one year instead of the permitted three years. §65583.2(c). If the one-year requirement applies, the local government's housing element cannot be found to be in substantial compliance until that city has completed the rezoning. §65588(e)(4)(C)(iii).

A local government that fails to substantially comply with the Housing Element Law is subject to enforcement action by the Attorney General. §65585(l). A failure to adopt a housing element found by HCD to be in substantial compliance makes the local government ineligible for certain program funding. §65589.11. A local government that is compliant with Housing Element Law requirements is awarded preference for certain state funding programs. §65589.9. A "compliant housing element" is defined for purposes of this preference as "an adopted housing element that has been found to be in substantial compliance with the requirements of this article by [HCD] pursuant to Section 65585." §65589.9(f)(2).

2. The Housing Accountability Act

a. Legislative Findings and Intent

The Legislature recognizes the lack of housing as a critical problem that threatens the economic, environmental, and social quality of life in California. §65589.5(a)(1)(A). It adopted the HAA in 1982 to "significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters." §65589.5(a)(2)(K). To date, the goal remains unfulfilled. Id.

The HAA reflects the Legislature's findings that "the availability of housing is of vital statewide importance," and that providing the necessary housing supply "requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels." §65580(a)-(b).

Effective January 1, 2018, the Legislature significantly amended the HAA to strengthen its provisions, expand its applicability, and increase local governments' liability for violations. The HAA found that California is in a housing crisis that is "partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing". §65589.5(a)(1)(B).

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The consequences of those actions include discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration. §65589.5(a)(1)(C).

Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects. §65589.5(a)(1)(D). The state's homeownership rate was at its lowest level since the 1940s and ranks 49 out of the 50 states. §65589.5(a)(2)(E). The lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians. §65589.5(a)(2)(F).

The HAA should be "interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." §65589.5(a)(2)(L).

It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety under either section 65589.5(d)(2) and 65589.5(j)(1) arise infrequently. §65589.5(a)(3).

It is the policy of the state that a local government not reject or make infeasible housing development projects that contribute to meeting the need determined pursuant to the HAA without a thorough analysis of the economic, social, and environmental effects of the action and without complying with section 65589.5(d). §65589.5(b).

b. Project Approval Based on Vested Rights

Section 65589.5 is referred to colloquially as the "anti-NIMBY law." Schellinger Brothers v. City of Sebastopol, (2009) 19 Cal.App.4th 1245 1253, n. 9. Subject to certain exceptions, a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application which included all the information required by section 65941.1(a) was submitted. §65589.5(o)(1).

A housing development project "shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity." §65589.5(f)(4).

Section 65589.5(j)(1) provides:

> "When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:
>
> (A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct,

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and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density." (emphasis added).

Section 65589.5(j) applies to market rate housing as well as affordable housing. Honchariw v. County of Steinhaus, (2011) 200 Cal.App.4th 1066, 1070. The HAA applies to all residential housing developments and takes away the agency's ability to deny residential projects based on subjective development policies. Id. at 1072-77.

"Disapprove the housing development project" includes any instance in which a local agency "votes on a proposed housing development project application and it is disapproved", "fails to comply with the timer periods specified in Section 65950" or fails to meet the time limits specified in Section 65913.3. §65589.5(h)(6).

If the court finds that an agency acted in bad faith in disapproving a project in violation of the HAA, the appropriate remedy is an "order or judgment directing the local agency to approve the housing development project." §65589.5(k)(1)(A)(ii). "Bad faith" "includes, but is not limited to, an action that is frivolous or otherwise entirely without merit." §65589.5(l).

The local jurisdiction bears the burden of proving that its decision conforms to the conditions specified in section 65589.5. §65589.6.

c. The Builder's Remedy

A local agency shall not disapprove a housing development project for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low- or moderate-income households, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, for one of five conclusions:

(1) the local jurisdiction has adopted a housing element in substantial compliance with the Housing Element Law and has met or exceeded its share of the regional housing need allocation pursuant to section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by section 65008. §65589.5(d)(1).

(2) the proposed housing development would have a specific, adverse impact on the public health or safety that cannot be feasibly mitigated without rendering the project unaffordable or infeasible. A specific, adverse impact on public health or safety does not include inconsistency with the zoning ordinance or general plan land use designation. §65589.5(d)(2)(A);

(3) denial of the project is required to comply with specific state or federal law, and there is no feasible method to comply without rendering the project unaffordable or infeasible;

(4) the proposed land for the project is zoned for, and surrounded on at least two sides by, agriculture or resource preservation purposes;

(5) the housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the

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jurisdiction has adopted a revised housing element in accordance with section 65588 that is in substantial compliance with the Housing Element Law. §§ 65589.5(d)(1)-(5).

Section 65589.5(d)(5) means that, when the local government does not have a housing element in substantial compliance with the Housing Element Law, it cannot disapprove an applicable project based on inconsistencies with the jurisdiction's zoning ordinance or general plan land use designation. This is colloquially referred to as the "builder's remedy."

A "housing development project" includes any mixed-use development consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use. §65589.5(h)(2). "Housing for very low, low-, or moderate-income households" includes buildings where 20% of the units are sold or rented to lower income households. §65589.5(h)(3).

"Deemed complete" means the applicant has submitted a preliminary application pursuant to section 65941.1 or, if the applicant has not submitted a preliminary application, has submitted a complete application pursuant to section 65943. §65589.5(h)(5).

"Disapproval of a housing development project" includes whenever a local agency votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit. §65589.5(h)(6)(A).

A "specific, adverse impact" is a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." §65589.5(j)(1)(A). The Legislature's intent is that conditions that would have a specific, adverse impact upon the public health and safety should arise infrequently. §65589.5(a)(3).

d. <u>Consistency with Other Laws</u>

New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income. §65590(d). Where it is not feasible to provide these housing units in a proposed new housing development, the local government shall require the developer to provide such housing, if feasible to do so, at another location within the same city or county, either within the coastal zone or within three miles thereof. <u>Id.</u>

Nothing in the HAA relieves the local agency from complying with, *inter alia*, the Coastal Act or the California Environmental Quality Act ("CEQA"). §65589.5(e). Nothing in the HAA, aside from section 65589.5(o), shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need. §65589.5(f)(1). However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development. Id.

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3. <u>The Permit Streamlining Act</u>

The PSA (§§ 65920-964) states that there is a statewide need to ensure a clear understanding of the specific requirements which must be met for the approval of development projects and to expedite decisions on such projects. §65921. The PSA requires that each agency maintain lists that "specify in detail the information that will be required from any applicant." §65940.

Once a development project application has been submitted, the agency must make a written determination whether the application is complete within 30 calendar days, or else "the application together with the submitted materials shall be deemed complete." §65943(a). Agencies have "30 days, and 30 days only" to determine that an application is incomplete. Orsi v. City Council of Salinas, (1990) 219 Cal. App. 3d 1576, 1584.

When the agency makes an incompleteness determination, it must provide "an exhaustive list of items that were not complete" which is limited to those items required on the agency's submittal requirement checklist. §65943(a). Upon any resubmittal, a new 30-day review period begins during which the agency shall determine completeness, but the agency "shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete." §65943(a).

If the application is determined incomplete, the agency must provide a right to appeal that determination. §65943(c). There shall be a final written determination on the appeal no later than 60 calendar days after receipt of the written appeal. Id. If a final written determination is not made within that 60-day period, "the application with the submitted materials shall be deemed complete." Id.

Deemed complete does not necessarily mean deemed approved. *See* §65950 (agency shall approve or disapprove project within specified time limits). The PSA does not create an exception to the well-established law requiring hierarchical consistency of land use permits, zoning ordinances, and general plans. Land Waste Management v. Contra Costa County Board of Supervisors, ("Land Waste") (1990) 222 Cal.App.3d 950, 960. Hence, the PSA does not require that a permit application be deemed approved if not acted on within the statutory period when the permit application would require a legislative change in the applicable zoning ordinance, general plan, or other controlling land use legislation. Id. at 961.

The City's actions under the PSA are reviewed as traditional mandate. §65943(c).

4. The Density Bonus Law

The DBL (§§ 65915-18) is intended to allow a developer to include more total units in a project that would otherwise be allowed by the local zoning ordinance in exchange for low-cost rental units, and to "cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional public subsidy." §65915(u).

A local government shall grant one density bonus as specified in subdivision (f), incentives or concessions as specified in subdivision (d), waivers or reductions of development standards as described in subdivision (e), and parking ratios as described in subdivision (p), if an applicant agrees to construct a housing development that will contain stipulated percentages of low income and very low-income units or target population units (*e.g.*, disabled veterans). §65915(b).

A "housing development" means a development project for five or more residential units, including mixed use developments. §65915(i).

A "density bonus" means a "density increase over the otherwise maximum allowable gross residential density," but the developer also may elect "a lesser percentage of density increase, including, but not limited to, no increase in density." §65915(f). The amount of the density bonus varies according to the amount by which the percentage of low and very low-income units exceed the percentages. §65915(f).

Density bonuses shall be granted based on the "maximum allowable density" for the project site, defined as "the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, the maximum allowable density for the specific

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zoning range and land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail." §65915(o)(5).

An applicant for a density bonus pursuant to subdivision (b) may submit a proposal for specific incentives or concessions. §65915(d)(1). The local government shall grant the requested incentive or concession unless (1) it makes a written finding, based on substantial evidence, that the project will not result in "identifiable and actual cost reductions" of affordable housing costs or for rents of the targeted units as specified in subdivision (c), (2) the concession or incentive would have a specific adverse impact upon public health and safety, the physical environment, or real property listed in the California Register of Historical Resources and for which there is no feasible method of mitigation without rendering the development unaffordable to low- and moderate-income households, or (3) the concession or incentive would violate state or federal law. §65915(d)(1)(A)-(C). §65915(d).

The applicant may also apply for and receive development waivers or reductions that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions/incentives permitted. §65915(e)(1). The local agency may not apply a development standard that will have this effect. §65915(e)(1). However, the local government is not required to waive or reduce development standards if there would be an adverse impact on health, safety, or the physical environment, and for which there is no feasible method of mitigation to avoid the impact. Id. Nor is the local government required to waive or reduce development standards that would have an adverse effect on real property listed in the California Register of Historical Resources, or to grant any waiver or reduction that would violate state or federal law. §65915(e)(1).

C. Standard of Review

1. Administrative Mandamus

Actions to enforce the HAA are brought as administrative mandamus. §65589.5(m); Honchariw v. County of Stanislaus, (2011) 200 Cal.App.4th 1066, 1072. *See* Pet. Op. Br. at 9.

The parties' principal debate for the HAA mandamus claim is whether (a) the City bears the burden of proof by a preponderance of the evidence under section 65589.6, (b) the HAA's "reasonable person" standard applies, pursuant to which a court must determine whether "substantial evidence...would allow a reasonable person to conclude that the housing development project" complies with applicable standards (§655589.5(f)(4)), and (c) any uncertainties should be resolved in favor of housing projects because the HAA must "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." §65589.5(a)(2)(L).

The City argues that these standards do not apply because the reasonable person standard only applies to deciding whether the Project complies with a local "applicable plan, program, policy, ordinance, [or] standard" for a final merits decision and the City has not made a merits decision disapproving the Project. §65589.5(f)(4), (j). The reasonable person standard also does not apply to determine whether density bonus or general plan amendment ("GPA") application procedures are applicable because they are "questions of statutory interpretation that [the court] will review independently." Cal. Renters Legal Advocacy & Educ. Fund v. City of San Mateo, ("Cal Renters") (2021) 68 Cal.App.5th 820, 839. Opp. at 13.

Yha correctly replies (Reply at 5) that the HAA's reasonable person standard applies to any action to enforce the HAA, including the determination whether a housing development project

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"is consistent, compliant, or in conformity" with applicable standards. §655589.5(f)(4). The HAA also broadly defines "disapproval" as any instance in which an agency "[v]otes on a proposed housing development project application and the application is disapproved." §65589.5(h)(6). Nothing limits the HAA solely to a final merits decision. Additionally, the court finds that the City's actions constitute a disapproval. *See post.*

2. Traditional Mandamus

Actions under the PSA are governed by traditional mandamus. §65943(c). Neither party addresses what form of mandamus applies to enforcement of the DBL, but in this context it is governed by traditional mandamus.

A petition for traditional mandamus is appropriate in all actions "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station...." CCP §1085. A traditional writ of mandate is the method of compelling the performance of a legal, ministerial duty required by statute. *See* Rodriguez v. Solis, (1991) 1 Cal.App.4th 495, 501-02. Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to performance." Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-84 (internal citations omitted). Whether a statute imposes a ministerial duty for which mandamus is available, or a mere obligation to perform a discretionary function, is a question of statutory interpretation. AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, (2011) 197 Cal.App.4th 693, 701.

In the absence of a ministerial duty, traditional mandamus relief is unavailable unless the petitioner can demonstrate an abuse of that discretion. An agency decision is an abuse of discretion only if it is "arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." Kahn v. Los Angeles City Employees' Retirement System, (2010) 187 Cal.App.4th 98, 106. In applying this deferential test, a court "must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." Western States Petroleum Assn v. Superior Court, (1995) 9 Cal.4th 559, 577. Mandamus will not lie to compel the exercise of a public agency's discretion in a particular manner. American Federation of State, County and Municipal Employees v. Metropolitan Water District of Southern California, (2005) 126 Cal.App.4th 247, 261. It is available to compel an agency to exercise discretion where it has not done so (Los Angeles County Employees Assn. v. County of Los Angeles, (1973) 33 Cal.App.3d 1, 8), and to correct an abuse of discretion actually exercised. Manjares v. Newton, (1966) 64 Cal.2d 365, 370-71. In making this determination, the court may not substitute its judgment for that of the agency, whose decision must be upheld if reasonable minds may disagree as to its wisdom. Id. at 371. A writ will lie where the agency's discretion can be exercised only in one way. Hurtado v. Superior Court, (1974) 11 Cal.3d 574, 579. No administrative record is required for traditional mandamus.

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3. Overlap of HAA, PSA, and DBL

Jha argues that the issues under the PSA and DBL cannot be viewed in isolation, separate from the HAA's more favorable standards of review. Rather, these overlapping laws must be construed together to carry out the Legislature's directive that the law be interpreted to favor housing. Reply at 5. This is true, but it does not change the standard of review for enforcement of the PSA and DBL.

Jha further argues that the question "whether an application is complete for purposes of the PSA is also relevant under the HAA, which incorporates by reference the PSA's definition of a complete application." Lafayette v. City of Lafayette, (2022) 85 Cal.App.5th 842, 851. The court is "not dealing with the PSA in a vacuum, but rather in its relation to the HAA". Id. at 855. Similarly, a DBL eligibility determination is inextricably linked to the HAA's consistency determination. The HAA expressly incorporates the DBL by reference, stating "the receipt of a density bonus, incentive, concession, waiver, or reduction of development standards pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent . . . ." §65589.5(j)(3). In other words, a determination of consistency under the HAA also requires a determination of DBL eligibility, and both questions must be reviewed under the HAA's reasonable person standard. Reply at 6.

Insofar as it is evaluating a HAA claim, the court agrees that factual issues concerning the PSA and DBL determinations are governed by the reasonable person standard. However, a legal issue is "subject to *de novo* review. Citizens for E. Shore Parks v. State Lands Com., (2011) 202 Cal.App.4th 549, 573. The City is correct (Opp. at 13) that whether density bonus or GPA application procedures apply are "questions of statutory interpretation that [the court] will review independently." Cal. Renters, *supra*, 68 Cal.App.5th at 839.

In construing a statute, a court must ascertain the intent of the legislature so as to effectuate the purpose of the law. Brown v. Kelly Broadcasting Co., (1989) 48 Cal.3d 711, 724. The court first looks to the language of the statute, attempting to give effect to the usual, ordinary import of the language and seeking to avoid making any language mere surplusage. Brown v. Kelly Broadcasting Co., (1989) 48 Cal 3d 711, 724. Significance, if possible, is attributed to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose. Orange County Employees Assn. v. County of Orange, (1991) 234 Cal.App.3d 833, 841. The statutory language must be harmonized with provisions relating to the same subject matter to the extent possible. Id. "'The statute's words generally provide the most reliable indicator of legislative intent; if they are clear and unambiguous, '[t]here is no need for judicial construction and a court may not indulge in it. [Citation.]'" MCI Communications Services, Inc. v. California Dept. of Tax & Fee Administration, ("MCI") (2018) 28 Cal. App. 5th 635, 643.

If a statute is ambiguous and susceptible to more than one reasonable interpretation, the court may resort to extrinsic aids, including principles of construction and legislative history. MacIsaac v. Waste Management Collection & Recycling, Inc., (2005) 134 Cal.App.4th 1076, 1082 (*quoting* Riverview Fire Protection Dist. v. Workers' Comp. Appeals Bd., (1994) 23 Cal.App.4th 1120, 1126). In reviewing legislative history, ballot pamphlets, prior versions of the bill, legislative committee reports, legislative analyst reports, bill reports, and other legislative records are also appropriate sources indicative of legislative intent. In re John S., (2001) 88 Cal.App.4th 1140, 1144, n. 2; Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc., 133 Cal.App.4th 26, 32. Documents not constituting legislative history include authoring legislator's letters, press releases, and letters by interested persons not communicated to the legislature as a whole, including letters to the Governor urging that a bill be signed or not signed. statements. Id. at 37.

Where ambiguity still remains, the court should consider "reason, practicality, and common sense." Id. at 1084. This requires consideration of the statute's purpose, the evils to be remedied, public policy, and contemporaneous administrative construction. MCI, *supra*, 28 Cal.App.5th at 643. The enactment must be given a reasonable and commonsense interpretation consistent with the apparent purpose and intent of the lawmakers, practical rather than technical in

nature, and which, when applied, will result in wise policy rather than mischief or absurdity. Lungren v. Deukmejian, (1988) 45 Cal. 3d 727, 735. Finally, statutes are not construed in isolation and every statute must be read and harmonized with the statutory scheme. People v. Ledesma, (1997) 16 Cal.4th 90, 95.

In interpreting the HAA, the court does not defer to the City's interpretation of its own regulations. Although a court would normally defer to an agency's interpretation of its own ordinances, land use decisions under the HAA are different precisely because the HAA cabins the discretion of local agencies. Cal Renters, *supra,* 68 Cal.App.5th 820, 844. The court must engage in a "more rigorous independent review…in order to prevent the City from circumventing what was intended to be a strict limitation on its authority." Ruegg & Ellsworth v. City of Berkeley, (2021) 63 Cal.App.5th 277, 299.

D. Statement of Facts[2]

1. The Preliminary Application

On June 23, 2022, Jha submitted a preliminary application for the Project to vest the development standards in effect at that time pursuant to section 65941.1. AR 57-64. The Project is a 40-unit housing development that reserves 20% of the units for low-income households. Id.

2. The AHRF

On August 11, 2022, Jha filed an Affordable Housing Referral Form ("AHRF") with Planning's Affordable Housing Services Section. AR 100-12. AHSS staff did not respond to the submittal until 34 days later, on September 26, 2022. AR 1637. AHSS staff determined that the Project was not eligible for the DBL program. Id. The staff stated that the Property site is in the RA zone, which permits only one family dwelling and does not allow multi-family uses. LAMC

[2] Petitioner Jha requests judicial notice of (1) a HCD letter of technical assistance to the City of Fillmore dated August 24, 2023 (Ex A) and (2) a HCD notice of violation issued to La Cañada Flintridge dated June 8, 2023 (Ex. B). The unopposed requests are granted. Evid. Code §452(c); American Indian Model School v. Oakland Unified School District, (2014) 227 Cal.App.4th 258, 293.

The City requests judicial notice of (1) the legislative history for SB 330 (§65941.1) (Ex. 1), (2) a March 16, 2023 memorandum from HCD's deputy director to planning directors and interested parties (Ex. 2), (3) a HCD letter of technical assistance to the City of Compton dated March 28, 2024, (4) a September 3, 2021 letter from HCD to the City concerning its draft housing element (Ex. 4), (5) a February 22, 2022 letter from HCD to Planning concerning the City's adopted housing element (Ex. 5), (6) a May 11, 2022 letter from HCD to Planning concerning the City's revised housing element (Ex. 6), (7) a June 29, 2022 letter from HCD to Planning concerning the City's adopted housing element (Ex. 7), (8) City Council files No. 21-1230 and 21-123—S1 concerning the City's housing element (Exs. 8, 9), (9) the City's housing element (Ex. 10), (10) Planning forms for density bonus, subdivision instructions, subdivider's statement, landscape plans, floor plans plot plans, and elevation plans (Ex. 11), (11) City Charter sections 100-07 (Ex. 12), and (12) year 2022 and 2023 calendars (Ex. 13). The requests are granted. Evid. Code §452(b), (c), (h).

In reply, Petitioner Jha requests judicial notice of a June 26, 2024 HCD letter of technical assistance to the City of Beverly Hills (Ex. 1). The request is granted. Evid. Code §452(c).

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§12.07.A.1. Id. AHSS staff stated that Jha will need to apply for a zoning change to allow multi-family uses. Id.

Jha requested an appeal of Planning's refusal to process the AHRF. According to Jha, the City responded that there is no recourse to challenge the City's processing of an AHRF. *See* AR 1637.

On October 14, 2022, a City Planner notified Jha via email that the AHRF was still in the processing stage. He indicated that a GPA, multiple zoning changes, and fees exceeding $100,000 would be necessary for the Project. AR 1641-42.

3. The Application and Project Review Letters

Jha contends that she was unable to submit the Project application until the City agreed to sign the AHRF. After multiple emails and meetings with Jha, a City Planner signed the AHRF on December 12, 2022. AR 1754.

According to Jha, Planning insisted that her Density Bonus request was invalid. On December 12, 2022, Planning created a new application with a new planning case number for a GPA Application and zone changes. AR 171. Planning issued case numbers for both a Density Bonus Application (AR 2039-40) and a GPA Application (AR 1796-97).

On December 21, 2022, Jha paid $38,352.77 in application filing fees for a Density Bonus Application. AR 2039-40. She was also invoiced $136,557.20 for the GPA Application and zone changes. Id. Jha's counsel at trial informed the court that she never submitted a GPA Application and did not pay this invoice.

On January 6, 2023, Planning sent Jha a 39-page Project Review letter which stated that, while Jha believes the proper entitlement path for the Project is a Density Bonus, Planning's position is that the proper entitlement path is a GPA, zone change, various other zone adjustments, all of which are in City Charter section 558 and the LAMC and subject to the findings under section 65589.5(d). AR 2042. Planning's letter stated that section 65589.5(d) does not specify the entitlement process that can be required and confirmed that a Density Bonus is not the proper entitlement process. AR 2043. The letter cautioned that it was not a disapproval of the Project but rather an identification of the process by which the Project will be reviewed. AR 2043. The letter listed 54 items for correction of the information already submitted. AR 2043-79. Some of the corrections concerned the need for a GPA and zone change. *See* AR 2056. Other corrections sought compliance with various code requirements, such as requesting that Jha "show active engagement with the public street" and "show how human scale is maintained." AR 2048. According to Jha, the majority of items did not request information and instead sought signatures on referral forms by multiple City departments, including the Preliminary Application and Review Program Unit, Bureau of Engineering, Bureau of Sanitation, Housing Department, and Los Angeles Department of Building and Safety ("LADBS"). AR 2046-50. The various referral forms, in turn, were used by the different departments to indicate whether staff believed the Project complies with the City's code. *See, e.g.,* AR 39.

On April 5, 2023, Jha submitted revised application materials in response to Planning's Project Review letter. AR 2100-205. The City responded with a Second Project Review letter on April 28, 2023. AR 641-86. This letter again stated that Jha believes the proper entitlement path for the Project is a Density Bonus, but Planning's position is that the proper entitlement path is a GPA, zone change, various other zone adjustments, all of which are in City Charter section 558 and the LAMC and subject to the findings under section 65589.5(d). AR 642. Planning argued that section 65589.5(d) does not specify the entitlement process that can be required and confirmed

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that a Density Bonus is not the proper entitlement process. AR 642. The letter again cautioned that it was not a disapproval of the Project but rather an identification of the process by which the Project will be reviewed. AR 642.

The Second Project Review letter also noted that the Project is now a condominium project based on the April 3, 2023 communication but that was not previously identified. AR 642. The documents submitted cannot be considered complete for a subdivision because no subdivision application had been made or paid for, and none of the items on the checklist and subdivider's statement form had been provided. AR 642. The letter listed 45 items for Jha to "amplify, correct, clarify, and supplement". AR 642-84. The majority of the corrections concerned the need for a GPA and zoning changes. *See, e.g.*, AR 675 ("correct the allowable maximum height for all buildings and structures") AR 645 ("needs to be amplified, corrected, clarified and supplemented to identify the correct type of entitlement requested (e.g., General Plan Amendment....").

4. <u>The Appeal and Planning's Determination of Loss of Vesting Rights</u>

On May 12, 2023, Jha appealed Planning's incompleteness determination to the City Council pursuant to the PSA. AR 719-27. On May 16, 2023, while the appeal was pending, Planning wrote Jha that she had lost her vesting rights from the June 23, 2022 preliminary application. AR 761-63. Planning's letter stated the preliminary application was deemed submitted on June 23, 2022, the 180-day period under section 65941.1(d)(2) ended on December 21, 2022. The City's letter added that on January 6 2023, Planning wrote the initial Project Review letter and more than 90 days had passed without receipt of all missing or incomplete information identified. AR 762. Although Jha had submitted a response to the City's January 6, 2023 incompleteness letter within 90 days (AR 386), the resubmittal did not satisfy the required information. AR 762. In addition, Jha had modified the Project to be a condominium project. AR 762.

A complaint was made to HCD about the loss of vesting, but HCD's June 28, 2023 email stated that its investigation found "no apparent violation" of housing law". AR 2921, 2962. Jha submitted her own inquiry to HCD to ask whether the Project's vesting rights expired after receiving a second incompleteness determination. An HCD staff member responded: "No, the preliminary application does not expire if the development application is deemed incomplete since Government Code section 65943 allows for resubmittal of the requested items." AR 2638.

5. <u>The City Council Appeal</u>

Planning provided the City Council with a June 12, 2023 staff report that repeated its position that the "correct entitlement path forward is not a Density Bonus request" and that the Jha must "proceed with a General Plan Amendment, Zone Change, Height District Change" and other entitlements. AR 786. Planning recommended denial of the appeal "due to flaws" in Jha's submittals (rather than any missing information). AR 823.

On June 20, 2023, the City Council's PLUM Committee conducted a hearing and unanimously recommended denial of Jha's appeal under the PSA. AR 1077-78.

On June 27, 2023, the City Council held an appeal hearing and voted to deny Jha's PSA appeal. AR 1138.

E. <u>Analysis</u>

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Petitioner Jha seeks mandamus compelling the City to carry out its duties pursuant to the PSA, HAA, and DBL, accept her development application as complete, and approve the Project within 60 days.[3]

1. The PSA

The purpose of the PSA is "to expedite decisions" on development projects. The PSA is solely designed to gather information about the project being proposed, not to determine whether a project is zoning compliant. Once a development project application has been submitted, an agency must first determine whether the application is complete and provide an exhaustive list of incomplete items. §65943(a).[4]

In response to local governments' denial of housing projects, HCD has explained in a technical letter to the City of Filmore that a determination that an application is incomplete based on a purported zoning code inconsistency violates both the PSA and the HAA. HCD explained

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[3] Certain of the parties' arguments may be dealt with summarily. Jha is correct that the court determined on demurrer the builder's remedy applies to her project application. Pet. Op. Br. at 1. The City was required to update its sixth housing element cycle by October 15, 2021 but did not meet the deadline. The City was not in compliance with the Housing Element Law until HCD certified the City's housing element on June 29, 2022. The court determined that the City did not achieve housing element compliance by the June 23, 2022 date when Jha submitted a complete preliminary application, and therefore she may invoke the builder's remedy in section 65589.5(d). In doing so, the City still could require the Project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need. §65589.5(f)(1).

Although the City's opposition reiterates these arguments and raises new arguments that imposition of the builder's remedy would violate the City's right to home rule and constitute an underground regulation/penalty, the arguments are not persuasive. *See* Reply at 7. As a result, the court need not address the City's arguments on the builder's remedy, including headings E, F, H, and I. *See* Opp. at 17-21.

The City also argues that the preliminary application does not vest against later state regulations (Opp. at 17), apparently suggesting that the application does not vest with respect to the HCD's certification of the City's housing element. At trial, the City's counsel reiterated that section 65589.5(o) subjects the Project only to the local ordinances, policies, and standards in effect at the time of the preliminary application, not the HCD's action. This issue was raised and rejected by the court on demurrer. *See* Reply at 6. The HCD's action prevents the City's housing element from being compliant but is not itself an ordinance, policy, or standard.

Finally, the City correctly argues that Jha fails to support her declaratory relief pattern and practice claim. Opp. at 21. While Jha tries to maintain the viability of that claim by arguing that she may request discovery and a separate trial regarding the City's pattern and practice of violating state housing law after the mandamus claim is heard, she did not have leave to bifurcate her claims. *See* Reply at 14. The pattern and practice claim is waived. *See* Balboa Insurance Co. v. Aguirre, (1983) 149 Cal.App.3d 1002, 1010.

[4] The HAA provides a separate process to determine zoning code compliance after an application is accepted as complete. For projects with fewer than 150 units, the written compliance determination shall be provided "[w]ithin 30 days of the date that the application for the housing development project is determined to be complete." §65589.5(j)(2).

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that a zoning code-compliance comment "cannot be used as a basis for determining the completeness of the application" and that when "a local jurisdiction improperly characterizes comments as incomplete items, the jurisdiction impermissibly raises the bar to achieving a complete application, in violation of the PSA." Pet. RJN Ex. A p. 2; RJN Ex. B, p. 5.

HCD's interpretation of the PSA is somewhat supported by section 65944(a), which prohibits an agency from requesting new information once a public agency accepts an application as complete. At that point, the local government may only request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application in the course of processing the application. Id.

Jha correctly contends that the City violated the PSA by demanding that she comply with zoning requirements in order for her application to be complete. Planning's Project Review letter states that the application "does not comply with objective zoning standards" and includes 34 demands for Jha to "clarify, amplify, correct, or otherwise supplement the information provided". Despite Planning's use of statutory language, the demands for corrections were based on the City's determination that the Project is not code-compliant rather than on missing items in the application. But this information can only be requested after the application is accepted as complete. Pet. Op. Br. at 11.

Jha also correctly argues that the City's demands for legislative action were outside the scope of the PSA, which only applies to "development projects", defined as "any activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." §65931. Zoning changes and general plan amendments are legislative acts and not development projects involving the issuance of an entitlement. Arnel Development Co. v. City of Costa Mesa, ("Arnel Development") (1980) 28 Cal. 3d 511, 514. Legislative acts are not entitlements as they are subject to referendum, are not reviewed against established standards, do not need to be supported by findings, and do not require notice and hearing for affected property owners. Id. at 522. The PSA "cannot be used to compel legislative changes to a zoning ordinance or a general plan because the act is limited to projects that are adjudicatory in nature." Land Waste, *supa*, 222 Cal.App.3d at 959; *see also* Landi v. County of Monterey, (1983) 139 Cal.App.3d 934, 935-37. In short, legislative actions such as rezonings and GPAs fall outside the scope of the PSA. Pet. Op. Br. at 11.

Jha contends that the only items identified in the City's Project Review letter that were missing from the application were applications for GPAs and zone changes. The City does not even have an application for a GPA, which may only be initiated by the City itself. City Charter §555(b). Thus, the City is demanding an application that does not exist. The City's demand for legislative change applications is itself a determination that the Project does not comply with current zoning. Its incompleteness determination based on missing legislative applications therefore was invalid. Pet. Op. Br. at 11-2.

According to the City, nothing in the PSA forbids it from reviewing the completeness of a legislative application based on an existing list of application requirements and then providing a written list of missing materials within the time specified by section 65943. The City may borrow from the PSA process even though an application is not subject to the deemed approved terms of section 65950 for an agency's failure to timely act. Land Waste, *supra*, 222 Cal.App.3d at 950, 961 (the PSA does not require that a permit application be deemed approved if not acted on within the statutory period when the permit application would require a legislative change; section 65950 does not compel legislative acts such as GPAs or zoning changes). Opp. at 14-15.

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It is not clear what the City means by borrowing from the PSA process. Whether they are described as an entitlement or not, it is clear that the City cannot graft legislative changes such as a GPA or zoning change onto the completeness determination. The City's refusal to process an application based on a missing GPA Application was invalid.

Jha similarly argues that density bonus eligibility determinations similarly are outside the PSA. The DBL prohibits a local government from refusing to accept an application as incomplete merely because it believes the project is ineligible for a density bonus. Rather, the DBL states that "to provide for the expeditious processing of a density bonus application," a local government shall notify the applicant with the application is complete within the PSA's timelines. §65915(a)(3)(C). Only "[i]f the local government notifies the applicant that the application is deemed complete" may the agency provide a determination regarding density bonus eligibility. §65915(a)(3)(D). This determination regarding density bonus eligibility occurs after an application has been accepted as complete. Pet. Op. Br. at 12.

Jha states that the City refused to accept her application as complete based on an erroneous determination that the Project is not eligible for a density bonus. Planning's letters repeatedly state that a Density Bonus Application is "not the correct" entitlement path. Under the plain language of the DBL, the City's refusal to accept the application as complete based on a determination of density bonus ineligibility was invalid. Pet. Op. Br. at 12.

The City responds that Jha grafts the word "only" onto quoted language in section 65915(a)(3)(D) to incorrectly claim that the City is prohibited from identifying basic Density Bonus eligibility issues until an application is deemed complete. Jha promotes this rewriting to argue the City must accept and process all Density Bonus applications no matter how little information is provided. A court may not "under the guise of construction rewrite the law". DiCampli-Mintz v. County of Santa Clara (2012) 55 Cal.4th 983, 992. Opp. at 14.

Section 65915(a)(3)(D) provides that "[i]f the local government notifies the applicant that the application is deemed complete", it may provide a determination regarding density bonus eligibility. It is true that the provision does not say that the local government can determine bonus density eligibility only in that circumstance. Nonetheless, the City cannot refuse to accept an application based on a determination of ineligibility for a density bonus. The DBL specifically allows local governments to create a "list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete." §65915(a)(3)(B). This is separate from a determination of density bonus eligibility and there is nothing in section 65915(a)(3)(B) permits a determination of ineligibility to be used to deny completeness. Section 65915(a)(3)(D) expressly states that any determination regarding the density bonus or eligibility for incentives, concessions, or waivers shall be based on the development project at the time the application is deemed complete. The City could not make this eligibility determination at the application completeness stage.

The City then argues that there is no basis to require a merits review of Jha's applications because Jha does not dispute that they are incomplete. The City notes that Planning issued a case number for both a Density Bonus Application (AR 2039-40) and a GPA Application (AR 1796-97). On January 6, 2023, Planning's letter identifying how both applications were incomplete. AR 2041-93. Jha submitted additional materials on April 5, 2023. AR 2100-2205. Planning's second letter on April 28, 2023 explained that both applications remained incomplete. AR 641-

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86. Jha appealed the incompleteness decisions to the City Council. AR 719-27.[5] Planning's June 12, 2023 staff report explained why the GPA Application process applies, and why both applications remained incomplete. AR 3020-61. The City Council upheld the incompleteness determination on June 27, 2023. AR 1138. Opp. at 9-10.

The issues raised in the City's review letters concern documents and information that are required in the City's lists of application requirements. AR 1792-1928; City RJN Ex. 11. The City is entitled to demand compliance with its list of application information. §§ 65940, 65943. Opp. at 16.

Jha does not address the City's detailed identification of incompleteness issues for the GPA Application. She merely contends that the GPA Application cannot be used. On or about December 12, 2022, Planning emailed all the instructions for the GPA Application process, including a GPA Initiation Request form that Jha could have filled out for GPA initiation. AR 1807-12.[6] Planning explained that, while Jha's application indicates that she is requesting Project approval under section 65589.5, that section does not specify the entitlement process. AR 2043. Once the GPA Application is complete, the application would be subject to the HAA builder's remedy findings at section 65589.5(d)(5), if applicable. AR 2042, 3034. Opp. at 15.[7]

The City adds that the Density Bonus Application was incomplete. The application materials have been either incomplete or internally inconsistent throughout the process of reviewing application completeness, resulting in review letters dated January 6, 2023 (First Review – AR 2042-79), April 28, 2023 (Second Review – AR 641-86), July 12, 2023 (Third Review – AR1139-89), August 2, 2023 (Fourth Review – AR1271-72), and August 23, 2023 (Fifth Review – AR1273-1330). Opp. at 15-16.

Contrary to Jha's claim, Planning's demand that the application be made "consistent" does not refer to project consistency with a City development standard but rather that Jha's Density Bonus Application be internally consistent. AR 641-705, 2041-93, 3300-309. For example, the description of housing units has been inconsistent even though the application form states that applications "filed with unclear or inconsistent information will result in delays...." AR 1901. Jha's initial application papers described a 45-unit Project. AR 82, 228. Other papers describe the Project as 40 units. AR 41, 232. The number of proposed units, market rate units and/or

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[5] The City argues that Jha provided responses that failed to complete either application (AR 3448-69 (6/2/23), 3411-46 (6/16/23), 3299-309 (missing items)) and Planning responded (AR 3337-39 (6/14/23)). Opp. at 9-10.

[6] Jha reiterates that the City's Charter prohibits private parties from initiating GPAs. City Charter §555. There are no "GPA application procedures" because there is no such thing as a GPA application. Reply at 10. However, the case relied on by Jha expressly states that City Charter section 555(a) does not place any limitation on a private party's ability to request a GPA. Westsiders Opposed to Overdevelopment v. City of Los Angeles, (2018) 27 Cal.App.5th 1079, 1089. The court accepts the City's position that Jha could initiate the GPA process.

[7] According to the City, Jha submitted a GPA Application in part (AR 3052-53 (Staff Appeal Resp. #4), but it was incomplete as explained in Planning's reports and its Exhibit I to the City Council. AR 3299-309 (Ex. I). Opp. at 15. At trial, Jha's counsel denied that Jha ever submitted a GPA Application. The City's citation (AR 3052-53) is to staff's statement that Jha directed the City to use material from the Density Bonus Application for the GPA Application, and she has submitted material for the GPA Application. This is insufficient to show submission of a GPA Application.

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affordable units remained inconsistent. AR 232, 1161, 1300. Other incompleteness and/or inconsistencies are: (1) failure to provide information about removal of off-site trees (AR 234, 663, 1299-1300, 1307-09); (2) an incomplete declaration regarding incentives and waivers (AR 667, 1301-03); (3) missing building permits and certificates of occupancy (AR 673, 1309); (4) illegible or inadequate floor plans (AR 677, 1313-14); and (5) missing landscaping and open space plans (AR 679, 1316). Opp. at 15-16.

Jha replies that her Density Bonus Application is complete. GPAs and zoning changes are outside the scope of PSA procedure, and most of the incomplete items were invalid demands for legislative changes, determinations of project consistency, and DBL eligibility determinations. Jha argues that she cannot go through all 45 pages of Planning's inane comments because of her briefing page limits but will address the items specifically discussed in the City's opposition, which demonstrate how the City abused the PSA process. Reply at 12-13.

While the City takes issue with the fact that Jah amended the Project from 45 units in the preliminary application to 40 units in the application, the HAA specifically allows an applicant to revise the number of units by less than 20% following the preliminary application submittal. §65589.5(o)(2)(E). Planning claimed the 40-unit Project is inconsistent with the AHRF that listed 45 units. AR 231. Planning failed to mention that Jha submitted the AHRF on August 11, 2022, just after the preliminary application. Planning failed to process the AHRF until December 12, 2022, four months after submittal and just a week before the deadline to submit a development application. AR 1754. The only reason the AHRF did not match the updated Project plans was because Planning failed to timely sign the form. Reply at 12.

The City also points to missing landscaping and open space plans, but Jha told Planning that landscaping and open space would not be included in the Project. AR 1316. She sought a DBL waiver from these requirements. Still, Planning argued that "[t]rees in the public right of way are landscaping." Id. In other words, Planning demanded that Jha submit a landscaping plan to identify existing off-site trees (that were already identified in her Tree Disclosure). Landscaping plans show the details of proposed landscaping, not the presence of existing off-site trees. *See* LAMC §12.21(G). Reply at 12-13.

The City points to an incomplete declaration regarding requested incentives and waivers. This is untrue. Jha did submit a complete declaration for waivers and incentives. AR 9-12. Planning did not request information from Jha and instead demanded that she confirm the applicable code standard with LADBS by submitting a Preliminary Zoning Form that is "intended to determine compliance with City zoning." AR 434, 1301. A determination regarding zoning code-compliance cannot be used as a basis for determining completeness. Reply at 13.

Other incomplete items included inadequate floor plans because the recreation room did not state whether it would be used as an "exercise room" or a "game room" (AR 1314), even though the term "recreation room" is defined as a room "designed to be utilized primarily for games, the pursuit of hobbies, social gatherings, and such activities." LAMC §12.03. The City also could not determine whether the clearly labeled rooftop terrace was a fourth story (AR 1315), yet simultaneously demanded that Jha "show how the terrace will be used directly on the plans" (AR 1314), as if Jha could predict how future residents will use their private terraces. Reply at 13.

Aside from the improper requirements for a GPA, zone change, and improper determination of density bonus eligibility, the court cannot determine from the parties' presentation whether the City had legitimate reasons to find the Density Bonus Application incomplete. There may be inconsistencies or incomplete information that could justify the

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determination.[8] However, the City clearly chose the wrong path in requiring a GPA, zone change, and determining density bonus ineligibility, and these were the main reasons for the incompleteness determination. As a result, the City's incompleteness determination cannot be upheld.

2. **Jha's Vesting Rights Did Not Expire**

In SB 330, the Legislature added a provision to the PSA preliminary application process specifically for housing development projects, the purpose of which is to secure vesting rights and lock into place existing development standards. §65941.1. To maintain vesting rights, an applicant must submit a development application within 180 days of submitting a preliminary application. §65941.1(d). Additionally, if an agency makes an incompleteness determination "pursuant to Section 65943",[9] the applicant must submit the information needed to complete the application within 90 days or the preliminary application expires. Id.

Jha contends that the City unlawfully refused to recognize the Project's vesting rights. According to Jha, section 65941.1(d) specifically references the iterative process of application and completeness determination, stating that an applicant must respond within 90 days if the public agency makes an incompleteness determination "pursuant to Section 65943." §65941.1(d). An incompleteness determination "pursuant to Section 65943" includes both an initial completeness determination and any subsequent determination made in response to a resubmittal. In other words, each time a new written completeness determination is made pursuant to section 65943, an applicant has 90 days to respond in order to maintain vesting rights. Pet. Op. Br. at 13.

The City argues that Jha's interpretation of section 65941.1(d) is incorrect. An applicant does not have 90 days to respond each time an incompleteness determination is made. The developer has 180 days after submitting a preliminary application to submit "all of the information" required for a complete application. §65941.1(d)(1). If there is an incompleteness determination, the developer "shall submit" the information for completion in 90 days. §65941.1(d)(2). A failure to do so means that "the preliminary application shall expire and have no further force or effect." Id. Opp. at 11-12.

The City points to the legislative history of SB 330 (section 65941.1) as establishing that a single 90-day period to complete the application was added so that the law "delineates a protocol for both the applicant and the jurisdiction." Resp. RJN Ex. 1, pp. 83, 98-99, 277, 284, 289, 300. It is designed so that a "developer doesn't just put in an initial application, lock rules, then go away for 10 years and come back wanting locked rules for their project."[10]

As a result of an amendment, the American Planning Association ("APA") removed its opposition to SB 330 because there would be an "obligation of the applicant to pursue a complete application in a reasonable timeframe in order to retain their vested rights." Resp. RJN Ex. 1, p.

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[8] Neither party addresses Planning's point in the Second Project Review Letter that the Project is now a condominium project, the documents submitted cannot be considered complete for a subdivision because no subdivision application had been made or paid for, and none of the items on the checklist and subdivider's statement form had been provided. AR 642. At trial, Jha's counsel stated that the Project is a rental project, not a condominium project.

[9] Pursuant to the PSA, once an applicant resubmits an application in response to an agency's incompleteness determination, a new 30-day period begins wherein the agency must make another completeness determination. §65943(a).

[10] The City's citation for this quotation (Ex. 1, p. 267) is not in its requested judicial notice.

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1184. The APA letter urged the Legislature to utilize the PSA's existing process but removed its opposition to SB 330 when amendments created an "obligation of the applicant to pursue a complete application in a reasonable timeframe in order to retain their vested rights." Resp. RJN Ex. 1, p. 68. The APA stated that it preferred the PSA's existing vesting trigger but noted that "these amendments are intended to ensure this new two-step application approval process creates incentives for the applicant to complete the development processes in a timely manner...." Id. The APA stated that the amendment "will require...the applicant to complete the process in a timely manner in order to receive the vesting benefits of the bill." Resp. RJN Ex. 1, p. 1182. Opp. at 11-12. [11]

The City concludes (Opp. at 10, 16) that this legislative history indicates that section 65941.1's 90-day provision is designed to cut off vesting rights and Jha's interpretation would interpret the 180-day and 90-day periods out of existence. *See* Select Base Materials, Inc. v. Bd. of Equalization, (1959) 51 Cal.2d 640, 645, 647 (statutes are construed to avoid rendering "nugatory important provisions of the statute."). Given this interpretation of section 65941.1(d), the Project has no builder's remedy protection because any vesting rights expired when Jha failed to submit a complete application within 90 days of Planning's January 6, 2023 incompleteness letter. AR 3037-38.

On May 16, 2023, Planning wrote Jha that she had lost her vesting rights from the June 23, 2022 preliminary application. AR 761-63. Planning stated the preliminary application was deemed submitted on June 23, 2022 and the 180-day period under section 65941.1(d)(2) ended on December 21, 2022. Planning wrote the initial Project Review letter on January 6 2023, and more than 90 days had passed without receipt of all missing or incomplete information identified. AR 762. Although Jha had submitted a response to the City's January 6, 2023 incompleteness letter within 90 days (AR 386), the resubmittal did not satisfy the required information. AR 762. Therefore, the vesting preliminary application had expired. AR 762.

The City notes that a complaint was made to HCD about the loss of vesting, but HCD's June 28, 2023 email stated that its investigation found "no apparent violation" of housing law". AR 2921, 2962. Opp. at 10, 16.

At trial, the City's counsel explained that the loss of vesting rights also means the loss of a section 65589.5(d) builder's remedy. The HAA prohibits a local government from applying development standards that were not in effect at the time a preliminary application is submitted. §65589.5(o). The HAA states that is a violation to require, or even attempt to require, a project to comply with an ordinance, policy, or standard not adopted and in effect when a preliminary application was submitted. §65589.5(k)(1)(A)(i)(III). If vesting rights under the preliminary application expire, then the builder's remedy – which applies only when the local government does not have a housing element in substantial compliance with the Housing Element Law – would not apply to Jha because the City now has a compliant housing element.[12]

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[11] Assuming that the APA's statement is proper legislative history, it is a statement by a third party and not accorded significant weight. *See* Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc., *supra,* 133 Cal.App.4th at 38.

[12] The City's counsel also stated that the loss of vesting rights would not prevent further review of the Project application. For this reason, Planning continued to review and deny Jha's Density Bonus Application as incomplete or internally inconsistent in additional review letters dated July 12, 2023 (AR 1139-89), August 2, 2023 (AR 1271-72), and August 23, 2023 (AR 1273-1330)

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Section 65941.1(d)(1) provides that the applicant must submit an application that includes all necessary information within 180 days after submitting the preliminary application. The plain language of the provision sets a 180-day deadline. Section 65941.1(d)(2) provides that, if the agency determines that the application is incomplete pursuant to section 65943, the applicant shall submit the missing information within 90 days and the failure to do so will mean the application has expired. In turn, section 65943 provides that the agency must make a written determination on the completeness of an application within 30 days of submittal, or it will be deemed complete. §65943(a). Upon receipt of "any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application." Id.

At trial, the parties' counsel agreed on the relationship of section 65941.1(d)(1) and (2). If an applicant fails to submit an application within 180 days after the preliminary injunction, the 180-day deadline in section 65941.1(d)(1) bars it from doing so. If, on the other hand, an applicant submits an application within 180 days, it is timely even if it is incomplete. This is true despite the language in section 65941.1(d)(1) that the application must include "all of the information required to process the development application". Counsel agreed that an incomplete application submitted within 180 days is still timely under section 65941.1(d)(1). The court accepts the parties' interpretation.

The incompleteness issue is dealt with by section 65941.1(d)(2). This is where the parties diverge. The City contends that the applicant receives a single 90-day period to cure the incomplete application. If the information submitted does not complete the application, then the preliminary application expires and is no further force and effect. §65941.1(d)(2). Jha contends that there may be multiple iterations of this 90-day submission and 30-day evaluation process. So long as an applicant meets the 90-day deadline, there is no bar.

The court agrees with Jha that multiple iterations of the 90-day submission/30-day review are permissible under section 65941.1(d)(2). Section 65941.1(d)(2) expressly refers to completeness pursuant to section 65943. In turn, section 65943(a) refers to "any subsequent review of the application determined to be incomplete", "any resubmittal of the application", and "a new 30-day period." The use of the words "any" and "new" in section 65943(a) indicate that multiple resubmissions of an application may be made. The statute supports Jha's reading that the submission and completeness evaluation for an application is an iterative process with no limit on the number of submissions.

The court's conclusion is supported by the fact that the court is "not dealing with the PSA in a vacuum, but rather in its relation to the HAA," and the Legislature has mandated the HAA must be interpreted to "afford the fullest possible weight to the interest of, and the approval and provision of, housing." Save Lafayette v. City of Lafayette, (2022) 85 Cal.App.5th 842, 855 (refusing to interpret the PSA to treat a multi-year delay as a resubmittal that terminated earlier vesting rights and instead recognizing the project's decade-old vesting rights in part because the HAA's policy that favors housing).[13] The City's interpretation makes it more difficult for

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[13] The City argues that the court in Save Lafayette v. City of Lafayette, *supra*, 85 Cal.App.5th at 854-55, rejected the prospect of a "deemed disapproved" consequence to passage of the PSA's timelines in part because no statutory text supported the argument and there is no statutory text to support Jha's argument either. Opp. at 16-17. Perhaps, but the point remains that the PSA and HAA must be interpreted to give full weight to the approval of housing.

applicants to maintain vesting rights and directly conflicts with the Legislature's clear mandate to interpret its provisions in favor of housing development.[14]

The legislative history provided by the City does not undermine this conclusion. The Assembly Bill Analysis states that "[i]f the local agency determines that the information provided is not complete, the proponent has 90 days after receiving this determination in writing to provide the information, or their preliminary application will expire." Resp. RJN Ex. 1, p. 40. This statement is consistent with the conclusion that when an applicant receives an incompleteness determination pursuant to section 65943 – not just the first incompleteness determination – an applicant has 90 days to respond. This interpretation does not read the 90-day deadline out of existence because an applicant still must diligently respond to each incompleteness determination within 90 days.

The June 28, 2023 email HCD email cited by the City is not weighty. HCD staff wrote that it had "received a request for a letter of support" for the Project and found "no apparent violation of state housing law." AR 2962. The email's conclusion is unsupported by any facts or analysis. In contrast, Jha submitted an inquiry to HCD asking whether the Project's vesting rights expired after receiving a second incompleteness determination. An HCD staff member responded: "No, the preliminary application does not expire if the development application is deemed incomplete since Government Code section 65943 allows for resubmittal of the requested items." AR 2638. Reply at 8-9. Jha responded to the City's incompleteness determination within 90 days as required and there was no violation of section 65941.1(d)(2).

Jha submitted the preliminary application on June 23, 2022. She filed the AHRF on August 11, 2022 and the City waited four months to sign it, until December 12, 2022. Jha paid her Density Bonus Application fees nine days later. After Planning sent her the January 6, 2023 Project Review letter, Jha submitted revised the application materials within 90 days, on April 5, 2023. After Planning's second Project Review letter of April 28, 2023, Jha promptly appealed on May 12, 2023. This timeline shows Jha's diligence in pursuing her application.

Jha's vesting rights did not expire, and the City's refusal to recognize them was inconsistent with the PSA and violated the HAA.

3. The City Disapproved the Project Under the HAA

It is undisputed that the Project meets the definition of "housing for very low, low-, or moderate-income households" under the HAA. §65589.5(h)(3). The HAA prohibits a local government from disapproving an affordable housing project unless it makes written findings based on a preponderance of the evidence in the record as to one of five specifically enumerated findings. §65589.5(d). The court has already determined that the City cannot disapprove the Project based on section 65589.5(d)(5) (the builder's remedy) because the City was not in compliance with the Housing Element Law on the date that Jha submitted a complete preliminary application. There is no evidence that any of the other enumerated findings apply, and the City did not attempt to make such findings. In short, there is no valid basis for the City to disapprove the proposed affordable housing Project.

The City argues that the court is reviewing the City's determination of incompleteness under PSA section 65943 as to both applications. The builder's remedy disapproval findings

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[14] Can the local government ever end the cycle of resubmissions within 90 days? Probably so by relying on the 180-day period in section 65941.1(d)(1), but the court need not decide this issue.

apply to a merits disapproval of the Project entitlement, not an incompleteness appeal. §65589.5(d)(5). Nothing in the HAA equates a decision on PSA incompleteness to the disapproval of a project application or entitlement. *Cf.* §65589.5(h)(6)(HAA definition of "disapprove" references the "land use approvals or entitlements" for a building permit). Planning stated that the applications remain incomplete, but it will process either of them once complete. AR 3338. To the extent that Planning made an "early pre-decision compliance review," it was for Jha's information, not a decision on the merits. AR 764-76. The City has not made a final merits disapproval of either application, and for that reason Jha cannot claim that Planning's statement that the GPA Application is the correct process is itself a disapproval of the Project. Opp. at 19.

The short answer is that Jha is correct that the City Council's decision on completeness is a disapproval. Pet. Op. Br. at 17. The HAA defines disapproval as any instance in which an agency "[v]otes on a proposed housing development project application and the application is disapproved . . . ." §65589.5(h)(6). While the City Council purported only to vote on whether the application was complete, its vote disapproved the Project based primarily on the City's perceived general plan and zoning inconsistencies. The City did not simply recommend a GPA and zone change; it required them. The City Council made clear the Project cannot be approved unless it is modified to be consistent with the general plan or the general plan is modified to be consistent with the Project. This is a disapproval.

4. The City Violated the HAA

The court has already determined that the builder's remedy applies, and therefore general plan and zoning inconsistencies are not a valid basis to deny the Project. The City did not make any written findings regarding any of the other four enumerated bases to disapprove an affordable housing project, and therefore the City's vote to disapprove the project was in violation of the HAA. §65589.5(k)(1)(A)(i).

The City correctly notes that the HAA does not specify procedures for the review and processing of a builder's remedy project. Unlike other HAA or DBL provisions, there is no HAA text that prevents legislative procedures from applying to projects receiving builder's remedy protection. *Cf.* §§ 65589.5(j)(4) (project "shall not require" rezoning), 65915(f)(5), (j)(1) (density bonus or incentive "shall not require" a plan amendment). There is also nothing in the HAA that says a builder's remedy project must be approved ministerially, or that a specific process must be used, in contrast to other statutes that expressly reference a ministerial process. *Cf.* §§ 65913.4(a), 66317(a), 65852.21, 66411.7(a), (b)(1). Opp. at 11.

The City argues that it is contrary to the plain language of section 65589.5(o) for Jha to claim that the City must use a process that does not follow the laws and policies under which the Project vested. The entitlements associated with the GPA Application honor the City policies in effect on the June 24, 2022 date of the preliminary application that specify the GPA Application procedure and satisfy the need to legalize the Project within the City's zoning and planning framework. §65589.5(o)(1); AR 1535-42. Nothing in the HAA prohibits the City from seeking a GPA or zone change. Opp. at 11-12.

The City relies on a March 28, 2024 HCD letter of technical assistance to the City of Compton in which HCD agreed that the HAA does not specify the process for reviewing a project with builder's remedy protection and also agrees that a jurisdiction may require a general plan amendment or zone change to review such a project. Resp. RJN Ex. 3. Opp. at 12.

HCD's letter stated that a jurisdiction without an adopted housing element in substantial compliance with state law when the preliminary application was submitted and subject to the

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builder's remedy is not prevented by the HAA "from requesting a general plan/zoning code amendment" to avoid a legal non-conformity. Resp. RJN, Ex. 3. Further, the builder's remedy does not expressly prevent the city from requiring discretionary permits and/or legislative actions that would be required for similar projects (*e.g.*, GPAs, zoning changes, CUP, specific plan amendments). Ex. 3. HCD warned, however, that the HAA would be violated if the city's insistence on a GPA or zone change would render the project infeasible because it "delays project approval or increases the cost of the approval process." Ex. 3. Opp. at 12.

Jha agrees that the builder's remedy does not specify the entitlement process and that nothing requires the City to approve the Project ministerially. Jha correctly argues (Pet. Op. Br. at 15-16; Reply at 9) that the City attempts to sidestep the HAA by claiming that the builder's remedy does not specify the entitlement path that a local government must follow, and that the proper entitlement path for the Project is a GPA and zoning change. The HAA requires agencies to approve applications pursuant to the PSA's mandatory deadlines, and nothing permits an agency to force an applicant to seek a legislative change that is outside the scope of those protections. §65589.5(o)(6)(B); Land Waste, *supra*, 222 Cal.App.3d at 959. The HAA requires mandatory approval unless fact-specific findings are made, and forcing an applicant to seek a legislative action strips the applicant of these rights and protections.

Jha argues that GPAs are not entitlements, they are legislative acts. Arnel Development, *supra*, 28 Cal. 3d at 514. GPAs are governed by Chapter 3 of the Planning and Zoning Law, and most sections do not apply to charter cities. §65700. The review and approval of development projects, on the other hand, are governed by Chapter 4.5, the entirety of which applies to charter cities (including the PSA). § 65921. Legislative actions and the review of development projects are two distinct processes, subject to different procedures, and serve different functions. "[A] legislative action is the formulation of a rule to be applied to all future cases, while an adjudicatory act involves the actual application of such a rule to a specific set of existing facts." Patterson v. Central Coast Regional Com, (1976) 58 Cal.App.3d 833, 840. Reply at 9.

The court need not agree with Jha that GPAs and zone changes are not entitlements to agree that they are legislative enactments that cannot be compelled when the builder's remedy applies. The City cannot compel Jha to seek a legislative action through the review of a development project for the same reason Jha cannot compel the City to approve a legislative action through the submittal of a development application. The builder's remedy applies to projects, not properties, and legislative changes are not "housing development projects" governed by the HAA. Chandis Securities Co. v. City of Dana Point, (1996) 52 Cal.App.4th 475, 485-86. Reply at 9.

Jha is correct that the City's interpretation of the HAA would eviscerate the builder's remedy in section 65589.5(d)(5), which states that a local government must approve an affordable housing project notwithstanding any purported general plan or zoning inconsistency. In other words, requiring legislative changes is simply a more circuitous route of requiring general plan and zoning consistency, which is not permitted when a jurisdiction does not have a certified housing element and the builder's remedy applies. A local government with a compliant housing element could disapprove a project for such an inconsistency, or could inform an applicant that his or her project would be disapproved unless a legislative change is granted, but it cannot do so where an affordable housing project is protected by the builder's remedy.[15]

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[15] According to Jha, the City attempts to nullify the builder's remedy by relying on section 65589.5(f)(1), which states that the HAA should not be interpreted to prohibit a local agency from requiring compliance "with objective, quantifiable, written development standards, conditions,

The City points to the language in section 65589.5(j)(4) that a project "shall not require a rezoning" to suggest that the City can require rezoning. Opp. at 11, 13. Jha correctly replies (Reply at 10) that section 65589.5(j)(4)'s reference to rezoning relates to a determination of project consistency, which is required for market-rate housing projects protected by the HAA. Section 65589.5(j)(4) states that a housing project is not inconsistent with applicable zoning standards, and rezoning is not required, if the project is consistent with objective general plan standards. For builder's remedy projects, consistency is not required for the project to be approved.

Jha notes (Reply at 10-11) that the HCD recently superseded March 28, 2024 Compton technical letter in a June 26, 2025 technical letter to the City of Beverly Hills. Reply RJN Ex. 1. The Beverly Hills technical letter noted that the March 28 letter to Compton stated that the HAA does not prohibit a city from requesting a general plan/zoning code amendment to avoid a legal non-conformity but also clarified that such an action may not be required where the builder's remedy applies. Reply RJN Ex. 1. In its Beverly Hills letter, HCD stated that the HAA is clear

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and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584." (emphasis added). The first step in the housing element process is for a local government to identify the "appropriate zoning and development standards" to accommodate its RHNA. §65583(c)(1). Section 65589.5(f)(1) only allows a local government to enforce standards that are "appropriate to, and consistent with," meeting a jurisdiction's RHNA. A local government that failed to have a certified housing element and is subject to the builder's remedy does not have standards "appropriate to, and consistent with" meeting its RHNA requirements. This is why the builder's remedy exists. If a local government has failed to go through the required housing element process to identify the standards "appropriate to, and consistent with" meeting its RHNA requirements, section 65589.5(d)(5) allows affordable housing projects a path to approval notwithstanding existing standards. Pet. Op. Br. at 16.

Moreover, section 65589.5(f)(1) requires that the development standards, conditions, and policies be applied to "facilitate and accommodate development at the density permitted on the site and proposed by the development," not to provide a backchannel method to thwart the protections of section 65589.5(d)(5). Jha proposed an affordable housing project at a time when the City did not have a compliant housing element and the "density permitted" on the site is not constrained by existing general plan and zoning density standards. The builder's remedy makes clear that such density standards are not a valid reason to disapprove the project. The City can enforce other objective standards (e.g., height, setbacks) but must do so in a manner that facilitates and accommodates the density proposed by the Project. Pet. Op. Br. at 16-17.

Finally, section 65589.5(f) merely contains a series of general interpretive provisions regarding how the HAA should be "construed." Section 65589.5(d) provides the specific findings that a local government must make to lawfully disapprove a proposed affordable housing project. It is a basic canon of statutory construction that "when a general and particular provision are inconsistent, the latter is paramount to the former." CCP §1859. A general interpretive provision cannot be read to nullify the builder's remedy provision as it applies to a particular project. Interpreting section 65589.5(f)(1) to allow cities to impose zoning and general standards that section 65589.4(d)(5) states are not a valid reason to disapprove a project would reduce the builder's remedy to mere surplusage. A "construction making some words surplusage is to be avoided.'" People v. Valencia, (2017) 3 Cal.5th 347, 357. Pet. Op. Br. at 17.

While the court agrees with Jha's analysis, the City's opposition does not rely on section 65589.5(f)(1).

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that a project protected by the builder's remedy may not be disapproved for inconsistency with the jurisdiction's general plan and zoning ordinance. §65589.5(d)(5). "Accordingly, a jurisdiction that refuses to process or approve a project subject to the Builder's Remedy due to the applicant's refusal to submit a GPA[zoning change] requires or required by the jurisdiction to resolve such an inconsistency violates the intent of the HAA." Ex. 1. The requirement of a GPA or zoning change is "essentially a requirement for consistency," and disapproval of a project for failure to resolve that inconsistency is effectively a disapproval on the grounds of inconsistency. Ex. 1. HCD also noted that Beverly Hills did not have a GPA or zone change on its submittal requirement checklist and under the PSA the city could not determine that an application is incomplete based on failure to include a request for a GPA or zone change. Ex. 1.

The deference and the weight given to an agency's interpretation is situational and dependent on the presence or absence of factors supporting the merit of the interpretation. Yamaha Corp. of America v. State Board of Equalization, (1998) 19 Cal.4th 1, 7-8, 12. Some deference is warranted where there are "indications of careful consideration by senior agency officials" or "the agency 'has consistently maintained the interpretation in question.'" Id. at 13. An administrative construction of a statute is only entitled to as much deference as is warranted by "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control". Hoechst Celanese Corp. v. Franchise Tax Bd., (2001) 25 Cal.4th 508, 524.

The Beverly Hills technical letter strongly supports Jha's position and is entitled to some weight. It is consistent with the court's view, which is that the City may not require GPA or zone change on Jha's Project that is protected by the builder's remedy. Therefore, the City violated the HAA.

5. The City Violated the DBL

The DBL (§§ 65915-18) is intended to allow a developer to include more total units in a project that would otherwise be allowed by the local zoning ordinance in exchange for low-cost rental units, and to "cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional public subsidy." §65915(u).

A local government shall grant one density bonus as specified in subdivision (f), incentives or concessions as specified in subdivision (d), waivers or reductions of development standards as described in subdivision (e), and parking ratios as described in subdivision (p), if an applicant agrees to construct a housing development that will contain stipulated percentages of low income and very low-income units or target population units (*e.g.*, disabled veterans). §65915(b).

A "housing development" means a development project for five or more residential units, including mixed use developments. §65915(i).

A "density bonus" means a "density increase over the otherwise maximum allowable gross residential density," but the developer also may elect "a lesser percentage of density increase, including, but not limited to, no increase in density." §65915(f). The amount of the density bonus varies according to the amount by which the percentage of low and very low-income units exceed the percentages. §65915(f).

Density bonuses shall be granted based on the "maximum allowable density" for the project site, defined as "the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density

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allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail." §65915(o)(5).

An applicant for a density bonus pursuant to subdivision (b) may submit a proposal for specific incentives or concessions. §65915(d)(1). The local government shall grant the requested incentive or concession unless (1) it makes a written finding, based on substantial evidence, that the project will not result in "identifiable and actual cost reductions" of affordable housing costs or for rents of the targeted units as specified in subdivision (c), (2) the concession or incentive would have a specific adverse impact upon public health and safety, the physical environment, or real property listed in the California Register of Historical Resources and for which there is no feasible method of mitigation without rendering the development unaffordable to low- and moderate-income households, or (3) the concession or incentive would violate state or federal law. §65915(d)(1)(A)-(C). §65915(d).

The applicant may also apply for and receive development waivers or reductions that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions/incentives permitted. §65915(e)(1). The local agency may not apply a development standard that will have this effect. §65915(e)(1). However, the local government is not required to waive or reduce development standards if there would be an adverse impact on health, safety, or the physical environment, and for which there is no feasible method of mitigation to avoid the impact. Id. Nor is the local government required to waive or reduce development standards that would have an adverse effect on real property listed in the California Register of Historical Resources, or to grant any waiver or reduction that would violate state or federal law. §65915(e)(1).

Jha argues that the amount of density bonus is based on the "maximum allowable gross residential density" or "base density," which the law defines as "the maximum number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan...." §65915(o)(6). On the other hand, incentives/concessions and waivers are awarded based on the percentage of "total units" that are restricted to low- and very-low income households. §65915(d). The DBL definition of "total units" is unrelated to zoning and is simply "a calculation of the number of units that: (i) Excludes a unit added by a density bonus awarded pursuant to this section. (ii) Includes a unit designated to satisfy an inclusionary zoning requirement." §65915(o)(8). In other words, the term "total units" simply means the number of units proposed for the project. Similarly, the DBL defines a "housing development" to mean "a development project for five or more residential units, including mixed-use developments" without any reference to zoning standards. §65915(i). Thus, a "housing development" is a project that proposes at least five units. Pet. Op. Br. at 18-19.

Jha's Project is a housing development that includes 20% of units restricted to low-income households and is therefore entitled to two incentives/concessions and an unlimited number of development standard waivers. §65915(d), (e). Jha proposed incentives to the applicable floor area ratio and low-impact development standards, as well as various waivers to development standards of setbacks, height limits, parking standards, and others. AR 136-37.

AHSS staff determined that the Project is not eligible for the DBL program. AR 1637. The staff stated that the Property site is in the RA zone, which permits only one family dwelling and does not allow multi-family uses. LAMC §12.07.A.1. AR 1637. AHSS staff stated that Jha will need to apply for a zoning change to allow multi-family uses. AR 145-47, 1637. In fact, the City unilaterally converted the application from a density bonus request to a zone change, assigning the Project a new Planning number. AR 171. Pet. Op. Br. at 19.

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Jha contends that the City did not deny the requested incentives/concessions, and development standard waivers due to public health and safety concerns, but rather due to the City's erroneous determination that a site must be zoned for a minimum of five base units to be eligible for any of the DBL's protections. The number of base units is only relevant to calculate the density bonus which Jha does not seek. It is distinct from the "total units" used to determine eligibility for incentives/concessions/development standard waivers. So long as the project includes the minimum level of affordability, the City may only deny the proposed incentives/concessions/waivers for the statutorily enumerated reasons. §65915(d), (e). The DBL includes "very limited exceptions" to deny requested incentives/concessions/waivers and zoning inconsistency is not one of them. *See* Bankers Hill 150 v. City of San Diego, (2022) 74 Cal.App.5th 755, 770. The City's refusal to grant the incentives/concessions/waivers is a violation of the DBL. Pet. Op. Br. at 19.

The City responds that Jha incorrectly reads the DBL. Her literal reading of the terms "total units" and "housing development" in sections 65915(o)(8) and 65915(i), respectively, would create an absurd result. Both terms refer to the number of base units identified by the zoning and land use designation based on usage of the "housing development" term. *Compare* §§ 65915(b)(1)(G), (c)(1)(B)(ii)("all units in the development, including total units and density bonus units"), §§ 65915(a)(1)("When an applicant seeks a density bonus for a housing development"), 65915(b)(1)(if an applicant "seeks and agrees to construct a housing development, excluding any units permitted by the density bonus") *with* 65915(o)(8)(i)("total units...[e]xcludes a unit added by a density bonus"). Jha's literal application of the definitions in sections 65915(o)(8) and 65915(i) would permit a density bonus project in any industrial zone or land use category that does not authorize residential uses so long as the number of proposed units is five or more. At trial, the City's counsel reiterated that Jha's interpretation would allow incentives, concessions, and waivers for a project in an industrial zone. *See* Unzueta v. Ocean View School Dist., (1992) 6 Cal.App.4th 1689 (statutes are interpreted to avoid absurd results). Opp. at 14.

Scrutiny of the DBL shows the City is wrong. An applicant for a qualifying housing development make seek and obtain one density bonus as specified in subdivision (f), incentives or concessions as specified in subdivision (d), waivers or reductions of development standards as described in subdivision (e), and parking ratios as described in subdivision (p). §65915(b)(1). A "housing development" means a development project for five or more residential units, including mixed use developments. §65915(i). The developer may elect to seek no increase in density as part of her density bonus (§65915(f)) and may seek specific incentives or concessions (§65915(d)(1) and development waivers or reductions (§65915(e)(1)) as Jha has. While the density bonus available pursuant to section 65915(b) is defined as an increase to maximum allowable density (§65915(f)) and maximum allowable density means the greatest number units allowed by the zoning ordinance (§65915)(o)(6)), there is simply no tie between bonus density, incentives or concessions, and waivers or reductions in development standards that would permit application of the maximum allowable density definition too the latter two entitlements.

The court agrees with Jha (Reply at 11-12) that the City is equating the terms "total units" in section 65915(o)(8) and "base density" in 65915(o)(6) even though each has a specific, unique definition in the DBL. "Total units" refers to the number of units in a project excluding any density bonus units. §65915(o)(6). "Base density" is only relevant for determining the amount of density bonus and refers to the units allowed under the zoning or general plan. §65915(o)(8). Reading these terms to be identical would render the statutory definitions surplusage. *See* MacIsaac v.

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Waste Management Collection & Recycling, Inc., (2005) 134 Cal.App.4th 1076, 1082. Reply at 11.

The plain language of the DBL controls. So long as a project that restricts a certain percentage of the "total units" to low-cost housing can be approved, it is eligible for incentives, concessions, and waivers with "very limited exceptions." *See* Bankers Hill 150 v. City of San Diego, (2022) 74 Cal.App.5th 755, 770. Zoning is not one of those exceptions. While the City argues that reliance on the plain language definition of "total units" would allow density bonus projects in zones where residential uses are not permitted, such as in an industrial zone, inconsistency with zoning or general plan requirements could be a valid reason to disapprove a project where (a) there would be an adverse impact on health, safety, or the physical environment, and for which there is no feasible method of mitigation to avoid the impact (b) there would be an adverse effect on real property listed in the California Register of Historical Resources, or (c) it would violate state or federal law. §65915(d)(1), (e)(1). Because the Project restricts 20% of the total units as affordable, the City's refusal to grant incentives, concessions, and waivers violated the DBL.[16]

F. Conclusion

The Petition is granted in large part. Jha is entitled to a judgment on her mandamus claims that (1) the City's determination that Jha's application is incomplete violated the PSA because the City wrongly required a GPA, zone change, and determined density bonus ineligibility, (2) the City violated the HAA by imposing a GPA and zone change on Jha's Project protected by the builder's remedy, (3) Jha's vesting rights did not expire, and the City's refusal to recognize them was inconsistent with the PSA and violated the HAA, and (4) the City's refusal to grant regulatory incentives, concessions, and waivers violated the DBL. Jha's claim for declaratory relief is denied. A writ shall issue directing the City to set aside the City Council's denial of the June 27, 2023 PSA appeal and to review and process Jha's Project application pursuant to the PSA, HAA and DBL as interpreted herein.

Jha's counsel is ordered to prepare a proposed judgment and writ, serve them on the City's counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment and writ along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for August 27, 2024 at 9:30 a.m.

[16] The City argues that it acted in good faith. Opp. at 21-22. The City's bad faith is relevant only to whether the court should direct it to approve the Project. §65589.5(k)(1)(A)(ii). If the court finds that an agency acted in bad faith in disapproving a project in violation of the HAA, the appropriate remedy is an "order or judgment directing the local agency to approve the housing development project" and attorney fees and costs. §65589.5(k)(1)(A)(ii). "Bad faith" "includes, but is not limited to, an action that is frivolous or otherwise entirely without merit." §65589.5(l). Jha fails to seriously address this issue and the court's decision requires further proceedings anyway.

Dated: July 23, 2024

Superior Court Judge

JAMES C. CHALFANT

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ITEM NO. 9.

TOWN OF LOS GATOS
COMMUNITY DEVELOPMENT DEPARTMENT
110 E. Main Street
Los Gatos, CA 95030

APPEAL OF THE DECISION OF DEVELOPMENT REVIEW COMMITTEE

PLEASE TYPE or PRINT NEATLY
I, the undersigned, do hereby appeal a decision of the DEVELOPMENT REVIEW COMMITTEE as follows:

DATE OF DECISION: January 30, 2025

PROJECT/APPLICATION: The Arya Builder's Remedy Project

LOCATION: 15300 and 15330 Los Gatos Blvd (APNs 424-17-35, -036)

Pursuant to the Town Code, any interested person as defined in Section 29.10.020 may appeal to the Planning Commission any decision of the Development Review Committee.
Interested person means:

1. *Residential projects.* Any person or persons or entity or entities who own property or reside within 1,000 feet of a property for which a decision has been rendered, and can demonstrate that their property will be injured by the decision.
2. *Non-residential and mixed-use projects.* Any person or persons or entity or entities who can demonstrate that their property will be injured by the decision.

LIST REASONS WHY THE APPEAL SHOULD BE GRANTED:
Please find the attached correspondence from Travis A. Brooks, Esq., Miller Starr Regalia. As noted in the letter, the Applicant is not appealing

IMPORTANT:

1. Appeal must be filed not more than ten (10) days after the decision is rendered by the Development Review Committee. If the tenth (10th) day is a Saturday, Sunday, or Town holiday, then the appeal may be filed on the workday immediately following the tenth (10th) day, usually a Friday. Appeals are due by 4:00 P.M. ***If an appeal is filed on a Friday, they must be submitted by 1:00 P.M.***
2. The appeal shall be set for the first regular meeting of the Planning Commission which the business of the Planning Commission will permit, more than five (5) days after the date of the filing of the appeal. The Planning Commission may hear the matter a new and render a new decision in the matter.
3. You will be notified, in writing, of the appeal date.
4. Contact the project planner to determine what material is required to be submitted for the public hearing.

RETURN APPEAL FORM TO COMMUNITY DEVELOPMENT DEPARTMENT

PRINT NAME: ALI MOAYED SIGNATURE: [signature]

DATE: 02-07-2025 ADDRESS: 16400 LARK AVE, STE 400 LOS GATOS, CA 95032

PHONE: (408) 5[illegible]-4649 EMAIL: alimoayed@msn.com

****

OFFICE USE ONLY

DATE OF PLANNING COMMISSION HEARING: ____________

COMMISSION ACTION: 1. ____________ DATE: ____________
2. ____________ DATE: ____________
3. ____________ DATE: ____________

PLAPPEAL $ 264.00 Residential
PLAPPEAL $ 1,052.00 Commercial
PLAPPEAL $ 107.00 Tree Appeals

N:\DEV\FORMS\Planning\2024-25 Forms (Effective July 1, 2024)\Appeals\Word Docs\Appeal - DRC.docx 06/2024

ATTACHMENT 4

1331 N. California Blvd.
Suite 600
Walnut Creek, CA 94596

T 925 935 9400
F 925 933 4126
www.msrlegal.com

Travis Brooks
travis.brooks@msrlegal.com

February 7, 2025

VIA E-MAIL AND HAND DELIVERY

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

Re: 15300 and 15330 Los Gatos Boulevard
Request For Appeal Of Town Planning Director's Apparent Determination, in Violation of Housing Accountability Act and Permit Streamlining Act, That Preliminary Application Expired
APNs 424-17-035 and -036
Architecture and Site Application S-24-018
Conditional Use Permit U-24-007
Subdivision Application M-24-009

Dear Mr. Paulson:

On behalf of Arya Properties, LLC ("Arya" or the "Applicant"), this letter is a formal request to appeal an erroneous January 30, 2025 statement (and potential formal determination) by Town staff that the Senate Bill 330 ("SB 330") Preliminary Application for Arya's above-referenced Builder's Remedy project at 15300 and 15330 Los Gatos Blvd (the "Project"), has expired.[1]

On January 30, 2025, you in your capacity as Town Community Development Director ("Community Development Director" or "CDD") sent the Applicant a letter (**Exhibit A**) with a determination that Arya's Project application remains incomplete after its most recent timely resubmittal under the Permit Streamlining Act and Senate Bill 330 ("PSA", Gov. Code § 65920 et seq., "SB 330", Gov. Code § 65941.1(e)(2)). As referenced above, the same day, in a conversation to discuss your letter, the Town Planning Director ("Planning Director") verbally communicated to the Applicant his/Town staff's belief that the Project's Preliminary Application, submitted on November 14, 2023, expired because Arya's application remained incomplete after a

[1] Arya reserves its right to submit additional information and materials to the Town in support of this request for appeal in advance of any hearing on the appeal.

second resubmittal.[2] If this communication reflects a final determination by you or the Planning Director, it is incorrect. If confirmed by the Town, it would amount to an improper denial of the Project in plain violation of the PSA, SB 330, and the HAA. As described further below, the Project is protected by the Builder's Remedy of the HAA and denial of it – including an improper determination that the Preliminary Application has "expired" – would expose the Town to liability under the HAA.[3]

Although we do not believe it necessary to appeal the Planning Director's unwritten, verbal statement regarding the "expiration" of the Preliminary Application, we file this appeal out of an abundance of caution to ensure that Arya has exhausted all of its administrative remedies. If the Planning Director's January 30 statement was a formal determination that Arya's Preliminary Application expired and that position has not changed, please provide Arya with written confirmation of this determination immediately.

To be clear, although the CDD's January 30, 2025 letter determined Arya's application to be incomplete, we are not requesting review of that decision for purposes of application completeness. And Arya does not need to do so to preserve the Preliminary Application or the Project's robust protections under the Builder's Remedy, the HAA, and SB 330. Consistent with state law, Arya will submit additional materials to make its formal application complete within the timeframes required by SB 330 and Section 65943 of the PSA.

I. SB 330 And The PSA As Applied To Arya's Application

As you know, SB 330 (Gov. Code § 65941.1.) allows an applicant for a housing development project to submit a "Preliminary Application" under state law. Submittal of a Preliminary Application vests an applicant's rights to proceed under the applicable development standards adopted and in effect at the time the Preliminary Application was submitted, even if those standards later change. (Gov. Code § 65589.5(o).)

Within 180 days after submittal of a Preliminary Application, the applicant must submit a formal development application. (Gov. Code § 65941.1(e)(1) (formerly (d)(1)).) Upon submittal of a formal development application, the process of determining whether a housing development application is complete begins as set forth in Government Code section 65943. Within 30 days of receiving the application

[2] In other words, your apparent determination that the Preliminary Application expired was not included in the CDD's January 30 letter, which only determined the application was incomplete. Moreover, the Applicant already received planning staff's written, third notice of incompleteness multiple weeks earlier, which included no indication that the application had expired.

[3] As discussed below, such a determination would also directly conflict with multiple guidance letters from HCD, including an August 30, 2024 Technical Assistance letter *to the Town*, as well as the one trial court decision opining on this issue. All of these clearly state that the 90-day resubmittal deadline in Gov. Code 65941.1(e)(2) "resets" after each of what may be *multiple* notices that a timely resubmitted application is incomplete.

materials, the Town must determine in writing whether the application is complete. (Gov. Code § 65943(a).) Upon receipt of an incompleteness determination, the applicant may then resubmit the application, giving the Town another 30-day period to make a completeness determination. (Gov. Code § 65943(b).) Government Code section 65941.1(e)(2) (formerly (d)(2)), requires an applicant to respond to a city's incompleteness determination by resubmitting the application materials as described in Section 65943(b) within 90 days, or else the Preliminary Application will expire. The PSA contemplates a potentially unlimited number of resubmission periods to make an application complete.

Here, the Applicant submitted a Preliminary Application for the Project on November 14, 2023. At that time, the Town did not have an adopted and compliant housing element under state law and was subject to the "Builder's Remedy" of the HAA (Gov. Code § 65589.5(d)(6) (formerly (d)(5).). Under the Builder's Remedy, a town may not disapprove or unreasonably condition any housing development project containing the required percentage of affordable units, even if the project is inconsistent with the Town's General Plan or zoning ordinance.[4] Because Arya's project contains the required percentage of affordable units, and it submitted the Preliminary Application at a time when the Town did not have a compliant housing element, the Project is protected by the Builder's Remedy.

The Applicant timely filed its formal application, pursuant to the Builder's Remedy, on May 9, 2024. The Town responded with a letter dated June 5, 2024, determining the application to be incomplete. The Applicant responded to the Town's June 5 incompleteness letter within 90 days by resubmitting its application materials on September 2, 2024. The Town then issued a subsequent incompleteness letter on September 25, 2024, which the Applicant responded to with a resubmittal on November 27, 2024. On December 23, 2024, the Town provided the Applicant with a third incompleteness letter which said nothing about the Project application expiring. On January 30, 2025, without a request for a review of staff's letter from the Applicant, the Community Development issued his own incompleteness determination and that same date the Planning Director communicated his erroneous belief that the Project's SB 330 preliminary application had expired.

II. There Is No Limit On The Number Of 90-Day Resubmission Periods Under SB 330 And The PSA

At this stage in the Project's application completeness process, the only manner which Arya's Preliminary Application could "expire" pursuant to SB 330 and the PSA is found in Government Code section 65941.1(e)(2).

The Town appears to interpret Section 65941.1(e)(2) to mean that if a formal application is not determined to be complete after two resubmittals – made within

[4] Recently enacted Assembly Bill 1886 confirms the Town is subject to the Builder's Remedy because it did not have a compliant housing element at the time a Preliminary Application was submitted. (Gov. Code § 65589.55(a).)

each respective 90 day resubmission period – the Preliminary Application expires. This is a plainly erroneous interpretation of the law that conflicts with the language, spirit, and intent of state housing law. It has been squarely rejected by the California Department of Housing and Community Development (HCD) multiple times – including an August 30, 2024 technical advisory memo *directed to the Town* – and the only court to have considered this statutory language so far. (HCD Letter of Technical Assistance to the Town of Los Gatos, dated August 30, 2024, enclosed hereto as **Exhibit B**; HCD Notice of Violation to the City of Beverly Hills, enclosed hereto as **Exhibit C**; Judgment Granting Petition for Writ of Mandate, Sup. Ct. of Cal., County. of Los Angeles, *Jha v. City of Los Angeles* (Case No. 23STCP03499), filed September 17, 2024; ("*Jha*"), enclosed hereto as **Exhibit D**.)

The *Jha* Court correctly reasoned that Gov. Code section 65941.1(e)(2)(then (d)(2)) cross-references the PSA, Gov. Code section 65943, which calls for an iterative completeness process in which the applicant is entitled to an unlimited number of 90-day windows to resubmit an application the jurisdiction determines to be incomplete. *Jha* at 23-24. As the Court held, "[t]he statute supports [the applicant's] reading that the submission and completeness evaluation for an application is an iterative process *with no limit on the number of submissions*.") (*Id.*) (emphasis added). The Court further stressed that a court "'is not dealing with the PSA in a vacuum, but rather in its relation to the HAA,' and the Legislature has mandated the HAA must be interpreted to 'afford the fullest possible weight to the interest of, and the approval and provision of, housing.'" (*Id.* (quoting *Save Lafayette v. City of Lafayette* (2022) 85 Cal. App. 5th 842 855, and Gov. Code § 65589.5(a)(1)(L).)

In its August 30, 2024 letter of technical assistance to the Town, HCD echoed this same analysis:

> [t]he 90 day deadline restarts with each subsequent resubmittal by the applicant. Subdivision (d) [now (e)(2)] of Government Code section 65941.1 references section 65943, which provides for an iterative process in which deadlines reset upon resubmittal. Because of that reference, it is reasonable to conclude that the subdivision envisions a similar back-and-forth process… Furthermore requiring a single 90-day review period would limit the completeness determination process to only one *or two resubmittals*, making the process more difficult for diligent applicants seeking to use the protections of the preliminary application system…
>
> *The 90-day review period for completeness determination under the PSA is not finite and, rather, resets for subsequent resubmittals….*

(emphasis added.)

Finally, HCD's NOV letter to the City of Beverly Hills advised the City that it would violate the HAA, PSA, and SB 330 if it refused to process the applicant's Builder's

Remedy project on the grounds that its Preliminary Application had expired due to the formal application being incomplete 90 days after an initial incompleteness determination. "HCD reminds the City… that the 90-day deadline resets after each incompleteness determination. A project with multiple incompleteness letters and responses may have *multiple* 90-day periods." (Beverly Hills Letter at 3, emphasis added.)

We have yet to receive a *written* determination that the Preliminary Application has expired, let alone *any* justification from the Town why the Legislature would have intended a contrary result here, because there is none. It would be an absurd reading of SB 330 to conclude that the Legislature provided an iterative process for completeness determinations for standard development projects under the PSA with unlimited resubmission windows, and then enacted SB 330, expressly cross-referencing the PSA, only allowing for two 90-day completeness periods for the Applicant to maintain vesting – a limitation nowhere referenced or allowed under state law. That result is especially absurd given the intent of the HAA to maximize the production of housing and the intent of the PSA to *reduce* barriers to an application achieving completeness. (*See* Gov. Code § 65589.5(a)(1)(L); *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1438 (purpose of PSA is "to relieve permit applicants from protracted and unjustified delays in processing their permit applications")). The Town's reading of SB 330 would only encourage cities to engage in gamesmanship with completeness determinations by developing onerous and convoluted application requirements or falsely determining applications to be incomplete so they can then argue that a SB 330 Preliminary Application has expired.

III. A Determination By The Town That The Preliminary Application Expired Would Be An Improper Denial Of The Project Under The HAA

Since the time of the *Jha* case, HCD's technical assistance letter to Los Gatos, and HCD's NOV letter to Beverly Hills, the Legislature subsequently enacted legislation confirming that a jurisdiction's improper determination that a Preliminary Application has expired is a disapproval of the project under the HAA. (*See* Gov. Code section 65589.5(h)(6)(H) (defining disapproval to include "mak[ing] a written determination that a preliminary application described in subdivision (a) of Section 65941.1 has expired or that the applicant has otherwise lost its vested rights under the preliminary application for any reason other than those described in subdivisions (c) and (d) of Section 65941.1"); *see also* Gov. Code § 65589.5(h)(6)(D); (6)(F) (expanding definition of disapproval to include improper incompleteness determinations and courses of conduct intended to harass or delay). As demonstrated above, determining a Preliminary Application to have expired after two 90-day resubmission windows is an incorrect reading of section 65941.1(e)(2), and therefore not a basis upon which a Preliminary Application can be determined to have expired. As a result, if the statement relayed in the Applicant's January 30, 2025 conversation with the Planning Director was a formal determination that the Preliminary Application has

expired and it is upheld on review, it will be a denial of the Project as a matter of law, entitling Arya to bring action in court for the Town's violation of the HAA.

A court will undoubtedly hold that the denial of this project is improper, because Arya's Project is protected by the Builder's Remedy of the HAA and therefore cannot be denied. As you are likely aware, local governments bear a heavy burden of proof in Builder's Remedy lawsuits under the HAA (See Gov. Code §§ 65589.5(d); 65589.6) and are subject to substantial penalties and fees. If a plaintiff wins an HAA lawsuit against a local government, the local government is required to pay the applicant's attorney's fees and other costs incurred in bringing the suit, absent extraordinary circumstances. If the local government loses the suit, it has 60 days to comply with the HAA, or it will be fined a minimum of $10,000 per dwelling unit in the proposed housing development project. If the local government acts in bad faith, that fine would be multiplied by five (i.e., $50,000 per dwelling unit in the proposed housing development project).

For all these reasons, we are formally requesting that the CDD first confirm in writing whether the Planning Director's January 30, 2025 statement reflects his or your formal (albeit erroneous) determination that the Preliminary Application expired. If so, we request that you (as Community Development Director) or the Planning Commission direct the Planning Director to reverse his determination that the Preliminary Application has expired and continue processing the Project application consistent with its protections under the Builder's Remedy and the PSA. If such determination is not overturned, we will seek all available remedies under the HAA for an improper denial of the Project.

We would much prefer to work with Town staff in processing the Project application in a manner consistent with the PSA, the HAA, and SB 330 to complete the Project application and prepare the Project for a hearing on the merits. Ultimately, Arya looks forward to delivering the Project and its critically needed new homes to the community.

Please feel free to contact me regarding the contents of this letter. I can be reached by e-mail at travis.brooks@msrlegal.com.

Very truly yours,

MILLER STARR REGALIA

Travis Brooks

Travis Brooks

TZB:kli

Attachments: Exhibits A-D

cc: Gabrielle Whelan, Esq., Town Attorney, GWhelan@losgatosca.gov
Sean Mullin, Planning Director, SMullin@losgatosca.gov
Erin Walters, Senior Planner, EWalters@losgatosca.gov
Client

EXHIBIT A

TOWN OF LOS GATOS
PLANNING DIVISION

January 30, 2025

Kurt Anderson, AIA
Anderson Architects, Inc.
120 W. Campbell Avenue, Suite D
Campbell, CA 95008

Subject: SB330 Application Incompleteness Determination Appeal Process
15300 and 15330 Los Gatos Boulevard

Dear Mr. Anderson,

Please note that in accordance with Government Code Section 65943, you may appeal the incompleteness determination, of the Senate Bill 330 application for the properties located at 15300 and 15330 Los Gatos Boulevard to the Town Council by paying the required appeal fee and submitting a written appeal to the Town Clerk on the attached appeal form within 10 days of the date of this letter.

The application's incompleteness determination was provided to the applicant's team on December 23, 2024, as part of the Staff Technical Review Committee comments, and discussed at the January 8, 2025, Staff Technical Review Committee meeting.

If you have questions, please contact Erin Walters, Senior Planner, by email at ewalters@losgatosca.gov.

Sincerely,

Joel Paulson
Community Development Director

Cc: Ali Moayed, Arya Properties, LLC , 16400 Lark Avenue, Suite 400, Los Gatos, CA 95032

EXHIBIT B

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY GAVIN NEWSOM, *Governor*

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
651 Bannon Street, Ste. 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

August 30, 2024

Jennifer Armer, Planning Manager
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

Dear Jennifer Armer:

RE: Town of Los Gatos – Saratoga Road Project – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received a request for technical assistance from Arielle Harris of Cox Castle (CC) on behalf of SummerHill Homes (SHH) on April 17, 2024 regarding the application of the Permit Streamlining Act (PSA) (Gov. Code, §§ 65941.1, 65943) and the State Density Bonus Law (SDBL) (Gov. Code, § 65915). The PSA governs the timing of development applications, while the SDBL allows certain housing developments to obtain incentives/concessions in development standards by providing affordable housing, among other provisions. The purpose of this letter is to provide technical assistance for the benefit of the Town of Los Gatos (Town), CC, and SHH regarding eligibility under the law.

Project Description and Background

HCD understands that the proposed project involves the construction of 155 units, of which 18 percent are affordable (28 units) to lower-income households, on an 8.82-acre site. On June 30, 2023, SHH submitted a preliminary application to vest rights for the project under the HAA, followed by a full application on December 15, 2023. The Town issued an invoice for the full application on December 19, which SHH paid the following day. CC has posed the following questions:

Question #1: When is an "application for a development project" deemed "submitted" under Government Code section 65941.1, subdivision (d)(1), where the local agency intake process does not offer a means of concurrent fee payment?

HCD understands that when development project applications are submitted to the Town, a Town staff person first checks to verify the appropriate type of permit being sought, then generates the invoice accordingly. Because this process requires action on the part of the staff person, it is not procedurally possible for an applicant to submit an application and associated fee at the same time. While in most instances this practice creates an insignificant delay, it is a matter of great concern to an applicant that is

attempting to submit a full application with the 180-day submittal window to maintain vesting under a Preliminary Application.[1] For the purposes of meeting PSA review deadlines for the full application[2], the Town considers the 30-day application completeness clock to have started when the invoice is paid, not when the application is submitted.

While it is reasonable for the Town to start its review of the project – and with it the application completeness clock – after its fees are paid, the inconsistent lag time between application submittal and invoice payment is concerning. The Legislature found and declared with the passing of the PSA that "there is a statewide need to ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects".[3] The intent of the PSA is to ensure that applicants are provided clear instructions and that local jurisdictions are consistently processing projects in accordance with the specific timelines outlined in the statute to streamline development. Considering the current housing crisis in California, delays in permitting processes and approval times add constraints to the cost of residential construction. Therefore, compliance with the PSA is even more pertinent today to meet the urgent housing needs across California.

As mentioned above, it is critically important for an applicant to be able to submit a full application within the 180-day submittal window to maintain vesting under a Preliminary Application. The Town should explore modifying its intake procedures for development applications of this type to provide an option for the applicant to pay the fee associated with the type of application being sought. If the applicant has misidentified the type of application, the Town can subsequently charge or refund the applicant the difference between the fees. Alternatively, the Town might consider amending its municipal code or other adopted procedures to address the circumstance encountered by the subject project (i.e., establish that procedural delays for which the Town is responsible are not a basis to lose Preliminary Application vesting status).

Question #2: Does the 90-day deadline provided in Government Code section 65941.1, subdivision (d)(2), of the Permit Streamlining Act require the housing development project applicant to achieve "application completeness" within 90 days of the agency's first incompleteness determination to avoid expiration of the preliminary application, or does it allow for multiple rounds of completeness review and resubmittals as long as the applicant responds within 90 days of each incompleteness determination, consistent with Government Code section 65943?

The 90-day deadline restarts with each subsequent resubmittal by the applicant. Subdivision (d) of Government Code section 65941.1 references section 65943, which provides for an iterative process in which deadlines reset upon resubmittal. Because of that reference, it is reasonable to conclude that the subdivision envisions a similar back-

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[1] Gov. Code, § 65941.1, subd. (d)(1).
[2] Gov. Code, § 65943, subd. (a).
[3] Gov. Code, § 65921.

and-forth process. Nothing in the subdivision explicitly precludes this. Furthermore, requiring a single 90-day review period would limit the completeness determination process to only one or two resubmittals, making the process more difficult for diligent applicants seeking to use the protections of the preliminary application system. An interpretation that there is a single finite 90-day review period is inconsistent with both the intent of the PSA and the Legislature when it introduced this system in Senate Bill 330 (Chapter 654, Statutes of 2019). This interpretation is also inconsistent with a recent Los Angeles Superior Court ruling which concluded "that when an applicant receives **an** incompleteness determination pursuant to section 65943 – not just the **first** incompleteness determination – an applicant has 90 days to respond." (*Janet Jha v. City of Los Angeles, et al.,* (Super. Ct. L.A. County, 2024, No. 23STCP03499).)

Question #3: Can a housing development project applicant and a city or county mutually agree to an extension of the 90-day time limit provided in Government Code section 65941.1, subdivision (d)(2)?

Yes. As mentioned above, subdivision (d)(1) links its process to that of section 65943, which provides in its subdivision (d) that the timelines for submittal do not preclude "an applicant and a public agency from mutually agreeing to an extension of any time limit provided by this section." It logically follows that if a project is in a situation where section 65943 is applicable because the application is not complete, then the local government and the applicant should be able to extend the submittal timelines by mutual agreement. HCD encourages local governments and applicants to work together to successfully realize residential development projects.

Conclusion

In conclusion, while applications under Government Code section 65941.1, subdivision (d)(1), are deemed "submitted" upon submission of required materials and payment of applicable fees, cities should make it possible for applicants to submit all materials and payments concurrently to maximize efficiency. The 90-day review period for completeness determination under the PSA is not finite and, rather, resets for subsequent resubmittals, and when mutually agreement upon by both applicants and local governments, the 90-day time limit may be extended. HCD remains committed to supporting the Town of Los Gatos in facilitating housing at all income levels and hopes the Town finds this clarification helpful. If you have questions or need additional information, please contact David Ying at David.Ying@hcd.ca.gov.

Sincerely,

Shannan West
Housing Accountability Unit Chief

EXHIBIT C

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY GAVIN NEWSOM, Governor
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
651 Bannon Street, Suite 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

December 2, 2024

Michael Forbes
Director of Community Development
City of Beverly Hills
Via: mforbes@beverlyhills.org
455 N Rexford Drive
Beverly Hills, CA 90210

Dear Michael Forbes:

RE: Beverly Hills Builder's Remedy Applications – Notice of Violation

On June 26, 2024, the California Department of Housing and Community Development (HCD) issued a Letter of Support and Technical Assistance to the City of Beverly Hills (City) regarding compliance with Government Code section 65589.5, subdivision (d)(5), known colloquially as the "Builder's Remedy," pertaining to the proposed development at 125-129 Linden Drive (Linden Project). On August 22, 2024, HCD issued a Notice of Violation (NOV) to the City pertaining to the City Council's denial of the applicant's appeal of the City's incompleteness finding regarding the Linden Project, based on the finding that a General Plan Amendment and Zoning Change (GPA/ZC) are required for the submittal.

In addition to the Linden Project, HCD is aware of nine additional "Builder's Remedy" applications where the City has issued incompleteness determinations on the basis that a GPA/ZC is required. The ten projects in question represent a total of 981 units, including 198 units affordable to low-income households. Along with reiterating HCD's position that a GPA/ZC is not required for "Builder's Remedy" projects, HCD would like to expand further on two positions outlined in the August NOV:

(1) the iterative nature of the 90-day deadline described in Government Code section 65941.1, subdivision (d)(2), (i.e., the deadline resets each time the City makes an incompleteness determination);[1] and

(2) that an SB 330 preliminary application remains vested unless the number of residential units or square footage of construction changes by 20 percent or more.[2]

[1] Gov. Code, § 65941.1, subd. (d)(2).
[2] Gov. Code, § 65941.1, subd. (c).

Background and Summary

Following the issuance of the August NOV regarding the Linden Project, HCD received requests for technical assistance for nine other Builder's Remedy projects in Beverly Hills. HCD has reviewed the projects and has determined that each qualifies for the benefits described in Government Code section 65589.5, subdivision (d)(5). In each case, HCD understands that the applicant submitted a preliminary application pursuant to Government Code section 65941.1 prior to May 1, 2024, when HCD certified that the City's housing element was substantially compliant with state law.

HCD understands that the City rejects each application's vesting and status as a Builder's Remedy project. The consistent issue across all projects appears to be the City's requirement for a GPA/ZC. As stated in the previous NOV to the City and reiterated below, the Housing Accountability Act (HAA) and the Permit Streamlining Act (PSA) prohibit the City from requiring a GPA/ZC for projects qualifying under Government Code section 65589.5, subdivision (d)(5).

In addition to the requirement for a GPA/ZC, HCD also finds the City's liberal interpretation of what may disqualify a project from the vested rights protected under Government Code section 65941.1 to be problematic. Finally, HCD rejects the City's claim that the PSA only provides one 90-day period for a developer to submit all of the information necessary for its full application to be deemed complete. The remainder of this letter outlines these thematic issues and provides a summary of the projects in question.

General Plan Amendment and the Housing Accountability Act's Builder's Remedy

The HAA is clear that a project protected by the Builder's Remedy may not be disapproved for inconsistency with a jurisdiction's general plan land use designation and zoning ordinance.[3] Accordingly, a jurisdiction that refuses to process or approve a project subject to the Builder's Remedy due to the applicant's refusal to submit a GPA/ZC (requested or required by the jurisdiction to resolve such an inconsistency) violates the HAA.

Indeed, where a jurisdiction cannot lawfully disapprove a project for inconsistency with the general plan land use designation or zoning ordinance, it would be illogical if the jurisdiction could lawfully disapprove a project for failing to resolve that very inconsistency. In other words, the City's requirement for a GPA/ZC is essentially a requirement for consistency, and disapproving the Project for failure to resolve that inconsistency is effectively a disapproval on the grounds of inconsistency. The HAA prohibits such a disapproval.

[3] Gov. Code, § 65589.5, subd. (d)(5).

Determining Application Completeness under the Permit Streamlining Act

Even if the City were permitted to require a GPA/ZC under the HAA, the PSA[4] prohibits the City from using the absence of the GPA/ZC application as a reason to determine that a project application is incomplete, if the item is not explicitly required on the submittal requirement checklist. The City cannot determine that an application is incomplete on the basis that it does not include a request for a GPA/ZC unless the City's submittal requirement checklist requires the applicant to submit such a request. When issuing an incompleteness determination, the City must provide a list of items that were not complete and "[t]hat list shall be limited to those items actually required on the lead agency's submittal requirement checklist."[5]

Here, the City's submittal checklist did not include a requirement for a GPA/ZC at the time of submittal, and therefore, the City cannot deem these applications incomplete for failing to include a GPA/ZC.

Vesting under Government Code Section 65941.1

HCD would also like to inform the City of other obligations under Government Code section 65941.1 that protect the vested rights of a project.

If the City determines that the application for a development project is not complete pursuant to Government Code section 65943, the development proponent is required to submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information.[6] If the applicant does not submit the information within the 90-day period, the preliminary application expires.[7] However, this 90-day deadline resets after each incompleteness determination. A project with multiple incompleteness letters and responses may have multiple 90-day periods.

In the recent case of *Jha v. City of Los Angeles,* the Superior Court held that multiple 90-day submission periods are permitted under the PSA:

> Section 65941.1(d)(2) expressly refers to completeness pursuant to section 65943. In turn, section 65943(a) refers to "any subsequent review of the application determined to be incomplete", "any resubmittal of the application", and "a new 30-day period." The use of the words "any" and "new" in section 65943(a) indicate that multiple resubmissions of an application may be made. This statute supports [the developer's] reading that the submission and completeness evaluation for an application is an iterative process with no limit on the number of submissions.[8]

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[4] Gov. Code, § 65920 et seq.
[5] Gov. Code, § 65943, subd. (a).
[6] Gov. Code, § 65941.1, subd. (d)(2).
[7] *Ibid.*
[8] *Jha v. City of Los Angeles,* Decision on Petition for Writ of Mandate (July 24, 2024, Los Angeles Superior Court Case No. 23STCP03499), p. 23.

The court went on to conclude that the PSA should not be interpreted in a vacuum, but rather in its relation to the HAA, and the Legislature has mandated that the HAA must be interpreted to "afford the fullest possible weight to the interest of, and the approval and provision of, housing."[9]

In addition, as explained in our June 26, 2024 letter, the preliminary application remains vested unless the number of residential units or square footage of construction proposed in the full application changes from the preliminary application by 20 percent or more (subject to certain conditions as listed in the statute).[10]

In HCD's review of the "Builder's Remedy" projects listed in the "Summary of Projects" section below, HCD found that the City improperly deemed preliminary applications void and of no effect due to changes that neither materially altered the project described in the full application from that contemplated in the preliminary application nor fell outside of the 20 percent provision of the PSA. These modifications include, but are not limited to, adding State Density Bonus Law (SDBL) concessions and waivers that did not change the unit count or square footage by more than 20 percent, requesting approval under the Subdivision Map Act because the project changed from apartments to condominiums, text contained in a submitted Zoning Change application that should not be considered in a completeness determination for a Builder's Remedy project anyway, and the addition of a commercial use that did not change the unit count or square footage by more than 20 percent. These modifications do not justify disturbing the vesting of the preliminary applications.

A full summary and explanation of the projects and HCD's understanding of the City's reasons for lost vesting under Government Code section 65941.1 are found below.

Summary of Projects

- **125 Linden Drive**
  - 165 units (33 affordable)
  - Preliminary application submitted: October 24, 2022
  - Application status: Appeal denied
  - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration, preliminary application divests because of addition of commercial use
- **346 Maple Drive**
  - 65 units (13 affordable)
  - Preliminary application submitted: October 6, 2023
  - Application status: Second Incomplete Letter issued
  - Issues raised by City Incomplete Letter(s): GPA/ZC,[11] 90-day expiration[12]

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[9] *Ibid.* (quoting *Save Lafayette v. City of Lafayette* (2022) 85 Cal.App.5th 842, 855).
[10] Gov. Code, § 65941.1, subd. (c).
[11] Refers to the City's requirement for a GPA/ZC application as part of the submittal.
[12] Refers to the project losing vesting rights due to expiration of a single 90-day period.

- **401 Oakhurst Drive**
  - 25 units (5 affordable)
  - Preliminary application submitted: October 30, 2023
  - Application status: Second Incomplete Letter issued
  - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration
- **232 South Tower Drive**
  - 55 units (11 affordable)
  - Preliminary application submitted: October 5, 2023
  - Application status: Second Incomplete Letter issued
  - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration
- **9229 Wilshire Boulevard**
  - 116 units (24 affordable), Mixed Use project
  - Preliminary application submitted: December 13, 2023
  - Application status: Developer filed appeal to Beverly Hills City Council regarding second Incomplete Letter issued
  - Issues raised by City Incomplete Letter(s): GPA/ZC, preliminary application vesting lost because of additional SDBL waivers and concessions[13]
- **145 South Rodeo Drive**
  - 30 units (6 affordable), Mixed Use project
  - Preliminary application submitted: February 23, 2024
  - Application status: First Incomplete Letter issued
  - Issues raised by City Incomplete Letter(s): GPA/ZC, preliminary application vesting lost because of additional SDBL waivers and concessions and submission of request under Subdivision Map Act[14]
- **140 South Camden Avenue**
  - 27 units (6 affordable)
  - Preliminary application submitted: March 15, 2024
  - Application status: First Incomplete Letter issued
  - Issues raised by City Incomplete Letter(s): GPA/ZC, preliminary application vesting lost because of additional SDBL waivers and concessions and submission of request under Subdivision Map Act
- **214 Hamilton Drive**
  - 90 units (18 affordable)
  - Preliminary application submitted: October 30, 2023
  - Application status: Second Incomplete Letter received
  - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration, compliance with City development standards[15]

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[13] The City claims the project lost vesting due to adding concessions and waivers that were not included in the preliminary application.
[14] The City claims the project lost vesting due to adding a subdivision map request that was not included in the preliminary application.
[15] Compliance with development standards is not an application checklist item under Government Code section 65941.1, subdivision (a).

- **8844 Burton Way**
  - 200 units (40 affordable); Mixed-Use project
  - Preliminary application submitted: December 15, 2023
  - Application status: Second Incomplete Letter received
  - Issues raised by City Incomplete Letter(s): GPA/ZC, 90-day expiration, compliance with City development standards
- **211 Hamilton Drive**
  - 210 units (42 affordable)
  - Preliminary application submitted: October 31, 2023
  - Application status: Second Incomplete Letter received
  - Issues raised by City Incomplete Letter(s): Preliminary application vesting lost because the change in the theoretical maximum density of the parcel indicated in the ZC application exceeded 20 percent[16]

Conclusion

The City's failure to accept the applications for processing due to the lack of a GPA/ZC is in violation of the HAA and PSA. Furthermore, the City's submittal checklist did not include a requirement for a GPA/ZC at the time of submittal and the PSA prohibits the City from deeming an application incomplete for items not on the checklist. City staff must process all projects contained in this letter without further delay and without imposing a requirement for a GPA/ZC.

The City must also consider its obligations under Government Code section 65941.1 that retain each project's vested rights. First, the 90-day period to submit information to complete a full application reset after each incompleteness determination, and the preliminary application remains vested during these 90-day periods. Second, the modifications mentioned in the project summaries above do not void the vesting created by the preliminary application submittal.

Under Government Code section 65585, HCD must notify a local government when that local government takes actions that violate the HAA and the PSA and may notify the California Office of the Attorney General.[17]

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[16] The unit count of the project did not change between the preliminary application and full submittal. The theoretical maximum density proposed in a ZC application does not fall under the 20 percent change provision under Government Code section 65941.1, subdivision (c). Moreover, any information contained in a GPA or ZC application does not void vesting because those applications should not have been required for a Builder's Remedy project.

[17] Gov. Code, § 65585, subds. (i)(1), (j).

The City has until December 20, 2024, to provide a written response to this letter. HCD will consider any written response before taking further action authorized by Government Code section 65585, subdivision (j), including, but not limited to, referral to the California Office of the Attorney General.

If you have any questions regarding the content of this letter or would like additional technical assistance, please contact Bentley Regehr at bentley.regehr@hcd.ca.gov.

Sincerely,

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

EXHIBIT D

Electronically Received 09/16/2024 05:35 PM

PATTERSON & O'NEILL, PC
235 MONTGOMERY STREET, SUITE 950
SAN FRANCISCO, CALIFORNIA 94104

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Attorneys for Petitioner and Plaintiff
JANET JHA

FILED
Superior Court of California
County of Los Angeles
09/17/2024
David W. Slayton, Executive Officer / Clerk of Court
By: J. De Luna Deputy

SUPERIOR COURT – STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – UNLIMITED CIVIL JURISDICTION

JANET JHA, Petitioner and Plaintiff, vs. CITY OF LOS ANGELES; CITY COUNCIL OF THE CITY OF LOS ANGELES; and DOES 1-25, Respondents and Defendants,	Case No. 23STCP03499 **~~[PROPOSED]~~ JUDGMENT GRANTING PETITION FOR WRIT OF MANDATE** Dept: 85 Judge: Hon. James Chalfant

PATTERSON & O'NEILL, PC
235 MONTGOMERY STREET, SUITE 950
SAN FRANCISCO, CALIFORNIA 94104

1 **WHEREAS**, on September 21, 2023, Petitioner Janet Jha filed a Verified Petition for
2 Writ of Mandate and Complaint for Declaratory Relief (the "Petition") against Respondents
3 City of Los Angeles and the City Council of the City of Los Angeles ("Respondents") alleging
4 causes of action under the Permit Streamlining Act ("PSA"), Density Bonus Law ("DBL"), and
5 the Housing Accountability Act ("HAA") arising out of the disapproval by Respondents of
6 Petitioner Jha's proposed 40-unit housing development project at 13916 W. Polk Street (the
7 "Project");
8 **WHEREAS,** the Petition came for trial on July 18, 2024, in Department 85 of this
9 Court. Petitioner Jha appeared through her counsel, Ryan J. Patterson and Brian O'Neill of
10 Patterson & O'Neill, PC, and Respondents appeared through their counsel, Donna Wong and
11 Kaiulani Lie of the Office of the Los Angeles City Attorney;
12 **WHEREAS,** after taking the matter under submission at the conclusion of the trial, the
13 Court adopted a ruling on July 24, 2024, regarding the Petition (the "Court's Ruling");
14 **WHEREAS**, the Court, having read the submissions of the parties to this action,
15 including the Petition, briefs, and matters judicially noticed, and having read and considered
16 the administrative record and the arguments of counsel;
17 **THE COURT DOES HEREBY ORDER, ADJUDGE, AND DECREE**, as follows:
18 1. Judgment is entered in favor of Petitioner for the reasons set forth in the Court's
19 Ruling, attached hereto as **Exhibit 1**. However, the complaint for declaratory relief is denied.
20 2. A writ of mandate shall issue as follows:
21 a. Respondents must set aside, vacate, and annul the City Council's June 27, 2023
22 action (Council File 23-0525), which the Court found was a disapproval of the Project;
23 and
24 b. Respondents must set aside, vacate, and annul the Planning Department's May
25 16, 2023 Loss of Vesting Rights Letter, and Respondents must recognize that Petitioner
26 Jha's preliminary application, dated June 23, 2022, remains valid and in effect pursuant
27 to the Court's Ruling; and
28 c. The Project does not require any general plan amendments or rezoning

PATTERSON & O'NEILL, PC
235 MONTGOMERY STREET, SUITE 950
SAN FRANCISCO, CALIFORNIA 94104

applications, and the Project's application as of June 27, 2023 should be processed consistent with the Court's Ruling; and

d. The Project is eligible for regulatory incentives, concessions, and waivers under State Density Bonus Law (Gov. Code § 65915) in compliance with this Court's Ruling; and

e. The Project is eligible for the Builder's Remedy (Gov. Code § 65589.5(d)(5)) in compliance with this Court's Ruling; and

f. Respondents must review and process the Project pursuant to the PSA, the HAA, and the DBL as interpreted in the Court's ruling within 60 days after service of the writ.

3. This matter shall be remanded for further proceedings in compliance with the writ of mandate.

4. Similarly situated parties shall take nothing by this action.

5. Nothing in this writ shall limit or control any discretion legally vested in Respondents, including but not limited to, the request, receipt, and consideration of further information related to the California Environmental Quality Act or other applicable laws.

6. As the prevailing party, Petitioner shall recover her costs of suit from Respondents pursuant to applicable law. Petitioner may bring a motion for attorney's fees pursuant to applicable law.

7. The Court hereby retains jurisdiction in this action until there has been full compliance with the writ.

IT IS SO ORDERED.

Dated: 09/17/2024

James C. Chalfant / Judge

Hon. James C. Chalfant
Judge of the Superior Court

Exhibit A

FILED
Superior Court of California
County of Los Angeles
JUL 24 2024
David W. Slayton, Executive Officer/Clerk of Court
By: J. De Luna, Deputy

Janet Jha v. City of Los Angeles et al., 23STCP03499

Decision on petition for writ of mandate: granted with remand

Petitioner Janet Jha ("Jha") seeks a writ of mandate compelling the Respondents City of Los Angeles and its City Council (collectively, "City") to review and process her development application pursuant to the Permit Streamlining Act ("PSA"), the Housing Accountability Act ("HAA"), and the Density Bonus Law ("DBL").

The court has read and considered the moving papers, oppositions, and replies, heard argument on July 18, 2024, and renders the following decision.

A. **Statement of the Case**

1. **The Petition**

Petitioner Jha filed the Petition against the City on September 21, 2023, alleging mandamus based on violations of the PSA, the HAA, and the DBL, and for declaratory relief. The Petition alleges in pertinent part as follows.

a. **Housing Element Law**

When the Legislature enacted the Housing Element Law, it declared that local governments need to designate and maintain a supply of land and adequate sites for the development of housing sufficient to meet the locality's housing need for all income levels. Pet., ¶21.

The HAA provides an avenue for developers to provide housing for very low, low-, or moderate-income households[1] when a local government fails to adopt a housing element in substantial compliance with the Housing Element Law. Pet., ¶22. The local government shall approve housing, and not condition that approval in a matter rendering that housing project infeasible, unless the local government can make certain written findings based upon a preponderance of the evidence. Pet., ¶23.

A local jurisdiction cannot determine whether its adopted element is in substantial compliance with the Housing Element Law. Pet., ¶25. It must submit a draft housing element to the State Department of Housing and Community Development ("HCD"), which must issue findings before the local jurisdiction adopts the housing element. Pet., ¶25. If HCD finds the draft element is not substantially compliant, the local jurisdiction must either revise the draft to address any issues or adopt the draft housing element with written findings explaining why it substantially complies with the Housing Element Law. Pet., ¶25. It must then submit the adopted housing element to HCD for it to find whether it substantially complies with the Housing Element Law. Pet., ¶25. In a March 16, 2023 memorandum, HCD advised that a local jurisdiction's housing element is only in substantial compliance with the Housing Element Law on the date HCD issues a letter finding to that effect. Pet., ¶26.

The Housing Element Law requires local governments to update their housing element in eight-year cycles. Pet., ¶27. The City had not adopted a substantially compliant housing element by the time the current cycle began on October 15, 2021. Pet., ¶27. Although it drafted a housing element on November 24, 2021, HCD found on February 22, 2022 that it was not substantially

[1] For convenience, very low, low-, and moderate-income households are sometimes referred to herein as "low-cost housing".

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compliant. Pet., ¶28. The City revised and resubmitted the draft housing element on April 28, 2022, and HCD found it substantially compliant on May 11, 2022. Pet., ¶28. The City adopted the housing element on June 14, 2022, and HCD certified its compliance with the Housing Element Law on June 29, 2022. Pet., ¶28.

Under Government Code[1] sections 65589.5(o)(1) and 65941.1(a), a housing development applicant who submits a complete preliminary application is vested with the zoning and general plan standards in effect at the time of submission. Pet., ¶30. This includes entitlement to the HAA's builder's remedy if submitted when the jurisdiction does not have a compliant housing element, even if it adopts one during the entitlement process. Pet., ¶31. HCD confirmed as much in a June 2023 Notice of Violation issued to the City of La Cañada Flintridge and in an October 2023 Letter of Technical Assistance to the City of Santa Monica. Pet., ¶32, Ex. A.

b. The Project

On June 23, 2022, Jha submitted a preliminary application for a 40-unit project with 20% set aside as affordable to lower-income households at 13916 W. Polk Street (the "Project"). Pet., ¶53. Because the City found the preliminary application for the Project was complete on June 24, 2022, development rights in effect on that date vested for the Project. Pet., ¶54.

Jha proposed a housing project that reserved 20% of the units for low-cost housing while the City was out of compliance with the Housing Element Law. Pet., ¶55. Under the builder's remedy, the City was barred from disapproving the Project unless it made one of the written findings required under section 65589.5(d). Pet., ¶55.

On August 11, 2022, Jha filed an Affordable Housing Referral Form with the Affordable Housing Services Section of the City's Planning Department ("Planning"). Pet., ¶57. The City signed this form on December 12, 2023. Pet., ¶64. After a meeting with City staff on December 9, 2022, Jha was allowed to submit a PSA development application. Pet., ¶66. Jha submitted the application and paid the fees on December 21, 2022. Pet., ¶66.

On January 26, 2023, the City sent Jha a 39-page Project Review letter. Pet., ¶67. The Project Review asserted the application was incomplete and did not comply with objective zoning standards. Pet., ¶67. The Project Review further said that, although the Project was eligible for the builder's remedy, HAA does not specify the entitlement process that a local government can require. Pet., ¶68. Planning's position was that a general plan amendment ("GPA") and rezoning were the proper entitlement path. Pet., ¶68. This is not an entitlement at all, but rather a legislative action. Pet., ¶68.

Section 65589.5(d) does provide an entitlement path. Pet., ¶71. If HCD does not find a local jurisdiction's housing element substantially compliant by the jurisdiction's statutory deadline, the local jurisdiction may not use section 65589.5(d)(5) to deny a qualifying affordable housing project. Pet., ¶72. HCD's Notice of Violation to La Cañada Flintridge explained that a jurisdiction shall not disapprove a housing development project for low-cost housing, or condition approval in a manner that renders the housing development project infeasible for development for such households, without one of five written findings. Pet., ¶71, Ex. A.

On April 5, 2023, Jha resubmitted revised application materials in response to the Project Review. Pet., ¶81. The City sent a second Project Review asserting the application was incomplete for failure to comply with City code standards. Pet., ¶¶ 82-83. The letter emphasized that the City would not process the development application unless Jha sought legislative rezoning that she did not want. Pet., ¶85.

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Jha appealed the City's incompleteness determination of her application. Pet., ¶86. The City Council's Planning and Land Use Management Committee ("PLUM") recommended denial of the appeal, and the City Council denied it on June 27, 2023. Pet., ¶¶ 92-93.

On May 16, 2023, the City wrote Jha a letter asserting that the preliminary application's submittal had expired and that Jha's vested rights therefore had terminated. Pet., ¶95. Section 65941.1(d)(2) states that if a public agency determines that the application for the development project is incomplete, the development proponent shall submit the specific information necessary to complete the application within 90 days of receiving the agency's written identification of the necessary information. Pet., ¶99. This means that the 90-day period resets with every new completeness determination. Pet., ¶99. The City wrongly interpreted the statute to mean that an applicant has only a single 90-day clock after the first written incompleteness determination. Pet., ¶100. Planning argued that, even if Jha were entitled to approval pursuant to the builder's remedy, it no longer applied because Jha's vesting rights had expired and the City's Housing Element was now in substantial compliance with the Housing Element Law. Pet., ¶104.

After Jha received the City's May 16 letter, she asked HCD to clarify the preliminary application expiration provision. Pet., ¶103. HCD confirmed that the application remains valid after a second incompleteness determination so long as the applicant resubmits within 90 days of that determination. Pet., ¶103.

c. **Causes of Action**

The first cause of action seeks mandamus for violation of the PSA. The PSA requires public agencies to compile lists of the information required from an applicant for a development project. Pet., ¶109. It also has strict timelines when an agency must determine whether an application is complete. Pet., ¶109. Agencies can only judge whether an application is complete based on the items in the checklist. Pet., ¶109.

The City's Project Review letters violated the PSA because they treated project consistency with a zoning ordinance or general plan as an item necessary for an application to be complete. Pet., ¶110. The City refuses to process an application when it makes a substantive decision regarding project consistency. Pet., ¶110. Section 65931 defines a development "project" as an activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. Pet., ¶111. This does not include rezonings or GPAs. Pet., ¶111. Courts have held that applicants cannot use the PSA to compel legislative changes to a zoning ordinance or a general plan. Pet., ¶111. Conversely, the City cannot demand that an applicant seek such changes through a PSA completeness determination. Pet., ¶111. The City refused to accept Jha's development application based on purported non-compliance with substantive zoning standards and criteria, not because of incomplete information. Pet., ¶114.

The second cause of action seeks mandamus for violation of the HAA. The City unlawfully disapproved the Project and failed to proceed in the manner required by law. Pet., ¶117. The City disapproved the low-cost housing Project without making one of the findings under section 65589.5(d)(1)-(5), and also did not support such findings by a preponderance of evidence in the record. Pet., ¶121. Although Jha submitted the preliminary application before the City's Housing Element was deemed substantially compliant with the Housing Element Law, the City attempted to deny her the builder's remedy. Pet., ¶122.

The third cause of action seeks mandamus for violation of the DBL. The Project reserved 20% of the units for low-cost housing. Pet., ¶128. This entitled the Project to two incentives or

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concessions and a waiver or reduction of any development standards that will physically preclude the Project at the proposed density. Pet., ¶128. The City denied Jha those incentives without making the public health and safety findings required under the HAA. Pet., ¶129.

The fourth cause of action seeks declaratory relief. The City has avoided its obligations under state law through its refusal to process housing development projects that qualify under the builder's remedy. Pet., ¶132.

d. Prayer for Relief

Jha seeks a writ of mandate compelling the City to review and process development applications pursuant to the PSA and SB 330. Pet. Prayer, ¶¶ 1-2. Jha also seeks a writ of mandate (1) voiding the June 27, 2023 denial of the PSA appeal based on violation of section 655589.5(d), (2) compelling Planning to accept and process the Project application, and (3) compelling the City and Planning to take all steps necessary to process the application, approve the Project, and issue all related approvals within 60 days. Pet. Prayer, ¶3. Jha seeks a declaration concerning the City's violations. Pet. Prayer, ¶7. Jha also seeks attorneys' fees, costs, and fines under section 65589.5. Pet. Prayer, ¶¶ 8-10.

2. Course of Proceedings

On September 25, 2023, Jha served the City with the Petition and Summons.

On November 6, 2023, the parties stipulated to extend the deadline for all responsive pleading to February 1, 2024.

On March 5, 2024, the Court overruled the City's demurrer and denied its motion to strike.

On March 22, 2024, the City filed its Answer.

B. Governing Law

1. The Housing Element Law

The Legislature finds that the provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government. §65580(c). The Housing Element Law details the substantive requirements that each housing element must include. §65583(a)-(c).

At least 90 days prior to adoption of a revision of its housing element, or 60 days prior to the adoption of a subsequent amendment thereto, the local jurisdiction agency shall submit a draft element revision or draft amendment to HCD. §65585(b)(1). In the preparation of review findings, HCD may consult with any public agency, group, or person and shall receive and consider any written comments from such entities regarding the draft or adopted element or amendment under review. §65585(c).

HCD shall review the draft and report its written findings to the planning agency within 90 days of its receipt of the first draft submittal for each housing element revision, or 60 days of its receipt of a subsequent draft amendment or an adopted revision or adopted amendment to an element. §65585(b)(3). In its written findings, HCD shall determine whether the draft element or draft amendment substantially complies with the Housing Element Law. §65585(d).

Prior to the adoption of its draft element or draft amendment, the legislative body shall consider the findings made by HCD if they become available within the time limits set in section 65585. §65585(e).

If HCD finds that the draft element or draft amendment does not substantially comply with this article, the legislative body shall either change the draft element or amendment to so comply or adopt the draft element or draft amendment without changes. §65585(f). If the legislative body

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adopts without changes, it shall include in its resolution of adoption written findings that explain why the legislative body believes the draft element or draft amendment substantially complies with the Housing Element Law despite HCD's findings. §65585(f)(2).

The legislative body shall submit a copy to HCD promptly after adopting the element. §65585(g). HCD shall then review it and report its findings to the planning agency within 60 days of submission. §65585(h).

"Despite the mandatory nature of many of the Housing Element Law's provisions compliance has been mixed statewide." Martinez v. City of Clovis, (2023) 90 Cal.App.5th 193, 226. The Legislature has amended the Housing Element Law multiple times since 2017, and a 2018 amendment, AB 72, increased HCD's oversight powers. Id. AB 72 added HCD's ability to review any local government action that is inconsistent with an adopted housing element and to revoke its findings of substantial compliance until the local jurisdiction complies. Id. at 226, n. 9; §65585(i), (j).

The Housing Element Law provides that a local government that fails to adopt a housing element that has been found to be in substantial compliance within 120 days of the statutory deadline is required to complete mandatory rezoning within one year instead of the permitted three years. §65583.2(c). If the one-year requirement applies, the local government's housing element cannot be found to be in substantial compliance until that city has completed the rezoning. §65588(e)(4)(C)(iii).

A local government that fails to substantially comply with the Housing Element Law is subject to enforcement action by the Attorney General. §65585(l). A failure to adopt a housing element found by HCD to be in substantial compliance makes the local government ineligible for certain program funding. §65589.11. A local government that is compliant with Housing Element Law requirements is awarded preference for certain state funding programs. §65589.9. A "compliant housing element" is defined for purposes of this preference as "an adopted housing element that has been found to be in substantial compliance with the requirements of this article by [HCD] pursuant to Section 65585." §65589.9(f)(2).

2. The Housing Accountability Act

a. Legislative Findings and Intent

The Legislature recognizes the lack of housing as a critical problem that threatens the economic, environmental, and social quality of life in California. §65589.5(a)(1)(A). It adopted the HAA in 1982 to "significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters." §65589.5(a)(2)(K). To date, the goal remains unfulfilled. Id.

The HAA reflects the Legislature's findings that "the availability of housing is of vital statewide importance," and that providing the necessary housing supply "requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels." §65580(a)-(b).

Effective January 1, 2018, the Legislature significantly amended the HAA to strengthen its provisions, expand its applicability, and increase local governments' liability for violations. The HAA found that California is in a housing crisis that is "partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing". §65589.5(a)(1)(B).

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The consequences of those actions include discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration. §65589.5(a)(1)(C).

Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects. §65589.5(a)(1)(D). The state's homeownership rate was at its lowest level since the 1940s and ranks 49 out of the 50 states. §65589.5(a)(2)(E). The lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians. §65589.5(a)(2)(F).

The HAA should be "interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." §65589.5(a)(2)(L).

It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety under either section 65589.5(d)(2) and 65589.5(j)(1) arise infrequently. §65589.5(a)(3).

It is the policy of the state that a local government not reject or make infeasible housing development projects that contribute to meeting the need determined pursuant to the HAA without a thorough analysis of the economic, social, and environmental effects of the action and without complying with section 65589.5(d). §65589.5(b).

b. Project Approval Based on Vested Rights

Section 65589.5 is referred to colloquially as the "anti-NIMBY law." Schellinger Brothers v. City of Sebastopol, (2009) 19 Cal.App.4th 1245 1253, n. 9. Subject to certain exceptions, a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application which included all the information required by section 65941.1(a) was submitted. §65589.5(o)(1).

A housing development project "shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity." §65589.5(f)(4).

Section 65589.5(j)(1) provides:

> "When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:
>
> (A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct,

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and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density." (emphasis added).

Section 65589.5(j) applies to market rate housing as well as affordable housing. Honchariw v. County of Steinhaus, (2011) 200 Cal.App.4th 1066, 1070. The HAA applies to all residential housing developments and takes away the agency's ability to deny residential projects based on subjective development policies. Id. at 1072-77.

"Disapprove the housing development project" includes any instance in which a local agency "votes on a proposed housing development project application and it is disapproved", "fails to comply with the timer periods specified in Section 65950" or fails to meet the time limits specified in Section 65913.3. §65589.5(h)(6).

If the court finds that an agency acted in bad faith in disapproving a project in violation of the HAA, the appropriate remedy is an "order or judgment directing the local agency to approve the housing development project." §65589.5(k)(1)(A)(ii). "Bad faith" "includes, but is not limited to, an action that is frivolous or otherwise entirely without merit." §65589.5(l).

The local jurisdiction bears the burden of proving that its decision conforms to the conditions specified in section 65589.5. §65589.6.

c. The Builder's Remedy

A local agency shall not disapprove a housing development project for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low- or moderate-income households, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, for one of five conclusions:

(1) the local jurisdiction has adopted a housing element in substantial compliance with the Housing Element Law and has met or exceeded its share of the regional housing need allocation pursuant to section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by section 65008. §65589.5(d)(1).

(2) the proposed housing development would have a specific, adverse impact on the public health or safety that cannot be feasibly mitigated without rendering the project unaffordable or infeasible. A specific, adverse impact on public health or safety does not include inconsistency with the zoning ordinance or general plan land use designation. §65589.5(d)(2)(A);

(3) denial of the project is required to comply with specific state or federal law, and there is no feasible method to comply without rendering the project unaffordable or infeasible;

(4) the proposed land for the project is zoned for, and surrounded on at least two sides by, agriculture or resource preservation purposes;

(5) the housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the

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jurisdiction has adopted a revised housing element in accordance with section 65588 that is in substantial compliance with the Housing Element Law. §§ 65589.5(d)(1)-(5).

Section 65589.5(d)(5) means that, when the local government does not have a housing element in substantial compliance with the Housing Element Law, it cannot disapprove an applicable project based on inconsistencies with the jurisdiction's zoning ordinance or general plan land use designation. This is colloquially referred to as the "builder's remedy."

A "housing development project" includes any mixed-use development consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use. §65589.5(h)(2). "Housing for very low, low-, or moderate-income households" includes buildings where 20% of the units are sold or rented to lower income households. §65589.5(h)(3).

"Deemed complete" means the applicant has submitted a preliminary application pursuant to section 65941.1 or, if the applicant has not submitted a preliminary application, has submitted a complete application pursuant to section 65943. §65589.5(h)(5).

"Disapproval of a housing development project" includes whenever a local agency votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit. §65589.5(h)(6)(A).

A "specific, adverse impact" is a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." §65589.5(j)(1)(A). The Legislature's intent is that conditions that would have a specific, adverse impact upon the public health and safety should arise infrequently. §65589.5(a)(3).

d. Consistency with Other Laws

New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income. §65590(d). Where it is not feasible to provide these housing units in a proposed new housing development, the local government shall require the developer to provide such housing, if feasible to do so, at another location within the same city or county, either within the coastal zone or within three miles thereof. Id.

Nothing in the HAA relieves the local agency from complying with, *inter alia*, the Coastal Act or the California Environmental Quality Act ("CEQA"). §65589.5(e). Nothing in the HAA, aside from section 65589.5(o), shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need. §65589.5(f)(1). However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development. Id.

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3. The Permit Streamlining Act

The PSA (§§ 65920-964) states that there is a statewide need to ensure a clear understanding of the specific requirements which must be met for the approval of development projects and to expedite decisions on such projects. §65921. The PSA requires that each agency maintain lists that "specify in detail the information that will be required from any applicant." §65940.

Once a development project application has been submitted, the agency must make a written determination whether the application is complete within 30 calendar days, or else "the application together with the submitted materials shall be deemed complete." §65943(a). Agencies have "30 days, and 30 days only" to determine that an application is incomplete. Orsi v. City Council of Salinas, (1990) 219 Cal. App. 3d 1576, 1584.

When the agency makes an incompleteness determination, it must provide "an exhaustive list of items that were not complete" which is limited to those items required on the agency's submittal requirement checklist. §65943(a). Upon any resubmittal, a new 30-day review period begins during which the agency shall determine completeness, but the agency "shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete." §65943(a).

If the application is determined incomplete, the agency must provide a right to appeal that determination. §65943(c). There shall be a final written determination on the appeal no later than 60 calendar days after receipt of the written appeal. Id. If a final written determination is not made within that 60-day period, "the application with the submitted materials shall be deemed complete." Id.

Deemed complete does not necessarily mean deemed approved. *See* §65950 (agency shall approve or disapprove project within specified time limits). The PSA does not create an exception to the well-established law requiring hierarchical consistency of land use permits, zoning ordinances, and general plans. Land Waste Management v. Contra Costa County Board of Supervisors, ("Land Waste") (1990) 222 Cal.App.3d 950, 960. Hence, the PSA does not require that a permit application be deemed approved if not acted on within the statutory period when the permit application would require a legislative change in the applicable zoning ordinance, general plan, or other controlling land use legislation. Id. at 961.

The City's actions under the PSA are reviewed as traditional mandate. §65943(c).

4. The Density Bonus Law

The DBL (§§ 65915-18) is intended to allow a developer to include more total units in a project that would otherwise be allowed by the local zoning ordinance in exchange for low-cost rental units, and to "cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional public subsidy." §65915(u).

A local government shall grant one density bonus as specified in subdivision (f), incentives or concessions as specified in subdivision (d), waivers or reductions of development standards as described in subdivision (e), and parking ratios as described in subdivision (p), if an applicant agrees to construct a housing development that will contain stipulated percentages of low income and very low-income units or target population units (*e.g.*, disabled veterans). §65915(b).

A "housing development" means a development project for five or more residential units, including mixed use developments. §65915(i).

A "density bonus" means a "density increase over the otherwise maximum allowable gross residential density," but the developer also may elect "a lesser percentage of density increase, including, but not limited to, no increase in density." §65915(f). The amount of the density bonus varies according to the amount by which the percentage of low and very low-income units exceed the percentages. §65915(f).

Density bonuses shall be granted based on the "maximum allowable density" for the project site, defined as "the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, the maximum allowable density for the specific

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zoning range and land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail." §65915(o)(5).

An applicant for a density bonus pursuant to subdivision (b) may submit a proposal for specific incentives or concessions. §65915(d)(1). The local government shall grant the requested incentive or concession unless (1) it makes a written finding, based on substantial evidence, that the project will not result in "identifiable and actual cost reductions" of affordable housing costs or for rents of the targeted units as specified in subdivision (c), (2) the concession or incentive would have a specific adverse impact upon public health and safety, the physical environment, or real property listed in the California Register of Historical Resources and for which there is no feasible method of mitigation without rendering the development unaffordable to low- and moderate-income households, or (3) the concession or incentive would violate state or federal law. §65915(d)(1)(A)-(C). §65915(d).

The applicant may also apply for and receive development waivers or reductions that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions/incentives permitted. §65915(e)(1). The local agency may not apply a development standard that will have this effect. §65915(e)(1). However, the local government is not required to waive or reduce development standards if there would be an adverse impact on health, safety, or the physical environment, and for which there is no feasible method of mitigation to avoid the impact. Id. Nor is the local government required to waive or reduce development standards that would have an adverse effect on real property listed in the California Register of Historical Resources, or to grant any waiver or reduction that would violate state or federal law. §65915(e)(1).

C. Standard of Review

1. Administrative Mandamus

Actions to enforce the HAA are brought as administrative mandamus. §65589.5(m); Honchariw v. County of Stanislaus, (2011) 200 Cal.App.4th 1066, 1072. *See* Pet. Op. Br. at 9.

The parties' principal debate for the HAA mandamus claim is whether (a) the City bears the burden of proof by a preponderance of the evidence under section 65589.6, (b) the HAA's "reasonable person" standard applies, pursuant to which a court must determine whether "substantial evidence...would allow a reasonable person to conclude that the housing development project" complies with applicable standards (§655589.5(f)(4)), and (c) any uncertainties should be resolved in favor of housing projects because the HAA must "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." §65589.5(a)(2)(L).

The City argues that these standards do not apply because the reasonable person standard only applies to deciding whether the Project complies with a local "applicable plan, program, policy, ordinance, [or] standard" for a final merits decision and the City has not made a merits decision disapproving the Project. §65589.5(f)(4), (j). The reasonable person standard also does not apply to determine whether density bonus or general plan amendment ("GPA") application procedures are applicable because they are "questions of statutory interpretation that [the court] will review independently." Cal. Renters Legal Advocacy & Educ. Fund v. City of San Mateo, ("Cal Renters") (2021) 68 Cal.App.5th 820, 839. Opp. at 13.

Yna correctly replies (Reply at 5) that the HAA's reasonable person standard applies to any action to enforce the HAA, including the determination whether a housing development project

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"is consistent, compliant, or in conformity" with applicable standards. §655589.5(f)(4). The HAA also broadly defines "disapproval" as any instance in which an agency "[v]otes on a proposed housing development project application and the application is disapproved." §65589.5(h)(6). Nothing limits the HAA solely to a final merits decision. Additionally, the court finds that the City's actions constitute a disapproval. *See post.*

2. Traditional Mandamus

Actions under the PSA are governed by traditional mandamus. §65943(c). Neither party addresses what form of mandamus applies to enforcement of the DBL, but in this context it is governed by traditional mandamus.

A petition for traditional mandamus is appropriate in all actions "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station...." CCP §1085. A traditional writ of mandate is the method of compelling the performance of a legal, ministerial duty required by statute. *See* Rodriguez v. Solis, (1991) 1 Cal.App.4th 495, 501-02. Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to performance." Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-84 (internal citations omitted). Whether a statute imposes a ministerial duty for which mandamus is available, or a mere obligation to perform a discretionary function, is a question of statutory interpretation. AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, (2011) 197 Cal.App.4th 693, 701.

In the absence of a ministerial duty, traditional mandamus relief is unavailable unless the petitioner can demonstrate an abuse of that discretion. An agency decision is an abuse of discretion only if it is "arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." Kahn v. Los Angeles City Employees' Retirement System, (2010) 187 Cal.App.4th 98, 106. In applying this deferential test, a court "must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." Western States Petroleum Assn v. Superior Court, (1995) 9 Cal.4th 559, 577. Mandamus will not lie to compel the exercise of a public agency's discretion in a particular manner. American Federation of State, County and Municipal Employees v. Metropolitan Water District of Southern California, (2005) 126 Cal.App.4th 247, 261. It is available to compel an agency to exercise discretion where it has not done so (Los Angeles County Employees Assn. v. County of Los Angeles, (1973) 33 Cal.App.3d 1, 8), and to correct an abuse of discretion actually exercised. Manjares v. Newton, (1966) 64 Cal.2d 365, 370-71. In making this determination, the court may not substitute its judgment for that of the agency, whose decision must be upheld if reasonable minds may disagree as to its wisdom. Id. at 371. A writ will lie where the agency's discretion can be exercised only in one way. Hurtado v. Superior Court, (1974) 11 Cal.3d 574, 579. No administrative record is required for traditional mandamus.

3. Overlap of HAA, PSA, and DBL

Jha argues that the issues under the PSA and DBL cannot be viewed in isolation, separate from the HAA's more favorable standards of review. Rather, these overlapping laws must be construed together to carry out the Legislature's directive that the law be interpreted to favor housing. Reply at 5. This is true, but it does not change the standard of review for enforcement of the PSA and DBL.

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Jha further argues that the question "whether an application is complete for purposes of the PSA is also relevant under the HAA, which incorporates by reference the PSA's definition of a complete application." Lafayette v. City of Lafayette, (2022) 85 Cal.App.5th 842, 851. The court is "not dealing with the PSA in a vacuum, but rather in its relation to the HAA". Id. at 855. Similarly, a DBL eligibility determination is inextricably linked to the HAA's consistency determination. The HAA expressly incorporates the DBL by reference, stating "the receipt of a density bonus, incentive, concession, waiver, or reduction of development standards pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent . . . ." §65589.5(j)(3). In other words, a determination of consistency under the HAA also requires a determination of DBL eligibility, and both questions must be reviewed under the HAA's reasonable person standard. Reply at 6.

Insofar as it is evaluating a HAA claim, the court agrees that factual issues concerning the PSA and DBL determinations are governed by the reasonable person standard. However, a legal issue is "subject to *de novo* review. Citizens for E. Shore Parks v. State Lands Com., (2011) 202 Cal.App.4th 549, 573. The City is correct (Opp. at 13) that whether density bonus or GPA application procedures apply are "questions of statutory interpretation that [the court] will review independently." Cal. Renters, *supra*, 68 Cal.App.5th at 839.

In construing a statute, a court must ascertain the intent of the legislature so as to effectuate the purpose of the law. Brown v. Kelly Broadcasting Co., (1989) 48 Cal.3d 711, 724. The court first looks to the language of the statute, attempting to give effect to the usual, ordinary import of the language and seeking to avoid making any language mere surplusage. Brown v. Kelly Broadcasting Co., (1989) 48 Cal 3d 711, 724. Significance, if possible, is attributed to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose. Orange County Employees Assn. v. County of Orange, (1991) 234 Cal.App.3d 833, 841. The statutory language must be harmonized with provisions relating to the same subject matter to the extent possible. Id. "'The statute's words generally provide the most reliable indicator of legislative intent; if they are clear and unambiguous, '[t]here is no need for judicial construction and a court may not indulge in it. [Citation.]'" MCI Communications Services, Inc. v. California Dept. of Tax & Fee Administration, ("MCI") (2018) 28 Cal. App. 5th 635, 643.

If a statute is ambiguous and susceptible to more than one reasonable interpretation, the court may resort to extrinsic aids, including principles of construction and legislative history. MacIsaac v. Waste Management Collection & Recycling, Inc., (2005) 134 Cal.App.4th 1076, 1082 (*quoting* Riverview Fire Protection Dist. v. Workers' Comp. Appeals Bd., (1994) 23 Cal.App.4th 1120, 1126). In reviewing legislative history, ballot pamphlets, prior versions of the bill, legislative committee reports, legislative analyst reports, bill reports, and other legislative records are also appropriate sources indicative of legislative intent. In re John S., (2001) 88 Cal.App.4th 1140, 1144, n. 2; Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc., 133 Cal.App.4th 26, 32. Documents not constituting legislative history include authoring legislator's letters, press releases, and letters by interested persons not communicated to the legislature as a whole, including letters to the Governor urging that a bill be signed or not signed. statements. Id. at 37.

Where ambiguity still remains, the court should consider "reason, practicality, and common sense." Id. at 1084. This requires consideration of the statute's purpose, the evils to be remedied, public policy, and contemporaneous administrative construction. MCI, *supra*, 28 Cal.App.5th at 643. The enactment must be given a reasonable and commonsense interpretation consistent with the apparent purpose and intent of the lawmakers, practical rather than technical in

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nature, and which, when applied, will result in wise policy rather than mischief or absurdity. Lungren v. Deukmejian, (1988) 45 Cal. 3d 727, 735. Finally, statutes are not construed in isolation and every statute must be read and harmonized with the statutory scheme. People v. Ledesma, (1997) 16 Cal.4th 90, 95.

In interpreting the HAA, the court does not defer to the City's interpretation of its own regulations. Although a court would normally defer to an agency's interpretation of its own ordinances, land use decisions under the HAA are different precisely because the HAA cabins the discretion of local agencies. Cal Renters, *supra*, 68 Cal.App.5th 820, 844. The court must engage in a "more rigorous independent review…in order to prevent the City from circumventing what was intended to be a strict limitation on its authority." Ruegg & Ellsworth v. City of Berkeley, (2021) 63 Cal.App.5th 277, 299.

D. Statement of Facts[2]

1. The Preliminary Application

On June 23, 2022, Jha submitted a preliminary application for the Project to vest the development standards in effect at that time pursuant to section 65941.1. AR 57-64. The Project is a 40-unit housing development that reserves 20% of the units for low-income households. Id.

2. The AHRF

On August 11, 2022, Jha filed an Affordable Housing Referral Form ("AHRF") with Planning's Affordable Housing Services Section. AR 100-12. AHSS staff did not respond to the submittal until 34 days later, on September 26, 2022. AR 1637. AHSS staff determined that the Project was not eligible for the DBL program. Id. The staff stated that the Property site is in the RA zone, which permits only one family dwelling and does not allow multi-family uses. LAMC

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[2] Petitioner Jha requests judicial notice of (1) a HCD letter of technical assistance to the City of Fillmore dated August 24, 2023 (Ex A) and (2) a HCD notice of violation issued to La Cañada Flintridge dated June 8, 2023 (Ex. B). The unopposed requests are granted. Evid. Code §452(c); American Indian Model School v. Oakland Unified School District, (2014) 227 Cal.App.4th 258, 293.

The City requests judicial notice of (1) the legislative history for SB 330 (§65941.1) (Ex. 1), (2) a March 16, 2023 memorandum from HCD's deputy director to planning directors and interested parties (Ex. 2), (3) a HCD letter of technical assistance to the City of Compton dated March 28, 2024, (4) a September 3, 2021 letter from HCD to the City concerning its draft housing element (Ex. 4), (5) a February 22, 2022 letter from HCD to Planning concerning the City's adopted housing element (Ex. 5), (6) a May 11, 2022 letter from HCD to Planning concerning the City's revised housing element (Ex. 6), (7) a June 29, 2022 letter from HCD to Planning concerning the City's adopted housing element (Ex. 7), (8) City Council files No. 21-1230 and 21-123—S1 concerning the City's housing element (Exs. 8, 9), (9) the City's housing element (Ex. 10), (10) Planning forms for density bonus, subdivision instructions, subdivider's statement, landscape plans, floor plans plot plans, and elevation plans (Ex. 11), (11) City Charter sections 100-07 (Ex. 12), and (12) year 2022 and 2023 calendars (Ex. 13). The requests are granted. Evid. Code §452(b), (c), (h).

In reply, Petitioner Jha requests judicial notice of a June 26, 2024 HCD letter of technical assistance to the City of Beverly Hills (Ex. 1). The request is granted. Evid. Code §452(c).

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§12.07.A.1. Id. AHSS staff stated that Jha will need to apply for a zoning change to allow multi-family uses. Id.

Jha requested an appeal of Planning's refusal to process the AHRF. According to Jha, the City responded that there is no recourse to challenge the City's processing of an AHRF. *See* AR 1637.

On October 14, 2022, a City Planner notified Jha via email that the AHRF was still in the processing stage. He indicated that a GPA, multiple zoning changes, and fees exceeding $100,000 would be necessary for the Project. AR 1641-42.

3. The Application and Project Review Letters

Jha contends that she was unable to submit the Project application until the City agreed to sign the AHRF. After multiple emails and meetings with Jha, a City Planner signed the AHRF on December 12, 2022. AR 1754.

According to Jha, Planning insisted that her Density Bonus request was invalid. On December 12, 2022, Planning created a new application with a new planning case number for a GPA Application and zone changes. AR 171. Planning issued case numbers for both a Density Bonus Application (AR 2039-40) and a GPA Application (AR 1796-97).

On December 21, 2022, Jha paid $38,352.77 in application filing fees for a Density Bonus Application. AR 2039-40. She was also invoiced $136,557.20 for the GPA Application and zone changes. Id. Jha's counsel at trial informed the court that she never submitted a GPA Application and did not pay this invoice.

On January 6, 2023, Planning sent Jha a 39-page Project Review letter which stated that, while Jha believes the proper entitlement path for the Project is a Density Bonus, Planning's position is that the proper entitlement path is a GPA, zone change, various other zone adjustments, all of which are in City Charter section 558 and the LAMC and subject to the findings under section 65589.5(d). AR 2042. Planning's letter stated that section 65589.5(d) does not specify the entitlement process that can be required and confirmed that a Density Bonus is not the proper entitlement process. AR 2043. The letter cautioned that it was not a disapproval of the Project but rather an identification of the process by which the Project will be reviewed. AR 2043. The letter listed 54 items for correction of the information already submitted. AR 2043-79. Some of the corrections concerned the need for a GPA and zone change. *See* AR 2056. Other corrections sought compliance with various code requirements, such as requesting that Jha "show active engagement with the public street" and "show how human scale is maintained." AR 2048. According to Jha, the majority of items did not request information and instead sought signatures on referral forms by multiple City departments, including the Preliminary Application and Review Program Unit, Bureau of Engineering, Bureau of Sanitation, Housing Department, and Los Angeles Department of Building and Safety ("LADBS"). AR 2046-50. The various referral forms, in turn, were used by the different departments to indicate whether staff believed the Project complies with the City's code. *See, e.g.*, AR 39.

On April 5, 2023, Jha submitted revised application materials in response to Planning's Project Review letter. AR 2100-205. The City responded with a Second Project Review letter on April 28, 2023. AR 641-86. This letter again stated that Jha believes the proper entitlement path for the Project is a Density Bonus, but Planning's position is that the proper entitlement path is a GPA, zone change, various other zone adjustments, all of which are in City Charter section 558 and the LAMC and subject to the findings under section 65589.5(d). AR 642. Planning argued that section 65589.5(d) does not specify the entitlement process that can be required and confirmed

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that a Density Bonus is not the proper entitlement process. AR 642. The letter again cautioned that it was not a disapproval of the Project but rather an identification of the process by which the Project will be reviewed. AR 642.

The Second Project Review letter also noted that the Project is now a condominium project based on the April 3, 2023 communication but that was not previously identified. AR 642. The documents submitted cannot be considered complete for a subdivision because no subdivision application had been made or paid for, and none of the items on the checklist and subdivider's statement form had been provided. AR 642. The letter listed 45 items for Jha to "amplify, correct, clarify, and supplement". AR 642-84. The majority of the corrections concerned the need for a GPA and zoning changes. *See, e.g.,* AR 675 ("correct the allowable maximum height for all buildings and structures") AR 645 ("needs to be amplified, corrected, clarified and supplemented to identify the correct type of entitlement requested (e.g., General Plan Amendment….").

4. <u>The Appeal and Planning's Determination of Loss of Vesting Rights</u>

On May 12, 2023, Jha appealed Planning's incompleteness determination to the City Council pursuant to the PSA. AR 719-27. On May 16, 2023, while the appeal was pending, Planning wrote Jha that she had lost her vesting rights from the June 23, 2022 preliminary application. AR 761-63. Planning's letter stated the preliminary application was deemed submitted on June 23, 2022, the 180-day period under section 65941.1(d)(2) ended on December 21, 2022. The City's letter added that on January 6 2023, Planning wrote the initial Project Review letter and more than 90 days had passed without receipt of all missing or incomplete information identified. AR 762. Although Jha had submitted a response to the City's January 6, 2023 incompleteness letter within 90 days (AR 386), the resubmittal did not satisfy the required information. AR 762. In addition, Jha had modified the Project to be a condominium project. AR 762.

A complaint was made to HCD about the loss of vesting, but HCD's June 28, 2023 email stated that its investigation found "no apparent violation" of housing law". AR 2921, 2962. Jha submitted her own inquiry to HCD to ask whether the Project's vesting rights expired after receiving a second incompleteness determination. An HCD staff member responded: "No, the preliminary application does not expire if the development application is deemed incomplete since Government Code section 65943 allows for resubmittal of the requested items." AR 2638.

5. <u>The City Council Appeal</u>

Planning provided the City Council with a June 12, 2023 staff report that repeated its position that the "correct entitlement path forward is not a Density Bonus request" and that the Jha must "proceed with a General Plan Amendment, Zone Change, Height District Change" and other entitlements. AR 786. Planning recommended denial of the appeal "due to flaws" in Jha's submittals (rather than any missing information). AR 823.

On June 20, 2023, the City Council's PLUM Committee conducted a hearing and unanimously recommended denial of Jha's appeal under the PSA. AR 1077-78.

On June 27, 2023, the City Council held an appeal hearing and voted to deny Jha's PSA appeal. AR 1138.

E. <u>Analysis</u>

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Petitioner Jha seeks mandamus compelling the City to carry out its duties pursuant to the PSA, HAA, and DBL, accept her development application as complete, and approve the Project within 60 days.[3]

1. The PSA

The purpose of the PSA is "to expedite decisions" on development projects. The PSA is solely designed to gather information about the project being proposed, not to determine whether a project is zoning compliant. Once a development project application has been submitted, an agency must first determine whether the application is complete and provide an exhaustive list of incomplete items. §65943(a).[4]

In response to local governments' denial of housing projects, HCD has explained in a technical letter to the City of Filmore that a determination that an application is incomplete based on a purported zoning code inconsistency violates both the PSA and the HAA. HCD explained

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[3] Certain of the parties' arguments may be dealt with summarily. Jha is correct that the court determined on demurrer the builder's remedy applies to her project application. Pet. Op. Br. at 1. The City was required to update its sixth housing element cycle by October 15, 2021 but did not meet the deadline. The City was not in compliance with the Housing Element Law until HCD certified the City's housing element on June 29, 2022. The court determined that the City did not achieve housing element compliance by the June 23, 2022 date when Jha submitted a complete preliminary application, and therefore she may invoke the builder's remedy in section 65589.5(d). In doing so, the City still could require the Project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need. §65589.5(f)(1).

Although the City's opposition reiterates these arguments and raises new arguments that imposition of the builder's remedy would violate the City's right to home rule and constitute an underground regulation/penalty, the arguments are not persuasive. *See* Reply at 7. As a result, the court need not address the City's arguments on the builder's remedy, including headings E, F, H, and I. *See* Opp. at 17-21.

The City also argues that the preliminary application does not vest against later state regulations (Opp. at 17), apparently suggesting that the application does not vest with respect to the HCD's certification of the City's housing element. At trial, the City's counsel reiterated that section 65589.5(o) subjects the Project only to the local ordinances, policies, and standards in effect at the time of the preliminary application, not the HCD's action. This issue was raised and rejected by the court on demurrer. *See* Reply at 6. The HCD's action prevents the City's housing element from being compliant but is not itself an ordinance, policy, or standard.

Finally, the City correctly argues that Jha fails to support her declaratory relief pattern and practice claim. Opp. at 21. While Jha tries to maintain the viability of that claim by arguing that she may request discovery and a separate trial regarding the City's pattern and practice of violating state housing law after the mandamus claim is heard, she did not have leave to bifurcate her claims. *See* Reply at 14. The pattern and practice claim is waived. *See* Balboa Insurance Co. v. Aguirre, (1983) 149 Cal.App.3d 1002, 1010.

[4] The HAA provides a separate process to determine zoning code compliance after an application is accepted as complete. For projects with fewer than 150 units, the written compliance determination shall be provided "[w]ithin 30 days of the date that the application for the housing development project is determined to be complete." §65589.5(j)(2).

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that a zoning code-compliance comment "cannot be used as a basis for determining the completeness of the application" and that when "a local jurisdiction improperly characterizes comments as incomplete items, the jurisdiction impermissibly raises the bar to achieving a complete application, in violation of the PSA." Pet. RJN Ex. A p. 2; RJN Ex. B, p. 5.

HCD's interpretation of the PSA is somewhat supported by section 65944(a), which prohibits an agency from requesting new information once a public agency accepts an application as complete. At that point, the local government may only request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application in the course of processing the application. Id.

Jha correctly contends that the City violated the PSA by demanding that she comply with zoning requirements in order for her application to be complete. Planning's Project Review letter states that the application "does not comply with objective zoning standards" and includes 34 demands for Jha to "clarify, amplify, correct, or otherwise supplement the information provided". Despite Planning's use of statutory language, the demands for corrections were based on the City's determination that the Project is not code-compliant rather than on missing items in the application. But this information can only be requested after the application is accepted as complete. Pet. Op. Br. at 11.

Jha also correctly argues that the City's demands for legislative action were outside the scope of the PSA, which only applies to "development projects", defined as "any activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." §65931. Zoning changes and general plan amendments are legislative acts and not development projects involving the issuance of an entitlement. Arnel Development Co. v. City of Costa Mesa, ("Arnel Development") (1980) 28 Cal. 3d 511, 514. Legislative acts are not entitlements as they are subject to referendum, are not reviewed against established standards, do not need to be supported by findings, and do not require notice and hearing for affected property owners. Id. at 522. The PSA "cannot be used to compel legislative changes to a zoning ordinance or a general plan because the act is limited to projects that are adjudicatory in nature." Land Waste, *supa*, 222 Cal.App.3d at 959; *see also* Landi v. County of Monterey, (1983) 139 Cal.App.3d 934, 935-37. In short, legislative actions such as rezonings and GPAs fall outside the scope of the PSA. Pet. Op. Br. at 11.

Jha contends that the only items identified in the City's Project Review letter that were missing from the application were applications for GPAs and zone changes. The City does not even have an application for a GPA, which may only be initiated by the City itself. City Charter §555(b). Thus, the City is demanding an application that does not exist. The City's demand for legislative change applications is itself a determination that the Project does not comply with current zoning. Its incompleteness determination based on missing legislative applications therefore was invalid. Pet. Op. Br. at 11-2.

According to the City, nothing in the PSA forbids it from reviewing the completeness of a legislative application based on an existing list of application requirements and then providing a written list of missing materials within the time specified by section 65943. The City may borrow from the PSA process even though an application is not subject to the deemed approved terms of section 65950 for an agency's failure to timely act. Land Waste, *supra*, 222 Cal.App.3d at 950, 961 (the PSA does not require that a permit application be deemed approved if not acted on within the statutory period when the permit application would require a legislative change; section 65950 does not compel legislative acts such as GPAs or zoning changes). Opp. at 14-15.

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It is not clear what the City means by borrowing from the PSA process. Whether they are described as an entitlement or not, it is clear that the City cannot graft legislative changes such as a GPA or zoning change onto the completeness determination. The City's refusal to process an application based on a missing GPA Application was invalid.

Jha similarly argues that density bonus eligibility determinations similarly are outside the PSA. The DBL prohibits a local government from refusing to accept an application as incomplete merely because it believes the project is ineligible for a density bonus. Rather, the DBL states that "to provide for the expeditious processing of a density bonus application," a local government shall notify the applicant with the application is complete within the PSA's timelines. §65915(a)(3)(C). Only "[i]f the local government notifies the applicant that the application is deemed complete" may the agency provide a determination regarding density bonus eligibility. §65915(a)(3)(D). This determination regarding density bonus eligibility occurs after an application has been accepted as complete. Pet. Op. Br. at 12.

Jha states that the City refused to accept her application as complete based on an erroneous determination that the Project is not eligible for a density bonus. Planning's letters repeatedly state that a Density Bonus Application is "not the correct" entitlement path. Under the plain language of the DBL, the City's refusal to accept the application as complete based on a determination of density bonus ineligibility was invalid. Pet. Op. Br. at 12.

The City responds that Jha grafts the word "only" onto quoted language in section 65915(a)(3)(D) to incorrectly claim that the City is prohibited from identifying basic Density Bonus eligibility issues until an application is deemed complete. Jha promotes this rewriting to argue the City must accept and process all Density Bonus applications no matter how little information is provided. A court may not "under the guise of construction rewrite the law". <u>DiCampli-Mintz v. County of Santa Clara</u>, (2012) 55 Cal.4th 983, 992. Opp. at 14.

Section 65915(a)(3)(D) provides that "[i]f the local government notifies the applicant that the application is deemed complete", it may provide a determination regarding density bonus eligibility. It is true that the provision does not say that the local government can determine bonus density eligibility <u>only</u> in that circumstance. Nonetheless, the City cannot refuse to accept an application based on a determination of ineligibility for a density bonus. The DBL specifically allows local governments to create a "list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete." §65915(a)(3)(B). This is separate from a determination of density bonus eligibility and there is nothing in section 65915(a)(3)(B) permits a determination of ineligibility to be used to deny completeness. Section 65915(a)(3)(D) expressly states that any determination regarding the density bonus or eligibility for incentives, concessions, or waivers shall be based on the development project at the time the application is deemed complete. The City could not make this eligibility determination at the application completeness stage.

The City then argues that there is no basis to require a merits review of Jha's applications because Jha does not dispute that they are incomplete. The City notes that Planning issued a case number for both a Density Bonus Application (AR 2039-40) and a GPA Application (AR 1796-97). On January 6, 2023, Planning's letter identifying how both applications were incomplete. AR 2041-93. Jha submitted additional materials on April 5, 2023. AR 2100-2205. Planning's second letter on April 28, 2023 explained that both applications remained incomplete. AR 641-

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86. Jha appealed the incompleteness decisions to the City Council. AR 719-27.[5] Planning's June 12, 2023 staff report explained why the GPA Application process applies, and why both applications remained incomplete. AR 3020-61. The City Council upheld the incompleteness determination on June 27, 2023. AR 1138. Opp. at 9-10.

The issues raised in the City's review letters concern documents and information that are required in the City's lists of application requirements. AR 1792-1928; City RJN Ex. 11. The City is entitled to demand compliance with its list of application information. §§ 65940, 65943. Opp. at 16.

Jha does not address the City's detailed identification of incompleteness issues for the GPA Application. She merely contends that the GPA Application cannot be used. On or about December 12, 2022, Planning emailed all the instructions for the GPA Application process, including a GPA Initiation Request form that Jha could have filled out for GPA initiation. AR 1807-12.[6] Planning explained that, while Jha's application indicates that she is requesting Project approval under section 65589.5, that section does not specify the entitlement process. AR 2043. Once the GPA Application is complete, the application would be subject to the HAA builder's remedy findings at section 65589.5(d)(5), if applicable. AR 2042, 3034. Opp. at 15.[7]

The City adds that the Density Bonus Application was incomplete. The application materials have been either incomplete or internally inconsistent throughout the process of reviewing application completeness, resulting in review letters dated January 6, 2023 (First Review – AR 2042-79), April 28, 2023 (Second Review – AR 641-86), July 12, 2023 (Third Review – AR1139-89), August 2, 2023 (Fourth Review – AR1271-72), and August 23, 2023 (Fifth Review – AR1273-1330). Opp. at 15-16.

Contrary to Jha's claim, Planning's demand that the application be made "consistent" does not refer to project consistency with a City development standard but rather that Jha's Density Bonus Application be internally consistent. AR 641-705, 2041-93, 3300-309. For example, the description of housing units has been inconsistent even though the application form states that applications "filed with unclear or inconsistent information will result in delays...." AR 1901. Jha's initial application papers described a 45-unit Project. AR 82, 228. Other papers describe the Project as 40 units. AR 41, 232. The number of proposed units, market rate units and/or

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[5] The City argues that Jha provided responses that failed to complete either application (AR 3448-69 (6/2/23), 3411-46 (6/16/23), 3299-309 (missing items)) and Planning responded (AR 3337-39 (6/14/23)). Opp. at 9-10.

[6] Jha reiterates that the City's Charter prohibits private parties from initiating GPAs. City Charter §555. There are no "GPA application procedures" because there is no such thing as a GPA application. Reply at 10. However, the case relied on by Jha expressly states that City Charter section 555(a) does not place any limitation on a private party's ability to request a GPA. Westsiders Opposed to Overdevelopment v. City of Los Angeles, (2018) 27 Cal.App.5th 1079, 1089. The court accepts the City's position that Jha could initiate the GPA process.

[7] According to the City, Jha submitted a GPA Application in part (AR 3052-53 (Staff Appeal Resp. #4), but it was incomplete as explained in Planning's reports and its Exhibit I to the City Council. AR 3299-309 (Ex. I). Opp. at 15. At trial, Jha's counsel denied that Jha ever submitted a GPA Application. The City's citation (AR 3052-53) is to staff's statement that Jha directed the City to use material from the Density Bonus Application for the GPA Application, and she has submitted material for the GPA Application. This is insufficient to show submission of a GPA Application.

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affordable units remained inconsistent. AR 232, 1161, 1300. Other incompleteness and/or inconsistencies are: (1) failure to provide information about removal of off-site trees (AR 234, 663, 1299-1300, 1307-09); (2) an incomplete declaration regarding incentives and waivers (AR 667, 1301-03); (3) missing building permits and certificates of occupancy (AR 673, 1309); (4) illegible or inadequate floor plans (AR 677, 1313-14); and (5) missing landscaping and open space plans (AR 679, 1316). Opp. at 15-16.

Jha replies that her Density Bonus Application is complete. GPAs and zoning changes are outside the scope of PSA procedure, and most of the incomplete items were invalid demands for legislative changes, determinations of project consistency, and DBL eligibility determinations. Jha argues that she cannot go through all 45 pages of Planning's inane comments because of her briefing page limits but will address the items specifically discussed in the City's opposition, which demonstrate how the City abused the PSA process. Reply at 12-13.

While the City takes issue with the fact that Jah amended the Project from 45 units in the preliminary application to 40 units in the application, the HAA specifically allows an applicant to revise the number of units by less than 20% following the preliminary application submittal. §65589.5(o)(2)(E). Planning claimed the 40-unit Project is inconsistent with the AHRF that listed 45 units. AR 231. Planning failed to mention that Jha submitted the AHRF on August 11, 2022, just after the preliminary application. Planning failed to process the AHRF until December 12, 2022, four months after submittal and just a week before the deadline to submit a development application. AR 1754. The only reason the AHRF did not match the updated Project plans was because Planning failed to timely sign the form. Reply at 12.

The City also points to missing landscaping and open space plans, but Jha told Planning that landscaping and open space would not be included in the Project. AR 1316. She sought a DBL waiver from these requirements. Still, Planning argued that "[t]rees in the public right of way are landscaping." Id. In other words, Planning demanded that Jha submit a landscaping plan to identify existing off-site trees (that were already identified in her Tree Disclosure). Landscaping plans show the details of proposed landscaping, not the presence of existing off-site trees. *See* LAMC §12.21(G). Reply at 12-13.

The City points to an incomplete declaration regarding requested incentives and waivers. This is untrue. Jha did submit a complete declaration for waivers and incentives. AR 9-12. Planning did not request information from Jha and instead demanded that she confirm the applicable code standard with LADBS by submitting a Preliminary Zoning Form that is "intended to determine compliance with City zoning." AR 434, 1301. A determination regarding zoning code-compliance cannot be used as a basis for determining completeness. Reply at 13.

Other incomplete items included inadequate floor plans because the recreation room did not state whether it would be used as an "exercise room" or a "game room" (AR 1314), even though the term "recreation room" is defined as a room "designed to be utilized primarily for games, the pursuit of hobbies, social gatherings, and such activities." LAMC §12.03. The City also could not determine whether the clearly labeled rooftop terrace was a fourth story (AR 1315), yet simultaneously demanded that Jha "show how the terrace will be used directly on the plans" (AR 1314), as if Jha could predict how future residents will use their private terraces. Reply at 13.

Aside from the improper requirements for a GPA, zone change, and improper determination of density bonus eligibility, the court cannot determine from the parties' presentation whether the City had legitimate reasons to find the Density Bonus Application incomplete. There may be inconsistencies or incomplete information that could justify the

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determination.[8] However, the City clearly chose the wrong path in requiring a GPA, zone change, and determining density bonus ineligibility, and these were the main reasons for the incompleteness determination. As a result, the City's incompleteness determination cannot be upheld.

2. Jha's Vesting Rights Did Not Expire

In SB 330, the Legislature added a provision to the PSA preliminary application process specifically for housing development projects, the purpose of which is to secure vesting rights and lock into place existing development standards. §65941.1. To maintain vesting rights, an applicant must submit a development application within 180 days of submitting a preliminary application. §65941.1(d). Additionally, if an agency makes an incompleteness determination "pursuant to Section 65943",[9] the applicant must submit the information needed to complete the application within 90 days or the preliminary application expires. Id.

Jha contends that the City unlawfully refused to recognize the Project's vesting rights. According to Jha, section 65941.1(d) specifically references the iterative process of application and completeness determination, stating that an applicant must respond within 90 days if the public agency makes an incompleteness determination "pursuant to Section 65943." §65941.1(d). An incompleteness determination "pursuant to Section 65943" includes both an initial completeness determination and any subsequent determination made in response to a resubmittal. In other words, each time a new written completeness determination is made pursuant to section 65943, an applicant has 90 days to respond in order to maintain vesting rights. Pet. Op. Br. at 13.

The City argues that Jha's interpretation of section 65941.1(d) is incorrect. An applicant does not have 90 days to respond each time an incompleteness determination is made. The developer has 180 days after submitting a preliminary application to submit "all of the information" required for a complete application. §65941.1(d)(1). If there is an incompleteness determination, the developer "shall submit" the information for completion in 90 days. §65941.1(d)(2). A failure to do so means that "the preliminary application shall expire and have no further force or effect." Id. Opp. at 11-12.

The City points to the legislative history of SB 330 (section 65941.1) as establishing that a single 90-day period to complete the application was added so that the law "delineates a protocol for both the applicant and the jurisdiction." Resp. RJN Ex. 1, pp. 83, 98-99, 277, 284, 289, 300. It is designed so that a "developer doesn't just put in an initial application, lock rules, then go away for 10 years and come back wanting locked rules for their project."[10]

As a result of an amendment, the American Planning Association ("APA") removed its opposition to SB 330 because there would be an "obligation of the applicant to pursue a complete application in a reasonable timeframe in order to retain their vested rights." Resp. RJN Ex. 1, p.

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[8] Neither party addresses Planning's point in the Second Project Review Letter that the Project is now a condominium project, the documents submitted cannot be considered complete for a subdivision because no subdivision application had been made or paid for, and none of the items on the checklist and subdivider's statement form had been provided. AR 642. At trial, Jha's counsel stated that the Project is a rental project, not a condominium project.

[9] Pursuant to the PSA, once an applicant resubmits an application in response to an agency's incompleteness determination, a new 30-day period begins wherein the agency must make another completeness determination. §65943(a).

[10] The City's citation for this quotation (Ex. 1, p. 267) is not in its requested judicial notice.

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1184. The APA letter urged the Legislature to utilize the PSA's existing process but removed its opposition to SB 330 when amendments created an "obligation of the applicant to pursue a complete application in a reasonable timeframe in order to retain their vested rights." Resp. RJN Ex. 1, p. 68. The APA stated that it preferred the PSA's existing vesting trigger but noted that "these amendments are intended to ensure this new two-step application approval process creates incentives for the applicant to complete the development processes in a timely manner...." Id. The APA stated that the amendment "will require...the applicant to complete the process in a timely manner in order to receive the vesting benefits of the bill." Resp. RJN Ex. 1, p. 1182. Opp. at 11-12. [11]

The City concludes (Opp. at 10, 16) that this legislative history indicates that section 65941.1's 90-day provision is designed to cut off vesting rights and Jha's interpretation would interpret the 180-day and 90-day periods out of existence. *See* Select Base Materials, Inc. v. Bd. of Equalization, (1959) 51 Cal.2d 640, 645, 647 (statutes are construed to avoid rendering "nugatory important provisions of the statute."). Given this interpretation of section 65941.1(d), the Project has no builder's remedy protection because any vesting rights expired when Jha failed to submit a complete application within 90 days of Planning's January 6, 2023 incompleteness letter. AR 3037-38.

On May 16, 2023, Planning wrote Jha that she had lost her vesting rights from the June 23, 2022 preliminary application. AR 761-63. Planning stated the preliminary application was deemed submitted on June 23, 2022 and the 180-day period under section 65941.1(d)(2) ended on December 21, 2022. Planning wrote the initial Project Review letter on January 6 2023, and more than 90 days had passed without receipt of all missing or incomplete information identified. AR 762. Although Jha had submitted a response to the City's January 6, 2023 incompleteness letter within 90 days (AR 386), the resubmittal did not satisfy the required information. AR 762. Therefore, the vesting preliminary application had expired. AR 762.

The City notes that a complaint was made to HCD about the loss of vesting, but HCD's June 28, 2023 email stated that its investigation found "no apparent violation" of housing law". AR 2921, 2962. Opp. at 10, 16.

At trial, the City's counsel explained that the loss of vesting rights also means the loss of a section 65589.5(d) builder's remedy. The HAA prohibits a local government from applying development standards that were not in effect at the time a preliminary application is submitted. §65589.5(o). The HAA states that is a violation to require, or even attempt to require, a project to comply with an ordinance, policy, or standard not adopted and in effect when a preliminary application was submitted. §65589.5(k)(1)(A)(i)(III). If vesting rights under the preliminary application expire, then the builder's remedy – which applies only when the local government does not have a housing element in substantial compliance with the Housing Element Law – would not apply to Jha because the City now has a compliant housing element.[12]

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[11] Assuming that the APA's statement is proper legislative history, it is a statement by a third party and not accorded significant weight. *See* Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc., *supra*, 133 Cal.App.4th at 38.

[12] The City's counsel also stated that the loss of vesting rights would not prevent further review of the Project application. For this reason, Planning continued to review and deny Jha's Density Bonus Application as incomplete or internally inconsistent in additional review letters dated July 12, 2023 (AR 1139-89), August 2, 2023 (AR 1271-72), and August 23, 2023 (AR 1273-1330)

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Section 65941.1(d)(1) provides that the applicant must submit an application that includes all necessary information within 180 days after submitting the preliminary application. The plain language of the provision sets a 180-day deadline. Section 65941.1(d)(2) provides that, if the agency determines that the application is incomplete pursuant to section 65943, the applicant shall submit the missing information within 90 days and the failure to do so will mean the application has expired. In turn, section 65943 provides that the agency must make a written determination on the completeness of an application within 30 days of submittal, or it will be deemed complete. §65943(a). Upon receipt of "any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application." Id.

At trial, the parties' counsel agreed on the relationship of section 65941.1(d)(1) and (2). If an applicant fails to submit an application within 180 days after the preliminary injunction, the 180-day deadline in section 65941.1(d)(1) bars it from doing so. If, on the other hand, an applicant submits an application within 180 days, it is timely even if it is incomplete. This is true despite the language in section 65941.1(d)(1) that the application must include "all of the information required to process the development application". Counsel agreed that an incomplete application submitted within 180 days is still timely under section 65941.1(d)(1). The court accepts the parties' interpretation.

The incompleteness issue is dealt with by section 65941.1(d)(2). This is where the parties diverge. The City contends that the applicant receives a single 90-day period to cure the incomplete application. If the information submitted does not complete the application, then the preliminary application expires and is no further force and effect. §65941.1(d)(2). Jha contends that there may be multiple iterations of this 90-day submission and 30-day evaluation process. So long as an applicant meets the 90-day deadline, there is no bar.

The court agrees with Jha that multiple iterations of the 90-day submission/30-day review are permissible under section 65941.1(d)(2). Section 65941.1(d)(2) expressly refers to completeness pursuant to section 65943. In turn, section 65943(a) refers to "any subsequent review of the application determined to be incomplete", "any resubmittal of the application", and "a new 30-day period." The use of the words "any" and "new" in section 65943(a) indicate that multiple resubmissions of an application may be made. The statute supports Jha's reading that the submission and completeness evaluation for an application is an iterative process with no limit on the number of submissions.

The court's conclusion is supported by the fact that the court is "not dealing with the PSA in a vacuum, but rather in its relation to the HAA," and the Legislature has mandated the HAA must be interpreted to "afford the fullest possible weight to the interest of, and the approval and provision of, housing." Save Lafayette v. City of Lafayette, (2022) 85 Cal.App.5th 842, 855 (refusing to interpret the PSA to treat a multi-year delay as a resubmittal that terminated earlier vesting rights and instead recognizing the project's decade-old vesting rights in part because the HAA's policy that favors housing).[13] The City's interpretation makes it more difficult for

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[13] The City argues that the court in Save Lafayette v. City of Lafayette, *supra*, 85 Cal.App.5th at 854-55, rejected the prospect of a "deemed disapproved" consequence to passage of the PSA's timelines in part because no statutory text supported the argument and there is no statutory text to support Jha's argument either. Opp. at 16-17. Perhaps, but the point remains that the PSA and HAA must be interpreted to give full weight to the approval of housing.

applicants to maintain vesting rights and directly conflicts with the Legislature's clear mandate to interpret its provisions in favor of housing development.[14]

The legislative history provided by the City does not undermine this conclusion. The Assembly Bill Analysis states that "[i]f the local agency determines that the information provided is not complete, the proponent has 90 days after receiving this determination in writing to provide the information, or their preliminary application will expire." Resp. RJN Ex. 1, p. 40. This statement is consistent with the conclusion that when an applicant receives an incompleteness determination pursuant to section 65943 – not just the first incompleteness determination – an applicant has 90 days to respond. This interpretation does not read the 90-day deadline out of existence because an applicant still must diligently respond to each incompleteness determination within 90 days.

The June 28, 2023 email HCD email cited by the City is not weighty. HCD staff wrote that it had "received a request for a letter of support" for the Project and found "no apparent violation of state housing law." AR 2962. The email's conclusion is unsupported by any facts or analysis. In contrast, Jha submitted an inquiry to HCD asking whether the Project's vesting rights expired after receiving a second incompleteness determination. An HCD staff member responded: "No, the preliminary application does not expire if the development application is deemed incomplete since Government Code section 65943 allows for resubmittal of the requested items." AR 2638. Reply at 8-9. Jha responded to the City's incompleteness determination within 90 days as required and there was no violation of section 65941.1(d)(2).

Jha submitted the preliminary application on June 23, 2022. She filed the AHRF on August 11, 2022 and the City waited four months to sign it, until December 12, 2022. Jha paid her Density Bonus Application fees nine days later. After Planning sent her the January 6, 2023 Project Review letter, Jha submitted revised the application materials within 90 days, on April 5, 2023. After Planning's second Project Review letter of April 28, 2023, Jha promptly appealed on May 12, 2023. This timeline shows Jha's diligence in pursuing her application.

Jha's vesting rights did not expire, and the City's refusal to recognize them was inconsistent with the PSA and violated the HAA.

3. The City Disapproved the Project Under the HAA

It is undisputed that the Project meets the definition of "housing for very low, low-, or moderate-income households" under the HAA. §65589.5(h)(3). The HAA prohibits a local government from disapproving an affordable housing project unless it makes written findings based on a preponderance of the evidence in the record as to one of five specifically enumerated findings. §65589.5(d). The court has already determined that the City cannot disapprove the Project based on section 65589.5(d)(5) (the builder's remedy) because the City was not in compliance with the Housing Element Law on the date that Jha submitted a complete preliminary application. There is no evidence that any of the other enumerated findings apply, and the City did not attempt to make such findings. In short, there is no valid basis for the City to disapprove the proposed affordable housing Project.

The City argues that the court is reviewing the City's determination of incompleteness under PSA section 65943 as to both applications. The builder's remedy disapproval findings

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[14] Can the local government ever end the cycle of resubmissions within 90 days? Probably so by relying on the 180-day period in section 65941.1(d)(1), but the court need not decide this issue.

apply to a merits disapproval of the Project entitlement, not an incompleteness appeal. §65589.5(d)(5). Nothing in the HAA equates a decision on PSA incompleteness to the disapproval of a project application or entitlement. *Cf.* §65589.5(h)(6)(HAA definition of "disapprove" references the "land use approvals or entitlements" for a building permit). Planning stated that the applications remain incomplete, but it will process either of them once complete. AR 3338. To the extent that Planning made an "early pre-decision compliance review," it was for Jha's information, not a decision on the merits. AR 764-76. The City has not made a final merits disapproval of either application, and for that reason Jha cannot claim that Planning's statement that the GPA Application is the correct process is itself a disapproval of the Project. Opp. at 19.

The short answer is that Jha is correct that the City Council's decision on completeness is a disapproval. Pet. Op. Br. at 17. The HAA defines disapproval as any instance in which an agency "[v]otes on a proposed housing development project application and the application is disapproved . . .." §65589.5(h)(6). While the City Council purported only to vote on whether the application was complete, its vote disapproved the Project based primarily on the City's perceived general plan and zoning inconsistencies. The City did not simply recommend a GPA and zone change; it required them. The City Council made clear the Project cannot be approved unless it is modified to be consistent with the general plan or the general plan is modified to be consistent with the Project. This is a disapproval.

4. <u>The City Violated the HAA</u>

The court has already determined that the builder's remedy applies, and therefore general plan and zoning inconsistencies are not a valid basis to deny the Project. The City did not make any written findings regarding any of the other four enumerated bases to disapprove an affordable housing project, and therefore the City's vote to disapprove the project was in violation of the HAA. §65589.5(k)(1)(A)(i).

The City correctly notes that the HAA does not specify procedures for the review and processing of a builder's remedy project. Unlike other HAA or DBL provisions, there is no HAA text that prevents legislative procedures from applying to projects receiving builder's remedy protection. *Cf.* §§ 65589.5(j)(4) (project "shall not require" rezoning), 65915(f)(5), (j)(1) (density bonus or incentive "shall not require" a plan amendment). There is also nothing in the HAA that says a builder's remedy project must be approved ministerially, or that a specific process must be used, in contrast to other statutes that expressly reference a ministerial process. *Cf.* §§ 65913.4(a), 66317(a), 65852.21, 66411.7(a), (b)(1). Opp. at 11.

The City argues that it is contrary to the plain language of section 65589.5(o) for Jha to claim that the City must use a process that does not follow the laws and policies under which the Project vested. The entitlements associated with the GPA Application honor the City policies in effect on the June 24, 2022 date of the preliminary application that specify the GPA Application procedure and satisfy the need to legalize the Project within the City's zoning and planning framework. §65589.5(o)(1); AR 1535-42. Nothing in the HAA prohibits the City from seeking a GPA or zone change. Opp. at 11-12.

The City relies on a March 28, 2024 HCD letter of technical assistance to the City of Compton in which HCD agreed that the HAA does not specify the process for reviewing a project with builder's remedy protection and also agrees that a jurisdiction may require a general plan amendment or zone change to review such a project. Resp. RJN Ex. 3. Opp. at 12.

HCD's letter stated that a jurisdiction without an adopted housing element in substantial compliance with state law when the preliminary application was submitted and subject to the

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builder's remedy is not prevented by the HAA "from requesting a general plan/zoning code amendment" to avoid a legal non-conformity. Resp. RJN, Ex. 3. Further, the builder's remedy does not expressly prevent the city from requiring discretionary permits and/or legislative actions that would be required for similar projects (*e.g.*, GPAs, zoning changes, CUP, specific plan amendments). Ex. 3. HCD warned, however, that the HAA would be violated if the city's insistence on a GPA or zone change would render the project infeasible because it "delays project approval or increases the cost of the approval process." Ex. 3. Opp. at 12.

Jha agrees that the builder's remedy does not specify the entitlement process and that nothing requires the City to approve the Project ministerially. Jha correctly argues (Pet. Op. Br. at 15-16; Reply at 9) that the City attempts to sidestep the HAA by claiming that the builder's remedy does not specify the entitlement path that a local government must follow, and that the proper entitlement path for the Project is a GPA and zoning change. The HAA requires agencies to approve applications pursuant to the PSA's mandatory deadlines, and nothing permits an agency to force an applicant to seek a legislative change that is outside the scope of those protections. §65589.5(o)(6)(B); Land Waste, *supra*, 222 Cal.App.3d at 959. The HAA requires mandatory approval unless fact-specific findings are made, and forcing an applicant to seek a legislative action strips the applicant of these rights and protections.

Jha argues that GPAs are not entitlements, they are legislative acts. Arnel Development, *supra*, 28 Cal. 3d at 514. GPAs are governed by Chapter 3 of the Planning and Zoning Law, and most sections do not apply to charter cities. §65700. The review and approval of development projects, on the other hand, are governed by Chapter 4.5, the entirety of which applies to charter cities (including the PSA). § 65921. Legislative actions and the review of development projects are two distinct processes, subject to different procedures, and serve different functions. "[A] legislative action is the formulation of a rule to be applied to all future cases, while an adjudicatory act involves the actual application of such a rule to a specific set of existing facts." Patterson v. Central Coast Regional Com, (1976) 58 Cal.App.3d 833, 840. Reply at 9.

The court need not agree with Jha that GPAs and zone changes are not entitlements to agree that they are legislative enactments that cannot be compelled when the builder's remedy applies. The City cannot compel Jha to seek a legislative action through the review of a development project for the same reason Jha cannot compel the City to approve a legislative action through the submittal of a development application. The builder's remedy applies to projects, not properties, and legislative changes are not "housing development projects" governed by the HAA. Chandis Securities Co. v. City of Dana Point, (1996) 52 Cal.App.4th 475, 485-86. Reply at 9.

Jha is correct that the City's interpretation of the HAA would eviscerate the builder's remedy in section 65589.5(d)(5), which states that a local government must approve an affordable housing project notwithstanding any purported general plan or zoning inconsistency. In other words, requiring legislative changes is simply a more circuitous route of requiring general plan and zoning consistency, which is not permitted when a jurisdiction does not have a certified housing element and the builder's remedy applies. A local government with a compliant housing element could disapprove a project for such an inconsistency, or could inform an applicant that his or her project would be disapproved unless a legislative change is granted, but it cannot do so where an affordable housing project is protected by the builder's remedy.[15]

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[15] According to Jha, the City attempts to nullify the builder's remedy by relying on section 65589.5(f)(1), which states that the HAA should not be interpreted to prohibit a local agency from requiring compliance "with objective, quantifiable, written development standards, conditions,

The City points to the language in section 65589.5(j)(4) that a project "shall not require a rezoning" to suggest that the City can require rezoning. Opp. at 11, 13. Jha correctly replies (Reply at 10) that section 65589.5(j)(4)'s reference to rezoning relates to a determination of project consistency, which is required for market-rate housing projects protected by the HAA. Section 65589.5(j)(4) states that a housing project is not inconsistent with applicable zoning standards, and rezoning is not required, if the project is consistent with objective general plan standards. For builder's remedy projects, consistency is not required for the project to be approved.

Jha notes (Reply at 10-11) that the HCD recently superseded March 28, 2024 Compton technical letter in a June 26, 2025 technical letter to the City of Beverly Hills. Reply RJN Ex. 1. The Beverly Hills technical letter noted that the March 28 letter to Compton stated that the HAA does not prohibit a city from requesting a general plan/zoning code amendment to avoid a legal non-conformity but also clarified that such an action may not be required where the builder's remedy applies. Reply RJN Ex. 1. In its Beverly Hills letter, HCD stated that the HAA is clear

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and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584." (emphasis added). The first step in the housing element process is for a local government to identify the "appropriate zoning and development standards" to accommodate its RHNA. §65583(c)(1). Section 65589.5(f)(1) only allows a local government to enforce standards that are "appropriate to, and consistent with," meeting a jurisdiction's RHNA. A local government that failed to have a certified housing element and is subject to the builder's remedy does not have standards "appropriate to, and consistent with" meeting its RHNA requirements. This is why the builder's remedy exists. If a local government has failed to go through the required housing element process to identify the standards "appropriate to, and consistent with" meeting its RHNA requirements, section 65589.5(d)(5) allows affordable housing projects a path to approval notwithstanding existing standards. Pet. Op. Br. at 16.

Moreover, section 65589.5(f)(1) requires that the development standards, conditions, and policies be applied to "facilitate and accommodate development at the density permitted on the site and proposed by the development," not to provide a backchannel method to thwart the protections of section 65589.5(d)(5). Jha proposed an affordable housing project at a time when the City did not have a compliant housing element and the "density permitted" on the site is not constrained by existing general plan and zoning density standards. The builder's remedy makes clear that such density standards are not a valid reason to disapprove the project. The City can enforce other objective standards (*e.g.*, height, setbacks) but must do so in a manner that facilitates and accommodates the density proposed by the Project. Pet. Op. Br. at 16-17.

Finally, section 65589.5(f) merely contains a series of general interpretive provisions regarding how the HAA should be "construed." Section 65589.5(d) provides the specific findings that a local government must make to lawfully disapprove a proposed affordable housing project. It is a basic canon of statutory construction that "when a general and particular provision are inconsistent, the latter is paramount to the former." CCP §1859. A general interpretive provision cannot be read to nullify the builder's remedy provision as it applies to a particular project. Interpreting section 65589.5(f)(1) to allow cities to impose zoning and general standards that section 65589.4(d)(5) states are not a valid reason to disapprove a project would reduce the builder's remedy to mere surplusage. A "construction making some words surplusage is to be avoided.'" People v. Valencia, (2017) 3 Cal.5th 347, 357. Pet. Op. Br. at 17.

While the court agrees with Jha's analysis, the City's opposition does not rely on section 65589.5(f)(1).

that a project protected by the builder's remedy may not be disapproved for inconsistency with the jurisdiction's general plan and zoning ordinance. §65589.5(d)(5). "Accordingly, a jurisdiction that refuses to process or approve a project subject to the Builder's Remedy due to the applicant's refusal to submit a GPA[zoning change] requires or required by the jurisdiction to resolve such an inconsistency violates the intent of the HAA." Ex. 1. The requirement of a GPA or zoning change is "essentially a requirement for consistency," and disapproval of a project for failure to resolve that inconsistency is effectively a disapproval on the grounds of inconsistency. Ex. 1. HCD also noted that Beverly Hills did not have a GPA or zone change on its submittal requirement checklist and under the PSA the city could not determine that an application is incomplete based on failure to include a request for a GPA or zone change. Ex. 1.

The deference and the weight given to an agency's interpretation is situational and dependent on the presence or absence of factors supporting the merit of the interpretation. Yamaha Corp. of America v. State Board of Equalization, (1998) 19 Cal.4th 1, 7-8, 12. Some deference is warranted where there are "indications of careful consideration by senior agency officials" or "the agency 'has consistently maintained the interpretation in question.'" Id. at 13. An administrative construction of a statute is only entitled to as much deference as is warranted by "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control". Hoechst Celanese Corp. v. Franchise Tax Bd., (2001) 25 Cal.4th 508, 524.

The Beverly Hills technical letter strongly supports Jha's position and is entitled to some weight. It is consistent with the court's view, which is that the City may not require GPA or zone change on Jha's Project that is protected by the builder's remedy. Therefore, the City violated the HAA.

5. The City Violated the DBL

The DBL (§§ 65915-18) is intended to allow a developer to include more total units in a project that would otherwise be allowed by the local zoning ordinance in exchange for low-cost rental units, and to "cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional public subsidy." §65915(u).

A local government shall grant one density bonus as specified in subdivision (f), incentives or concessions as specified in subdivision (d), waivers or reductions of development standards as described in subdivision (e), and parking ratios as described in subdivision (p), if an applicant agrees to construct a housing development that will contain stipulated percentages of low income and very low-income units or target population units (*e.g.*, disabled veterans). §65915(b).

A "housing development" means a development project for five or more residential units, including mixed use developments. §65915(i).

A "density bonus" means a "density increase over the otherwise maximum allowable gross residential density," but the developer also may elect "a lesser percentage of density increase, including, but not limited to, no increase in density." §65915(f). The amount of the density bonus varies according to the amount by which the percentage of low and very low-income units exceed the percentages. §65915(f).

Density bonuses shall be granted based on the "maximum allowable density" for the project site, defined as "the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density

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allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail." §65915(o)(5).

An applicant for a density bonus pursuant to subdivision (b) may submit a proposal for specific incentives or concessions. §65915(d)(1). The local government shall grant the requested incentive or concession unless (1) it makes a written finding, based on substantial evidence, that the project will not result in "identifiable and actual cost reductions" of affordable housing costs or for rents of the targeted units as specified in subdivision (c), (2) the concession or incentive would have a specific adverse impact upon public health and safety, the physical environment, or real property listed in the California Register of Historical Resources and for which there is no feasible method of mitigation without rendering the development unaffordable to low- and moderate-income households, or (3) the concession or incentive would violate state or federal law. §65915(d)(1)(A)-(C). §65915(d).

The applicant may also apply for and receive development waivers or reductions that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions/incentives permitted. §65915(e)(1). The local agency may not apply a development standard that will have this effect. §65915(e)(1). However, the local government is not required to waive or reduce development standards if there would be an adverse impact on health, safety, or the physical environment, and for which there is no feasible method of mitigation to avoid the impact. Id. Nor is the local government required to waive or reduce development standards that would have an adverse effect on real property listed in the California Register of Historical Resources, or to grant any waiver or reduction that would violate state or federal law. §65915(e)(1).

Jha argues that the amount of density bonus is based on the "maximum allowable gross residential density" or "base density," which the law defines as "the maximum number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan...." §65915(o)(6). On the other hand, incentives/concessions and waivers are awarded based on the percentage of "total units" that are restricted to low- and very-low income households. §65915(d). The DBL definition of "total units" is unrelated to zoning and is simply "a calculation of the number of units that: (i) Excludes a unit added by a density bonus awarded pursuant to this section. (ii) Includes a unit designated to satisfy an inclusionary zoning requirement." §65915(o)(8). In other words, the term "total units" simply means the number of units proposed for the project. Similarly, the DBL defines a "housing development" to mean "a development project for five or more residential units, including mixed-use developments" without any reference to zoning standards. §65915(i). Thus, a "housing development" is a project that proposes at least five units. Pet. Op. Br. at 18-19.

Jha's Project is a housing development that includes 20% of units restricted to low-income households and is therefore entitled to two incentives/concessions and an unlimited number of development standard waivers. §65915(d), (e). Jha proposed incentives to the applicable floor area ratio and low-impact development standards, as well as various waivers to development standards of setbacks, height limits, parking standards, and others. AR 136-37.

AHSS staff determined that the Project is not eligible for the DBL program. AR 1637. The staff stated that the Property site is in the RA zone, which permits only one family dwelling and does not allow multi-family uses. LAMC §12.07.A.1. AR 1637. AHSS staff stated that Jha will need to apply for a zoning change to allow multi-family uses. AR 145-47, 1637. In fact, the City unilaterally converted the application from a density bonus request to a zone change, assigning the Project a new Planning number. AR 171. Pet. Op. Br. at 19.

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Jha contends that the City did not deny the requested incentives/concessions, and development standard waivers due to public health and safety concerns, but rather due to the City's erroneous determination that a site must be zoned for a minimum of five base units to be eligible for any of the DBL's protections. The number of base units is only relevant to calculate the density bonus which Jha does not seek. It is distinct from the "total units" used to determine eligibility for incentives/concessions/development standard waivers. So long as the project includes the minimum level of affordability, the City may only deny the proposed incentives/concessions/waivers for the statutorily enumerated reasons. §65915(d), (e). The DBL includes "very limited exceptions" to deny requested incentives/concessions/waivers and zoning inconsistency is not one of them. *See* Bankers Hill 150 v. City of San Diego, (2022) 74 Cal.App.5th 755, 770. The City's refusal to grant the incentives/concessions/waivers is a violation of the DBL. Pet. Op. Br. at 19.

The City responds that Jha incorrectly reads the DBL. Her literal reading of the terms "total units" and "housing development" in sections 65915(o)(8) and 65915(i), respectively, would create an absurd result. Both terms refer to the number of base units identified by the zoning and land use designation based on usage of the "housing development" term. *Compare* §§ 65915(b)(1)(G), (c)(1)(B)(ii)("all units in the development, including total units and density bonus units"), §§ 65915(a)(1)("When an applicant seeks a density bonus for a housing development"), 65915(b)(1)(if an applicant "seeks and agrees to construct a housing development, excluding any units permitted by the density bonus") *with* 65915(o)(8)(i)("total units…[e]xcludes a unit added by a density bonus"). Jha's literal application of the definitions in sections 65915(o)(8) and 65915(i) would permit a density bonus project in any industrial zone or land use category that does not authorize residential uses so long as the number of proposed units is five or more. At trial, the City's counsel reiterated that Jha's interpretation would allow incentives, concessions, and waivers for a project in an industrial zone. *See* Unzueta v. Ocean View School Dist., (1992) 6 Cal.App.4th 1689 (statutes are interpreted to avoid absurd results). Opp. at 14.

Scrutiny of the DBL shows the City is wrong. An applicant for a qualifying housing development make seek and obtain one density bonus as specified in subdivision (f), incentives or concessions as specified in subdivision (d), waivers or reductions of development standards as described in subdivision (e), and parking ratios as described in subdivision (p). §65915(b)(1). A "housing development" means a development project for five or more residential units, including mixed use developments. §65915(i). The developer may elect to seek no increase in density as part of her density bonus (§65915(f)) and may seek specific incentives or concessions (§65915(d)(1) and development waivers or reductions (§65915(e)(1)) as Jha has. While the density bonus available pursuant to section 65915(b) is defined as an increase to maximum allowable density (§65915(f)) and maximum allowable density means the greatest number units allowed by the zoning ordinance (§65915)(o)(6)), there is simply no tie between bonus density, incentives or concessions, and waivers or reductions in development standards that would permit application of the maximum allowable density definition too the latter two entitlements.

The court agrees with Jha (Reply at 11-12) that the City is equating the terms "total units" in section 65915(o)(8) and "base density" in 65915(o)(6) even though each has a specific, unique definition in the DBL. "Total units" refers to the number of units in a project excluding any density bonus units. §65915(o)(6). "Base density" is only relevant for determining the amount of density bonus and refers to the units allowed under the zoning or general plan. §65915(o)(8). Reading these terms to be identical would render the statutory definitions surplusage. *See* MacIsaac v.

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Waste Management Collection & Recycling, Inc., (2005) 134 Cal.App.4th 1076, 1082. Reply at 11.

The plain language of the DBL controls. So long as a project that restricts a certain percentage of the "total units" to low-cost housing can be approved, it is eligible for incentives, concessions, and waivers with "very limited exceptions." *See* Bankers Hill 150 v. City of San Diego, (2022) 74 Cal.App.5th 755, 770. Zoning is not one of those exceptions. While the City argues that reliance on the plain language definition of "total units" would allow density bonus projects in zones where residential uses are not permitted, such as in an industrial zone, inconsistency with zoning or general plan requirements could be a valid reason to disapprove a project where (a) there would be an adverse impact on health, safety, or the physical environment, and for which there is no feasible method of mitigation to avoid the impact (b) there would be an adverse effect on real property listed in the California Register of Historical Resources, or (c) it would violate state or federal law. §65915(d)(1), (e)(1). Because the Project restricts 20% of the total units as affordable, the City's refusal to grant incentives, concessions, and waivers violated the DBL.[16]

F. Conclusion

The Petition is granted in large part. Jha is entitled to a judgment on her mandamus claims that (1) the City's determination that Jha's application is incomplete violated the PSA because the City wrongly required a GPA, zone change, and determined density bonus ineligibility, (2) the City violated the HAA by imposing a GPA and zone change on Jha's Project protected by the builder's remedy, (3) Jha's vesting rights did not expire, and the City's refusal to recognize them was inconsistent with the PSA and violated the HAA, and (4) the City's refusal to grant regulatory incentives, concessions, and waivers violated the DBL. Jha's claim for declaratory relief is denied. A writ shall issue directing the City to set aside the City Council's denial of the June 27, 2023 PSA appeal and to review and process Jha's Project application pursuant to the PSA, HAA and DBL as interpreted herein.

Jha's counsel is ordered to prepare a proposed judgment and writ, serve them on the City's counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment and writ along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for August 27, 2024 at 9:30 a.m.

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[16] The City argues that it acted in good faith. Opp. at 21-22. The City's bad faith is relevant only to whether the court should direct it to approve the Project. §65589.5(k)(1)(A)(ii). If the court finds that an agency acted in bad faith in disapproving a project in violation of the HAA, the appropriate remedy is an "order or judgment directing the local agency to approve the housing development project" and attorney fees and costs. §65589.5(k)(1)(A)(ii). "Bad faith" "includes, but is not limited to, an action that is frivolous or otherwise entirely without merit." §65589.5(l). Jha fails to seriously address this issue and the court's decision requires further proceedings anyway.

Dated: July 23, 2024

Superior Court Judge

JAMES C. CHALFANT

07/25/2024

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Via U.S. and Electronic Mail

March 27, 2025

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Re: Appeals of Community Development Department Director's Determination Re Arya and Lux SB 330 Planning Applications

Dear Travis:

I am acknowledging receipt of the appeals of Town staff's determination that, because the Arya and Luxe planning applications remain incomplete, the projects are no longer vested, pursuant to Government Code Section 65941.1(e).

As you know, Government Code Section 65941.1(e) provides as follows:

(1) Within 180 calendar days after submitting a preliminary application with all of the information required by subdivision (a) to a city, the development proponent shall submit an application for a development project that includes all of the information required to process the development application consistent with Sections 65940, 65941, and 65941.5.

(2) If the public agency determines that the application for the development project is not complete pursuant to Section 65943, the development proponent shall submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information. If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force and effect.

ATTACHMENT 5

(3) This section shall not require an affirmative determination by a city . . . regarding the completeness of a preliminary application or a development application for purposes of compliance with this section.

I read Section 65941.1 to provide that applicants are required to complete the planning application within 90 days after the first 180-day period.[1]

That said, I recognize of the import of this question. Therefore, I requested a legal analysis on the meaning of Government Code Section 65941.1(e)(2) from the law firm of Goldfarb & Lipman. I have enclosed a copy of that analysis, which concludes that Section 65941.1(e)(2) provides for a single 90-day period, in addition to the initial 180-day period in which to render a planning application complete. As you can see from the enclosed, this conclusion is based on the plain language of the statute, the statutory scheme as a whole, the legislative history of Government Code Section 65941.1, and the purpose of the legislation, which was to expedite the production of housing in California. The Town is concerned that allowing unlimited 90-day periods within which to complete the application will delay rather than speed up the production of housing in Los Gatos.

In order to provide certainty on this question to both the Town and project applicants, the Town will be seeking declaratory relief as to the correct interpretation of Section 65941.1, since no appellate court has definitively interpreted the section. We stress that the Town is seeking declaratory relief in good faith, so that all parties, not just the Town, can obtain judicial guidance on how to apply Section 65941.1's reference to "the 90-day period" within which to complete the application. It is not the Town's intention in any manner to delay or "effectively disapprove" these planning applications. In fact, the Town does not intend to make a final decision on these two applications until after receiving the court's opinion. Further, the Town will seek to expedite the court's resolution of the issue.

Put simply, the Town needs a judicial opinion on this important question of statutory interpretation. Crucially, while the Town seeks a judicial opinion, it will continue to process the Arya and Luxe planning applications. In addition, the Town will schedule the appeals of the Town's determination for consideration by the Town Council as soon as the Town has obtained a judicial opinion.

Finally, we want to be sure you are aware that Los Gatos is fully committed to

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[1] However, the Arya and Luxe applicants vested to Town guidelines providing that applicants were eligible for two additional 90-day periods in which to submit complete planning applications and remain vested. As a result, the Arya and Luxe applicants were provided with two additional 90-day periods in which to render the planning applications complete.

expeditiously meeting its obligations under State Housing Law. The Town is proud of its housing accomplishments, which include exceeding its RHNA allocation for the 2015-2023 Housing Element period, obtaining certification of a 2023-2031 Housing Element that accommodates the Town's RHNA allocation of 1993 units with a buffer, and approving 340 residential units thus far in this housing cycle.

Please let me know if you have any questions in the interim.

Very truly yours,

Gabrielle Whelan
Town Attorney

cc: Barb Kautz, Esq., Goldfarb & Lipman

Enclosure

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March 27, 2025

memorandum

To

Gabrielle Whelan, Town Attorney

From

Dolores Bastian Dalton
Barbara E. Kautz

RE

The Meaning of Government Code Section 65941.1(e) (2)

You have asked for our analysis of Government Code section 65941.1(e)(2), and specifically, whether the 90-day period referred to in that section resets after each resubmission of an application. We understand that, in recent appeals, development applicants have argued that a preliminary application remains in effect so long as applicants re-submit an application found incomplete within 90 days after receiving a list of incomplete items, allowing successive and unending 90-day periods after each incompleteness determination. In our view, Government Code Section 65941.1(e)'s reference to "the 90-day period" within which to submit specific information needed to complete a preliminary application likely refers to a single 90-day period. As discussed below, the plain text of the statute, the context, the legislative history, and the public policy of expediting housing production behind the Housing Crisis Act of 2019 (Government Code Sections 65941.1, 65943 and 66300) support this reading.

The Preliminary Application

The Housing Crisis Act created the "preliminary application." A preliminary application allows a developer to submit a specified list of information about a proposed housing project to a local agency in an abbreviated application, before formally applying for project approval. (Government Code Section 65941.1.)[1] The primary effect of the preliminary application is that the proposed project becomes "vested" to the local agency's development standards, fees, and zoning rules that apply to the project when a complete preliminary application is submitted, with limited exceptions. (Section 65589.5(o).) Changes in those local rules that might make the project more expensive or difficult are not permitted to apply to the project, while the preliminary application is in effect.

[1] All unlabeled statutory references are to the Government Code.

In a significant change in the law, the preliminary application allows developers to "vest" housing projects very early in the planning process. The local agency's rules in effect when a complete preliminary application is submitted remain applicable throughout the development review, even if local ordinances change later. This is an exceptional benefit conferred for minimal effort, designed to eliminate a good deal of the risk and uncertainty inherent in land use entitlement, in exchange for quick production of housing.

The Housing Crisis Act also requires that a project proponent must complete a formal application and move a project forward expeditiously, or else lose vesting. To maintain vesting, the development proponent must submit an application for approval of the project under the Permit Streamlining Act (PSA) (Sections 65940 *et seq*., 65941, and 65943). The deadline for submitting the regular project application is 180 calendar days after submitting a preliminary application that contains all of the statutorily-required information. (Section 65941.1(e)(1).) That section states:

> (e)(1) **Within 180 calendar days** after submitting a preliminary application with all of the information required by subdivision (a) to a city, county, or city and county, the development proponent shall submit an application for a development project **that includes all of the information required to process the development application consistent with Sections 65940, 65941, and 65941.5**. (Emphases added.)

We are addressing the correct interpretation of Section 65941.1(e)(2),[1] which states:

> (e)(2) If the public agency determines that the application for the development project is not complete pursuant to Section 65943 [the Permit Streamlining Act], the development proponent shall submit the specific information needed to complete the application **within 90 days** of receiving the agency's written identification of the necessary information. **If the development proponent does not submit this information within <u>the</u> 90-day period, then the preliminary application shall expire and have no further force or effect.** (Emphases added.)

The Town, along with other local agencies throughout the State, have read this to mean that, after the 180-day period to submit a complete application expires, this provision refers plainly to <u>a single</u> 90-day review period (**<u>the</u>** 90-day period) within which a project applicant must complete a development application, in order to maintain the extraordinary vesting benefit conferred by the Housing Crisis Act. This reading would give an applicant at least 270 days total to merely submit plans that include all items required by the local agency's application form, in order to maintain vesting.

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[1] Formerly numbered Section 65941.1(d)(2); the pertinent section was renumbered effective January 1, 2025 when subdivision (b), related to fee estimates, was added to Section 65941.1.

In recent appeal submissions, we understand that developers have asserted that a preliminary application remains in effect so long as applicants continually re-submit an application found incomplete, within 90 days after receiving a list of incomplete items—no matter how long the overall process takes, how little change is made in the plans, or how many notices of incompleteness the Town provides—allowing iterative and unending 90-day periods, and consequently, unending vesting.

In our view, a continual reset of "the" 90-day period, all the while maintaining vesting, cannot be squared with the plain language of the statute. Further, the statute's context, as well as the legislative history and the public policy which led to the enactment of the Housing Crisis Act, all support the idea that the Legislature intended that the special vesting benefit conferred by the preliminary application should not last indefinitely. Of concern is that the developers' interpretation would allow an applicant to receive the benefits of vesting forever, without producing the housing that is the goal of these statutes. Crucially, a developer could game the system by filing a preliminary application and then submitting a development application within 180 days that omits required information. The applicant could then resubmit within 90 days after each successive incompleteness determination—all the while maintaining vesting, burdening the community with developments governed by outdated rules and fees, which are not actually built until years later.

Notably, SB 330's vesting provisions conferred an unprecedented benefit upon applicants, by providing for vested rights with a minimum amount of effort. Before the enactment of SB 330, vested rights required much more: either a development agreement, which requires approval of an ordinance subject to referendum (Sections 65864 *et seq.*); completion of a vesting tentative map (Section 66498.5); or substantial construction in reliance on an approved building permit. (*Avco Community Developers Inc. v. South Coastal Reg'l. Comm'n.* (1976) 17 Cal.3d 785.)

All of these required detailed plans and substantial time and effort. SB 330 represents a significant change in the law of vested rights, by requiring merely a streamlined application that contains limited information about a proposed project—which could differ significantly from the eventual project. The developers' interpretation would impermissibly allow developers to maintain vesting simply by resubmitting minor changes. This consequence is hard to square with the legislative history, since the stated purpose of the Act was to produce housing quickly.

Moreover, section 65941.1(e)(2) contemplates an expiration of the preliminary application, due to the failure to supply the missing information within "the" 90-day period:

> If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force and effect.

A reading that allows unending renewals, and resulting unending vesting, is difficult to reconcile with the clear expiration date set forth in the section.

The argument that Section 65941.1(e)(2) allows vesting for an unlimited period of time rests upon that section's reference to Section 65943 of the Permit Streamlining Act. That section states:

> Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the application is determined to be incomplete, the lead agency shall provide the applicant with an exhaustive list of items that were not complete. That list shall be limited to those items actually required on the lead agency's submittal requirement checklist. In any subsequent review of the application determined to be incomplete, the local agency shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. **Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application.** (Emphasis added.)

Section 65943, unlike Section 65941.1, expressly states that resubmittals begin a new 30-day review period under the Permit Streamlining Act—not the Housing Crisis Act. If the Legislature had intended the 90-day period in Section 65941.1(e)(2) to reset upon each resubmission, it could have easily included similar language, as discussed in more detail below.

The Rules of Statutory Interpretation Support the Conclusion that the 90-Day Period, and Vesting, Do Not Renew Indefinitely.

Courts look first to the plain language of the statute to interpret it. When construing a statute, a court's aim is to ascertain legislative intent. (*People v. Park* (2013) 56 Cal.4th 782, 796; *People v. Jefferson* (1999) 21 Cal.4th 86, 94. When a court construes a statute, its role "is simply to ascertain and declare what is in terms or in substance contained therein, **not to insert what is omitted**, or to omit what has been inserted . . ." (Code Civ. Proc., § 1858; *Los Angeles Unified School Dist. v. Superior Court* (2021) 64 Cal.App.5th 549, 559, *aff'd* (2023) 14 Cal.5th 758; emphasis added.)

Here, Section 65941.1 requires an applicant to submit information needed to complete the application within "the 90-day period"; otherwise, "the preliminary application"—a type of application created for the first time by the Housing Crisis Act--- "shall expire and

have no further force or effect." (Section 65941.1(e)(2).) The plain language seems clear—the Legislature identified a single 90-day period by referring to it as "the 90-day period."

In contrast, Section 65943, which predates Section 65941.1, does not address preliminary applications at all. Instead, it concerns the more formal "application for a development project" and the deadline imposed on a public agency to determine if that application is complete. Section 65943, unlike Section 65941.1, expressly states that the 30-day period for an agency determining completeness resets upon an application resubmittal: "Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application." (Gov. Code, § 65943(a).)

Section 65941.1 and 65943 are entirely different in this respect. An argument for more than a single 90-day period would read the word "the" out of Section 65941.1, and insert the language from preexisting 65943, conflicting with the rule of interpretation in Code of Civil Procedure section 1858. In other words, if the Legislature wanted the 90-day period to be capable of resetting, and the vesting capable of renewing, it could easily have said so, as it did in an analogous part of Section 65943---yet it did not.

Courts have refused to inject language from similar statutory sections into a newer statute, explaining the significance of the Legislature's ability to reuse language from those preexisting statutes, and the choice not to do so. For example, in *Vasquez v. State of California* (2008) 45 Cal.4th 243, 253, the California Supreme Court refused to impose a prelitigation demand on the availability of attorneys' fees under Code of Civil Procedure section 1021.5. As the Court reasoned: "the Legislature clearly knows how to require prelitigation demands unambiguously when that is what it wishes to do," citing a host of various notice and correction demands in various other statutory sections across the Civil Code, Code of Civil Procedure, Health & Safety Code, Corporations Code, and Government Code. (*See id.* at 252.)

In this instance as well, the Legislature was aware of preexisting Section 65943, allowing for multiple 30-day periods in which a public agency must make a completeness determination after multiple resubmittals of an incomplete application. The fact that the Legislature did not use the same language in 65941.1 is significant.

Similarly, the court in *People v. Myles* (2021) 69 Cal.App.5th 688, 697-703, construed a section of the penal code to have a broad, general definition of "new or additional evidence" in part because the Legislature "has defined or placed limits on the introduction of 'new evidence'" in other penal code sections, showing "that it knows how to limit the admissibility of such evidence when it intends to do so." Given the Legislature's lack of restriction on "new or additional evidence" in the relevant section, there was "no textual evidence of similar legislative intent" to restrict that term beyond its broad, general meaning. (*See id.* at 702.)

Courts have reached similar conclusions in an array of statutory contexts. (*See, e.g., In re Ethan C.* (2012) 54 Cal.4th 610, 637-38 [explaining how neighboring sections of the Welfare & Institutions Code requiring additional, specific evidence shows "that the Legislature understands how to specify the need for particularized evidence" and that the relevant section "contains no such language"].) "When language is included in one portion of a statute, its omission from a different portion addressing a similar subject suggests that the omission was purposeful." (*Id.* at 638.)

Even if the court were to conclude that the language of Section 65941.1(e)(2) is ambiguous, other statutory canons forbid reading language into a statute that is not there. "The expression of some things in a statute necessarily means the exclusion of other things not expressed." (*People v. Vasquez* (2016) 247 Cal.App.4th 513, 519 [concluding "that resentencing was intentionally excluded from" certain subdivisions of a statute that differed from others because they "say nothing about resentencing."].) Here, Section 65943 shows a repeating 30-day obligation for a public agency to turn around a completeness determination, or face the application being deemed complete. But Section 65941.1, applying to the same application but a different party (and with different consequences), did not include any language to suggest that "the 90-day period" repeats. The inclusion of a repeating period in one section suggests the intentional exclusion of a repeating period in another section.

Courts also infer legislative intent from the Legislature's repeated amendments. Where a statute is "amended frequently after its enactment" but "none of the limiting amendments modified the language" at issue, a court should infer that the Legislature intended the new 30-day periods in Section 65943 and the single 90-day period in Section 65941.1 to operate differently. (*See In re Jose S.* (2017) 12 Cal.App.5th 1107, 1120 fn. 6.) Section 65941.1 has been amended five times in its brief history, with no changes to the language at issue.

Although courts must also read statutes together to make sense of and give effect to all provisions, there is no conflict between Sections 65941.1 and 65943 that would require reading additional language into Section 65941.1. Section 65943 addresses public agency deadlines to provide a completeness determination. Section 65941.1, however, addresses the development proponent's deadline to maintain the extraordinary benefit of vesting.

Even if the two statutes conflicted and could not be harmonized, "[a]nother principle of statutory construction. . . holds "that in the event of a conflict between two statutes, effect will be given to the more recently enacted law." (*Moreno v. Bassi* (2021) 65 Cal.App.5th 244, 256; *see also Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1504 ["[A] more recent provision is typically more persuasive than an older one."].) Thus, Section 65941.1 (e)(2)'s newer language—providing a single 90-day period without any reference to that period repeating—should control.

The Statutory Context of Section 65941.1(e) (2), including the PSA and the HAA, Support the Conclusion that Preliminary Application Vesting Was Not Intended to Renew Indefinitely.

We also reviewed the interpretation of Section 65941.1(e)(2) in light of its statutory context as part of the Permit Streamlining Act (PSA) (Section 65940 *et seq.*) and related provisions in the Housing Accountability Act (HAA) (Section 65589.5.) The context demonstrates that the reference to Section 65943 in Section 65941.1(e)(2) was not intended to entitle preliminary applications to remain in effect for an unlimited period, but rather to define the time limit for completing the project application before the preliminary application expires.

The PSA was originally adopted in 1977 (Chapter 1200, Statutes of 1977) and has been amended numerous times since. Sections 65940 and 65943 describe the process that cities must follow when an application is made for development projects of all types, not just housing projects. This process has existed since 1977. A city must provide a detailed list of information needed for various types of applications (Sections 65940 and 65941) and notify applicants of the City's application fees. (Section 65941.5.) After receiving the application, the City *must* review the application for completeness within 30 days, and re-review the project for completeness within 30 days each time the applicant resubmits plans. (Section 65943.) Under recent amendments, cities are under strict limitations: nothing can be requested that was not on the city's application form, and nothing can be requested in a subsequent incomplete letter that was not requested in the first letter. (*Id.*)

In contrast to the strict requirements the section places upon local agencies, Section 65943 establishes no deadlines for the developer to act. An applicant can elect to resubmit plans quickly, or to delay resubmissions for months; the statute establishes no timeline for making an application complete. But the project can only be approved once the plans are complete.

The Housing Crisis Act created an entirely new process, made available for the first time five years ago when the Housing Crisis Act was enacted, that allows housing developers to "vest" their projects merely by submitting a very abbreviated application. So long as the preliminary application remains in effect, no new local laws or fees can be applied to the project, with very limited exceptions; fees may be fixed, even the project takes years to construct. (Section 65589.5(o).)

In exchange for this extraordinary benefit, however, the statute requires developers to provide plans that can be approved within a reasonable time period. The applicant must submit a project application within 180 days of the submission of the preliminary application, using the process described in the PSA. That application must include "*all of* the information required to process the development application consistent with Sections 65940, 65941, and 65941.5." (Section 65941.1(e)(1).) Then, as with all development projects, Section 65943 requires a city to determine if the project is complete, and to provide an "exhaustive list of items that were not complete" within 30 days. (Section 65943(a).)

The procedure for keeping a preliminary application alive, described in Section 65941.1(e), sets forth a completely different process from the PSA application process

that was established over 30 years ago, for all development projects. Unlike the provisions applicable to developments without preliminary applications, Section 65941.1(e)(2) sets time limits for submittal of a complete project application – placing obligations on developers that are not included in Section 65943. And, the obligations only apply if the developer first submitted a preliminary application. In spite of the availability of this new procedure, many projects are still done under the PSA only, with no preliminary application.

Section 65941.1(e)(2) references Section 65943 *only* to set the date when the 90-day limit on submitting a complete application begins: if the public agency sends a completeness letter under Section 65943 (as it is supposed to do), then the applicant must "submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information." The statute necessarily references Section 65943 to describe the letter that starts the shot clock; there would not reasonably be another way to describe it. But – unlike Section 65943, which establishes no time limits to complete a planning application – for the new preliminary application process, if the application is not completed within 90 days of receipt of the city's letter, the preliminary application expires and has "no further force or effect." While Section 65943(a) describes a re-submittal process, nothing in Section 65941.1(e)(2) describes a "resubmittal;" rather, it is the developer's obligation to make the application complete within the 90-day period, or else lose vesting.

The loss of vesting rights established by a preliminary application is a separate and distinct issue from the ability to resubmit an application under Section 65943. The loss of vesting rights does not limit an applicant's ability to resubmit plans under Section 65943. An applicant may elect to continue resubmitting the application, regardless of whether the preliminary application has expired, or not. And, there continues to be no deadline for an applicant to respond to incompleteness determinations under the PSA. The only deadline pertains to keeping the preliminary application alive—and that deadline is 90 days.

Likewise, the HAA distinguishes between the preliminary application process and the review of projects under Section 65943. For instance, various vesting provisions contained in the HAA at Section 65589.5(o) apply *only* to projects that filed preliminary applications. A letter describing any inconsistencies with local ordinances is required only after a project is "determined to be complete," which means that an applicant has submitted a complete application "pursuant to Section 65943." (Sections 65589.5(h)(10).)

Thus, read in context with related provisions. the procedure for maintaining the vesting rights conferred by the preliminary application is separate and distinct from the procedure governing regular project applications, set forth in Section 65943.

SB 330's Legislative History Supports the Reading that an Applicant Has 90 Days Within Which to Provide Missing Information, or Else Lose Vesting.

The legislative history of the Housing Crisis Act demonstrates a legislative intent to create certainty in the application process and allow project applicants to receive local agency approval with clarity about the rules to be followed, so that housing could be built more quickly. The developers' reading of Section 65941.1 (e) would allow the housing application process to last indefinitely, and reward applicants who merely want to maintain vested rights, with no intent to construct sorely needed housing. This would interfere with the Town's goal of meeting the Regional Housing Needs Allowance (RHNA) on schedule, as required by state law.

For example, the Author's Statement for the bill states:

> The bill then requires the city to give project proponents a single list of all incomplete elements of the full application and sets a new requirement that the project proponent respond with the additional information **within 90 days**. (Assembly Committee on Local Government, Committee Background Request at AP2-51; emphasis added.) (A copy of the Author's Statement is attached to this Memo as Exhibit A.)

In addition, the Summary of the Legislation appearing in the Assembly Committee on Housing and Community Development Report (Date of Hearing June 19, 2019), refers to the 90-day period as a single period, after which the preliminary application expires:

> v) If the local agency determines that the information provided is not complete, **the proponent has 90 days after receiving this determination in writing to provide the information, or their preliminary application will expire**. (Emphasis added; see Exhibit B.)

Moreover, the Assembly Committee on Local Government's Report for the July 10, 2019, hearing on SB 330 states that the bill:

> f) Requires, if the public agency determines that the application. . . is not complete, the proponent to submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information. **Specifies the preliminary application shall expire if the proponent does not submit the information within 90 days**. (Emphasis added; see Exhibit C.)

The bill author's Response to the Assembly Committee on Housing and Community Development's Background Information Request explains that one of the purposes of the bill was to:

> Give some timeframe by which a developer must move from initial application to submittal of a full complete application (6 mo.**) so that**

> **developer doesn't just put in an initial application, lock rules, then go away for 10 years and come back wanting locked rules for their project**. (Emphasis added.)

The Response also stresses the importance of refraining from actions or interpretations that would delay the production of housing:

> SB 330 asks local governments to process housing permits faster, not change the rules midstream, **and hold off on actions that would decrease or delay housing. . .** (Emphasis added; see Exhibit D.)

The American Planning Association (APA) withdrew its opposition to SB 330 in part because safeguards were added to require that project applicants complete preliminary applications quickly or lose vesting. According to the APA's June 12, 2019, Memorandum of the Assembly Housing Committee, the 90-day limit was intended to establish a: "timeline that will create an obligation of the applicant to pursue a complete application in a reasonable timeframe in order to retain their vested rights" (attached as Exhibit E.) An iterative 90-day period, with no limit on the number of submissions, is not "a reasonable timeframe" for retaining vested rights.

Finally, we are aware that HCD has taken the position that the 90-day period referred to in Section 65941.1(e)(2) restarts with each subsequent resubmittal by an applicant. HCD relies in part on the trial court's decision in *Jha v. City of Los Angeles*, LASC 23STCP03499; *appeal pending*. That trial court decision does not have precedential value, and has been appealed. Further, the court did not consider all of the legislative history referred to above. Finally, we disagree with the court's conclusion that Section 65943's reference to a resubmission should be imported into Section 65941.1 (e) (2), for all of the reasons detailed above.

We respect the guidance provided by HCD yet note that HCD's interpretation of the housing statutes is not binding on a court. (*Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1192-1193; *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 243.) Further, and crucially, we are concerned that the developers' interpretation will make it more difficult for the Town to produce the housing it needs on time, which will make it harder for the town to comply with RHNA obligations and the other requirements of state law, which HCD is charged with enforcing.

We are happy to answer any questions or discuss in more detail any of the points touched on above.

Thank you.

Filed
January 29, 2026
Clerk of the Court
Superior Court of CA
County of Santa Clara
25CV462276
By: MJacobo

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
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THE TOWN OF LOS GATOS, a California municipal corporation, Plaintiff, vs. ARYA PROPERTIES, LLC, et al. Defendants.	Case No. 25CV462276
AND RELATED CROSS-ACTION	ORDER RE: MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION (*Order on Submitted Matter*)

I. Introduction

Plaintiff in this case is the Town of Los Gatos, which filed its complaint for declaratory relief against defendants Arya Properties, LLC (Arya) and Los Gatos Boulevard Properties, LLC (Boulevard, and collectively, defendants). The complaint seeks "a declaration of [the Town's] rights and duties with respect to the processing of applications for housing development projects" and "judicial guidance on the correct interpretation of [Government Code[1] s]ection 65941.1, so that it may process

[1] Further unspecified statutory references are to the Government Code.

development projects in full accordance with its legal rights and obligations, and so affected developers may have similar clarity as to their, and the Town's, rights and duties." (Complaint, ¶ 1.) The complaint asserts the Town's position that "to retain extraordinary vesting rights granted by the Housing Crisis Act [of 2019, sections 65941.1, 65943, and 66300], developers should complete their applications within the reasonable period of time granted by the Legislature [while] [d]efendants claim that they may retain these vesting rights indefinitely while continuing to submit incomplete applications, and building no housing." (*Ibid.*)

Specifically, the Town's complaint alleges that under section 65941.1, subdivision (e)(2) (section 65941.1(e)(2)), "after the 180-day period to submit a complete application expires," there is only "a single 90-day period … within which a project applicant must complete a [development] application to maintain vesting" while defendants maintain that the vesting of "a preliminary application remains in effect so long as applicants re-submit [a development] application found to be incomplete within 90 days after receiving a list of incomplete items—no matter how long the overall process takes, how little change is made in the plans, or how many notices of incompletion the Town provides—allowing successive and unending 90-day periods after each incompleteness determination." (Complaint, ¶¶ 16, 17.) The complaint's prayer seeks "a judicial declaration that [section 65941.1(e)(2)]'s reference to 'the 90-day period' within which to submit specific information needed to complete a [development] application refers to a single 90-day period."

Defendants Arya and Boulevard, in turn, filed a cross-complaint/petition against the Town, the Town of Los Gatos Community Development Department, and the Town of Los Gatos Planning Division (collectively, the Town cross-defendants) alleging causes of action for (1) a writ of mandate directing the Town cross-defendants to comply with the Permit Streamlining Act (PSA, section 65920 et seq.) with respect to Arya and Boulevard's respective projects; (2) a writ of mandate directing the Town cross-defendants to comply with the Housing Accountability Act

(section 65589.5) with respect to Arya and Boulevard's respective projects; and (3) declaratory relief. The declaratory relief cause of action alleges an actual controversy in that: "Cross-defendants' policies and procedures … operate to avoid obligations imposed by state law, such as (1) [the] refusal to process housing development projects that qualify under the 'Builder's Remedy' section of the Government Code; and (2) [the] disregard[of] the vested rights of Preliminary Applications and associated housing development project applications under state law," in that the Town cross-defendants' actions are prohibited by the HAA, section 65589.5, California Senate Bill 330 (SB 330), specifically section 65941.1, and the PSA, section 65943.

The Town and the Town cross-defendants filed a motion for summary judgment on both the complaint and cross-complaint, respectively, and alternatively for summary adjudication of the complaint's single declaratory relief cause of action. The notice of motion asserts as its grounds that "the undisputed facts establish that the 90-day period in … section 65941.1(e)(2) refers to a single 90-day deadline within which to submit all of the information needed to complete the preliminary application as set forth in the statute, or else the preliminary application and associated vesting expires." This ground is asserted to resolve both the complaint and cross-complaint in the Town's and the Town cross-defendants' favor in that "all causes of action are based on the dispute over this 90-day deadline in" section 65941.1(e)(2). In this regard, the notice of motion further seeks a judicial declaration that "[s]ection 65941.1(e)(2)'s reference to 'the 90-day period' within which to submit specific information needed to complete a preliminary application refers to a single 90-day period."[2]

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[2] The Town's counsel somewhat inconsistently clarified its position in argument at the hearing, asserting it more precisely as section 65941.1, subdivisions (e)(1) and (e)(2), read together, mean that "the total amount of time available to complete the development application is 270 days. 180 days, referred to in (e)(1), plus a 90-day period to complete, for a total period of 270 days. … [¶] …

Thus, as apparently agreed by the parties, the motion in essence presents a single legal issue—the correct statutory interpretation of section 65941.1. Although the motion is one for summary judgment or adjudication under Code of Civil Procedure section 437c, it does not pivot on whether there are disputed issues of material fact. Indeed, the material facts appear to be undisputed such that the single issue presented by the motion is one of law. This, despite the parties' evidence in support of and in opposition to the motion, and their respective separate statements, going well beyond the material facts needed to resolve the dispositive legal issue presented by motion.

The motion came on for hearing before the Honorable Helen E. Williams on October 15, 2025, at 1:30 p.m. in Department 66. Counsel of record appeared. After full consideration of the papers on both sides, the authorities submitted, as well as oral argument by the parties,[3] the court orders as follows:

II. Factual and Procedural Background

A. The Pleadings as Relevant to the Motion

As noted, this action presents a complaint for declaratory relief by plaintiff and cross-defendant the Town against defendants and cross-complainants Arya and

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Because the total period is 270 days, multiple submissions are possible if a developer acts quickly." (RT pp. 15-16.) In other words, the Town's position incorporates the possibility that multiple incompleteness determinations by the agency are permitted and responses thereto, but if the total period exceeds 270 days, the developer's vested entitlement rights under section 65941.1, subdivision (e)(1) are lost.

[3] The court previously granted the applications of amici curiae in support of defendants and cross-complainants California Housing Defense Fund, Californians for Homeownership, and Yes In My Backyard to file a single brief in opposition to the motion, further allowing the Town and the Town cross-defendants a single response brief. At the hearing, the court also allowed brief and collective argument by counsel for one amicus party and rebuttal to that argument by the Town's counsel. The court has considered the amici brief and arguments and the Town's responses thereto in ruling on the motion.

Boulevard, and a cross-complaint in mandate and declaratory relief against the Town cross-defendants.

The complaint sets out the Town's view of the legal issue presented. It alleges that the preliminary application for a housing development project as provided at section 65941.1, subdivision (a) allows developers to "vest" housing projects as entitlements very early in the planning process, when only conceptual plans have been prepared. (Complaint at ¶ 13.) Once a preliminary application is submitted with all required components, the developer gains "vested rights" to develop the project according to the standards and fees that were in place at the time of submission. (*Ibid.*)

The complaint further alleges that under section 65941.1, a project proponent must complete a formal application and move a project forward within the statutory deadlines provided at section 65941.1, subdivision (e), or else the project loses vesting. (Complaint at ¶ 14.) "To maintain the vesting conferred by the preliminary application, the development proponent must submit an application for approval of the housing development project under the PSA (sections 65940 et seq., 65941, and 65943). (*Ibid.*) The deadline for submitting the project application under section 65941.1, subdivision (e)(1) is 180 calendar days after submission of a preliminary application that contains all of the statutorily required information." (*Ibid.*) The complaint then quotes section 65941.1, subdivision (e)(1) as follows:

> Within 180 calendar days after submitting a preliminary application with all of the information required by subdivision (a) to a city, county, or city and county, the development proponent shall submit an application for a development project that includes all of the information required to process the development application consistent with Sections 65940, 65941, and 65941.5. (Complaint at ¶ 14, quoting statute.)

As noted, the complaint further pleads that the controversy in this declaratory relief action is the correct interpretation of section 65941.1(e)(2), which provides, as quoted:

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> If the public agency determines that the application for the development project is not complete pursuant to Section 65943 [the PSA], the development proponent shall submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information. *If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force or effect*. (Complaint at ¶ 15, quoting statute, italics added.)

According to the complaint, many local agencies throughout the State, including the Town, contend that "after the 180-day period in section 65941.1, subdivision (e)(1) to submit a complete application expires, this provision refers plainly to a single 90-day review period (the 90-day period) within which a project applicant must complete a preliminary application to maintain vesting." (Complaint at ¶ 16.) "This provides an applicant with at least 270 days total to merely submit plans that include all items required by the local agency's application form before a preliminary application expires." (*Ibid*.)

By contrast, according to the complaint, "defendants contend that a preliminary application remains in effect so long as applicants re-submit an application found incomplete within 90 days after receiving a list of incomplete items—no matter how long the overall process takes, how little change is made in the plans, or how many notices of incompletion the Town provides—allowing successive and unending 90-day periods after each incompleteness determination." (Complaint at ¶ 17.)

The cross-complaint/petition makes allegations and claims and seeks relief beyond the correct interpretation of section 65941.1 in support of its three causes of action. But it also alleges as material to all three causes of action cross-defendants' view that under section 65941.1(e)(2), the "completeness determination [of a development application] is an iterative process that contemplates the possibility of resubmissions and 30[-]day response periods to make a [d]evelopment [a]pplication complete." (Cross-complaint at ¶ 31.) It further alleges that section 65941.1(e)(2) expressly cross-references section 65943, which contains an iterative process that

contemplates multiple resubmission windows." (Cross-complaint at ¶ 32; see also cross-complaint at ¶¶ 47-49, 56, 65, 69 [e.g., "the necessary predicate for the Town's declaratory relief action is that the parties disagree as to the meaning and interpretation of" section 65941.1].)

Thus, the proper statutory construction and interpretation of section 65941.1(e)(2) as the dispositive legal issue presented by the motion appears to be well framed by the pleadings. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1253 [pleadings delimit issues to be considered on summary judgment].) Again, although the material facts appear to be undisputed here, the question remains whether the Town and Town cross-defendants are dispositively entitled to judgment (or adjudication) as a matter of law based on their asserted position on the dispositive legal issue, on which the Town and Town cross-defendants as the moving parties bear the burden of persuasion. (*Aguilar, supra*, 25 Cal.4th at p. 850 [from start to finish, moving party bears the burden of persuasion that there is no disputed issue of material fact *and* that they are entitled to judgment as a matter of law].)

B. Undisputed Material Facts as Relevant to the Motion[4]

1. The Town's Compliance With its Required Housing Element Update

[4] The relevant facts as treated by both sides in their respective separate statements are larded with irrelevant information, improper and biased characterizations, and legal conclusions. The stated facts are also with some frequency not supported by admissible evidence (see two separate orders on evidentiary objections issued in connection with this motion, which are incorporated here by reference). The court here reframes the undisputed material facts from the separate statements to the unadorned basics as necessary only to decide the motion. Further, it does not appear that the moving parties responded to the defendants/cross-complainants' "additional material facts and supporting evidence" reflected at the end of these parties' filed response to separate statement in opposition to the motion. The court will therefore accept the relevant and material facts stated there as undisputed for purposes of the motion.

Under the housing element law, the Town was required to adopt a compliant housing element update for its Sixth Cycle Regional Housing Needs Allocation (RHNA) (2023-2031) by January 31, 2023. (Additional Material Fact No. 1.) From February 1, 2023, to July 10, 2024, the Town did not have a substantially compliant housing element and was therefore subject to the builder's remedy during this compliance gap. (Ex. H to Brooks Decl.)

2. The Arya Project

On November 14, 2023, while the Town was out of compliance with its housing element requirements, Arya submitted a preliminary application for a project to be located at 15300 and 15330 Los Gatos Boulevard, Los Gatos (Arya Project). (Complaint at ¶ 26; Town's Sep. Stmt. at Fact No. 1.) Arya followed its preliminary application with the timely submission of its development application on May 10, 2024, within the 180-day deadline set forth in section 65941.1, subdivision (e)(1). (Town's Sep. Stmt. at Fact No. 3 and response.)

The Town responded with a letter dated June 5, 2024, within 30 days, determining Arya's development application to be incomplete under section 65943. (Town's Sep. Stmt. at Fact No. 1.) Arya timely responded to the Town's first incompleteness determination on September 2, 2024, within 90 days as provided by section 65941.1(e)(2). (*Ibid.*) The Town then issued its second incompleteness determination on September 25, 2024, within 30 days. (*Ibid.*) Arya timely responded to the second incompleteness determination on November 27, 2024, 63 days later and within 90. (*Ibid.*) On December 23, 2024, the Town provided Arya with its third determination of incompleteness, followed by a letter dated January 30, 2025, from the Town's Community Development Director, notifying Arya of the right to appeal the incompleteness determination. (Town's Sep. Stmt. at Fact No. 4 and response.) The Town also communicated its position that Arya's preliminary application had expired and lost vesting because its development application remained incomplete after a second resubmittal. (Ex. C to Paulson Decl.)

On February 7, 2025, defendant Arya submitted an appeal of the Town's position that the preliminary application had expired because Arya's application remained incomplete after a second submittal. (Complaint at ¶ 29; Town's Sep. Stmt. at Fact No. 5.)

3. The Boulevard Project

Boulevard submitted a preliminary application on September 12 or 13, 2023 (it doesn't matter which), for a builder's remedy project located at 14849 Los Gatos Boulevard, Los Gatos, known as "the Luxe Builder's Remedy Project." (Boulevard Project) (Complaint at ¶ 32; Town's Sep. Stmt. at Fact No. 7 and response thereto; Additional Material Fact No. 9.) The Town was then out of compliance with its housing element requirements. Boulevard then submitted its development application on March 8, 2024, within section 65941.1, subdivision (e)(1)'s 180-day deadline. (Complaint at ¶ 34; Town's Sep. Stmt. at Fact No. 9.)

The Town responded with a letter dated April 3, 2024, within 30 days, determining the application to be incomplete under section 65943. (Complaint at ¶ 34; Town's Sep. Stmt. at Fact No. 10 and response thereto; Additional Material Fact No. 9.) Boulevard responded to the Town's April 3, 2024 incompleteness letter on July 2, 2024, 90 days later. (Complaint at ¶ 34; Town's Sep. Stmt. at Fact No. 11.) The Town responded with its second incompleteness determination on July 24, 2024, within 30 days. (Town's Sep. Stmt. at Fact No. 11 and response thereto.) Boulevard timely responded to the second incompleteness determination on October 21, 2024, 89 days later. (Town's Sep. Stmt. at Fact No. 11 and response thereto.) On November 20, 2024, the Town responded with a third incompleteness determination. (Town's Sep. Stmt. at Fact No. 11 and response thereto.)

On January 30, 2025, the Town's Community Development Director issued a letter notifying Boulevard of its right to appeal the incompleteness determination. (Complaint at ¶ 34; Town's Sep. Stmt. at Fact No. 12.) The Town also communicated its position that Boulevard's preliminary application had expired

and lost vesting because its development application remained incomplete after a second resubmittal. (Ex. C to Paulson Decl.)

On February 7, 2025, Boulevard submitted an appeal of the Town's position that the preliminary application had expired because Boulevard's development application remained incomplete after a second resubmittal. (Complaint at ¶ 34; Town's Sep. Stmt. at Fact No. 12.)

III. Motion for Summary Judgment, or in the Alternative, Summary Adjudication

As noted, the Town seeks an order granting summary judgment in its favor on the complaint and the Town cross-defendants seek the same with respect to the cross-complaint. In the alternative, the Town requests an order granting summary adjudication of its complaint, which alleges the single cause of action for declaratory relief on the parties' conflicting legal interpretations of section 65941.1(e)(2). The correct interpretation of this statutory text is thus the single and dispositive legal issue presented by the motion.

A. Town's Request for Judicial Notice

"Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117.)

In support of the motion, and without objection, the Town requests judicial notice of the following:

(1) The California Affordable Housing Pipeline (Pipeline) Brief which is publicly available online (Request for Judicial Notice [RJN] at Ex. A);

(2) May 27, 2025 Minute Order issued in this case (Ex. B);

(3) Authentication of Legislative History (Ex. C);

1 (4) Assembly Committee on Local Government – Committee Background
2 Request re. Measure SB 330 Response (Authored by Senator Nancy
3 Skinner) (Ex. D);
4 (5) Assembly Committee on Housing and Community Development –
5 Summary of SB 330 (June 19, 2019 hearing) (Ex. E);
6 (6) Assembly Committee on Local Government's Report on SB 330 (July 10,
7 2019 hearing) (Ex. F);
8 (7) Senate Amendment to Senate Bill No. 330 (March 25, 2019; 2019 – 2020
9 Reg. Sess.) (Ex. G); and
10 (8) June 12, 2019 American Planning Association Memorandum to Members
11 of the Assembly Housing Committee re. SB 330 (Skinner) – Neutral if
12 Amended (Ex. H).
13 The unopposed request appears relevant to issues raised in connection the
14 motion for summary judgment and adjudication. (See *Gbur v. Cohen* (1979) 93
15 Cal.App.3d 296, 301[information subject to judicial notice must be relevant to the
16 issue at hand].) The court accordingly grants the request and takes judicial notice of
17 Exhibit A as the Pipeline Brief is publicly available online and not reasonably
18 subject to dispute. (Evid. Code, § 452, subd. (h); see, e.g., *People v. Miami Nation*
19 *Enterprises* (2016) 2 Cal.5th 222, 231 [taking judicial notice of screenshots from
20 United States Patent and Trademark Office's website].) The court takes judicial
21 notice of Exhibit B as a record of the superior court. (Evid. Code, § 452, subd. (d);
22 see *Stepan v. Garcia* (1974) 43 Cal.App.3d 497, 500 [the court may take judicial
23 notice of its own file]; see also *Steed v. Dept. of Consumer Affairs* (2012) 204
24 Cal.App.4th 112, 122 (*Steed*) [trial court may take judicial notice of minute order,
25 but not of truth of factual findings and determinations on which the minute order is
26 based].) The court takes judicial notice of Exhibits C through H as they constitute
27 legislative history materials with respect to SB 330. (Evid. Code, § 452, subd. (c);
28 see *Global Financial Distributors Inc. v. Super. Ct.* (2019) 35 Cal.App.5th 179, 190,

1 fn. 4 ["We grant Global Financial's request to take judicial notice of the legislative
2 history of [Code of Civil Procedure] section 418.10"]; see also *Guinn v. County of San
3 Bernardino* (2010) 184 Cal.App.4th 941, 949, fn. 4 ["We take judicial notice of the
4 legislative history materials pertaining to Senate Bill No. 2215 contained in the
5 record on appeal"].)

6 **B. Defendants' Request for Judicial Notice**

7 In opposition, defendants request judicial notice of the following:

8 (1) Letter of Technical Assistance dated August 30, 2024, issued by the
9 Department of Housing and Community Development Division of Housing
10 Policy Development (HCD) to the Town entitled: "Town of Los Gatos –
11 Saratoga Road Project – Letter of Technical Assistance" (Ex. A);

12 (2) Notice of Violation dated December 2, 2024, issued by HCD to the City of
13 Beverly Hills entitled: "Beverly Hills Builder's Remedy Applications –
14 Notice of Violation" (Ex. B);

15 (3) Notice of Potential Violation dated February 12, 2025, issued by HCD to
16 the Town entitled: "Town of Los Gatos – 980 University Avenue Project –
17 Notice of Potential Violation" (Ex. C);

18 (4) Notice of Violation dated July 16, 2025, issued by HCD to the City of
19 Cupertino entitled: "City of Cupertino – Permit Streamlining Act 90-Day
20 Review – Notice of Violation" (Ex. D);

21 (5) Judgment Granting Petition for Writ of Mandate filed on September 17,
22 2024, in the case of *Janet Jha v. City of Los Angeles, et al.* (case no.
23 23STCP03499) in Los Angeles County Superior Court (Ex. E);

24 (6) Judgment Granting Petition for Writ of Mandate, filed on November 8,
25 2024, in the case of *Cal., Cnty. of Los Angeles, Yes in My Backyard,*
26 *Trauss, et al. v. City of Los Angeles* (case no. 24STCP0070) in Los Angeles
27 County Superior Court (Ex. F);

28

(7) 2024 Assembly Floor Analysis of Assembly Bill 1893, as amended August 23, 2024 ("AB 1893") (Ex. G).

Defendants request judicial notice of Exhibits A through D under Evidence Code section 452, subdivisions (b), (c), and (h) as they constitute public records issued by HCD. The Town does not oppose the existence of the HCD documents but contends the court should not afford them any weight or deference in ruling on the motion. This objection however has no bearing on whether judicial notice is proper under the Evidence Code as to these exhibits. Thus, the request for judicial notice of Exhibits A through D is granted.

Defendants request judicial notice of Exhibits E and F as records of the superior court in Los Angeles County under Evidence Code section 452, subdivision (d). The Town objects to the request on the ground that the exhibits constitute unpublished trial court opinions lacking precedential value. (See *Crab Addison, Inc. v. Super. Ct.* (2008) 169 Cal.App.4th 958, 963, fn. 3 [appellate court declined to take judicial notice of trial court order which had no precedential value and judicial notice could not be used to impart value it did not have].) The objection lacks merit as the exhibits constitute trial court judgments where judicial notice is permitted. "Judicial notice is properly taken of the existence of a factual finding in another proceeding, but not of the truth of that finding." (*Steed, supra,* 204 Cal.App.4th at p. 120; see *O'Neill v. Novartis Consumer Health, Inc.* (2007) 147 Cal.App.4th 1388, 1405 ["A court may take judicial notice of a court's action, but may not use it to prove the truth of the facts found and recited"]; see also *Professional Engineers v. Department of Transportation* (1997) 15 Cal.4th 543, 590, superseded by statute on another ground in *Consulting Engineers & Land Surveyors of California v. Department of Transportation* (2008) 167 Cal.App.4th 1457 ["[J]udicial notice of findings of fact does not mean that those findings of fact are true, but, rather, only means that those findings of fact were made"].) Therefore, the request for judicial notice of Exhibits E and F is granted. The court acknowledges that the results in

these two superior court cases as reflected in the documents has no precedential or authoritative value and the court will afford them none.

Finally, defendants request judicial notice of Exhibit G as an official act of the California Legislature under Evidence Code section 452, subdivision (b). (See *Elsner v. Uveges* (2004) 34 Cal.4th 915, 929, fn. 10 [Supreme Court grants request for judicial notice of legislative history of assembly bill]; *Tellez v. Super. Ct.* (2020) 56 Cal.App.5th 439, 449, fn. 3 ["We grant Tellez's request for judicial notice of Assembly Bill 3234, several interim drafts of the bill, several legislative analyses of the bill, and the governor's signing statement for the bill"].) The Town objects to the request as the legislative history of Exhibit G does not refer to any statute at issue in the case. But the court finds the exhibit is relevant to arguments raised in support of the opposition and thus the request for judicial notice as to this exhibit is granted.

C. Post-Hearing Submission

After the motion hearing, defendants submitted by letter (but did not file as it does not appear on the court's Odyssey docket) an advisement of a "Legal Alert" issued by the California Department of Justice, Office of the Attorney General, dated November 14, 2025 (OAG 2025-04).[5] The Legal Alert is directed to "All Cities, Counties, and other interested parties" and its subject is identified as "Consistent Interpretation of the Permit Streamlining Act's 90-day Rule to Resubmit Housing Development Applications." The Legal Alert provides analysis and concludes that "for purposes of determining whether a housing development project application is complete, an applicant is entitled to as many 90-day review and resubmission periods as necessary, and, throughout the process, retains the rights that vest upon the submission of a preliminary application under the Housing Crisis Act [of 2019]." The Legal Alert also cites HCD's technical assistance letters directed to various

[5] The letter merely pointed out the existence of the Legal Alert, which the court asked to be provided with.

jurisdictions on the application of section 65941.1(e)(2)'s 90-day rule, which are consistent with the Legal Alert's analysis and conclusion, and argues that HCD's interpretation of the statute is entitled to some deference, citing *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 221–222 (*Martinez*) ("courts generally will not depart from the HCD's determination unless 'it is clearly erroneous or unauthorized').

The Town cross-defendants filed an objection to defendants' letter and the court's consideration of the Legal Alert, challenging its authoritative and deferential value and urging the court instead to exercise its independent judgment in construing the relevant statute. The objection also notes that the Legal Alert is not "new," having been issued before the hearing in this case.

As explained below, the court will at the threshold exercise its independent judgment on the proper construction of the statute and will not defer to the Legal Alert, but the court recognizes that the analysis and conclusions stated therein precisely mirror both the position of the HCD on the relevant issue, for which there exists authority for *some* deference, and the arguments of defendants themselves in opposition to the motion.

D. Legal Standard

Any party may move for summary judgment. (Code Civ. Proc., § 437c, subd. (a); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*).) "The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact *and* that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c), italics added.) "The object of the summary judgment procedure is 'to cut through the parties' pleadings' to determine whether trial is necessary to resolve their dispute. [Citation.]" (*Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1020.)

1 “[T]he party moving for summary judgment bears an initial burden of
2 production to make a prima facie showing of the nonexistence of any triable issue of
3 material fact…” (*Aguilar, supra,* 25 Cal.4th at p. 850.) “A prima facie showing is one
4 that is sufficient to support the position of the party in question.” (*Id.* at p. 851.)
5 If the moving party makes the necessary initial showing, the burden of
6 production shifts to the opposing party to make a prima facie showing of the
7 existence of a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); see
8 *Aguilar, supra,* 25 Cal.4th at p. 850.)
9 A triable issue of material fact exists “if, and only if, the evidence would allow
10 a reasonable trier of fact to find the underlying fact in favor of the party opposing
11 the motion in accordance with the applicable standard of proof.” (*Aguilar, supra,* 25
12 Cal.4th at p. 850, fn. omitted.) If the party opposing summary judgment presents
13 evidence demonstrating the existence of a disputed material fact, the motion must
14 be denied. (*Id.* at p. 856.)
15 Throughout the process, the trial court “must consider all of the evidence and
16 all of the inferences drawn therefrom.” (*Aguilar, supra,* 25 Cal.4th at p. 856.) The
17 moving party’s evidence is strictly construed, while the opponent’s is liberally
18 construed. (*Id.* at p. 843.)
19 Similarly, “[a] party may seek summary adjudication on whether a cause of
20 action, affirmative defense, or punitive damages claim has merit or whether a
21 defendant owed a duty to a plaintiff. [Citation.] ‘A motion for summary
22 adjudication…shall proceed in all procedural respects as a motion for summary
23 judgment.’ [Citation.]” (*California Bank & Trust v. Lawlor* (2013) 222 Cal.App.4th
24 625, 630.)
25 “[S]ummary judgment (or summary adjudication) is a drastic remedy and
26 should be used with caution. [Citation.] Because summary judgment is a drastic
27 procedure all doubts as to the propriety of granting a motion for summary judgment
28 should be resolved in favor of the party opposing the motion. [Citations.]” (*Tully v.*

World Savings & Loan Assn. (1997) 56 Cal.App.4th 654, 660; see *Kernan v. Regents of University of California* (2022) 83 Cal.App.5th 675, 684 ["The drastic remedy of summary judgment may not be granted unless reasonable minds can draw only one conclusion from the evidence"].)

E. Legal Overview—Relevant Housing Laws

There is no doubt that California is perceived to be experiencing an unprecedented and long-term housing crisis, decades old. The Legislature has attempted to address the crisis over time with many and ongoing changes to housing laws to encourage and promote the production of housing, especially low-income housing. The crisis is reflected in legislation itself: "California has a housing supply and affordability crisis of historic proportions." (§ 65589.5, subd. (a)(2)(A).) "This 'despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels.' " (*California Renters Legal Advocacy and Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 830 (San *Mateo*), quoting § 65589.5, subd. (a)(2)(J).)

Legislative efforts to address the housing crisis include the Housing Element Law (§ 65580 et seq.), under which each city and local jurisdiction is required to have a "comprehensive, long-term general plan for [its] physical development." (§ 65300.) Each general plan must have a housing element consisting of standards and plans for housing sites that " 'shall endeavor to make adequate provision for the housing needs of all economic segments of the community.' [Citations.]' (*California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 444; see also § 65580 [legislative findings concerning housing element law].) "A municipality [or other jurisdiction] must review its housing element for the appropriateness of its housing goals, objectives, and policies and must revise the housing element in accordance with a statutory schedule." (*Martinez, supra*, 90 Cal.App.5th at p. 222, citing § 65588, subds. (a) & (b).) "The interval between the due dates for the revised

housing element is referred to as a planning period or cycle, which is usually eight years." (*Ibid.*, citing § 65588, subds. (e)(3), (f)(1).)

"The projected regional housing needs for a planning period are determined by the HCD in consultation with regional 'councils of government.' " (*Martinez, supra*, 90 Cal.App.5th at p. 223, citing §§ 65584, subd. (a) & (b), 65584.01, 65588, subd. (e)(3).) "Based on HCD's regional housing needs determination, each regional council of government adopts a 'final regional housing needs plan that allocates a share of the regional housing need' among the cities and counties within its region." (*Ibid.*, citing § 65584, subd. (b).)

Local governments are required by the Housing Element Law to adopt comprehensive updates to the housing element of their general plans in the eight-year cycles to provide sufficient zoning capacity to accommodate their respective fair shares of the regional housing need. For jurisdictions that fail to adopt a substantially compliant housing element by the statutory deadline, the HAA includes a provision that requires the approval of certain housing development projects regardless of whether the project complies with local zoning and general plan standards. (§ 65589.5, subds. (d), (h)(11).) This provision is known as the "builder's remedy," which now applies to projects submitting a preliminary application for development during a time period in which the jurisdiction did not have a substantially compliant housing element, even if the jurisdiction later achieves compliance. (§ 65589.5, subd. (o)(1); see also § 65941.1 [preliminary application process])

The HAA represents another comprehensive and regularly amended legislative effort to promote and increase the state's housing supply at all income levels. "The HAA was enacted in 1982 in an effort to address the state's shortfall in building housing approximating regional needs, and the Legislature has amended the law repeatedly in an increasing effort to compel cities and counties to approve

more housing. [Citations.]" (*Save Lafayette v. City of Lafayette* (2022) 85 Cal.App.5th 842, 850 (*Save Lafayette*).)

Among other things, "[t]he HAA provides that when a proposed housing development complies with objective general plan, zoning, and subdivision standards and criteria in effect at the time the application is deemed complete, the local agency may disapprove the project or require lower density only if it finds the development would have specific adverse effects on public health or safety that cannot feasibly be mitigated. [Citations.]" (*Safe Lafayette, supra,* 85 Cal.App.5th at p. 850, citing § 65589.5, subd. (j)(1).)

In 2019, the Legislature also enacted the Housing Crisis Act (HCA, SB 330, stats. 2019, ch. 654, § 13), which added the "preliminary application" process to the PSA (at section 65941.1) for housing development projects. Under this process, once a project applicant submits a complete preliminary application, the HAA vesting rights provision prohibits a local government from subjecting the housing project to "an ordinance, policy, or standard beyond those in effect when a preliminary application was submitted." (§ 65589, subd. (o).) This locks in a developer's right to pursue a project under the rules in effect when the preliminary application is complete even if the rules later change. This gives developers desired certainty about the rules that will apply to a project and avoids those rules changing midstream but before the formal development application is complete, which has historically been the point at which a project attains vested rights as an entitlement.

Vesting rights are an important part of builder's remedy projects as this remedy is available only when a jurisdiction is not in substantial compliance with the Housing Element Law. If a permit application process is lengthy, the timing of vesting rights takes on added importance and the builder's remedy will not provide its intended benefit if vesting rights are lost.

The HCA included provisions added to the PSA to address and establish early vesting for a project. The PSA was first enacted years ago to " 'ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects.' [Citation.] Under the [PSA], public agencies must maintain 'one or more lists that shall specify in detail the information that will be required from any applicant for a development project.' [Citation.] This list of information must 'indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project.' [Citation.]" (*Old Golden Oaks LLC v. County of Amador* (2025) 111 Cal.App.5th 794, 799 (*Old Golden Oaks*).) The goal of the PSA is to relieve permit applicants from protracted and unjustified delays in processing their permit applications. (*Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1438.)

"After an agency receives an application for a development project, it must determine whether the application is complete and notify the applicant of its determination within 30 days. [Citation.] If the agency determines an application is incomplete, it must 'provide the applicant with an exhaustive list of items that were not complete. That list shall be limited to those items actually required on the lead agency's submittal requirement checklist.' [Citation.]" (*Old Golden Oaks, supra,* 111 Cal.App.5th at p. 800.) For preliminary applications, the checklist items are prescribed by statute and may not be added to by the jurisdiction. (See § 65941.1, subds. (a) & (c).)

Finally, section 65943, part of the PSA, provides a process, which is expressly iterative, for the determination of completeness of a development application.

Iterative process

F. Declaratory Relief Principles/Ripeness

"Code of Civil Procedure section 1060, which governs actions for declaratory relief, provides: 'Any person interested under a written instrument … , or under a

contract, or who desires a declaration of his or her rights or duties with respect to another … may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action … for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract.' " (*California Public Records Research, Inc. v. County of Yolo* (2016) 4 Cal.App.5th 150, 185 (*County of Yolo*).)

" 'Declaratory relief operates prospectively, serving to set controversies at rest before obligations are repudiated, rights are invaded or wrongs are committed. Thus the remedy is to be used to advance preventive justice, to declare rather than execute rights. [Citation.]' [Citation.] 'The correct interpretation of a statute is a particularly suitable subject for a judicial declaration. [Citation.] Resort to declaratory relief therefore is appropriate to attain judicial clarification of the parties' rights and obligations under the applicable law. [Citation.]' [Citation.]" (*County of Yolo, supra,* 4 Cal.App.5th at p. 185.)

As a preliminary matter, Defendants, in opposition, contend the case is not ripe for adjudication and the Town's claim for declaratory relief fails on that basis alone.

" 'The fundamental basis for declaratory relief is the existence of an actual, present controversy over a proper subject.' [Citation.]" (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79.)

"Whether a case is founded upon an 'actual controversy' centers on whether the controversy is justiciable. 'The principle that courts will not entertain an action which is not founded on an actual controversy is a tenet of common law jurisprudence, the precise content of which is difficult to define and hard to apply. The concept of justiciability involves the intertwined criteria of ripeness and standing. A controversy is "ripe" when it has reached, but not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to

be made.' [Citations.]" (*Stonehouse Homes LLC v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 540 (*Stonehouse Homes*).)

" 'The ripeness requirement … prevents courts from issuing purely advisory opinions. [Citation.] It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion.' [Citations.]" (*Stonehouse Homes, supra,* 167 Cal.App.4th at p. 540.)

"To determine if a controversy is ripe, we employ a two-pronged test: (1) whether the dispute is sufficiently concrete that declaratory relief is appropriate; and whether withholding judicial consideration will result in the parties suffering hardship. [Citations.] 'Under the first prong, the courts will decline to adjudicate a dispute if "the abstract posture of [the] proceeding makes it difficult to evaluate … the issues" [citation], if the court is asked to speculate on the resolution of hypothetical situations [citation], or if the case presents a "contrived inquiry" [citation]. Under the second prong, the courts will not intervene merely to settle a difference of opinion; there must be an imminent and significant hardship inherent in further delay. [Citation.]' [Citations.]" (*Stonehouse Homes, supra,* 167 Cal.App.4th at p. 540.)

To the extent the Town argues it has not disapproved the projects, defendants assert the case is not ripe and the claim for declaratory relief must be rejected.[6] The court notes the Town submitted evidence of its position (and reiterated at oral argument) that the applications for the projects have not been denied. (See Paulson Decl. at ¶¶ 22, 24; see Town's Sep. Statement at Fact Nos. 6, 13, 19, 26.) As a threshold matter, defendants do not address the two-pronged test for ripeness under California case authority and thus the contention is undeveloped. (See *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52 ["We are not

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[6] The cross-complaint contends that the Town cross-defendants' course of conduct resulted in disapproval of the project applications as a matter of law, under the HAA. (See § 65589.5, subd. (h)(6)(D), (F), and (H), and subd. (k).)

required to examine undeveloped claims or to supply arguments for the litigants"].) Nor does the court find defendants' cases to be persuasive as they consider the ripeness doctrine in connection with whether a public agency has made a decision that is final. (See *California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1485 ["Until a public agency makes a final decision, the matter is not ripe for judicial review"]; see also *Santa Barabara County Flower & Nursery Growers Assn. v. County of Santa Barbara* (2004) 121 Cal.App.4th 864, 875 ["In the context of administrative proceedings, a controversy is not ripe for adjudication until the administrative process is completed and the agency makes a final decision that results in a direct and immediate impact on the parties"].)

But the action for declaratory relief here addresses a single legal issue involving interpretation of section 65941.1(e)(2). As noted above, the Town contends the statute's reference to a 90-day period to submit a complete preliminary application refers to a single 90-day period, after the expiration of the 180-day period to submit a complete development application, to maintain vesting. By contrast, defendants argue the preliminary application remains in effect so long as the applicants resubmit an application within 90 days after receiving a list of incomplete items – no matter how many times this process takes. Furthermore, the briefing submitted by defendants and amici in opposition clearly demonstrates the presence of an actual controversy about the statute's interpretation. Thus, the legal issue appears to be ripe and proper for resolution by way of this motion for summary judgment and adjudication. (See *Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1401–1402 [the propriety of the application of summary judgment to declaratory relief lies in the trial court's function to render such a judgment when only legal issues are presented for determination]; see also *Sambrano v. City of San Diego* (2001) 94 Cal.App.4th 225, 236 ["Legal issues can be resolved on summary judgment only where there are no material disputed factual issues"].)

1 **G. Rules of Statutory Interpretation**

2 "Our essential task in interpreting a statute ' "is to determine the
3 Legislature's intent so as to effectuate the law's purpose. We first examine the
4 statutory language, giving it a plain and commonsense meaning. We do not examine
5 that language in isolation, but in the context of the statutory framework as a whole
6 in order to determine its scope and purpose and to harmonize the various parts of
7 the enactment. If the language is clear, courts must generally follow its plain
8 meaning unless a literal interpretation would result in absurd consequences the
9 Legislature did not intend. If the statutory language permits more than one
10 reasonable interpretation, courts may consider other aids, such as the statute's
11 purpose, legislative history, and public policy." [Citation.] "Furthermore, we
12 consider portions of a statute in the context of the entire statute and the statutory
13 scheme of which it is a part, giving significance to every word, phrase, sentence, and
14 part of an act in pursuance of the legislative purpose." [Citation.]' [Citation.]"
15 (*Jackpot Harvesting Co., Inc. v. Super. Ct.* (2018) 26 Cal.App.5th 125, 140 (*Jackpot*
16 *Harvesting*).)

17 "California courts follow an approach to determine legislative intent that
18 involves up to three steps. [Citation.] The first step is our 'examin[ation of] the
19 actual language of the statute. [Citations.]' [Citation.] We do so ' "because the
20 statutory language is generally the most reliable indicator of legislative intent."
21 [Citations.]' [Citation.] In this first step, we scrutinize 'words themselves, giving
22 them their "usual and ordinary meanings" and construing them in context.
23 [Citation.]' [Citation.] And we 'will apply common sense to the language at hand and
24 interpret the statute to make it workable and reasonable. [Citation.]' [Citation.] In
25 doing so, if we find the statutory language to be 'clear, its plain meaning should be
26 followed. [Citation.]' [Citation.] Thus, if there is no ambiguity, ' "we presume the
27 Legislature meant what it said, and the plain meaning of the language governs.
28

[Citations.]" ' [Citation.]" (*Jackpot Harvesting, supra,* 26 Cal.App.5th at pp. 140–141.)

"If we determine the statutory language is unclear, we will proceed to the second step and review the legislative history. [Citations.] In doing so, we 'examine the legislative history and statutory context of the act under scrutiny.' [Citation.] Under these circumstances, we 'select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.' [Citation.]" (*Jackpot Harvesting, supra,* 26 Cal.App.5th at p. 141.)

"In the event the proper interpretation of the statute is not evident after examining the legislative history, 'we must cautiously take the third and final step in the interpretive process. [Citation.] … Where an uncertainty exists, we must consider the consequences that will flow from a particular interpretation. [Citation.] Thus, "[i]n determining what the Legislature intended, we are bound to consider not only the words used, but also other matters, 'such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy and contemporaneous construction.' [Citation.]" [Citation.]' [Citation.]" (*Jackpot Harvesting, supra,* 26 Cal.App.5th at p. 141.)

"An overarching principle for our interpretation of statutes is that courts have a 'limited role in the process of interpreting enactments from the political branches of our state government. In interpreting statutes, we follow the Legislature's intent, as exhibited by the plain meaning of the actual words of the law, " ' "whatever may be thought of the wisdom, expediency, or policy of the act." ' " [Citation.] "… [T]he judicial role in a democratic society is fundamentally to interpret laws, not write them. …" [Citation.] It cannot be too often repeated that due respect for the political branches of our government requires us to interpret the laws in accordance with the expressed intention of the Legislature. "This court has

no power to rewrite the statute so as to make it conform to a presumed intention which is not expressed." [Citations.]' [Citation.]" (*Jackpot Harvesting, supra,* 26 Cal.App.5th at pp. 141–142.)

Finally, as relevant here, the vesting of rights by the completion of a preliminary application is part of the HAA, at section 65589.5, subdivision (o)(1), which refers over to section 65941.1. The Legislature has expressly added an "interpretive gloss" or command to the HAA at section 65589.5, subdivision (a)(2)(L), which provides that it "is the policy of this state that [the HAA] should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (See *Save Lafayette*, *supra*, 85 Cal.App.5th at p. 853; *San Mateo, supra*, 68 Cal.App.5th at p. 887.)

H. Analysis

1. Plain Language of Section 65941.1, subdivision (e)

Under the above principles, the court first examines the plain language set forth in section 65941.1, subdivision (e)(1) and (2) which provides:

> (1) Within 180 calendar days after submitting a preliminary application with all of the information required by subdivision (a) to a city, county, or city and county, the development proponent shall submit an application for a development project that includes all of the information required to process the development application consistent with Sections 65940, 65941, and 65941.5.
>
> (2) If the public agency determines that the application for the development project is not complete pursuant to Section 65943, the development proponent shall submit the specific information needed to complete the application *within 90 days* of receiving the agency's written identification of the necessary information. *If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force or effect.* (§ 65941.1, subd. (e)(1) – (2), italics added.)

As to section 65941.1(e)(2), it is the Town's position as articulated in its briefing that the plain language refers only to or allows only for a *single* 90-day period for resubmission of the development application or response to an

incompleteness determination. Or at least that with more than one submission, the total period must not exceed 270 days (a maximum of 180 days for submission after a preliminary application is complete, plus 90 to respond to an incompleteness determination, setting aside the 30 days the locality has to initially respond to the development application). Exceeding that, according to the Town, if the development application is not complete, the vesting rights conferred with the preliminary application are lost.

On its face, the statute itself does not specify whether an applicant's resubmission or response to an incompleteness determination is limited to a single 90-day period or whether this process is iterative and can be repeated. The Town argues that the phrase "the 90-day period" is synonymous with a single resubmission or response period within which to complete the development application, pointing the court to the article "the" and its dictionary definition. (See *Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1121–1122 ["When attempting to ascertain the ordinary, usual meaning of a word, courts appropriately refer to the dictionary definition of that word"].) While multiple definitions of the word exist, the Town relies on a dictionary definition for "the" as follows: "used as a function word to indicate that a following noun or noun equivalent is a unique or a particular member of its class." (Merriam-Webster's Online Dict. (2026) http://www.merriam-webster.com/dictionary/the [as of January 16, 2026].) Given the word "the" and the fact that the word "period" is singular, the Town contends the plain language of the statute refers to a *single* 90-day period.

But it is more linguistically likely, in the context of the statute and the PSA as a whole, that the word "the" preceding "90-day period" in section 65941.1(e)(2) is simply an anaphoric reference—a word or phrase that refers back to an antecedent term already mentioned in the text to ensure coherence and reduce repetition—to the "90 days" in the prior sentence and without limitation on the number of 90-day periods allowed.

Despite the Town's arguments, there is no such frequency limitation mentioned in section 65941.1(e)(2) and a plain reading does not require this interpretation. Moreover, the Town's position improperly isolates the terms "90 days" and "the 90-day period" in section 65941.1(e)(2), plucking them from the entire operative statutory scheme of which this section is a part and ignoring their place and context within this very subdivision, which specifically cross-references section 65943 that is likewise contained within the PSA and provides for the iterative process leading to a determination of completeness. Subdivision (a) of that section states in full:

> "Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the application is determined to be incomplete, the lead agency shall provide the applicant with an exhaustive list of items that were not complete. That list shall be limited to those items actually required on the lead agency's submittal requirement checklist. In *any subsequent review* of the application determined to be incomplete, the local agency shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. *Upon receipt of any resubmittal application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application.* If the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description." (§ 65943, subd. (a), italics added.)

The incorporation of section 65943 into section 65941.1(e)(2) indicates that the Legislature intended for these two statutes to be read in harmony with each another. (See *People v. Harrison* (2025) 116 Cal.App.5th 1145, 1156 ["[B]y this cross-reference, the Legislature indicated it intends these two statutes to be read together"].) So doing establishes that there is a new 30-day period during which the

public agency must determine the completeness of the development application with every resubmission or response to an incompleteness determination made within 90 days of a prior incompleteness determination, after the initial development application is made within 180 days of a complete preliminary application, as referenced in section 65941.1, subdivision (e)(1). And that the 90-day periods continue with each subsequent determination of incompleteness.

The use of the words “any” and “new” as referencing a resubmittal in section 65943, subdivision (a) also suggests that multiple resubmissions in response to succeeding incompleteness determinations may be made without a preliminary application expiring as provided in section 65941.1(e)(2). Indeed, neither statute expressly limits the number of resubmissions by a development proponent in response to successive incompleteness determinations. Therefore, the incorporation of section 65943 into section 65941.1(e)(2) supports a plain reading of the latter that multiple resubmissions within 90 days of successive incompleteness determinations, ultimately leading to completeness by an ever narrowing list of incomplete items, are allowed without expiration of the vesting conferred by a preliminary application. The court rejects the speculative notion that this could theoretically lead to a project proponent simply resubmitting the same information over and over ad infinitum in successive responses without some narrowing of incompleteness issues—like Groundhog Day—while retaining vested rights, as it doubtful that such a course of action could reasonably be viewed as an applicant engaging in good faith in the prescribed process that requires responses within deadlines.

The Town contends that the iterative aspects of section 65943 are not applicable to or incorporated into section 65941.1(e)(2) by the express reference, as section 65943 addresses only development applications, not preliminary applications. But this assertion lacks merit as there is no such express limitation and both statutes pertain to the process of determining whether an application is

complete as well as to the path leading to that determination, and section 65941.1(e)(2) expressly incorporates section 65943.

The Town alternatively contends that, unlike section 65493, there is no "reset" language included in section 65941.1(e)(2) and the court is not permitted to add provisions not contained in a statute. (See *Prang v. Los Angeles County Assessment Appeals Bd.* (2024) 15 Cal.5th 1152, 1177 [as a general rule, when the Legislature uses a term in one provision of a statute but omits from another, the court generally presumes the Legislature did so deliberately, in order to convey a different meaning]; see also *People v. Guzman* (2005) 35 Cal.4th 577, 587 [inserting additional language into a statute violates the cardinal rule of statutory construction that courts must not add provisions to statutes].) While section 65941.1(e)(2) might be more clearly understood if it included express reset language, such addition appears both unnecessary and redundant, given that section 65941.1(e)(2) already expressly cross-references section 65943. And, as the statutes are properly read together in harmony, the absence of the reset provision is not fatal to reading section 65941.1(e)(2) to include multiple 90-day resubmission periods as part of the iterative process described at section 65943 without leading to loss of vesting. In other words, the court rejects the argument that reading the plain text of the statute this way requires adding language that the Legislature intentionally omitted.

The Town further argues that the newer section 65941.1(e)(2), providing a 90-day period to respond to an incompleteness determination without an express reference to that period repeating, should somehow control to the exclusion of section 65943, which does provide for an iterative process. (See *Bledstein v. Super. Ct.* (1984) 162 Cal.App.3d 152, 160 (*Bledstein*) ["A well-settled rule of statutory construction is that in the event of a conflict between two statutes, effect will be given to the more recently enacted law"]; see also *Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1504 ["[A] more recent provision is typically more persuasive

than an older one."].) "However, the rule giving precedence to the more recently enacted statute is invoked only if the two cannot be harmonized. [Citation.] This is because rules of construction are designed to aid in resolving doubts about the meaning of statutes and not to create doubts or defects regarding legislative intent." (*Bledstein, supra,* 162 Cal.App.3d at pp. 160–161.) In this, the Town fails to articulate how the two statutes are actually in conflict and cannot be harmonized. And, as already noted, the two statutes appear to be in harmony as section 65941.1(e)(2) expressly cross-references section 65943 and both provisions are directed to a completeness determination and the process required or allowed to get there.

The court thus concludes that a plain and textual reading of section 65941.1(e)(2) allows for multiple and successive 90-day periods within which to respond to incompleteness determinations following the submission of a development application within 180 days of a complete preliminary application as provided at section 65941.1, subdivision (e)(1), without loss of project vesting and access to the builder's remedy.

2. Legislative History and Other Interpretive Aids

As noted, where the terms of a statute are clear, there is no need to resort to interpretive aids. (See *City of Brentwood v. Department of Finance* (2020) 54 Cal.App.5th 418, 428 ["If the language is clear and unambiguous, there is no need to resort to other indicia of legislative intent"].) But "[w]here statutory provisions are unclear, they should be interpreted to achieve the purpose of the statutory scheme and the public policy underlying the legislation. [Citation.] 'An important aid in this regard is the legislative history of the statute. [Citation.]' [Citation.]" (*Conrad v. Medical Bd.* (1996) 48 Cal.App.4th 1038, 1046.) The court has concluded that the terms of section 65941.1(e)(2), read in the context of the statute as a whole and the entire statutory scheme of which it is a part, is clear enough to permit a facial or textual reading. The Town does not assert in any event that the statute is

ambiguous, arguing instead that its plain meaning supports the Town's interpretation. But if interpretive aids are required because of some ambiguity, if anything, they appear to support the same plain statutory meaning the court has ascribed to section 65941.1(e)(2).

The Town cross-defendants direct the court to various legislative history materials incorporated as part of their request for judicial notice. (See Town's RJN at Exs. D-F.) Defendants do not substantively address these materials in their opposition. But considering them does not lead to the conclusion that the Legislature intended to limit section 65941.1 to one 90-day resubmission period for a project proponent to retain vested rights conferred by a preliminary application. Nothing in the proferred legislative history compels a contrary conclusion, including the clear legislative intention expressed in the materials to promote much-needed housing development, especially affordable housing, as quickly as possible.

The Town also urges the court to refrain from giving weight or deference to the HCD guidance letters addressing the interpretation of section 65941.1 attached in support of defendants' request for judicial notice. (See defendants' RJN at Exs. A-D.)

"An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts; however, unlike quasi-legislative regulations adopted by an agency to which the Legislature has confided the power to 'make law,' and which, if authorized by the enabling legislation, bind this and other courts as firmly as statutes themselves, the binding power of an agency's interpretation of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation." (*Yamaha Corp. of America v. State Bd. Of Equalization* (1998) 19 Cal.4th 1, 7 (*Yamaha*), italics omitted.)

"Courts must, in short, independently judge the text of the statute, taking into account and respecting the agency's interpretation of its meaning, of course,

1 whether embodied in a formal rule or less formal representation. Where the
2 meaning and legal effect of a statute is the issue, an agency's interpretation is one
3 among several tools available to the court. Depending on the context, it may be
4 helpful, enlightening, even convincing. It may sometimes be of little worth.
5 [Citation.] Considered alone and apart from the context and circumstances that
6 produce them, agency interpretations are not binding or necessarily even
7 authoritative." (*Yamaha, supra,* 19 Cal.4th at pp. 7–8.)

8 That said, "courts generally will not depart from the HCD's determination
9 unless 'it is clearly erroneous or unauthorized.' [Citations.]" (*Martinez, supra,* 90
10 Cal.App.5th at p. 243.)

11 The HCD letters submitted here in support of defendants' request for judicial
12 notice align with their interpretation of the statute, rejecting the Town's opposing
13 view. For example, in a letter to the Town, HCD stated in relevant part:

14 > "The 90-day deadline restarts with each subsequent resubmittal by the
15 > applicant. Subdivision (d) of Government Code section 65941.1 references
16 > section 65943, which provides for an iterative process in which deadlines
> reset upon resubmittal. Because of that reference, it is reasonable to conclude
17 > that the subdivision envisions a similar back-and-forth process. Nothing in
> the subdivision explicitly precludes this. … An interpretation that there is a
18 > single finite 90-day review period is inconsistent with both the intent of the
> PSA and the Legislature when it introduced this system in Senate Bill 330
19 > (Chapter 654, Statutes of 2019)." (Defendants' RJN at Ex. A.)

20

21 The remaining HCD letters directed to other jurisdictions on the same point
22 likewise assert that section 65941.1(e)(2)'s 90-day deadline resets after each
23 incompleteness determination made by a city. (Defendants' RJN at Exs. B-D.)
24 According to HCD, under section 65941.1(e)(2), a development with multiple
25 incompleteness determinations and responses may have multiple 90-day periods
26 while vested rights conferred by a preliminary application are retained. (*Ibid.*)

27 In short, the Town argues the HCD letters explaining its view of the relevant
28 statute within its scope of authorized agency action are not worthy of deference and
offer minimal assistance to the court in its task. The court first reiterates that its

interpretation of section 65941.1(e)(2) to provide for multiple resubmissions and 90-day deadlines is independent of the HCD letters or other interpretive aids, and the court has exercised its independent judgment in this regard. That said, the court finds the HCD letters, which establish a consistent interpretive history by HCD in this regard since the statute was enacted in 2019 to have some persuasive value. And, despite the Town's arguments, the court does not find HCD's views on the issue to be "clearly erroneous or unauthorized" and thus commanding no deference.

As a final point, the court briefly addresses the public policy arguments made by the parties in support of their respective positions on the dispositive legal issue presented by this motion. (See *Moore v. Super. Ct.* (2020) 58 Cal.App.5th 561, 54 [for purposes of statutory interpretation, the court may consider "evils to be remedied" by the statute and public policy].) In particular, the Town contends the statute affords only a single 90-day period as California is in a housing crisis and it makes little sense for preliminary-application vesting to continue infinitely. By contrast, defendants echo the expressed legislative concern that jurisdictions have used incompleteness determinations to attempt to free themselves from builder's remedy projects that have garnered public opposition and thereby skirt and thwart the development of necessary housing at all levels of affordability while contributing to, instead of helping to address, the housing crisis that the Legislature is actively targeting.

The court concludes that the highlighted public policy and legislative purposes, on balance, favor the interpretation of section 65941.1(e)(2) as proffered by defendants. And there is no evidence before the court on this motion of the parade of horribles offered by the Town in the form of developers dragging their feet while infinitely maintaining vesting of their projects or unreasonably extending the process of reaching completeness determinations by manipulation and gaming. Instead, it appears that reading section 65941.1(e)(2), as the Town urges, to require the loss of project vesting after a single 90-day resubmission in response to an

initial incompleteness determination fails to recognize the reality that achieving completeness of a development application, especially for large projects, inherently involves and may even require the iterative process as reflected in section 65943 and that the reading urged would likely result in more delay and less housing development as vesting rights are lost—anathema to the very purposes the Legislature is so obviously trying to achieve.

IV. Disposition

To conclude, based first on its independent judgment but secondarily in consideration of other interpretive aids that align, the court is convinced that section 65941.1(e)(2), by its express cross-reference to section 65943, allows for multiple 90-day resubmission periods for a project proponent to respond to successive incompleteness determinations without losing the project vesting conferred by a preliminary application as provided at section 65941.1, subdivision (e)(1). While there are no disputed issues of material fact presented on this motion, the moving parties have consequently not demonstrated their entitlement to summary judgment or adjudication on the complaint or cross-complaint/petition as a matter of law.

The motion for summary judgment on the complaint and cross-complaint is accordingly DENIED, as is the alternative motion for summary adjudication of the complaint.

This case is set for a further case management conference on March 17, 2026, at 1:30 in Department 66.

SO ORDERED.

Dated: January 29, 2026

Hon. Helen E. Williams
Judge of the Superior Court

DRAFT RESOLUTION

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS GRANTING AN APPEAL OF THE DECISION OF THE COMMUNITY DEVELOPMENT DIRECTOR'S INCOMPLETENESS DETERMINATION FOR A SENATE BILL 330 (SB 330) APPLICATION REQUESTING APPROVAL TO CONSTRUCT A MIXED-USE DEVELOPMENT (120 UNITS) A TENTATIVE MAP, SITE WORK REQUIRING A GRADING PERMIT, AND REMOVAL OF LARGE PROTECTED TREES ON PROPERTY ZONED NORTH FORTY SPECIFIC PLAN:HOUSING ELEMENT OVERLAY ZONE.

APN 424-07-064
ARCHITECTURE AND SITE APPLICATIONS: S-24-008
AND SUBDIVISION APPLICATION M-24-005
PROPERTY LOCATION: 14849 LOS GATOS BOULEVARD
APPELLANT/PROPERTY OWNER/APPLICANT: LOS GATOS BOULEVARD PROPERTIES, LLC

WHEREAS, Government Code Section 65941.1 authorizes housing development project applicants to submit a Senate Bill 330 (SB 330) "preliminary application;"

WHEREAS, under Government Code Section 65589.5(o), submittal of an SB 330 "preliminary application" containing all items required by Government Code Section 65941.1 vests an applicant to the Town regulations that were in effect on the date that the preliminary application was deemed submitted, with certain exceptions;

WHEREAS, Government Code Section 65941.1(e)(1) provides that within 180 calendar days after submitting a preliminary application with all of the required information, an applicant must submit a planning application that includes all of the information required by Government Code Sections 65940, 65941, and 65941.5 in order to retain vesting;

WHEREAS, Government Code Section 65941.1(e)(2) provides that, if the Town determines under Government Code Section 65943 that the planning application is incomplete, the applicant must submit the information required to complete the planning application within 90 days of receiving the Town's determination in order to retain vesting;

WHEREAS, Government Code Section 65941.1(e)(2) could be interpreted to mean that the applicant may have either a single 90-day period in which to render a planning application complete after the 180-day submittal period expires, or unlimited 90-day periods to complete the application;

WHEREAS, a preliminary application for the Luxe project was submitted on August 30, 2023, and a formal planning application for a mixed-use development (120 units), tentative map, site improvements requiring a grading permit, and removal of large protected trees

ATTACHMENT 7

(Architecture and Site application S-24-008 and Subdivision Application M-24-005) was submitted on March 8, 2024;

WHEREAS, on November 19, 2024, the Town provided the Applicant with a letter indicating that the Town had completed its review of the resubmittal of the formal application pursuant to provisions of the Permit Streamlining Act (specifically, Government Code Section 65943), and that the application remained incomplete;

WHEREAS, the application incompleteness determination was provided to the Applicant's team on November 19, 2024, as part of the Staff Technical Review Committee comments, and discussed at the November 20, 2024, Staff Technical Review Committee meeting;

WHEREAS, the Luxe applicant received an incompleteness letter after both the 180-day submittal period and an additional 90-day period had elapsed;

WHEREAS, on January 30, 2025, the Town's Community Development Director provided provided the Applicant with a letter stating that the application remained incomplete and that, in accordance with Government Code Section 65943, the Applicant may appeal the incompleteness determination of the SB 330 application to the Town Council by paying the required appeal fee and submitting a written appeal to the Town Clerk on the appeal form within 10 days of the date of the letter;

WHEREAS, the Applicants' architect called a Town staff member to inquire regarding the import of the incompleteness letter, and the Town staff member indicated that the vesting afforded by the preliminary application may have expired;

WHEREAS, after speaking with a Town staff member, the Luxe applicant submitted an appeal of the Town staff member's statement that their preliminary application vesting may have expired;

WHEREAS, the Town sought declaratory relief to obtain a judicial determination on the question of whether, after the initial 180-day submittal period expires, there is a single 90-day period or unlimited 90-day periods in which to render a planning application complete;

WHEREAS, the Town continued to process in a normal fashion, without delays, all potentially affected planning applications, including the planning application of the appellant, pending judicial review of this question;

WHEREAS, the Luxe planning application was deemed complete on April 16, 2025, and is continuing to be processed, pending receipt of requested information from the applicant;

WHEREAS, on January 29, 2026, the Santa Clara County Superior Court ruled in *The Town of Los Gatos v. Arya Properties, LLC* (Case No. 25CV462276), that that Government Code

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Section 65941.1(e)(2) "allows for multiple 90-day resubmission periods for a project proponent to respond to successive incompleteness determinations without losing the project vesting conferred by a preliminary application as provided at section 65941.1, subdivision (e)(1)."

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Los Gatos does hereby declare, determine, and order as follows:

1. Because the Superior Court has determined that multiple 90-day resubmission periods are allowed to respond to successive incompleteness determinations, the vesting afforded by the SB 330 preliminary application for the Luxe application has not expired.
2. The appeal submitted by the Luxe applicant is granted.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 21st of April, 2026, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

____

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

____

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

DRAFT

DRAFT RESOLUTION

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS GRANTING AN APPEAL OF THE DECISION OF THE COMMUNITY DEVELOPMENT DIRECTOR'S INCOMPLETENESS DETERMINATION FOR A SENATE BILL 330 (SB 330) APPLICATION REQUESTING APPROVAL TO DEMOLISH A COMMERCIAL BUILDING AND CONSTRUCT A MIXED-USE DEVELOPMENT (175 MULTI-FAMILY RESIDENTIAL UNITS) WITH COMMERCIAL SPACE AND A CONDOMIUM TENTATIVE MAP ON PROPERTY ZONED C-1:HEOZ AND C-1.

APNS 424-17-035 AND -036
ARCHITECTURE AND SITE APPLICATION: S-24-018,
CONDITIONAL USE PERMIT APPLICATION: U-24-007,
AND SUBDIVISION APPLICATION: M-24-009.
PROPERTY LOCATION: 15300 AND 15330 LOS GATOS BOULEVARD
APPELLANT/PROPERTY OWNER/APPLICANT: ARYA PROPERTIES, LLC.

DRAFT

WHEREAS, Government Code Section 65941.1 authorizes housing development project applicants to submit a Senate Bill 330 (SB 330) "preliminary application;"

WHEREAS, under Government Code Section 65589.5(o), submittal of an SB 330 "preliminary application" containing all items required by Government Code Section 65941.1 vests an applicant to the Town regulations that were in effect on the date that the preliminary application was deemed submitted, with certain exceptions;

WHEREAS, Government Code Section 65941.1(e)(1) provides that within 180 calendar days after submitting a preliminary application with all of the required information, an applicant must submit a planning application that includes all of the information required by Government Code Sections 65940, 65941, and 65941.5 in order to retain vesting;

WHEREAS, Government Code Section 65941.1(e)(2) provides that, if the Town determines under Government Code Section 65943 that the planning application is incomplete, the applicant must submit the information required to complete the planning application within 90 days of receiving the Town's determination in order to retain vesting;

WHEREAS, Government Code Section 65941.1(e)(2) could be interpreted to mean that the applicant may have either a single 90-day period in which to render a planning application complete after the 180-day submittal period expires, or unlimited 90-day periods to complete the application;

WHEREAS, a preliminary application for the Arya project was submitted on November 7, 2023, and a formal planning application for a mixed-use development (175 units) and a condominium tentative map (Architecture and Site Application S-24-018, Conditional Use

ATTACHMENT 8

Permit Application U-24-007, and Subdivision Application M-24-009) was submitted on May 10, 2024;

WHEREAS, on December 23, 2024, the Town provided the Applicant with a letter indicating that the Town had completed its review of the resubmittal of the formal application pursuant to provisions of the Permit Streamlining Act (specifically, Government Code Section 65943), and that the application remained incomplete;

WHEREAS, the application incompleteness determination was provided to the Applicant's team on December 23, 2024, as part of the Staff Technical Review Committee comments, and discussed at the January 8, 2025, Staff Technical Review Committee meeting;

WHEREAS, the Arya applicant received an incompleteness letter after both the 180-day submittal period and an additional 90-day period had elapsed;

WHEREAS, on January 30, 2025, the Town's Community Development Director provided provided the Applicant with a letter stating that the application remained incomplete and that, in accordance with Government Code Section 65943, the Applicant may appeal the incompleteness determination of the SB 330 application to the Town Council by paying the required appeal fee and submitting a written appeal to the Town Clerk on the appeal form within 10 days of the date of the letter;

WHEREAS, the applicants' architect called a Town staff member to inquire regarding the import of the incompleteness letter, and the Town staff member indicated that the vesting afforded by the preliminary application may have expired;

WHEREAS, after speaking with a Town staff member, the Arya applicant submitted an appeal of the Town staff member's statement that their preliminary application vesting may have expired;

WHEREAS, the Town sought declaratory relief to obtain a judicial determination on the question of whether, after the initial 180-day submittal period expires, there is a single 90-day period or unlimited 90-day periods in which to render a planning application complete;

WHEREAS, the Town continued to process in a normal fashion, without delays, all potentially affected planning applications, including the planning application of the appellant, pending judicial review of this question;

WHEREAS, the Arya planning application was deemed complete on April 16, 2025, and is continuing to be processed, pending receipt of requested information from the applicant;

WHEREAS, on January 29, 2026, the Santa Clara County Superior Court ruled in *The Town of Los Gatos v. Arya Properties, LLC* (Case No. 25CV462276), that that Government Code Section 65941.1(e)(2) "allows for multiple 90-day resubmission periods for a project proponent

DRAFT

to respond to successive incompleteness determinations without losing the project vesting conferred by a preliminary application as provided at section 65941.1, subdivision (e)(1)."

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Los Gatos does hereby declare, determine, and order as follows:

1. Because the Superior Court has determined that multiple 90-day resubmission periods are allowed to respond to successive incompleteness determinations, the vesting afforded by the SB 330 preliminary applications for the Arya application has not expired.
2. The appeal submitted by the Luxe applicant is granted.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 21st of April, 2026, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

____

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

____

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

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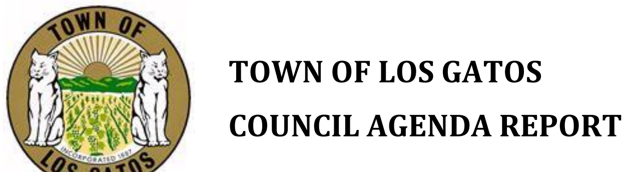

TOWN OF LOS GATOS
COUNCIL AGENDA REPORT

MEETING DATE: 04/21/2026

ITEM NO: 10

DATE: April 14, 2026

TO: Mayor and Town Council

FROM: Chris Constantin, Town Manager

SUBJECT: **Receive the Fiscal Condition Assessment and Fiscal Impact Analysis for Proposed and Planned Growth Memorandums and Provide Feedback**

RECOMMENDATION: Receive the Fiscal Condition Assessment with Five-Year and Long-Term Financial Projections and Fiscal Impact Analysis for Proposed and Planned Growth Memorandums and provide feedback for the Town Council.

FISCAL IMPACT:

There is no fiscal impact associated with this item. Funding for this work was previously approved by the Town Council. Any future costs or financial impacts identified through this analysis would be considered by the Town Council as part of the annual budget process.

STRATEGIC PRIORITY:

This action supports Strategic Priorities regarding prudent financial management to result in a structurally balanced 5-year budget.

BACKGROUND:

In December 2025, the Town began work with NHA Advisors with sub-contract support from Raftelis Financial Consultants and Willdan. Raftelis is leading the first study with the development of a baseline long-term financial model. Willdan is supporting the second study, focusing on fiscal impact analysis that incorporates proposed and planned growth based on the Housing Element Plan and General Plan, with sensitivity analysis regarding the percentage of

PREPARED BY: Kristina Alfaro
Administrative Services Director

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Administrative Services Director

SUBJECT: Receive the Fiscal Condition Assessment with Five-Year and Long-Term Financial Projections and Fiscal Impact Analysis for Proposed and Planned Growth Memorandums and provide feedback for the Town Council.
DATE: April 21, 2026

new units designated as affordable. Both studies will support the future Asset, Liability Management (ALM) study.

DISCUSSION:

A preliminary Fiscal Condition Assessment with Five-Year and Long-Term Financial Projections and Fiscal Impact Analysis for Proposed and Planned Growth was presented to the Finance Commission at their February 2, 2026, meeting. The Commission requested information on the assumptions for the five-year and long-term forecast and changes to methodology for the study focused on the fiscal impact of proposed and planned growth based on the Housing Element.

Memos for the Fiscal Condition Assessment with Five-Year and Long-Term Financial Projections Assumption and an updated fiscal impact analysis for the Proposed and Planned Growth were posted to the Town's Finance website on March 18, 2026 (Attachment 1 and Attachment 2)

At its April 13, 2026, meeting, the Finance Commission reviewed the memos and forwarded them to the Town Council with the following comments. The Commission recommended that the financial forecast be presented as a base case scenario reflecting projected conditions should the Town take no action. This base case would serve as the foundation for evaluating alternative scenarios. The Commission also advised that the base case clearly identify all underlying assumptions, including staffing levels required to maintain current service levels, anticipated population changes, and expected housing development within the Town.

CONCLUSION:

Receive both memos and provide feedback to consultant.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:
1. Fiscal Condition Assessment with Five-Year and Long-Term Financial Projections Assumption Memo
2. Updated Fiscal Impact Analysis for Proposed and Planned Growth

MEMO

To: Los Gatos Executive Leadership Team

From: Raftelis

Date: March 18, 2026

Re: **Los Gatos Long-Term Financial Plan – Detailed Assumptions**

Background

The Town of Los Gatos (Town) issued a request for proposals to conduct three studies:

1. Fiscal Condition Assessment with Five-Year and Long-Term Financial Projections
2. Fiscal Impact Analysis for proposed and planned growth
3. An Asset Liability Management (ALM) Study

The contract was awarded to NHA Advisors with sub-contract support from Raftelis Financial Consultants and Willdan. Raftelis is leading the first study with the development of a baseline long-term financial model. Willdan is supporting the second study, focusing on fiscal impact analysis that incorporates proposed and planned growth based on the Housing Element Plan and General Plan, with sensitivity analysis regarding the percentage of new units designated as affordable. Both of these studies will support the future ALM study. Work began in earnest in December 2025, with ongoing coordination from each consulting firm.

Development of a long-term financial model began with a detailed review of the Town's financial data, policies, and economic factors influencing the fiscal outlook. This included working closely with Town Finance staff to understand their budgeting and forecasting methodology. As the model was being developed, Raftelis conducted multiple check-in calls with the Town's project team to review progress and vet key assumptions. This iterative communication process continues as we refine assumptions and review underlying trends. Most recently, the Raftelis project team presented preliminary assumptions and findings to the Town's Finance Commission on February 2, 2026.

The purpose of this memo is to provide a detailed overview of the data sources, assumptions, and methodology that went into the development of the Town's long-term financial plan, including changes and revisions that were incorporated based on feedback from the Finance Commission presentation in February. Project next steps include sharing the preliminary outlook with Town Council after the Finance Commission is comfortable with the detailed assumptions and methodology used to develop the baseline financial model.

Project deliverables will include the model itself, which was developed in Microsoft Excel™ and will be provided to Town staff as a dynamic tool that can be used for the annual forecast and budget development process. Once the baseline assumptions and outlook have been fully reviewed and vetted, Raftelis will work with Town staff and the Finance Commission to develop scenarios that support anticipated development activity as well as asset management and infrastructure investment considerations. A comprehensive report detailing methodology, assumptions, and various scenarios will be provided at the conclusion of the project.

Methodology

The baseline General Fund forecast assumes normalized historical patterns will continue without major policy intervention. Normalized historical patterns leverage actual revenue and expenditure trends, after adjusting for one-time events or anomalies that may skew expected future results. Budget-to-actual results remain a relevant metric to understand how the Town has historically estimated major revenue and expenditure categories, including recent adjustments to the base budget that may be more in-line with actual performance.

The primary data source used to build the model is a line-item record of budgeted and actual revenues and expenditures by fund from Fiscal Year (FY) 2019 through FY2026, provided by Town Finance staff. Other information was also used to develop the model, including personnel history, collective bargaining agreements, economic and population data, and permit data. Further sections of this memo provide more detail on the specific information used to inform each assumption.

The aim of this model is to develop a robust forecast for future revenues and expenditures based on the best-available data. It uses a trend-based approach to determine the long-term direction of the underlying data. This deviates from the annual budget process where the primary objective is making near-term adjustments to maintain fiscal balance. The projections in this model are not intended to represent actual revenues and expenditures, but instead to serve as a planning tool for the Town's leadership and governing bodies to frame high-level policy and investment considerations.

The baseline model was also built to balance accuracy with usability. It is meant to be a tool used by staff for years to come, and the more complex the model the more difficult it is to use and the more prone it is to errors. This is the reason why the project team, for example, looks at aggregate data on assessed value and new construction to estimate property taxes, rather than more specific data by census tract, because collecting and maintaining that data would be a significant burden on Town staff. Aggregate data also allows for better identification of trends that may not be apparent at a more granular level. Where appropriate, granular level data such as new housing units for a potential new development can be used in scenario analysis to understand the underlying adjustment or change in assumption required to compare with the baseline forecast.

Model Structure

The model focuses on forecasting General Fund expenditures and revenues over a 10-year period, from FY2027 through FY2036. The FY2026 budget is the initial base year for the model; however, the model calculates an estimated 2026 base that considers actual revenue and expenditure trends and will project from this base for the out years. This allows staff to monitor and update actual performance throughout the fiscal year.

For the purposes of this model, all Measure G Sales Tax revenue is considered part of the General Fund.

Revenue and Operating Expenditure Categories

The model forecasts operating expenditures and revenues by category. Revenue categories largely align with categories used in the Town's audited Annual Comprehensive Financial Report (ACFR), Budget Document, and State Controller's Office required Town Financial Transactions Report (FTR). In some cases more granular categories were developed, in consultation with Town staff. The Assumptions by Category section of this memo will identify those categories that may not align exactly with existing financial reporting. Generally, categories were selected with the intention of balancing accuracy with the model's ease of use.

Categories of revenue and operating expenditures used in the model are listed below.

Table 1: Revenue and Operating Expenditure Categories in Model

Revenues	Operating Expenditures
• Property Tax	• Personnel- Salary
• Vehicle and License Fee (VLF) Backfill Property Tax	• Personnel- Overtime
• Sales and Use Tax (Non-Measure G)	• Personnel- California Public Employees' Retirement System (CalPERS)
• Sales and Use Tax (Measure G)	• Personnel- Other Post-Employment Benefits (OPEB) Pay As You Go
• Licenses & Permits	• Personnel- Other Benefits
• Franchise Fees	• Personnel- Vacancy Savings
• Town Services	• Grants and Awards
• Business License Tax	• Materials and Supplies
• Transient Occupancy Tax	• Utilities
• Intergovernmental	• Purchased Services
• Fines & Forfeitures	• Other Operating Expenditures
• Investment Income	• Internal Service Charges
• Other Revenue	• Debt Service
• Transfers In	• Transfers Out- New Capital
	• Transfers Out- Other (including Pension Trust)

Excluded Revenues and Expenditures

The model uses actual and budgeted revenue and expenditure data as provided by Town staff. This line-item data was mapped to the higher level categories outlined in this memo. Raftelis continues to work with the Town to reconcile actual expenditures provided in the line-item financial system detail with audited financial statements and budget documents. The ACFR reports by function (department), therefore, a direct reconciliation by expenditure classification as structured for the forecast model is not possible. This includes identifying accounts and/or one-time amounts to exclude for normalizing trends. Specific accounts and one-time amounts are identified below; however, this list may continue to change as we refine our understanding of the underlying data and chart of account/fund structure with Town staff.

Excluded accounts typically relate to non-cash or Generally Accepted Accounting Principles (GAAP) adjustments such as depreciation and mark-to-market adjustments. This allows for a forecast that reflects actual funds available for the Town's use.

Table 2: "Non-Cash" Revenue and Expenditure Accounts Excluded from Model

Account Description	Actual Amount
Revenue 45218 - GASB31 to Market	
2019	$643,911
2020	$1,092,564
2021	($780,399)
2022	($2,015,501)
2023	$3,197
2024	$1,712,246
2025	$1,201,824
Expenditures 62142 - Depreciation Expense[1]	
2019	$102,250
2020	$101,693
2021	$101,693
2022	$101,693
2023	$101,693
2024	$77,081,050
2025	$5,914,417

Additionally, one-time revenues and operating expenditures are not considered in the model, because it is not assumed that they would carry forward into future years. This includes American Rescue Plan Act funds that the Town received from 2021 – 2025. The remaining one-time revenues and expenditures excluded from the model are listed in the table below.

Table 3: One-Time Revenues and Expenditures Excluded from Model

Model Category	Account Number	Fiscal Year(s)	Amount	Town Chart of Accounts Description
Revenues				
Licenses and Permits	42416	2022 Actuals	$1,200,000	Contra revenue for bmp
Intergovernmental	43210	2021 Actuals	$388,181	CARES Act Coronavirus Relief
Intergovernmental	43211	No actual funds logged	$0	American Rescue Plan Act 2021
N/A – Capital Fund	45946	2023 Actuals	$1,565,000	Insurance Settlement
Other Sources	45949	2023-2025 Actuals	$45,323	Misc. Non-Operating Revenues
Town Services	45961	2025 Actuals	($344,388)	Contra revenue for bmp
Transfers In	49411	2025 Actuals	$250,000	Community Grants
Expenditures				
N/A	67109	No actual funds logged	$0	ARPA- American Rescue Plan Act
Grants and Awards	67506	2022 Actuals	$1,200,000	20 dittos In BMR housing loan
Materials and Supplies	82202	2023, 2025 Actuals	$0	Land Acquisition
Purchased Services	81505	2024 Actuals	$706,713	Subscriptions - GASB 96

[1] Depreciation expense is not recorded to the General Fund. Amounts represent total for all Town funds, including Internal [illegible]e Funds and Development Agency Fund.

Capital

The model also estimates future capital costs for capital projects, vehicles and equipment, and technology. Costs are estimated based on the Town's adopted Capital Improvement Program (CIP), as well as equipment and technology replacement schedules provided by Town staff. The model projects the amount of money transferred from the General Fund to finance these investments, based on past history and Town direction. It assumes no new debt to support capital maintenance needs, although the model allows users to project the potential impact of new debt.

It is important to distinguish capital needs assumed in the baseline model from potential scenarios. For the baseline forecast, ongoing maintenance and replacement needs for existing assets are factored in. If the Town's historical funding for maintenance and replacement have not kept pace with actual need then there is inherent deferred maintenance. A catch-up or higher level of investment to address any deferred maintenance would be a potential scenario. A large-scale capital investment required to support anticipated development would also be considered a scenario.

Assumptions by Category

The following sections detail assumptions used to project a 10-year General Fund baseline forecast, including projected revenues, operating expenditures, and transfers to other funds.

Revenues

The following sections detail the model's revenue assumptions by category. The sections discuss the model's assumptions for revenues in the base year of the model, FY2026, as well as assumptions for how that amount is projected to change over time during the model period.

The following table compares the categories used in the model to the categories reported in the Town's ACFR and provides context for any variation.

Table 4: Model vs. ACFR Revenue Categories

ACFR Category	Model Category	Comments
Property Taxes	Property Tax VLF Backfill	VLF Backfill is separated because it is revenue from the State, and so forecasts may vary
Sales Taxes	Sales and Use Tax (Non-Measure G) Sales and Use Tax (Measure G)	Separated due to potential differences in forecasts
Transient Occupancy Taxes	Transient Occupancy Tax	
Licenses & Permits	Licenses & Permits Town Services	Separated based on the Town's internal categories and to allow for more specific forecasts
Intergovernmental	Intergovernmental	
Fines and Forfeitures	Fines & Forfeitures	
Franchise Fees	Francise Fees	
Interest	Interest	
Other Taxes Use of Property Other	Business License Tax Other Sources	Business Licenses Tax separated to allow for forecasting based on economic conditions. Other categories combined for model usability.
Transfers In	Transfers In	

Property Tax

The following table illustrates the Town's historical trend for actual property tax revenue collected, as well as the average annual change.

Table 5: Property Tax Revenue History

Year	Actual Revenue	Annual Percent Change
2019	$13,636,099	N/A
2020	$14,454,513	6.0%
2021	$15,826,162	9.5%
2022	$16,899,618	6.8%
2023	$18,187,388	7.6%
2024	$19,321,147	6.2%
2025	$20,157,765	4.3%
Average		**6.7%**

2026 Budget: $21,450,971

Base Year Estimate: $21,450,971

Historically, General Fund revenue has been 5.6% higher than budget, but in the most recent year actual revenues were close to budget. The model maintains the 2026 budget as the base for forecasting property tax growth over the next ten years.

Potential Revenue Risks and Restrictions

California law restricts the amount of funds that local governments can collect through property tax, primarily through two mechanisms summarized below:

- Proposition 13 was adopted in 1978. It limits property tax assessed value increases at 2% per year and limits property tax revenue to 1% of assessed value (unless a higher rate is approved by voters). Properties can only be assessed at market value for new construction or when a property changes ownership.
- Proposition 4, commonly known as the Gann Limit, was adopted in 1978 and caps local revenue at 1979 expenditure levels, adjusted annually based on population and income.
- Proposition 98, adopted in 1992, requires each local government to set aside a portion of its tax revenues to ensure that school districts meet minimum funding levels.[2] Between FY2019 and FY2025, an average of 11.9% of Town property tax revenue was designated for ERAF. However, it is important to note that currently any ERAF funding not needed to meet school funding minimums has been returned to the Town. If the State changes this policy it would reduce total property tax funding available to the Town.

Annual Change Assumption: 5.2%, on average

Estimates of future sales tax revenue were based on several factors, selected to account for State revenue restrictions and available information.

The primary information source used to estimate future property tax revenue was data from Santa Clara County on historical valuation trends. As stated above, Proposition 13 restricts changes in valuation except in cases of new construction or when property is bought and sold, so the team evaluated trends separately for new construction, changes in ownership, and other properties.

[2] The State is responsible for ensuring that schools receive at least minimum funding. The ERAF allocation reduces the State's [illegible]g obligation.

The team used trends for each of these categories, as well as reported FY2026 valuations and data prepared by a separate company, HdL Companies (HdL), on historical trends in the median value of new construction and the median sales price of homes, to estimate total valuation per year over the course of the model period. The model also assumes that 15% of property tax funds in the base year will be allocated to ERAF, based on Santa Clara County FY2026 budget allocations[3].

Finally, the model calculates the estimated Gann appropriation limit each year, based on a State law limiting property tax revenue that can be collected based on changes in population and income. The team estimated the Gann limit for each model year based on historical population and income trends reported by the United States Census Bureau, and verified that the projected revenue did not hit that limit.

The annual change in projected revenue based on these assumptions varies from year to year based on the estimate for each valuation component: new construction, home sales, ERAF, and base valuation. On average, it increases approximately 5.2% per year between FY2027 and FY2036. The assumed growth for new construction considered the Town's Housing Element Plan and anticipated new housing units outlined in that plan. After further discussion with staff and Finance Commission members, there is uncertainty in how those units may be realized over time and whether they will meet state required affordability metrics. As such, the baseline model maintains a steady growth assumption for new residential development but relies on historical trend with a more moderate long-term outlook than the post-pandemic era given recent softness in real estate market activity.

The following table summarizes model assumptions.

Table 6: Property Tax Performance History and Assumptions by Component

Property Tax Component	Five Year Average Annual Change[4]	Assumed Portion of Revenue	Assumed Annual Change	Comments
New Construction	12.5%	0.3%	0.0%	Assumed flat to be conservative due to variations in the change of value from year to year
Changes in Ownership	17.1%	2.8%	4.0%	Reduced to be conservative due to variations in the change of value from year to year
ERAF	19.1%	14.9%	6.9%[5]	Based on the average of the past two years to normalize post-pandemic volatility
Base Valuation	6.2%	81.9%	5.6%	Based on the average of the past two years to normalize post-pandemic volatility

Vehicle and License Fee (VLF) Backfill Property Tax

The VLF backfill is a payment from the State of California intended to reimburse local governments for losses due to a State VLF reduction. The annual amount allocated is based on the Town's assessed property valuation. The following table illustrates the category's historical trend for actual revenue collected, as well as the average annual change.

[3] The County estimates a $3.2 million allocation to ERAF in 2026.

[4] Based on Santa Clara County valuation reports

[5] ...d on the average of the past two years to normalize post-pandemic volatility

Table 7: VLF Backfill Property Tax Revenue History

Year	Actual Revenue	Annual Percent Change
2019	$3,685,247	N/A
2020	$3,875,914	5.2%
2021	$4,052,672	4.6%
2022	$4,229,462	4.4%
2023	$4,555,700	7.7%[6]
2024	$4,906,019	7.7%
2025	$5,109,100	4.1%
Average		**5.6%**

2026 Budget: $5,377,328

Base Year Estimate: $5,557,685

Historically, since FY2019, General Fund revenue has consistently outperformed budget by approximately 3.4%. The model assumes the FY2026 base amount will be higher than the current budgeted amount by this average variance.

Potential Revenue Risks and Restrictions

VLF revenue is allocated from the State, and is therefore subject to changes in State law. A future legislature could opt to reduce or eliminate this revenue source.

Annual Change Assumptions: 5.4%

VLF revenue is allocated based on property value. The project team used the property value assumptions discussed in the Property Tax section above to project VLF revenue. The model assumes a 5.4% average annual property value increase over the next 10 years.

Sales and Use Tax

The Town has two sources of sales tax revenue:

- The Town, like all California municipalities, receives 1% of the State's base sales tax rate (7.25%)
- The Town has adopted an additional 1/8 cent general sales tax (Measure G)

The following tables illustrate the category's historical sales tax revenue trends.

er increases in FY2023 and 2024 are aligned with higher increases in the City's property valuation in those years.

Table 8: Sales and Use Tax (non-Measure G) Revenue History

Year	Actual Revenue	Annual Percent Change
2019	$7,930,021	N/A
2020	$6,535,034	-17.6%
2021	$6,794,218	4.0%
2022	$7,177,597	5.6%
2023	$7,507,068	4.6%
2024	$6,795,037	-9.5%
2025	$6,992,336	2.9%
Average		**-1.7%**

Table 9: Sales and Use Tax (Measure G) Revenue History[7]

Year	Actual Revenue	Annual Percent Change
2019	$0	N/A
2020	$0	N/A
2021	$1,139,386	N/A
2022	$1,306,076	14.6%
2023	$1,299,409	-0.5%
2024	$1,276,698	-1.7%
2025	$1,338,642	4.9%
Average		**4.3%**

2026 Budget: ***Non-Measure G:*** ***$6,639,081***
Measure G: ***$1,298,825***
$7,937,906

Base Year Estimate: ***Non-Measure G:*** ***$7,780,826***
Measure G: ***$1,329,000***
$9,109,826

The Town engaged a separate firm, HdL, to forecast sales tax in FY2026. HdL's forecasts were used to inform the base estimate for 2026 as well as future growth detailed below. There is a significant increase in the non-measure G base estimate for 2026. This is driven by the most recent projections from HdL, which include proprietary, confidential local economic data to inform estimates. This information was not known at the time of budget adoption.

Potential Revenue Risks and Restrictions

Sales tax revenue is closely tied to economic conditions. An economic downturn would have a significant impact on revenue in this category. Additionally, the 1% of the State's sales tax revenue is defined by State legislation, and is subject to change by the Legislature.

[7] includes all Measure G revenue, not just the revenue allocated to the General Fund.

Annual Change Assumptions: 2.0% (weighted average)

Projections of sales tax revenue are based on industry data as well as trend projections prepared by the City's economic advisor. The model projects revenue by industry to allow each industry's revenue trends to be separately modeled.
Previously, an Economic Review prepared for the Town by an outside firm, MuniServices, provided information on the Town's historical sales tax revenue trends by industry along with estimates for future sales tax collection. As the Town transitions to a new economic advisor (HdL), Raftelis relied on both historical MuniServices reports as well as the first, and most recent, HdL report to establish a framework for detailing the various components that comprise overall sales tax revenue collection.

The industry components of sales tax revenue are detailed in the table below. Historically, the largest generators of sales tax revenue have been the Food and General Retail industries, and they are assumed to remain the largest generators moving forward.

Table 10: Sales Tax Revenue Historical Performance and Assumptions by Industry, as Reported by MuniServices

Industry	Five Year Average Annual Change	Assumed Portion of Revenue[8]	Assumed Annual Change	Comments
Food Products	5.4%	28.7%	2.0%	Based on HdL projection
General Retail	-1.6%	21.1%	2.0%	Based on HdL projection
Transportation	-8.9%	19.6%	2.5%	Based on HdL projection, reduced slightly based on past history (HdL generally projects 3.0-3.5% per year)
County Pool	-4.7%	19.2%	2.0%	Based on HdL projection, reduced slightly based on past history (HdL generally projects 3.0% per year)
Business to Business	0.3%	4.8%	1.0%	Based on HdL projection, reduced slightly based on past history (HdL generally projects 2.2-2.8% per year)
Misc.	-33.0%	3.9%	0.0%	Kept flat due to past volatility
Construction	7.5%	2.6%	2.5%	Based on HdL projection

The historic volatility of sales tax collections and dynamic local economic conditions led the project team to take a conservative approach to forecasting the Town's second-largest revenue source. The baseline model incorporates the significant increase to 2026 base estimates and then uses a lower annual growth rate assumption compared to HdL. The first report from HdL suggests higher growth across each of the industries noted in the table above during 2026-2027 and then settles to a blended average that is slightly below 3%. Some industries like transportation, which have experienced decline in past years due to higher use of electric vehicles, and construction, assume a higher rate of growth (2.5%) because of known development activity expected to have a positive influence on collections. Other sources like general retail and food products rely more on regional inflation trends for cost of goods and no significant variation or increase to the volume of goods purchased from historical experience.

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[8] ...d on five-year historical average for that industry's representative share of overall sales tax revenue to the Town.

Licenses & Permits

The following table illustrates the Town's historical Licenses & Permits revenue, as well as the average annual change. The significant revenue increase in FY2025 is due to a change in how the Town accounts for Solid Waste revenue; before FY2025, the Town classified it as a Franchise Fee. The revenue collected by the Town from the Solid Waste Joint Powers Agreement (JPA) also increased from prior years as a result of a recently updated valuation report used to determine payment amount.

Table 11: Licenses & Permits Actual Revenue History

Year	Actual Revenue	Annual Percent Change
2019	$3,044,490	N/A
2020	$2,673,706	-12.2%
2021	$3,003,475	12.3%
2022	$3,614,650	20.3%
2023	$3,283,848	-9.2%
2024	$3,993,247	21.6%
2025	$6,681,657	67.3%
Average		**16.7%**

2026 Budget: $6,322,712

Base Year Estimate: $6,322,712

Historically, actual General Fund revenue has been 12.1% higher than budget, on average, but there has been significant volatility after the pandemic. This is coupled with the Solid Waste revenue transfer, updated valuation, and in the 2026 budget changes to permit fees that also increased overall revenue collected in this category. The 2026 budget is in line with most recent 2025 actuals and is used as the base estimate in the forecast model.

Potential Revenue Risks and Restrictions

The amount of License & Permit revenue received by the Town can vary based on external factors, such as the amount of development occurring in the community, but the Town also has the ability to revise fees as needed to cover costs. Additionally, less revenue also means a lower cost to process license and permit applications.

Annual Change Assumptions: 0.4%

The types of licenses and permits issued vary from department to department, so the project team used revenue history by department to estimate future trends. For the Community Development Department, historical permit trends were also used to inform the projection. Other departments' revenue is projected based on past history, due to lack of additional available data.

Although Community Development Department Licenses & Permit revenue has generally been increasing in recent years, with an average increase of 19.4% between FY2019 and FY2025, the number and value of permits has been decreasing, as illustrated in the table below. Because of this decline, it is assumed that Community Development Licenses & Permit revenue will have minimal growth over the next ten years.

Table 12: Building Permit History[9]

Year	Number of Permits	Annual Percent Change	Permit Value	Annual Percent Change
2021	1,196	N/A	$148,527,983	N/A
2022	1,261	5.4%	$156,227,403	5.2%
2023	1,202	-4.7%	$92,855,563	-40.6%
2024	1,019	-15.2%	$94,598,614	1.9%
2025	980	-3.8%	$103,021,665	8.9%
Average		**-4.6%**		**-6.1%**

The following table illustrates assumed annual Licenses & Permits revenue change by department. Police and Solid Waste (non-departmental) revenue are assumed to be flat with the most recent solid waste valuation adjustment reflected in the 2026 base.

Table 13: Licenses & Permits Revenue Assumptions by Department

Department	Five Year Average Change	Average Portion of Revenue	Assumed Annual Change	Comments
Administrative Services	91.7%	0.1%	2.0%	Assumed lower due to volatility
Community Development	19.4%	59.0%	0.5%	Assumed lower due to permit trends
Police	-6.9%	1.8%	0.0%	Assumed flat due to volatility
Parks and Public Works	10.0%	24.8%	0.5%	Assumed lower due to volatility
Non-Departmental	1663.2%	14.2%	0.0%	Significant increase reflects Solid Waste revenue- assumed flat due to volatility

Franchise Fees

The following table illustrates the Town's historical Franchise Fee revenue, as well as the average annual change. The significant revenue decrease in FY2025 is due to a change in how the Town accounts for Solid Waste revenue; before FY2025, the Town considered it a Franchise Fee, but is now categorized under Licenses & Permits.

Table 14: Franchise Fees Revenue History

Year	Actual Revenue	Annual Percent Change
2019	$2,475,916	N/A
2020	$2,495,792	0.8%
2021	$2,499,463	0.1%
2022	$2,822,515[10]	12.9%
2023	$3,074,624	8.9%
2024	$2,547,012	-17.2%
2025	$1,057,484	-58.5%
Average		**-8.8%**

[9] Provided by Town staff

[10] Increased revenues in FY2022 and 2023 were largely due to increases in Solid Waste revenue, which went from $1.6 million [in FY2]021 to $1.9 in FY2022, then to $2.1 million in FY2023, only to reduce to $1.5 million in 2024.

2026 Budget: $1,043,730

Base Year Estimate: $1,043,730

Historically, General Fund revenue has been 8.3% higher than budget; however, the recent base adjustment to remove solid waste JPA revenue impacts the future growth assumptions. For the baseline model, the 2026 budget is used as the initial base year estimate since it is in line with actual revenue collected in 2025 after the solid waste revenue transition.

Potential Revenue Risks and Restrictions

Franchise fee revenue depends on private companies' use of public infrastructure and can vary depending on the companies' needs and economic conditions.

Annual Change Assumptions: 1.7%

When Solid Waste revenue is not considered, annual increases in past years have ranged from 0.3% to 8.7%, as illustrated below. The project team believes that past history is the best available indicator to predict future revenue. Annual increases are assumed at 1.7%, which is the average over the past seven years when the outlier year, 2023, is removed.[11]

Table 15: Franchise Fees Actual Revenue History (No Solid Waste Revenue)

Year	Actual Revenue	Annual Percent Change
2019	$892,980	N/A
2020	$898,636	0.6%
2021	$925,621	3.0%
2022	$941,647	1.7%
2023	$1,023,289	8.7%
2024	$1,053,827	3.0%
2025	$1,057,484	0.3%
Average		**2.9%**

Town Services

This revenue category essentially reflects charges for services where the Town has some cost recovery component. The two highest-revenue categories of Town services, accounting for more than $1 million in revenue each in 2025, were policing services for Monte Sereno and building plan reviews.

The following table illustrates the category's historical revenue, as well as the average annual change.

Table 16: Town Services Revenue History

Year	Actual Revenue	Annual Percent Change
2019	$4,440,606	N/A
2020	$4,373,603	-1.5%
2021	$4,778,695	9.3%
2022	$5,310,271	11.1%

increase is largely driven by a 23% increase in PG&E Franchise Fee revenues for that year.

Year	Actual Revenue	Annual Percent Change
2023	$4,631,325	-12.8%
2024	$5,913,520	27.7%
2025	$5,749,895	-2.8%
2026	N/A	N/A
Average		**5.2%**

2026 Budget: $5,736,735

Base Year Estimate: $5,736,735

Actual revenue has averaged about $5 million annually, outperforming budget by approximately 12.1% on average. In 2026 the Town made a significant adjustment to the base budget that is reflective of actual collections the past two years. This is the base estimate used in the forecast.

Potential Revenue Risks and Restrictions

Like sales tax, this is a customer-driven revenue source that has experience greater volatility over the past seven years. The Town has maintained a conservative budget approach for this revenue source given the difficulty predicting the volume of customer activity from year to year.

Annual Change Assumptions: 3.0%

The types of services offered vary from department to department, so the project team used revenue history by department to estimate future trends. In many departments revenue has varied significantly from year to year. The projections in the model are intended to smooth out this growth from year to year, while also generally assuming a conservative projection to avoid over-estimating revenue with future economic uncertainty.

The following table illustrates assumed annual revenue change by department.

Table 17: Town Services Revenue Historical Performance and Assumptions by Department

Department	Five Year Average Change	Average Portion of Revenue	Assumed Annual Change	Comments
Administrative Services	8.9%	2.2%	5.0%	Assumed lower than average due to past variance
Community Development	1.7%	40.1%	2.0%	Assumed in line with past average
Police	7.4%	24.2%	5.0%	Assumed lower than average due to past variance
Parks and Public Works	9.2%	30.9%	3.0%	Assumed lower than average due to past variance
Non-Departmental	-11.3%	2.6%	0.0%	Assumed flat due to past variance

The following table compares the highest-revenue line items that are categorized as Town Services versus those categorized as License & Permits.

Table 18: Town Services and Licenses & Permits Top Revenue Source, FY2025

Town Services	Licenses and Permits
PD Services for Monte Sereno- $1,135,514	Wasteholder Encroachment Fee (Solid Waste)- $2,297,703
Plan Check- $1,043,926	Building Permit Fees- $2,205,805
Plan Check Building- $529,251	Planning Permits- $902,524

Town Services	Licenses and Permits
Engineering Review Surcharge- $323,972	Encroachment Permits- $459,831
Environmental Impact- $277,397	Tree Removal Permits- $155,535

Business License Tax

The following table illustrates the Town's historical Business License Tax revenue, as well as the average annual change. The revenue has significant year-to-year variation due to economic factors as well as delays in revenue collection. Revenue from one of the largest businesses in the Town was delayed due to an appeal of the tax rate, for example, which is one of the reason for the significant variation in recent years.

Table 19: Business License Actual Revenue History

Year	Actual Revenue	Annual Percent Change
2019	$1,526,894	N/A
2020	$1,357,080	-11.1%
2021	$1,386,943	2.2%
2022	$1,481,667	6.8%
2023	$2,361,862	59.4%
2024	$1,519,960	-35.6%
2025	$2,975,721	95.8%
Average		**19.6%**

2026 Budget: $2,493,992

Base Year Estimate: $2,470,000

The Town commissioned HdL to project future Business License Tax revenue. The firm created aggressive, conservative, and moderate projection scenarios. Under the moderate scenario, a total of $2.47 million in revenue is estimated for FY2026. HdL bases this forecast on actual payments received in the beginning of the fiscal year as well as projected trends for the remaining months. The forecast leverages this estimate as the 2026 base.

Potential Revenue Risks and Restrictions

The variation from year to year illustrated in the table above illustrates the volatility of this revenue source. It is influenced by economic trends as well as Town tax policy, potential court challenges, and other external factors.

Annual Change Assumptions: 1.5%

Business License Tax revenue has increased significantly in the past years, but there has also been a great deal of variation from year to year. HdL acknowledges this volatility in its projections and forecasts three scenarios: an aggressive estimate, a moderate estimate, and a conservative estimate. HdL's assumption for a moderate Business License Tax growth rate is 1.5% per year, and this assumption is used for the model.

This estimate may be somewhat conservative when compared against past trends in the Consumer Price Index (CPI) for the San Francisco region. The CPI can be considered an indicator of long-term growth, and the past five years of CPI growth have averaged 3.8% per year, as illustrated below. However, we believe that HdL's estimate is appropriate given future economic uncertainty.

Table 20: San Francisco Region CPI History

Year	Annual CPI: All Costs	Percent Change
2020	300.084	1.7%

Year	Annual CPI: All Costs	Percent Change
2021	309.721	3.2%
2022	327.06	5.6%
2023	339.05	3.7%
2024	348.417	2.8%
Average		3.8%

Transient Occupancy Tax

The Town charges a Transient Occupancy Tax on hotels and other short-term lodging. Revenue is based on the nightly room rate and number of days at each establishment. The following table illustrates the category's historical revenue, as well as the average annual change.

Table 21: Transient Occupancy Tax Revenue History

Year	Actual Revenue	Annual Percent Change
2019	$2,692,043	N/A
2020	$1,869,685	-30.5%
2021	$1,044,820	-44.1%
2022	$1,895,064	81.4%
2023	$2,228,190	17.6%
2024	$2,367,653	6.3%
2025	$2,417,630	2.1%
Average		5.4%

2026 Budget: $2,422,390

Base Year Estimate: $2,412,087

Actual Transient Occupancy Tax revenues have been an average of 10.4% higher than budgeted over the last seven years. However, one of the hotels in the community closed in 2026, and this change will likely reduce the amount of revenue collected from the Transient Occupancy Tax. The Town provided us with the revenue history per establishment, and based on this we calculated that the closure will mean a reduction of approximately $260,000 in FY2026. Based on these assumptions, we estimate a base year revenue of approximately $2.4 million.

Potential Revenue Risks and Restrictions

Transient Occupancy Tax revenue varies significantly from year to year, as illustrated above. It is tied to the level of tourism and business travel in the community, which is heavily influenced by economic trends. Additionally, the number of hospitality establishments in the Town also influence the amount of revenue generated.

Annual Change Assumptions: 3.0%

Transient Occupancy Tax revenue is projected forward based on the most recent two years of available historical data on revenue by establishment. Older data is not used due to the impact of the pandemic on hotel occupancy. Data for the establishment that closed was not considered when projecting future trends.

Intergovernmental Revenue

The Town receives some intergovernmental revenue, such as state and federal grants. The following table illustrates the category's historical revenue, as well as the average annual change.

Table 22: Intergovernmental Revenue History

Year	Actual Revenue	Annual Percent Change
2019	$945,191	N/A
2020	$1,094,075	15.8%
2021	$1,185,516	8.4%
2022	$1,263,352	6.6%
2023	$1,553,397	23.0%
2024	$1,157,225	-25.5%
2025	$1,357,593	17.3%
Average		**7.6%**

2026 Budget: $838,936

Base Year Estimate: $1,300,000

Actual intergovernmental revenue has been an average of 29.6% higher than budgeted revenue over the past seven years. The budget in FY2026 is somewhat lower than the past, at $838,936 compared to more than $950,000 in previous years. Political and economic uncertainty justifies a lower budget estimate, but the model seeks to normalize revenues over the 10-year projection period. For this reason, we are assuming a base year revenue of $1.3 million to align with previous years' actual revenue.

Potential Revenue Risks and Restrictions

Intergovernmental revenue is dependent on the state of the economy, as well as the philosophies and priorities of the governments in power. These external factors are difficult to predict, which is one reason why revenues are assumed to be flat for this category as discussed below.

Annual Change Assumptions: 0.0%

Intergovernmental revenue is assumed to be flat due to past volatility and to political uncertainty on the state and federal levels.

Fines & Forfeitures

The Town receives revenue from fines levied for infractions, as well as asset forfeitures. The following table illustrates the category's historical revenue, as well as the average annual change.

Table 23: Fines & Forfeitures Revenue History

Year	Actual Revenue	Annual Percent Change
2019	$510,266	N/A
2020	$271,117	-46.9%
2021	$103,467	-61.8%
2022	$319,170	208.5%
2023	$416,951	30.6%
2024	$480,634	15.3%
2025	$420,127	-12.6%
Average		**22.2%**

2026 Budget: $315,200

Base Year Estimate: $440,000

Actual intergovernmental revenue has consistently been higher than budgeted in recent years, with an average variance of 27.7%. To estimate a reasonable base year revenue, the team averaged the actual fine & forfeiture revenue for the past three years, which translates to approximately $440,000. This is somewhat higher than the budgeted figure for FY2026 but was chosen to establish a reasonable basis for future projections, beyond year-over-year volatility.

Potential Revenue Risks and Restrictions

Fines and forfeiture revenue can vary significantly, as illustrated above, because it depends on the frequency with which individuals incur fines and other penalties. The Town does have some ability to influence revenue by adjusting the amount of the fines and by determining the level of enforcement.

Annual Change Assumptions: 0.8%

Revenue in this category is largely influenced by the frequency of fines incurred, which can vary significantly from year to year. It is reasonable, however, to assume that fines incurred with increase over time somewhat proportionally to population. The average population growth over the past two years of available United States Census data (2023 and 2024) was 0.8%, so it is assumed that fine & forfeiture revenue will increase by 0.8% per year.

It is important to reiterate that revenue in this category could be influenced by policy and practice changes, such as new or increased fines or increased enforcement. The model assumes no changes in fines or enforcement levels in the base scenario, but users can project the impact of potential changes moving forward.

Investment Income

The Town also receives income from funds it has invested. Investment income for the General Fund model excludes earnings from the pension trust designated to support the Town's long-term pension liability. Earnings are generated from operating cash accounts as well as pooled cash funds invested in the state Local Agency Investment Fund (LAIF). The interest rate environment has gone through a period of significant change over the past several years, emerging from near 0% rates for cash-related investments to spikes in interest rates to help curb inflation after the pandemic, and most recently steady reductions from the Federal Reserve. The following table illustrates the category's historical revenue, including GAAP-based revenue that includes required mark-to-market non-cash accounting adjustments and interest income without this adjustment as a proxy for cash-based collections.

Table 24: Investment Income Revenue History

Year	Actual Revenue	Annual Percent Change	Actual Revenue (No Mark-to-Market Adjustment)	Annual Percent Change
2019	$1,445,640	N/A	$801,728	N/A
2020	$2,238,102	54.8%	$1,145,537	42.9%
2021	$58,250	-97.4%	$838,649	-26.8%
2022	($1,404,526)	-2511.2%	$610,975	-27.1%
2023	$584,171	-141.6%	$580,975	-4.9%
2024	$2,597,723	344.7%	$885,477	52.4%
2025	$2,935,466	13.0%	$1,733,643	95.8%
2026	N/A	N/A	N/A	N/A
Average		**-389.6%**		**22.0%**

2026 Budget: $1,567,774

Base Year Estimate: $1,567,774

The model maintains a base estimate equal to the 2026 budget. This estimate is consistent with 2025 earnings.

Potential Revenue Risks and Restrictions

The amount of income generated by the Town's investments is dependent on market changes. It can be volatile from year to year, as illustrated above, and in an economic downturn the Town risks a significant reduction in revenue.

Annual Change Assumptions: 2.0% for LAIF and 2.8% remaining cash investments

There are two offsetting factors influencing the projected interest earnings over the next ten years. First, the assumption for interest earned on investment balance is split between a steady LAIF balance of $15m returning 2.0% on average over the forecast period and approximately $45m of investment account balance that is expected to decline over the forecast period as the projected structural deficit will reduce fund balance and cash on hand for the Town. This declining balance, however, is expected to return interest earnings of approximately 2.8% annually. The interest rate assumptions are lower than the most recent rate of return the Town has experienced of 3.4%. This is influenced by recent Federal Reserve actions to reduce rates.

Actual interest earnings collected by the Town declines over the ten-year period from an estimated $1.5m in 2027 to $700,000 in 2036. This is driven by a lower investment balance of $65 million today to approximately $30 million in 2036. This decline assumes the Town will rely more on fund balance to meet balanced budget requirements, decreasing the amount of cash available to invest.

Other Revenue

The final external revenue category in the model encompasses all revenue not falling into another category, such as donations or property sales. The following table illustrates the category's historical revenue, as well as the average annual change.

Table 25: Other Revenue History

Year	Actual Revenue	Annual Percent Change
2019	$6,575,936	N/A
2020	$2,731,171	-58.5%
2021	$3,550,564	30.0%
2022	$2,410,531	-32.1%
2023	$2,755,697	14.3%
2024	$3,156,921	14.6%
2025	$2,517,861	-20.2%
Average		**-8.7%**

2026 Budget: $2,188,465

Base Year Estimate: $2,800,000

The Town's budgeted revenues in this category for FY2026 are lower than FY2025, reflecting the decrease that took place between FY2024 and FY2025. This is appropriate for the FY2026 budget, but may be artificially low if used as the basis for future projections. Instead, the project team used the average revenue for the past three years, approximately $2.8 million, as a basis for future projections.

Potential Revenue Risks and Restrictions

There are a variety of revenue sources in this category, many of which vary significantly from year to year. This impacts the Town's ability to reliably predict future revenues.

Annual Change Assumptions: 0.0%

The base year assumption is intended to normalize revenue projections in this category based on past years' average, but volatility in annual revenue makes it difficult to predict future revenues. For the purposes of the model, revenue is assumed to be flat in the base scenario.

Transfers In

Some General Fund revenue is transfers from other Town funds. The following table illustrates the category's historical revenue, as well as the average annual change.

Table 26: Transfers In Revenue History

Year	Actual Revenue	Annual Percent Change
2019	$1,578,911	N/A
2020	$599,669	-62.0%
2021	$652,056	8.7%
2022	$633,352	-2.9%
2023	$538,536	-15.0%
2024	$564,910	4.9%
2025	$812,411	43.8%
Average		**-3.7%**

The two largest sources of transfers are the General Fund Appropriation Reserve (GFAR) Fund 411 and the Gas Tax Fund; all other transfer amounts have historically been $10,000 or less. The GFAR Fund is used to finance capital projects, and the transfers into the General Fund are intended to represent excess unspent funds in a given year. The Gas Tax Fund transfers go towards operating costs that can legally be paid out of Gas Tax revenue, such as the cost of mowing laws and trimming trees in Town Right-Of-Way. Historically, the Town has transferred a standard amount year for this purpose.

2026 Budget: $562,411

Base Year Estimate: $321,280

The Town has historically transferred a set amount from most funds each year, as shown in the table below, and these amounts are also assumed in the base budget. The exception is the General Fund Appropriation Reserve (GFAR) Fund 411, where amounts have varied. The GFAR Fund is used to finance capital projects, and over the past seven years GFAR transfers into the General Fund have averaged 6.9% of expenditures. We applied this 6.9% to the average annual assumed GFAR capital expenditures over the model period and based on these assumptions an average of approximately $200,970 is expected to be transferred into the General Fund. This is assumed as the base revenue for FY2026.

Table 27: Assumed Transfers In by Fund, FY2026

Fund	FY2026 Transfers In
General Fund Appropriated Reserve Fund 411	$200,970
Gas Tax Fund	$106,000
Traffic Mitigation Fund	$10,000

Fund	FY2026 Transfers In
Kennedy Assessment District Fund	$1,510
Vasona Assessment District Fund	$1,430
Santa Rosa Assessment District Fund	$660
Blackwell Assessment District Fund	$460
Hillbrook Assessment District Fund	$250
Total	$321,280

Annual Change Assumptions: 0.0%

The Town has had a historical practice of transferring in set amounts from various other funds, as discussed above, with the transfers generally remaining flat from year to year. The exception is GFAR transfers, but the base year assumption is the normalized annual projected transfer for the entire model period. For this reason, all transfers are assumed to remain flat.

Personnel Expenditures

The following sections detail personnel-related expenditures including salaries and overtime (e.g. wages) and benefits, including healthcare and retirement.

Personnel Costs- Salary

Personnel-related costs are the single largest driver of operating expenses for the Town. Wages, including salaries and overtime account for nearly 40% of total budgeted expenditures in 2026. Wages and benefit costs are nearly 70% of total cost. To determine the underlying assumption for personnel – salaries cost, the project team reviewed actual expenditure history since 2019 alongside the change in authorized staffing levels over that same period. The following table illustrates these trends.

Table 28: Personnel - Salary Actual Expenditure History

Year	Actual Expenditures	Annual Percent Change	Authorized Staffing	Annual Percent Change	Cost per FTE	Annual Percent Change
2019	$17,223,545	N/A	148.99	N/A	$115,602	N/A
2020	$18,175,614	5.5%	149.63	0.4%	$121,470	5.1%
2021	$18,987,346	4.5%	150.00	0.2%	$126,582	4.2%
2022	$18,306,124	-3.6%	150.24	0.2%	$121,846	-3.7%
2023	$20,011,354	9.3%	153.26	2.0%	$130,571	7.2%
2024	$21,186,554	5.9%	152.51	-0.5%	$138,919	6.4%
2025	$21,813,266	3.0%	152.50	0.0%	$143,038	3.0%
Average		4.1%		0.4%		3.7%

Personnel Costs- Vacancy Savings

Budgeting for vacancy savings is a tool to improve realistic forecasting, especially in an environment of financial constraint. The underlying assumption should be rooted in actual experience for the Town and consider, where appropriate, department specific turnover rates that may have an outsized impact on overall savings, such as Police. The challenge is determining a vacancy factor that does not prevent hiring or influence policy/service level decisions. In other words, vacancy savings occur naturally each year based on normal staffing churn (e.g. time to hire, retirements, voluntary resignations etc.). Where the savings are generated can vary from year to year. Therefore, the estimate should rely on Town-wide experience without impacting individual department hiring practices to meet service level expectations.

Raftelis reviewed the recent budget-to-actual variance for personnel cost (excluding OPEB) to get a sense of vacancy savings generated annually compared to the Town's current vacancy savings estimate of $2.2 million or 4.6%.

Table 29: Budgeted vs. Actual Personnel Costs, FY2019-2025[12]

Year	Budgeted Personnel Costs	Actual Personnel Costs	Variance ($)	Variance (%)
2019	$27,182,218	$26,791,635	$390,583	1.4%
2020	$30,910,360	$28,563,165	$2,347,195	7.6%
2021	$31,578,999	$29,954,224	$1,624,775	5.1%
2022	$32,269,661	$29,651,637	$2,618,024	8.1%
2023	$35,472,824	$32,306,067	$3,166,757	8.9%
2024	$36,166,293	$34,234,940	$1,931,353	5.3%
2025	$38,518,446	$36,315,240	$2,203,206	5.7%
Average			**$2,040,270**	**6.0%**

The vacancy savings percentage estimate falls below historical experience; however, the amount is close to the historical average. The Town should exercise caution with this budgetary estimate going forward. Attrition data needs to be evaluated annually to see if staffing trends have changed and if so, adjust this estimate to remain conservative instead of in-line with actual experience. Reductions to the vacancy savings will *increase* the annual budget gap. In addition, part of the historical experience considers overtime and pension costs. While these costs are certainly related to personnel, they are not always linear in terms of impact. Overtime may spike due to service response needs and pension cost also factors in amortization of long-term liability based on market performance in addition to covered payroll.

Bargaining Units

Town staff fall within five different labor groups, with three groups governed by collective bargaining agreements or memorandums of understanding (MOU's). The MOU's indicate contractual salary increases over a set period of time. For purposes of the baseline forecast, Raftelis considered each of these labor groups individually and the associated historical trend for personnel costs. The current MOUs expire at the end of FY 2027. Details regarding salary assumptions for each of these labor groups are provided below.

2026 Personnel – Salary Budget without Vacancy Savings: $25,381,471

2026 Personnel – Salary Budget with Vacancy Savings: $23,182,932

Base Year Estimate: $22,794,863

For the long-term forecast, Raftelis chose to rely on historical trend and not include a vacancy savings factor. The base estimate for 2026 considers the most recent actual personnel cost of $21.3 million and assumed base increase of 4.5%.

...udes salary, overtime, other benefits, and CalPERs pension.

Annual Change Assumptions: 3.9%, weighted average

The model assumes that the number of positions remains unchanged over the course of the model period.[13] Costs are projected forward based on the average annual salary increase by bargaining unit[14], the total number of positions per bargaining unit, and the average annual salary per position. All data was provided by Town staff. Based on these assumptions, salary costs are assumed to increase by an average of 3.9% per year over the course of the model period.

The following table summarizes data used to create these assumptions.

Table 30: Salary Assumptions by Bargaining Group

Group	Average Salary Range Increase, Most Recent Three Years of Data	Total Authorized Positions, FY2026	Average Hourly Salary, FY2026
American Federation of State, County and Municipal Employees (AFSCME)	4.0%	14	$47.93
Los Gatos Police Officers' Association	5.2%	39	$81.72
Los Gatos Town Employees' Association	3.0%	56	$58.40
Confidential	3.7%	13	$57.25
Management	3.7%	32	$96.56

Personnel Costs- Overtime

As mentioned previously, overtime costs can vary and are typically tied to overall trends in staffing. Often, overtime costs run higher when staffing levels are lower (higher vacancy rates). The Town's budget for overtime has consistently lagged actual expenditures as illustrated in the following table.

Table 31: Overtime Budgeted and Actual Expenditure History

Year	Actual Expenditures	Annual Percent Change	Adopted Budget
2019	$707,046	N/A	$387,204
2020	$708,955	0.3%	$477,890
2021	$882,421	24.5%	$424,560
2022	$1,134,177	28.5%	$472,270
2023	$1,373,672	21.1%	$604,678
2024	$1,342,518	-2.3%	$578,856
2025	$1,333,709	-0.7%	$599,171
Average		**11.9%**	

2026 Budget: $657,310

Base Year Estimate: $1,371,566

Overtime costs grew significantly between 2021 and 2023. This is likely correlated with lower staffing levels after the pandemic. As staffing levels have stabilized, overtime costs have also remained more consistent at approximately $1.3 million annually. Maintaining a historical trend-based methodology, the 2026 estimate for the General Fund forecast assumes an amount in line with recent experience.

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[13] The Excel model does include mechanisms to allow the user to project the cost of additional positions.

al increases are used where negotiated agreements are available.

Annual Change Assumptions: 1.0%

The project team analyzed trends in average overtime per authorized position in recent years to project future costs. Overtime per position has varied significantly over time, as illustrated below, but has decreased in recent years. The baseline model assumes no new positions are added; therefore, future overtime costs will be a factor of vacancy rates, changes in service level expectations (without corresponding funding), and the underlying base wage for overtime eligible positions. Because overall salary growth is projected to increase, a corresponding increase is expected for overtime. The projected growth is smaller than anticipated salary growth, assuming staffing levels remain consistent with recent experience and the actual amount of overtime hours incurred (overtime per person) continues to decline slightly.

Table 32: Historical Overtime Costs by Authorized Position

Year	Total Positions	Overtime Per Position	Annual Change
2019	148.99	$4,746	N/A
2020	149.64	$4,738	0%
2021	150.81	$5,851	24%
2022	150.24	$7,549	29%
2023	153.25	$8,964	19%
2024	152.50	$8,803	-2%
2025	152.50	$8,746	-1%
Average			**11.4%**

Personnel Costs- CalPERS

Current and former Town employees participate in the state's public pension fund – CalPERs. Plan participation varies depending on when employees entered the system and the nature of their employment (general or public safety). The Town relies on actuarial consultants to provide estimates for annual contributions. These estimates include multiple factors such as current Town payroll for covered employees (those eligible to participate), accrued pension liability resulting from pension assets underperforming relative to plan assumptions, and the expected benefit payment for each vested employee based on demographics and plan features.

Similar to other personnel cost drivers, the project team first assessed actual pension cost paid annually to understand underlying growth trends. This data along with actuarial estimates provided by Foster and Foster® informed assumptions for expected future pension costs. The following table illustrates actual CalPERS costs, as well as the average annual change.

Table 33: CalPERS Actual Expenditure History

Year	Actual Expenditures	Annual Percent Change
2019	$5,282,681	N/A
2020	$6,059,646	14.7%
2021	$6,374,119	5.2%
2022	$6,531,958	2.5%
2023	$7,091,215	8.6%
2024	$7,431,198	4.8%
2025	$8,220,124	10.6%
Average		**7.7%**

2026 Budget: $9,907,119

Base Year Estimate: $9,114,430

The table below details how the 2026 base amount was determined relying on the actuarial estimates from the March 2025 Foster and Foster Report. Included in that report were estimates for covered payroll that support the model's 2026 base estimate for contributions.

Table 34: CalPERS Covered Payroll and Contribution by Group

Employee Group[15]	Employee Count	2025/26 Payroll	2025/26 Contribution[16]	FY2026 Base Estimate
Miscellaneous	114	$15,215,000	30.0%	$4,564,500
Safety	36	$6,842,000	66.5%	$4,549,930
Total	**150**	**$22,057,000**	**N/A**	**$9,114,430**

Annual Change Assumptions: 4.9% on average (varies by year)

The model projects annual covered payroll for Safety and miscellaneous employees based on the assumptions detailed in the salary section above. The Foster and Foster report projects the percentage of payroll contributions needed for both safety and miscellaneous employees over the next 10 years to cover normal cost and the unfunded accrued liability (UAL) payment. This percentage (50th percentile) is used to determine pension cost for the Town over the next ten years.

It is important to note the baseline model does not consider changes to underlying pension assumptions, such as the discount rate used for market rate of return on assets. This type of change would be modeled as a scenario and may have a significant impact on the required contribution from the Town each year. To hedge against growing unfunded liability the Town has also established a pension trust, for which annual contributions are factored into the baseline model projection for the General Fund. Additional details can be found in that expenditure category section.

[15] Includes proportionate share of classic members utilizing final average contribution (FAC) of one year or three years as well as members who joined after the 2013 Public Employees' Retirement Reform Act (PEPRA).

[16] ...udes normal cost and unfunded accrued liability (UAL) payment

ITEM NO. 10.

Miscellaneous

Risk Mitigation Impact

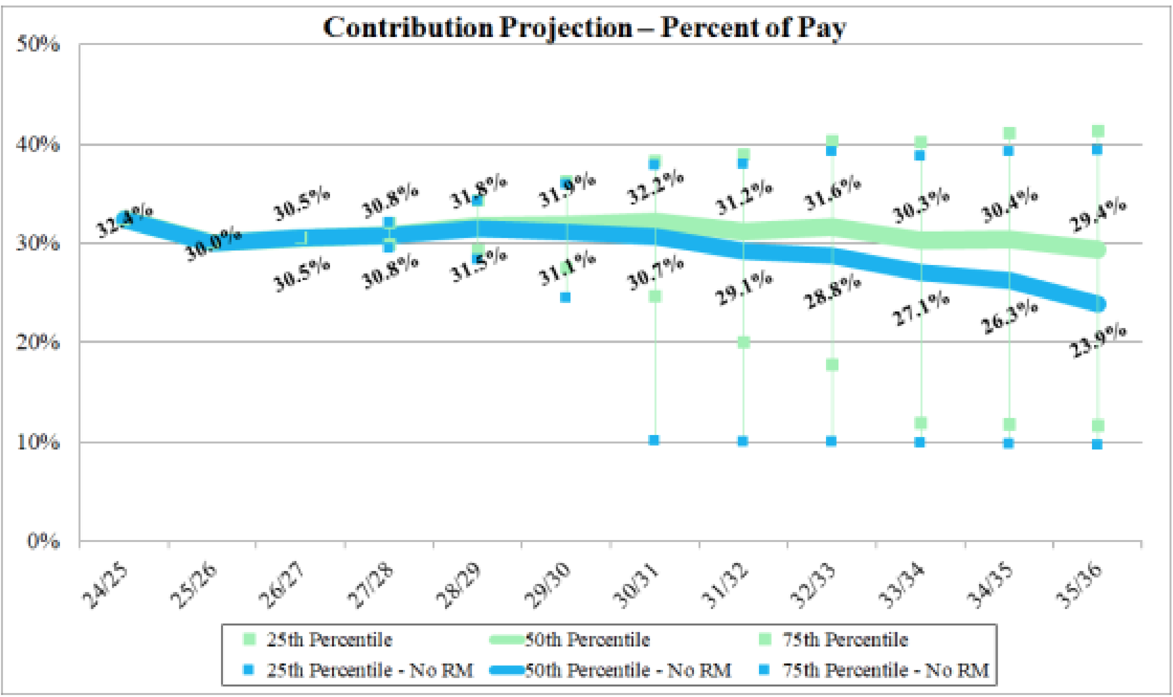

Figure 1: Foster and Foster Miscellaneous Employer Pension Contributions FY2026-2036

Safety

Risk Mitigation Impact

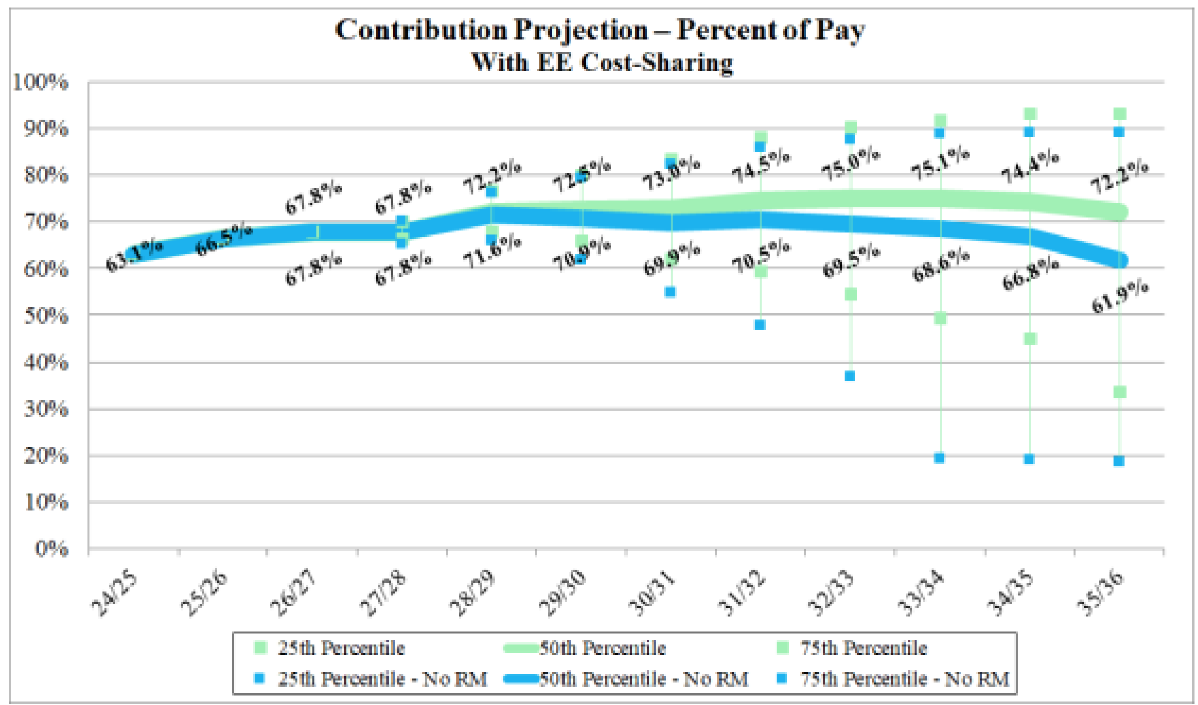

Figure 2: Foster and Foster Safety Employer Pension Contributions FY2026-2036

Personnel Costs- Other Benefits

The other benefits category encompasses costs primarily related to health insurance (including dental and vision) as well as other benefits such as disability and group life insurance. The Town is fully insured, paying a fixed premium to an insurance carrier to provide medical coverage for employees. The following table illustrates the category's historical actual costs, as well as the average annual change.

Table 35: Other Benefits Budgeted and Actual Expenditure History

Year	Actual Expenditures	Annual Percent Change
2019	$3,578,363	N/A
2020	$3,618,950	1.1%
2021	$3,710,338	2.5%
2022	$3,679,378	-0.8%
2023	$3,829,826	4.1%
2024	$4,274,670	11.6%
2025	$4,948,141	15.8%
Average		5.7%

2026 Budget: $6,265,770

Base Year Estimate: $5,548,868

Benefit costs were dormant through the pandemic years and then rebounded to above average increases, particularly within the past two years. The lower actual costs experienced in 2020 – 2022 are not anticipated in future years. Rather, it is expected that healthcare costs will settle into historic growth patterns of 6-8% employer cost increases annually. For this reason, the 2026 base estimate in the forecast is $5.5 million, reflecting approximately a 12% increase from the 2025. This is base assumes a "catch up" from the deflated costs experienced previously and is below the Town's 2026 budget. The growth in costs from this base estimate are not expected to increase as much as explained below.

Annual Change Assumptions: 6.6%

The project team looked at trends in healthcare costs from two industry experts, PricewaterhouseCoopers (PwC) and the National Association of Insurance Commissioners (NAIC), as well as the Town's own experience with costs the past several years to develop the annual benefit cost projection of a 6.6% annual increase.

Table 36: Industry Healthcare Cost Trends

Year	PwC Annual Change in Group Plan Healthcare Costs	NAIC Annual Change in Insurance Premiums
2021	7.0%	Not available
2022	5.5%	5.5%
2023	8.0%	5.2%
2024	8.5%	4.9%
2025	8.5%	7.1%
Average	7.5%	5.7%

Personnel Costs- Other Post-Employment Benefits (OPEB)

The Town's share of retiree medical expenses is categorized as OPEB. The Town is required to provide medical insurance for retirees who are not yet Medicare eligible. The underlying cost for this benefit is related to assumptions for healthcare cost increases (e.g. Other Benefits); however, the demographic composition is a higher age group that typically utilize medical benefits at a higher rate than the overall employee population. The historical trend data supports this, with Town-wide benefit costs growing at 5.7% on average the past seven years, while retiree's share of healthcare costs grew at 8.2%. The following table illustrates the category's historical actual costs, as well as the average annual change.

Table 37: OPEB Actual Expenditure History

Year	Actual Expenditures	Annual Percent Change
2019	$1,181,579	N/A
2020	$1,203,101	1.8%
2021	$1,286,285	6.9%
2022	$1,391,296	8.2%
2023	$1,527,074	9.8%
2024	$1,631,602	6.8%
2025	$1,883,528	15.4%
Average		**8.2%**

2026 Budget: $2,125,000

Base Year Estimate: $2,125,000

The Town's 2026 budget aligns with growth in actual costs of approximately 8% from the most recent fiscal year.

Annual Change Assumptions: 7.7%

Similar to the underlying industry data support total benefit costs for the Town, the anticipated growth for this expenditure category uses a higher overall percentage to mirror the differences in demographics and the higher end of anticipated national healthcare cost increases anticipated by industry experts.

Non-Personnel Expenditures

The Town has multiple ongoing operating expenditures required to support service delivery that do not involve personnel. Actual expenditure trend history and underlying cost assumptions for the General Fund baseline model are detailed by category below. Unless otherwise noted, historical averages shown by department or a more granular expense type reflect the seven-year average consistent with the historical trend data provided.

Grants and Awards

The Town has historically set aside funds for grant and awards programs in the community. The amount has varied depending on the Town's financial position and community/economic factors. For example grants increased significantly after pandemic, likely related to one-time funding from state and federal sources to support various community programs. The amount of grants awarded is an annual discretionary policy decision. As such, for the baseline forecast model, we relied on Town staff guidance of $155,000 as the ongoing base amount of grants awarded annually with no anticipated increases over the ten year period.

Materials and Supplies

Police, Parks and Public Works, and Library comprise 88% of total materials and supplies expenditures for the Town. The following table illustrates the category's historical cost, as well as the average annual change. Amount have been adjusted to remove one-time anomalies.

Table 38: Materials and Supplies Actual Expenditure History

Year	Actual Expenditures	Annual Percent Change
2019	$506,425	N/A
2020	$954,191	88.4%
2021	$986,060	3.3%
2022	$976,524	-1.0%
2023	$1,004,047	2.8%
2024	$1,336,078	33.1%
2025	$1,205,674	-9.8%
Average		**19.5%**

2026 Budget: $1,341,030

Base Year Estimate: $1,101,676

In FY2024 the Town increased the base budget to $1.3 million, which is slightly higher than recent trends for the past three years. The model assumes an initial base estimate of $1.1 million, which the five-year historical expenditure average since 2021.

Annual Change Assumptions: 7.4% (weighted average)

The types of materials and supplies purchased vary from department to department, so the project team used expenditure history by department to estimate future trends. As stated previously, three departments drive the majority of underlying cost for this category. The remaining departments make up a smaller share of costs with actual expenses varying from year to year. For those departments, expenditures are assumed to remain flat throughout the model period (e.g. existing allocation of base budget is sufficient to cover these departments collectively).

The following table illustrates historical and assumed annual expenditure change by department. A three-year (post pandemic) average growth rate was used to inform the future costs.

Table 39: Materials and Supplies Expenditure Assumptions by Department

Department	Average Portion of Expenditures	Three Year Average Annual Change	Assumed Annual Change
Police	41.9%	12.8%	10.0%
Parks and Public Works	29.2%	10.1%	7.0%
Library	16.9%	3.0%	2.0%
All Other	12.0%	-15.4%	0.0%

Utilities

The Town pays a variety of utilities including water, electric, and telecommunications. The following table illustrates actual utilities costs, as well as the average annual change.

Table 40: Utilities Actual Expenditure History

Year	Actual Expenditures	Annual Percent Change
2019	$451,146	N/A
2020	$540,966	19.9%
2021	$572,195	5.8%
2022	$560,096	-2.1%
2023	$636,764	13.7%
2024	$723,753	13.7%
2025	$829,296	14.6%
Average		**10.9%**

2026 Budget: $721,546

Base Year Estimate: $900,000

Actual utilities costs since the pandemic have increased by 14%, exceeding budget estimates in FY2023-25. For the model, an initial 2026 base estimate of $900,000 is used. This is based on the recent three year growth trajectory.

Annual Change Assumptions: 10.6% (weighted average)

Costs were estimated by utility type, based on past history. Utilities with a minimal impact on overall cost and volatile changes year-over-year are assumed to be flat. The following table illustrates assumed annual expenditure change by utility.

Table 41: Utility Expenditure Assumptions by Type

Utility	Average Portion of Expenditures	Average Annual Change	Assumed Percent of Cost[17]	Assumed Annual Change
Electric	6.4%	11.4%	7.0%	12.0%
Water	50.6%	11.9%	51.6%	12.0%
St Lite / Signals Energy	31.1%	9.4%	30.9%	9.0%
911 Communications Line	5.2%	14.8%	5.3%	10.0%
Telephone	3.3%	11.7%	3.3%	8.0%
Mobile/Cell Phones	2.2%	3.2%	1.0%	1.0%
Communications Data Lines	0.3%	-39.2%	0.2%	0.0%
Cable	0.8%	2.9%	0.7%	0.0%

Purchased Services

Purchased services include contracts and third-party technical/advisory support services for the Town. Amounts can vary significantly by department, however, Police, Parks and Public Works, and Community Development account for almost two-thirds of costs, with the remaining share coming from administrative functions (including non-departmental). The table below provides historical expenditure trends.

Table 42: Purchased Services Actual Expenditure History

Year	Actual Expenditures	Annual Percent Change
2019	$3,518,231	N/A
2020	$3,408,461	-3.1%

ed on most recent 2025 portion of actual cost.

Year	Actual Expenditures	Annual Percent Change
2021	$2,899,476	-14.9%
2022	$3,308,630	14.1%
2023	$2,795,440	-15.5%
2024	$3,453,697	23.5%
2025	$3,063,557	-11.3%
Average		-1.2%

2026 Budget: $3,752,045

Base Year Estimate: $3,206,785

Actual purchased services costs have generally come in lower than budget. The model assumes a 2026 base estimate of $3.2 million, which is consistent with the historical average for expenditures over the past seven years.

Annual Change Assumptions: 4.6% (weighted average)

Costs were estimated by department, based on past history. Departments with volatile past change that are relatively small relative to total cost incurred are assumed to be flat. The following table illustrates assumed annual expenditure change by Department.

Table 43: Purchased Services Expenditure Assumptions by Department

Department	Average Portion of Expenditures	Average Annual Change	Assumed Percent of Cost[18]	Assumed Annual Change
Council	0.1%	55.1%	0.2%	0.0%
Attorney	5.1%	152.5%	16.2%	10.0%
Administrative Services	8.0%	14.8%	8.1%	5.0%
Community Development	17.1%	1.6%	17.0%	2.0%
Police	20.5%	18.8%	17.5%	10.0%
Parks and Public Works	19.7%	3.3%	19.4%	2.0%
Library	2.9%	7.8%	4.2%	2.0%
Non-Departmental	26.7%	-12.5%	17.5%	0.0%

Other Operating Expenditures

The final non-personnel operating expenditure category includes all operating expenditures that do not fall into another category. Examples include license fees, subscriptions, and reimbursements for employee travel. The following table illustrates actual costs, as well as the average annual change.

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ed on most recent 2025 portion of actual cost.

Table 44: Other Operating Costs Budgeted and Actual Expenditure History

Year	Actual Expenditures	Annual Percent Change
2019	$2,732,835	N/A
2020	$2,363,715	-13.5%
2021	$2,656,065	12.4%
2022	$2,826,600	6.4%
2023	$2,898,164	2.5%
2024	$3,177,868	9.7%
2025	$3,907,189	23.0%
Average		**6.7%**

2026 Budget: $3,367,687

Base Year Estimate: $4,170,370

Actual expenditures increased significantly in 2024 and 2025. The base year estimate assumes this pattern continues with a 6.7% increase from 2025 actual.

Annual Change Assumptions: 6.7%

Based on the average annual change.

Internal Services Charges

The Town relies on internal service funds (ISF) for Town-wide insurance including general liability and workers compensation, as well as facility, Fleet/equipment replacement, and IT services. Each of these funds incur operating costs, including ongoing maintenance, repair, and small capital asset replacement. In some cases they may also receive external revenue sources that support operating costs. The baseline model first calculates estimated operating costs including ongoing maintenance, repair, and replacement for each ISF, then applies any outside revenue sources, before determining the net "charge" required to be allocated to departments to fully recover operational cost. As a result, the General Fund model internal service charge category reflects this aggregate net "charge" to all General Fund departments. The following sections detail assumptions for each internal service fund.

Liability Self-Insurance Fund

The underlying cost of this fund reflects general liability insurance premiums, which are influenced by the Town's claims experience and insurance industry cost trends. The following table illustrates historical operating expenditures for the fund, as well as the average annual change. The fund does not consistently receive external revenue to support operating costs.

Table 45: Liability Self-Insurance Fund Actual Expenditure History

Year	Actual Expenditures	Annual Percent Change
2019	$338,617	N/A
2020	$400,823	18.4%
2021	$646,495	61.3%
2022	$583,924	-9.7%
2023	$988,486	69.3%
2024	$1,131,184	14.4%
2025	$1,320,458	16.7%
Average		**28.4%**

2026 Charges for Service Budget: $1,825,348

Base Year Estimate: $1,622,241

Actual costs spiked beginning in 2023 through 2025. The Town recently moved to a new JPA that is expected to yield some cost savings in future years. The 2026 base estimate reflects historical cost with anticipated growth of 22% from 2025 actual.

Annual Change Assumptions: 7.0%, on average

With the recent shift to a new JPA, the annual growth in insurance costs are expected to slow from recent historical averages. Costs are still projected to increase each year at a rate greater than inflation given insurance industry trends. This assumption will need to be closely monitored as the Town receives future premium and claims data under the new JPA.

Workers' Compensation Self-Insurance Fund

The underlying cost of this fund reflects workers compensation claims activity. The following table illustrates historical operating expenditures for the fund, as well as the average annual change.

Table 46: Workers' Compensation Self-Insurance Fund Actual Revenue and Expenditure History

Year	Actual Operating Expenditures	Annual Percent Change	Actual External Revenues	Annual Percent Change
2019	$1,270,628	N/A	412,720	N/A
2020	$1,525,589	20.1%	526,552	27.6%
2021	$1,381,049	-9.5%	327,768	-37.8%
2022	$1,533,045	11.0%	258,474	-21.1%
2023	$1,913,144	24.8%	163,755	-36.6%
2024	$1,332,697	-30.3%	392,310	139.6%
2025	$1,131,566	-15.1%	330,788	-15.7%
Average		0.2%		9.3%

2026 Charges for Service Budget: $1,901,696

Base Year Estimate: $1,650,000

Recent workers compensation costs have declined from the 2023 peak of $1.9 million. With the difficulty predicting claims activity, some contingency or fund balance within the ISF is desired as a way to smooth incremental cost increases over time. The 2026 base estimate includes the historical average cost of $1.4 million with a $250,000 contingency.

Annual Change Assumptions: 2.3%, on average

The model projects Workers' Compensation Self-Insurance Fund costs using a general inflationary factor of 2%. Year-to-year costs have varied significantly. With some contingency built into the base estimate, ongoing growth assumptions are smoothed to consider inflation given the average historical experience has been relatively flat.

Facilities Maintenance Internal Service Fund

The facilities maintenance funds provides funding for the upkeep and maintenance of Town facilities. The following table illustrates actual operating expenditures, as well as the average annual change and external revenue sources (outside of charges to General Fund departments) that support facilities maintenance operating needs.

Table 47: Facilities Maintenance Fund Budgeted and Actual Contribution History

Year	Actual Operating Expenditures	Annual Percent Change	Actual External Revenues	Annual Percent Change
2019	$968,550	N/A	$904,548	N/A
2020	$1,002,775	3.5%	$233,302	-74.2%
2021	$1,063,763	6.1%	$333,649	43.0%
2022	$1,217,971	14.5%	$1,115,005	234.2%
2023	$1,298,219	6.6%	$394,952	-64.6%
2024	$1,330,691	2.5%	$490,512	24.2%
2025	$1,418,481	6.6%	$245,818	-49.9%
Average		**6.6%**		**18.8%**

2026 Charges for Service Budget: $1,175,983 (net of external revenue)

Base Year Estimate: $1,175,983

The Town has consistently charged the General Fund departments for 100% of underlying operating expenditures. The 2026 base maintains the original adopted budget of $1.2 million, which is reflective of actual operating expenditures less external revenue sources.

Annual Change Assumptions: 7.2%, on average

The model projects Facilities Maintenance Fund costs by category, based on past history and consistent with underlying assumptions for General Fund costs for the same non-personnel expenditure categories. The expected charge is offset by approximately $340,000 in revenue, which does not include a growth factor over the ten years. The following table summarizes expenditure assumptions by category.

Table 48: Facilities Maintenance Fund Model Assumptions

Expenditure Category	FY2025 Actual Expenditures	Annual Change Assumed for Model
Materials and Supplies	$404,096	3.5%
Utilities	$817,793	8.0%
Purchased Services	$158,481	2.0%
Other Operating Expenditures	$58,836	6.1%

Information Technology (IT) Internal Service Fund

The IT ISF supports Town-wide application support and maintenance contracts, along with equipment (hardware) replacement cycles. The following table illustrates actual operating expenditures, as well as the average annual change.

Table 49: IT Internal Service Fund Actual Expenditure History

Year	Actual Expenditures	Annual Percent Change
2019	$566,952	N/A
2020	$796,071	40.4%
2021	$668,473	-16.0%
2022	$877,789	31.3%
2023	$538,282	-38.7%
2024	$731,789	35.9%
2025	$887,063	21.2%
Average		**12.4%**

2026 Charges for Service Budget: $954,554

Base Year Estimate: $1,067,101

Base year estimates for the IT ISF charges for services do not include any assumption for external revenue sources. In addition, the 2026 base estimate is reflective of the anticipated maintenance and replacement schedule provided by Town staff, not historical spending. This schedule reflects the true cost to maintain the IT infrastructure the Town has in place to support current service levels.

Annual Change Assumptions: 3.0%, on average

The Town provided an inventory of existing technology assets and planned replacement schedules, and the project team used this data to project annual technology replacement needs over the 10-year model period. The model projects that actual technology costs will be between approximately $1.1 and $1.5 million per year over the next 10 years. These figures are smoothed out over the model period to allow for a more predictable annual contribution. Contribution amounts are assumed to increase by 3% each year based on inflation and higher replacement costs over time.

The following table illustrates estimated actual technology needs by year. It is based on existing technology and does not assume any expansion of technology use.

Table 50: Estimated Technology Replacement Needs per Year, FY2026-2036

Year	Town Estimate of Maintenance and Replacement Needs	Smoothed Estimate for Forecast[19]
2026	$1,251,845	$1,042,067
2027	$1,420,894	$1,101,297
2028	$1,105,082	$1,134,336
2029	$1,157,701	$1,168,366
2030	$1,206,837	$1,203,417
2031	$1,138,311	$1,239,520
2032	$1,508,759	$1,276,705
2033	$1,214,200	$1,315,007
2034	$1,190,731	$1,354,457
2035	$1,196,769	$1,395,091
2036	$1,276,077	$1,436,943
Average	**$1,242,473**	**N/A**

Equipment Replacement Internal Service Fund

The Equipment Replacement ISF supports maintenance and replacement of vehicles and other large equipment used by various Town departments. The following table illustrates historical operating expenditures, as well as the average annual change. Since the fund supports vehicle and equipment replacement (capital costs), there is greater variation in funds expended annually. This may be due to market conditions delaying the purchasing and receipt of new vehicles, which was common immediately after the pandemic. The fund also relies more heavily on fund balance to support catch-up or timing of replacement.

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udes 3% annual inflationary increase

Table 51: Equipment Replacement Fund Actual Expenditure History

Year	Actual Expenditures	Annual Percent Change	Actual Revenues	Annual Percent Change
2019	$601,961	N/A	$22,492	N/A
2020	$540,036	-10.3%	$36,987	64.4%
2021	$248,302	-54.0%	$59,852	61.8%
2022	$157,761	-36.5%	$48,484	-19.0%
2023	$526,960	234.0%	$78,916	62.8%
2024	$187,323	-64.5%	$33,418	-57.7%
2025	$563,192	200.7%	$43,409	29.9%
Average		**44.9%**		**23.7%**

2026 Charges for Service Budget: $1,167,544

Base Year Estimate: $1,026,554

Base year estimates for the Equipment Replacement ISF charges for services includes a small assumption of $40,000 in external revenue to offset General Fund charges for services. This external revenue is typically generated by sale proceeds from auction on obsolete vehicles that have exceeded their useful life. In addition, the 2026 base estimate is reflective of the anticipated maintenance and replacement schedule provided by Town staff, not historical spending. This schedule reflects the ongoing cost required to replace the Town's current vehicle and equipment asset inventory.

Annual Change Assumptions: 3.0%, on average

The Town provided an inventory of equipment and planned replacement schedules, and the project team used this to project annual vehicle and equipment replacement needs over the 10-year model period. The Town replacement schedule projects that actual equipment costs will be between approximately $215,000 and $2.4 million per year over the next 10 years. These figures are smoothed out over the model period to allow for a more predictable annual contribution. Contribution amounts are assumed to increase by 3% each year.

The following table illustrates estimated actual equipment needs by year. It is based on existing equipment and does not assume any expansion for increased service levels.

Table 52: Estimated Equipment Replacement Needs per Year, FY2026-2036

Year	Town Estimate of Maintenance and Replacement Needs	Smoothed Estimate for Forecast[20]
2026	$584,890	$1,000,000
2027	$2,387,730	$1,089,741
2028	$2,014,115	$1,122,433
2029	$214,275	$1,156,106
2030	$1,029,654	$1,190,789
2031	$837,932	$1,226,513
2032	$532,015	$1,263,308
2033	$1,079,139	$1,301,207
2034	$1,414,414	$1,340,244
2035	$2,162,045	$1,380,451
2036	$1,403,991	$1,421,864
Average	**$1,241,836**	**N/A**

Debt Service

The following table illustrates historical debt service, as well as the average annual change and the average annual variance between budgeted and actual.

Table 53: Debt Service Budgeted and Actual Expenditure History

Year	Actual Expenditures	Annual Percent Change
2019	$1,909,073	N/A
2020	$1,905,024	-0.2%
2021	$1,960,505	2.9%
2022	$2,055,884	4.9%
2023	$2,049,747	-0.3%
2024	$2,119,919	3.4%
2025	$2,108,681	-0.5%
Average		**1.7%**

2026 Budget: $2,057,884

Base Year Estimate: $2,057,884

It is assumed that actual debt service expenditures will match the Town's adopted debt service schedule, as provided by Town staff.

Annual Change Assumptions: Varies

Debt service payments are based on debt service schedules provided by the Town. No additional debt is assumed during the model period.

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[20] ...udes 3% annual inflationary increase

Transfers Out

Pension Trust Transfers

The Town transfers General Fund balance to a pension trust each year as a policy directive to accumulate reserves and investment earnings that can be used to offset the anticipated growth in unfunded pension liability over time. Similar to Town grants, the amount funded to the Pension Trust is an annual discretionary policy decision. For the baseline forecast, the model assumes $390,000 is transferred annually from the General Fund.

Capital Transfers Out

For purposes of a baseline model forecast, transfers from the General Fund to support capital investment should only consider tier one funding, which is the required maintenance, repair, and replacement cost for existing assets used to provide services. If the Town has historically underfunded asset maintenance needs, this would not be reflected in the underlying baseline assumption. Rather, a scenario-based analysis could be used that incorporates higher funding levels to address deferred maintenance needs in a way that positions the Town to achieve desired replacement cycles for future years. The same scenario-based assumption is true for new capital projects tied to potential development or projects desired by Town Council.

The table below shows the history of capital expenditure, non-transfer revenue, and General Fund revenue (transfers in).

Table 54: Capital Improvement Projects Sources and Uses History

Year	Actual Capital Expenditures	Non-Transfer Revenue Sources	General Fund Transfer
2019	$9,521,126	$6,162,615	$2,335,220
2020	$8,477,293	$13,382,084	$6,982,591
2021	$6,398,953	$5,622,634	$3,401,479
2022	$18,257,900	$18,196,039	$1,750,001
2023	$10,617,693	$18,098,143	$3,006,978
2024	$13,375,941	$11,406,579	$1,615,000
2025	$16,525,663	$14,029,724	$1,110,000
Average	**$11,882,081**	**$12,413,974**	**$2,885,896**

The General Fund baseline model only considers pay-go cash sourced from the General Fund operating budget needed to support tier one capital needs after considering any external sources of designated revenue used for capital purposes. The model does not assume any new debt is issued to support ongoing tier one capital needs.

Base Year Estimate: $1,000,000

Ultimately, General Fund cash to support capital investment is a policy decision. Given the history of total capital expenditures and other capital revenue sources, the model assumes a conservative $1 million is transferred annually only to support tier one project needs. Additional capital investment is required but will be modeled as scenarios within the asset liability management (ALM) study components of the project.

There are potential options to mitigate the impact of these capital needs on the General Fund. The Town's capital funds have an estimated FY2026 beginning fund balance of $17.3 million, per the Town's FY2026 budget book, and the strategic use of fund balance could minimize the need for General Fund transfers. The Town also has the option of incurring additional debt to finance capital project. No new debt is assumed in projections, but the Excel model allows users to project the impact of additional bond financing.

Preliminary Outlook

Projected Revenues and Expenditures

The following figure summarizes the projected revenues and expenditures.

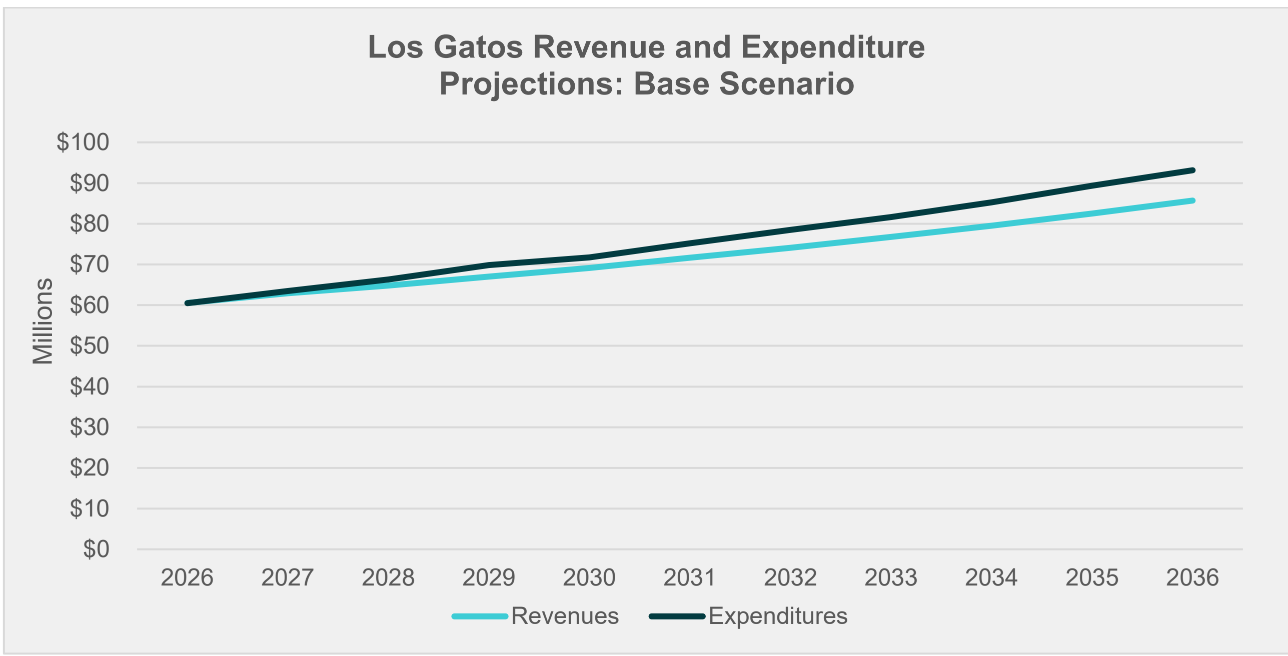

Figure 3: Estimated General Fund Revenues and Expenditures, in Millions

The model shows a gap between estimated revenues and expenditures that is projected to increase over time based on underlying assumptions for each of the model forecast categories detailed in this memo. It is again important to reiterate that these projections are based on a number of assumptions, and actual costs will vary significantly based on policy and operational decisions as well as external factors like the economy. The Excel model provided to staff as part of this project allows users to evaluate the potential impact of different scenarios.

The tables below show the estimated revenues, expenditures, and impact on fund balance in greater detail.

Table 55: Detailed General Fund Revenue Projections, FY2026-2036, in Millions

Category	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
Property Tax	$21.5	$23.1	$24.4	$25.7	$27.2	$28.7	$30.4	$32.1	$33.9	$35.8	$37.8
VLF Backfill	$5.6	$5.9	$6.2	$6.5	$6.9	$7.2	$7.6	$8.0	$8.5	$8.9	$9.4
Sales and Use Tax (non-Measure G)	$7.8	$7.9	$8.1	$8.3	$8.4	$8.6	$8.8	$9.0	$9.1	$9.3	$9.5
Sales and Use Tax (Measure G)	$1.3	$1.4	$1.4	$1.4	$1.4	$1.5	$1.5	$1.5	$1.6	$1.6	$1.6
Licenses & Permits	$6.3	$6.3	$6.4	$6.4	$6.4	$6.5	$6.5	$6.5	$6.5	$6.6	$6.6
Town Services	$5.7	$5.9	$6.1	$6.3	$6.5	$6.7	$6.9	$7.1	$7.3	$7.5	$7.7
Business License Tax	$2.5	$2.5	$2.5	$2.6	$2.6	$2.7	$2.7	$2.7	$2.8	$2.8	$2.9
Transient Occupancy Tax	$2.4	$2.5	$2.6	$2.6	$2.7	$2.8	$2.9	$3.0	$3.1	$3.2	$3.3
Intergovernmental	$1.3	$1.3	$1.3	$1.3	$1.3	$1.3	$1.3	$1.3	$1.3	$1.3	$1.3
Franchise Fees	$1.0	$1.1	$1.1	$1.1	$1.1	$1.1	$1.2	$1.2	$1.2	$1.2	$1.2
Fines & Forfeitures	$0.4	$0.4	$0.4	$0.5	$0.5	$0.5	$0.5	$0.5	$0.5	$0.5	$0.5
Transfers In	$0.3	$0.3	$0.3	$0.3	$0.3	$0.3	$0.3	$0.3	$0.3	$0.3	$0.3
Interest	$1.6	$1.6	$1.2	$1.2	$1.0	$1.0	$0.8	$0.8	$0.7	$0.7	$0.7
Other Sources	$2.8	$2.8	$2.8	$2.8	$2.8	$2.8	$2.8	$2.8	$2.8	$2.8	$2.8
Total Revenues	**$60.5**	**$63.0**	**$64.8**	**$67.0**	**$69.2**	**$71.6**	**$74.1**	**$76.8**	**$79.5**	**$82.5**	**$85.7**
Percent Change	**N/A**	**4.0%**	**2.9%**	**3.5%**	**3.2%**	**3.6%**	**3.4%**	**3.7%**	**3.6%**	**3.8%**	**3.8%**

Table 56: Detailed General Fund Expenditure Projections, FY2026-2036, in Millions

Category	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
Operating Expenditures											
Salary	$22.8	$23.6	$24.5	$25.5	$26.5	$27.6	$28.6	$29.8	$31.0	$32.2	$33.5
Overtime	$1.4	$1.4	$1.4	$1.4	$1.4	$1.4	$1.5	$1.5	$1.5	$1.5	$1.5
CalPERS	$9.1	$9.7	$10.1	$11.1	$11.7	$12.3	$12.8	$13.5	$13.9	$14.5	$14.7
OPEB	$2.1	$2.3	$2.5	$2.7	$2.9	$3.1	$3.3	$3.6	$3.9	$4.2	$4.5
Other Benefits	$5.5	$5.9	$6.3	$6.7	$7.2	$7.6	$8.1	$8.7	$9.2	$9.9	$10.5
Materials and Supplies	$1.1	$1.2	$1.3	$1.4	$1.5	$1.6	$1.7	$1.8	$1.9	$2.1	$2.2
Internal Service Charges	$6.5	$7.0	$7.2	$7.5	$7.7	$7.9	$8.2	$8.4	$8.7	$8.9	$9.2
Grants and Awards	$0.2	$0.2	$0.2	$0.2	$0.2	$0.2	$0.2	$0.2	$0.2	$0.2	$0.2
Utilities	$0.9	$1.0	$1.1	$1.2	$1.3	$1.5	$1.6	$1.8	$2.0	$2.2	$2.5
Debt Service	$2.1	$2.1	$2.1	$2.1	$0.8	$0.8	$0.7	$0.0	$0.0	$0.0	$0.0
Purchased Services	$3.2	$3.4	$3.5	$3.7	$3.8	$4.0	$4.2	$4.4	$4.6	$4.8	$5.0
Other Operating Expenditures	$4.2	$4.5	$4.8	$5.1	$5.4	$5.8	$6.2	$6.6	$7.0	$7.5	$8.0
Total Operating Expenditures	**$59.1**	**$62.0**	**$64.9**	**$68.4**	**$70.3**	**$73.8**	**$77.1**	**$80.3**	**$83.9**	**$87.9**	**$91.8**
Transfers Out											
New Capital	$1.0	$1.0	$1.0	$1.0	$1.0	$1.0	$1.0	$1.0	$1.0	$1.0	$1.0
Other	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4
Total Transfers Out	**$1.4**	**$1.4**	**$1.4**	**$1.4**	**$1.4**	**$1.4**	**$1.4**	**$1.4**	**$1.4**	**$1.4**	**$1.4**
Total Expenditures	**$60.5**	**$63.4**	**$66.3**	**$69.8**	**$71.7**	**$75.2**	**$78.5**	**$81.7**	**$85.3**	**$89.3**	**$93.1**
Percent Change	**N/A**	**4.9%**	**4.5%**	**5.3%**	**2.7%**	**4.8%**	**4.4%**	**4.0%**	**4.4%**	**4.7%**	**4.3%**

Table 57: Total General Fund Balance Projections, FY2026-2036, in Millions

Category	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
Total Revenues	$60.5	$63.0	$64.8	$67.0	$69.2	$71.6	$74.1	$76.8	$79.5	$82.5	$85.7
Total Expenditures	$60.5	$63.4	$66.3	$69.8	$71.7	$75.2	$78.5	$81.7	$85.3	$89.3	$93.1
Net Fund Balance Change	**$0.1**	**($0.5)**	**($1.5)**	**($2.8)**	**($2.6)**	**($3.5)**	**($4.4)**	**($4.9)**	**($5.8)**	**($6.8)**	**($7.5)**
Total Fund Balance	**$34.9**	**$34.4**	**$32.9**	**$30.1**	**$27.6**	**$24.0**	**$19.6**	**$14.8**	**$9.0**	**$2.2**	**($5.2)**

Comparison to Initial Projections

The figure below compares preliminary outlook (projected gap) projections as presented to the Finance Commission on February 2nd compared to the updated projections after incorporating their feedback, continuing to refine for one-time adjustments, and adjusting growth assumptions based on revised "normalized" trends.

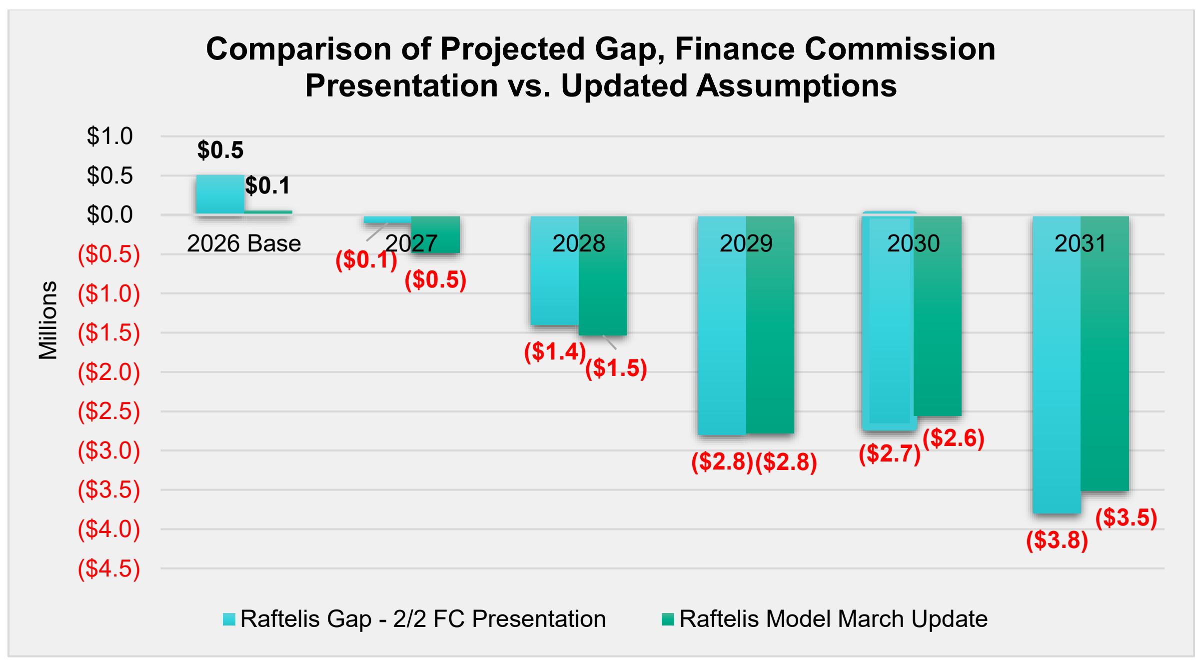

Figure 4: Comparison of Projected Gap, in Millions

The following table compares past and current assumptions in greater detail and provides some context for any changes.[21]

…ly compares categories where assumptions were reported in the February Finance Commission meeting.

Table 58: Comparison of Assumptions by Category

Category	Finance Commission Assumption	Updated Assumption	Comments
Revenues			
Property Tax	5.1%	5.2%	Slight refinement based on HdL report and discussions with staff
VLF Backfill	5.2%	5.4%	Slight refinement based on updated assumptions on property value trends
Sales and Use Tax	2.0%	2.0%	
Licenses & Permits	1.2%	0.4%	Revised downward based on trends in building permit value
Town Services	1.1%	3.0%	Revised upward because permit valuation trends are not weighted as heavily
Business License Tax	1.5%	1.5%	
Transient Occupancy Tax	3.0%	3.0%	
Investments	2.6%	2.6%	
Operating Expenditures			
Salary and CalPERS	Based on inflation	Based on collective bargaining agreements and past history	Changed per Commission direction
Other Benefits	6.6%	6.6%	
OPEB	7.7%	7.7%	
Materials and Supplies	10.1%	7.4%	Refined with additional feedback on excluded one-time costs
Grants and Awards	0.0%	0.0%	
Utilities	8.0%	10.6%	Refined with additional feedback on projected utility cost trends
Purchased Services	9.8%	4.6%	Refined with additional feedback on excluded one-time costs
Other Operating Expenditures	7.1%	6.7%	Refined with additional feedback on excluded one-time costs
Internal Service Funds			
Liability Self-Insurance Fund	7.0%	7.0%	
Workers' Compensation Self-Insurance Fund	2.0%	2.3%	Refined based on staffing cost trends
Facilities Maintenance Fund	15.0%	7.2%	Refined based on further discussions with staff
IT Fund	3.0%	3.0%	
Equipment Replacement Fund	3.0%	3.0%	

Next Steps

The Finance Commission and Town Council will have the opportunity to review the detailed assumptions outlined in this memo and provide feedback during regularly scheduled meetings in April. Raftelis will then incorporate recommendations and adjust the model assumptions and baseline financial outlook as appropriate in consultation with Town staff. A final report will then be provided to the Finance Commission and Town Council, as work among the consultants shifts to finalizing detailed scenario analysis that builds from the baseline model assumptions. The scenarios will be used to guide policy discussion during May-June.

TO: Chris Constantin, City Manager, Town of Los Gatos
FROM: Michael Medve, Principal Consultant, Willdan
DATE: April 7, 2026
SUBJECT: Summary of Assumptions in Fiscal Impact Study

In February of 2026, Willdan prepared a Fiscal Impact Analysis for the Town of Los Gatos (the "Town") to evaluate the annual fiscal impacts of residential development considered in the Town's Housing Element and related planning work through 2040.

Community Development subsequently recommended several refinements to the development and revenue assumptions used in the study. The updated assumptions are provided below in bullet point form.

Revenues

- Residential development assumptions were updated to use the average of the more aggressive and more conservative development scenarios through 2040, totaling 3,263 units, inclusive of 400 accessory dwelling units (ADUs).
- For purposes of the study, the same number of units is assumed to be developed each year during the study period.
- ADUs may be rented to or sold to low- and moderate-income households, but no percentage is assumed for the purposes of this analysis.
- Affordable units are assumed to comprise approximately 15% of non-ADU units, rather than the 60% estimate cited in the Housing Element. The reduction was applied proportionately across the non-ADU development program, in accordance with Community Development's recommendation.
- Because there was no direct source for the price of a market rate multi-family unit in Los Gatos, Willdan used an amount equal to 70% of the overall median home value (according to Zillow), which is a common assumption. This came out to $1,711,935.
- Since there is a mix of affordable and market rate units, Willdan disaggregated the development by type of housing unit and calculated the weighted average home value to estimate increase in assessed value.
- An ADU is assumed to raise a Bay Area home's property value by $200,000 to $500,000, based on information from various online sources. ADUs can either be rented or sold, but in either case, the assessed value associated with an ADU is assumed to be $350,000 for the purposes of this analysis.

- The weighted average AB 8 apportionment factor for secured property taxes (1% of secured assessed value) was calculated to be about 9.5%. Property Tax In-Lieu of VLF came out to an additional 2.8%.
- Sales tax revenues are equal to 1.125% of taxable sales, which includes the general sales tax rate and Measure G.
- Taxable sales were estimated by estimating the household income for each type of new unit and deriving the percentage of income that would generate taxable sales from the Consumer Expenditure Survey. This allowed me to estimate the taxable sales for Los Gatos that come from each new household.
- A leakage rate estimate of 40% was used for the primary sales tax analysis. Some studies have shown higher leakage rates for small suburban communities, but online retail has increased substantially in recent years, and the use tax mechanism will capture those revenues from Los Gatos residents.
- An alternative estimate for sales tax was calculated using a multivariate analysis among cities in Santa Clara County to approximate the increase in taxable sales associated with new residential development. After reducing the number of affordable units, the results are comparable to the household expenditure-based estimate.
- Other revenues evaluated in the study include Franchise Fees, Licenses & Permits, and Fines & Forfeitures. These were determined using multipliers that account for both residents and employees. The resident estimate at buildout is driven by the updated housing development assumptions summarized above.
- Franchise fees are estimated at $23.77 per new resident.
- Licenses & Permits are estimated at $144.00 per new resident.
- Fines & Forfeitures are estimated at $7.18 per new resident.

Expenditures

- Police Department, Parks & Public Works, Community Development, and Library Services were used to develop multipliers to estimate future expenditures.
- Non-Departmental, Administrative Services, and Town Council expenditures were considered overhead. After excluding non-operating expenditures, the overhead percentage rate for operations was calculated to be 28.9%.
- Adjustments were made to Parks/Public Works, Community Development, and Non-Departmental to account for fees collected for services. The amounts taken from the Adopted Budget were deducted from the expenditure total to arrive at a net cost.
- Police Department is estimated at $690.26 per new resident.
- Parks and Public Works is estimated at $332.21 per new resident.
- The Public Works budget does not include any adjustments to address deficiencies in infrastructure and maintenance budgets identified by Town staff.
- Community Development is estimated at $121.75 per new resident.
- Library is estimated to be $141.33 per new resident.

Other Assumptions

- Unless otherwise noted, the Fiscal Year 2025-26 Budget estimates were used.
- Number of residents from CA Department of Finance population estimates equal to 33,355.

- Number of employees comes from the Census Bureau's "On the Map" tool. 2023 "All jobs" estimate was used, yielding 21,105 jobs.
- Persons served estimate is equal to population plus 50% of employees.

If you have any questions about this memorandum, please feel free to contact Mike Medve at (951) 587-3575.