

**TOWN OF LOS GATOS  
COUNCIL MEETING AGENDA  
AUGUST 01, 2023  
110 EAST MAIN STREET AND TELECONFERENCE  
TOWN COUNCIL CHAMBERS  
LOS GATOS, CA  
7:00 PM**

**PARTICIPATION IN THE PUBLIC PROCESS**

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

How to participate: The Town of Los Gatos strongly encourages your active participation in the public process, which is the cornerstone of democracy. If you wish to speak to an item on the agenda, please follow the participation instructions on page 2 of this agenda. If you wish to speak to an item NOT on the agenda, you may do so during the “Verbal Communications” period, by following the participation instructions on page 2 of this agenda. The time allocated to speakers may change to better facilitate the Town Council meeting.

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

Deadlines for Public Comment and Presentations are as follows:

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

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

***IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE CLERK DEPARTMENT AT (408) 354-6834. NOTIFICATION 48 HOURS BEFORE THE MEETING WILL ENABLE THE TOWN TO MAKE REASONABLE ARRANGEMENTS TO ENSURE ACCESSIBILITY TO THIS MEETING [28 CFR §35.102-35.104]***

**TOWN OF LOS GATOS  
COUNCIL MEETING AGENDA  
AUGUST 01, 2023  
110 EAST MAIN STREET AND TELECONFERENCE  
TOWN COUNCIL CHAMBERS  
7:00 PM**

**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 the Zoom webinar application (log-in information provided below). Members of the public may provide public comments for agenda items in-person or virtually through the Zoom webinar by following the instructions listed below. The live stream of the meeting may be viewed on television and/or online at [www.LosGatosCA.gov/TownYouTube](http://www.LosGatosCA.gov/TownYouTube).

**PARTICIPATION**

To provide oral comments in real-time during the meeting:

- **Zoom webinar:** Join from a PC, Mac, iPad, iPhone or Android device: Please click this URL to join: <https://losgatosca.gov.zoom.us/j/87922005778?pwd=RnNadEIXWEVQd290dDJJVzEwaEw3Zz09>  
Passcode: 771495 You can also type in 87922005778 in the “Join a Meeting” page on the Zoom website at <https://zoom.us/join>.
  - When the Mayor announces the item for which you wish to speak, click the “raise hand” feature in Zoom. If you are participating by phone on the Zoom app, press \*9 on your telephone keypad to raise your hand.
- **Join by telephone:** Join by Telephone: Dial: USA 877 336 1839 US Toll-free or 636 651 0008 US Toll. Conference code: 686100
  - If you are participating by calling in, press #2 on your telephone keypad to raise your hand.
- **In-Person:** If you wish to speak during the meeting, please complete a “speaker’s card” located on the back of the chamber benches and return it to the Town Clerk. If you wish to speak to an item on the agenda, please list the item number. If you wish to speak on an item NOT on the agenda, please list the subject and you may speak during the “Verbal Communications” period. The time allocated to speakers may change to better facilitate the Town Council meeting.

When called to speak, you may be asked to provide your full name and your town/city of residence. This identifying information is optional and not a requirement for participation. Please limit your comments to three (3) minutes, or such other time as the Mayor may decide, consistent with the time limit for speakers at a Council meeting. If you wish to speak to an item or items on the Consent Calendar, please state which item number(s) you are commenting on at the beginning of your time.

If you are unable to participate in real-time, you may email to [Clerk@losgatosca.gov](mailto:Clerk@losgatosca.gov) the subject line “Public Comment Item #\_\_” (insert the item number relevant to your comment) or “Verbal Communications – Non-Agenda Item.” Comments received by 11:00 a.m. the day of the meeting

will be reviewed and distributed before the meeting. All comments received will become part of the record.

## **MEETING CALL TO ORDER**

## **ROLL CALL**

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

## **RULES OF DECORUM AND CIVILITY**

To conduct the business of the community in an effective and efficient manner, please follow the meeting guidelines set forth in the Town Code and State law.

The Town does not tolerate disruptive conduct, which includes but is not limited to:

- Addressing the Town Council Meeting without first being recognized;
- Interrupting speakers, Town Council Meeting, or Town staff;
- Continuing to speak after the allotted time has expired;
- Failing to relinquish the microphone when directed to do so;
- Repetitiously addressing the same subject.

Town Policy does not allow speakers to cede their commenting time to another speaker. Disruption of the meeting may result in a violation of Penal Code Section 403.

## **PLEDGE OF ALLEGIANCE**

## **PRESENTATIONS**

- i. Friends of the Library

## **CLOSED SESSION REPORT**

## **COUNCIL / MANAGER MATTERS**

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

- [1.](#) Approve Minutes of the June 13, 2023 Town Council Retreat.
- [2.](#) Approve Minutes of the June 20, 2023 Closed Session Town Council Meeting.
- [3.](#) Approve Minutes of the June 20, 2023 Study Session of the Town Council.
- [4.](#) Approve Minutes of the June 20, 2023 Town Council Meeting.

5. Appoint Mayor Maria Ristow as the Town's Voting Delegate and Council Member Rob Moore as the Town's Alternate Voting Delegate for the League of California Cities Annual Conference Scheduled for September 20-22, 2023 in Sacramento.
6. Adopt an Ordinance Titled "An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 18, Article VII, 'Weapons,' of the Town Code to Update the Town's Concealed Carry Firearm Licensing Ordinance and Prohibit the Carry of Firearms in Sensitive Places."
7. Adopt an Ordinance Titled "An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, 'Zoning Regulations,' of the Town Code Regarding Land Use and Economic Recovery Amendments Related to Personal Service Businesses, Bars, Tap/Tasting Rooms, Specialty Food Retail, Banks, Financial and Investment Services, Office Activities, Formula Retail, Group Classes, Veterinarians, and Definitions."
8. Approve the Modification to Town Council Policy 2-17: Solicitation and Donation Policy as Recommended by the Policy Committee.
9. Authorize the Construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505), Federal Project No. CML-5067(021), by taking the following actions:
  - a. Reject the bid from AB Construction Company received on April 6, 2023 for Construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project; and
  - b. Authorize the Town Manager to Execute a Construction Agreement with Granite Construction in the Amount of \$6,529,395.78 with a 10% Construction Contingency in the Amount of \$652,939.58 for a Total Contract Amount Not to Exceed \$7,182,335.36 for Construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project; and
  - c. Authorize Staff to Execute Contract Change Orders Up To and Within the Not to Exceed 10% Construction Contingency of \$652,939.58; and
  - d. Authorize the Town Manager to Execute the Second Amendment to the Agreement for Consultant Services with Mott MacDonald Group to Provide Design Consultant Construction Support Services in an Amount Not to Exceed \$206,371; and
  - e. Authorize the Town Manager to Execute an Agreement for Consultant Services with Zoon Engineering for Construction Management, Inspection, and Materials Testing Services in an amount not to exceed \$1,220,822.07 and also to encumber a 2% contingency in the amount of \$29,177.93 for a total agreement amount not to exceed \$1,250,000; and
  - f. Authorize Advances from the General Fund to the Town's Grant Fund not to Exceed the Approved Grant Funding of \$8,054,305 to Bridge Expenses and Reimbursement Timing.
10. Adopt an Updated Police Officer Association Salary Schedule, Effective July 9, 2023, to Correct a Mathematical Error to the Police Sergeant Classification.

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

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

- [11.](#) Weed Abatement Program Public Hearing to Consider Objections to the 2023 Weed Abatement Program Assessment Report and Adopt a Resolution Confirming the Report and Authorizing Collection of the Assessment Charges.
- [12.](#) Introduce an Ordinance Titled "An Ordinance of the Town Council of the Town of Los Gatos Amending Section 18.30.040, 'Penalties for Violations,' of Division 1, Article III, of Chapter 18 of the Town Code, 'Social Host Ordinance'."

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

- [13.](#) Receive the Fiscal Year 2022/23 Parks Commission Accomplishments and Provide Direction on the Fiscal Year 2023/24 Work Plan.

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

- [14.](#) Consider an Appeal of a Planning Commission Decision to Approve a Fence Height Exception Request for Construction of an Automated Vehicular Gate Exceeding the Maximum Height and with Reduced Setbacks on Property Zoned R-1:8. **Located at 380 Blackwell Drive.** APN 424-12-027. Categorically Exempt Pursuant to CEQA Guidelines Section 15303 (e): New Construction or Conversion of Small Structures. Fence Height Exception Application FHE-23-002. PROPERTY OWNER: Larry Cesnik and Martha Johnson. APPELLANT: Larry Cesnik. APPLICANT: Ramin Zohoor. PROJECT PLANNER: Sean Mullin.

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

- [15.](#) Consider Adoption of a Resolution Modifying the Height Pole and Netting Policy for Additions and New Construction. The Proposed Modifications to Town Policy are Not Considered a Project Under the California Environmental Quality Act. Project Location: Town Wide. Applicant: Town of Los Gatos.
- [16.](#) Provide Direction on Legislative Priorities with Regard to State, Federal, and Regional Legislation and Town Council Policy #2-18: Legislative Policy.

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

*Writings related to an item on the Town Council meeting agenda distributed to members of the Council within 72 hours of the meeting are available for public inspection at the front desk of the Los Gatos Town Library, located at 100 Villa Avenue, and are also available for review on the official Town of Los Gatos website. Copies of desk items distributed to members of the Council at the meeting are available for review in the Town Council Chambers.*



---

**DRAFT  
Minutes of the Town Council Special Meeting – Council Retreat  
June 13, 2023**

The Town Council of the Town of Los Gatos conducted a special meeting in person and virtually utilizing teleconferencing to conduct a Council Retreat on Tuesday, June 13, 2023, at 2:00 p.m.

**MEETING CALLED TO ORDER AT 2:01 P.M.**

**ROLL CALL**

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

Absent: None

**VERBAL COMMUNICATIONS FOR ITEMS ON THE AGENDA**

No one spoke.

**OTHER BUSINESS**

1. Town Council Retreat: Discussion of Values, Norms, and Principles

Mayor Ristow and Town Manger Prevetti gave introductory comments.

Facilitator Shawn Spano provided an overview of the retreat discussion.

Council discussed the following:

- Council Values, Principles, and Norms
- Council Diversity, Strengths, and Appreciations
- Council, Staff, and Community Values

**MEETING ADJOURNED**

Meeting adjourned at 4:45 p.m.

Attest:

---

Wendy Wood, Town Clerk



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 08/01/2023

ITEM NO: 2

---

**DRAFT  
Minutes of the Town Council Special Meeting - Closed Session  
Monday, June 20, 2023**

The Town Council of the Town of Los Gatos conducted a Special Meeting on Tuesday, June 20, 2023, to hold a Closed Session at 5:00 p.m.

**MEETING CALLED TO ORDER AT 5:02 P.M.**

**ROLL CALL**

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

Absent: None

Town Attorney Gabrielle Whelan announced a correction to the Code section listed on the agenda stating that it is Government Code section 54956.9 (d)(3).

**VERBAL COMMUNICATIONS**

None.

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

1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
(Significant exposure to litigation pursuant to Government Code Section 54956(d)(3): One case.

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

**ADJOURNMENT**

Closed Session adjourned at 5:33 p.m.

Attest:

Submitted by:

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

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



---

**DRAFT  
Minutes of the Town Council Special Meeting – Study Session  
Tuesday, June 20, 2023**

The Town Council of the Town of Los Gatos conducted a special meeting in person and utilizing teleconferencing means on Tuesday, June 20, 2023, at 5:30 p.m.

**MEETING CALLED TO ORDER AT 5:35 P.M.**

**ROLL CALL**

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

Absent: None

**VERBAL COMMUNICATIONS**

No one spoke.

**STUDY SESSION**

1. Discuss and Provide Direction to Potentially Modify Town Policies and Procedures, Including Town Council Policy 2-04, "Town Council Code of Conduct," Town Council Policy 2-05, "Planning Commission Policies and Procedures," Town Council Policy 2-11, "Commission Appointments, Residency, and Attendance Requirements, and Establishing a Quorum," and the Commissioner Handbook.

Gabrielle Whelan, Town Attorney presented the staff report.

Council Member Hudes commented on concerns and stated that he will be recusing himself from this item on a voluntary basis.

Council Member Badame commented on concerns and stated she will be recusing herself from this item on a voluntary basis.

**MOTION: Motion by Council Member Moore to continue the study session to a date to be determined when the recusals can be resolved. Seconded by Mayor Ristow.**

**VOTE: Motion passed by a 3-0-2 vote. (Council Member Hudes and Vice Mayor Badame were recused).**



PAGE 2 OF 2

SUBJECT: Draft Minutes of the Town Council Study Session of June 20, 2023

DATE: June 22, 2023

**ADJOURNMENT**

The meeting adjourned at 5:45 p.m.

Respectfully Submitted:

---

Wendy Wood, Town Clerk



---

**DRAFT  
Minutes of the Town Council Meeting  
Tuesday, June 20, 2023**

The Town Council of the Town of Los Gatos conducted a regular meeting in person and utilizing teleconferencing means on Tuesday, June 20, 2023, at 7:00 p.m.

**MEETING CALLED TO ORDER AT 7:06 P.M.**

**ROLL CALL**

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

Absent: None

**PLEDGE OF ALLEGIANCE**

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

**PRESENTATIONS**

Midpeninsula Open Space District Board Member Craig Gleason gave a presentation about the District's activities.

Mayor Ristow presented commendations to the Police Foundation.

**COUNCIL/TOWN MANAGER REPORTS**

**Council Matters**

- Council Member Moore stated he hosted a fundraiser for the Los Gatos Anti-Racism Coalition for a rental assistance program and his monthly Council Member Community Coffee; met with the Community Health and Senior Services Chair and separately met with Los Gatos Union School District Superintendent Paul Johnson; and attended the West Valley Sanitation District meeting and the Housing Element Advisory Board meeting.
- Vice Mayor Badame stated she met with residents on various issues; and attended the Shannon Road community meeting and the Conceptual Development Advisory Committee meeting.
- Council Member Hudes stated he met with members of a newly formed group Friends of Los Gatos Older Adults, attended the Housing Element Advisory Board meeting, commented on concern with the housing element and requested a joint study session with the Planning Commission to review the potential impacts of state law related to pre-applications under Senate Bill 330, and participated in the Association of Bay Area Government's General Membership meeting.
- Council Member Rennie stated he met with Town seniors who are working on the implementation of the Senior Roadmap; and attended the Santa Clara County Local Agency

Formation Commission 60-year lunch celebration, the Casa Diablo for Geothermal Plan ribbon cutting ceremony, the Silicon Valley Clean Energy Board meeting and Study Session, and the Cities Association dinner.

- Mayor Ristow attended the Conceptual Development Advisory Committee meeting, the Cities Association Annual Membership Dinner, a couple ribbon cuttings, the beautification committee meeting, and the Council Retreat; and meet with NUMU's Childrens Art Camp.

### **Manager Matters**

- Announced the Fourth of July celebration at Oak Meadow Park starting at 11:00 a.m.
- Announced the concert series Music in the Park will begin on Sunday afternoons in late July at the Civic Center.

### **CLOSED SESSION REPORT**

Gabrielle Whelan, Town Attorney, stated the Council met in closed session to discuss one item of anticipated litigation pursuant to Government Code section 54956.9(d)(3) and there was no reportable action.

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

1. Approve Closed Session Meeting Minutes of June 6, 2023.
2. Approve Minutes of the June 6, 2023 Town Council Special Meeting Regarding Commission Interviews.
3. Approve Minutes of June 6, 2023 Town Council Meeting.
4. Authorize the Town Manager to Execute an Agreement with Dillingham Associates for Preliminary Design Services for the Pinehurst Community Garden (CIP No. 831-4610) and Lynn Avenue Pedestrian Path Design (CIP No. 832-4510) for a Total Amount Not to Exceed \$123,556.
5. Authorize the Town Manager to Issue a Request for Qualifications (RFQ) for Revenue Ballot Measure Consulting Services.
6. Authorize the Town Manager to Execute a Five-Year Agreement for Services with Brightview Tree Care Services, Inc. for Tree Trimming and Maintenance Services in an Amount not to exceed \$200,000 in Fiscal Year 2023/24 and Total Five-Year Contract Value of Up to \$1,000,000.
7. Consider the Following in Support of Tree Trimming and Maintenance:
  - a. Authorize the Town Manager to Execute a Sixth Amendment to the Agreement for Services with Brightview Tree Care Services, Inc. to Increase Compensation for Fiscal Year 2022/23 in an Amount of \$75,000 for a Total Annual Amount Not to Exceed \$275,000 and a Total Agreement Amount Not to Exceed \$1,174,000; and
  - b. Authorize a Revenue and Expenditure Budget Adjustment in the Amount of \$75,000 from the Available Tree Replacement Deposit Account.
8. Authorize the Town Manager to Execute an Agreement with Los Gatos Saratoga Community Education and Recreation for Senior Services in the Amount of \$225,000.

9. Authorize the Town Manager to Execute a Second Amendment to the Agreement with Whitlock & Weinberger Transportation, Inc. dba W-Trans, Modifying the Scope of Service, Extending the Term, and Increasing the Total Compensation by \$50,000 for a Total Contract Amount not to Exceed \$250,000 for Consultant Services for the Project Management Function of the Traffic Signal Modernization Project (Project 813-0227).
10. Authorize the Town Manager to Execute a Notice of Completion and Certificate of Acceptance for Specified Improvements Completed by SummerHill N40 LLC for the North 40 Phase 1 Development at Lark Avenue and Los Gatos Boulevard and Authorize the Town Clerk to Submit for Recordation.
11. Adopt a Resolution Establishing the Fiscal Year 2023/24 Gann Appropriation Limit for the Town of Los Gatos. **RESOLUTION 2023-034**
12. Receive the Monthly Financial and Investment Report (April 2023).
13. \*This item was removed from the agenda posted on June 15, 2023, as noted on the amended agenda posted on June 16, 2023.
14. Authorize the Town Manager to Execute a Second Amendment to the Agreement for Consultant Services with CSG Consultants, Inc. to Extend the Term and Time of Performance to June 30, 2025, Revise the Compensation Approach, and Increase the Minimum Scope of Insurance of the Agreement.
15. Staff Recommends the Town Council:
  - a. Authorize the Town Manager to Prepare a Joint Jurisdiction (Los Gatos and San José) Grant Application to the Safe Streets and Roads for All Program for a Corridor Study of Blossom Hill Road from Union Avenue to Camden Avenue;
  - b. Authorize Town Manager to Execute a Second Amendment to the Agreement for Consultant Services with Fehr and Peers for a Total Contract Amount Not to Exceed \$124,999.14; and
  - c. Authorize an Expenditure Budget Transfer in an Amount of \$25,000 from Available Fiscal Year (FY) 2023/24 Funds in in Project No. 911-9901 – Street Repair and Resurfacing to Project 812-0132 – Local Road Safety Program.

Opened public comment.

No one spoke.

Closed public comment.

**MOTION: Motion by Council Member Rennie** to approve consent items 1-15 and noted item 13 was previously removed from the Consent Calendar. **Seconded by Council Member Moore.**

**VOTE: Motion passed unanimously.**

### VERBAL COMMUNICATIONS

Carl Guardino, Vice President of Global Government Affairs for Turano Wireless

- Commented on the Third Annual 5K Stars and Stride Run and Walk on Saturday July 1 in Downtown San Jose with proceeds going to Valley Health Foundation to help support the basic health care needs of those in Santa Clara County.

Jeffery Blum, Community Health and Senior Services Commission Chair

- Commented on possible County funding for adult day care services or a case manager and requested Council read the mental health and substance abuse report they submitted.

### OTHER BUSINESS

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

- Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of Assessments for Landscape and Lighting Assessment District No. 1-Blackwell Drive Benefit Zone. **RESOLUTION 2023-035**
- Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of Assessments for Landscape and Lighting Assessment District No. 1-Kennedy Meadows Benefit Zone. **RESOLUTION 2023-036**
- Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of Assessments for Landscape and Lighting Assessment District No. 1-Santa Rosa Heights Benefit Zone. **RESOLUTION 2023-037**
- Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of assessments for Landscape and Lighting Assessment District No. 1-Vasona Heights Benefit Zone. **RESOLUTION 2023-038**
- Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of assessments for Landscape and Lighting Assessment District No. 1-Hillbrook Drive Benefit Zone. **RESOLUTION 2023-039**
- Adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of assessments for Landscape and Lighting Assessment District No. 2-Gemini Court Benefit Zone. **RESOLUTION 2023-040**

Meredith Johnston, Administrative Technician, presented the staff report.

Opened public comment.

No one spoke.

Closed public comment.

**MOTION:** Motion by Council Member Rennie to adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of Assessments for

Landscape and Lighting Assessment District No. 1-Blackwell Drive Benefit Zone; adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of Assessments for Landscape and Lighting Assessment District No. 1-Kennedy Meadows Benefit Zone; adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of Assessments for Landscape and Lighting Assessment District No. 1-Santa Rosa Heights Benefit Zone; adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of assessments for Landscape and Lighting Assessment District No. 1-Vasona Heights Benefit Zone; adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of assessments for Landscape and Lighting Assessment District No. 1-Hillbrook Drive Benefit Zone; adopt a Resolution Confirming the Diagram and Assessments and Levying and Authorizing Collection of assessments for Landscape and Lighting Assessment District No. 2-Gemini Court Benefit Zone. **Seconded by Council Member Hudes.**

**VOTE: Motion passed unanimously.**

17. Conduct Brush Abatement Program Public Hearing to Consider Objections to the Proposed Removal of Brush on Parcels Listed on the 2023 Wildland Urban Interface (WUI) Area Non-Compliant Parcel List and Order Abatement.

Meredith Johnston, Administrative Technician, presented the staff report.

Opened public comment.

No one spoke.

Closed public comment.

**MOTION: Motion by Vice Mayor Badame** to order the abatement of parcels listed on attachment one of the staff report that are part of the 2023 Wildland Urban Interface (WUI) Area Non-Compliant Parcel List. **Seconded by Council Member Moore.**

**VOTE: Motion passed unanimously.**

#### **OTHER BUSINESS**

18. Adopt the Following Salary Schedules:
  - a. Salary Schedule for Management Classifications Effective April 2, 2023,
  - b. American Federation of State, County, and Municipal Employees (AFSCME) Salary Schedule Effective July 9, 2023,
  - c. Police Officer Association (POA) Salary Schedule Effective July 9, 2023,

- d. Town Employees' Association (TEA) Salary Schedule Effective July 9, 2023,
- e. Salary Schedule for Confidential Classifications Effective July 9, 2023,
- f. Salary Schedule for Management Classifications Effective July 9, 2023, and
- g. Salary Schedule for Temporary/Hourly Classifications Effective July 9, 2023.

Gitta Ungvari, Finance Director, presented staff report.

Mayor Ristow called for a recess due to technical difficulties at 8:19 p.m.

Reconvened at 8:32 p.m.

Opened public comment.

No one spoke.

Closed public comment.

**MOTION:** Motion by Council Member Moore to adopt the Salary Schedule for Management Classifications Effective April 2, 2023; the American Federation of State, County, and Municipal Employees (AFSCME) Salary Schedule Effective July 9, 2023; Police Officer Association (POA) Salary Schedule Effective July 9, 2023; the Town Employees' Association (TEA) Salary Schedule Effective July 9, 2023; the Salary Schedule for Confidential Classifications Effective July 9, 2023; the Salary Schedule for Management Classifications Effective July 9, 2023; and the Salary Schedule for Temporary/Hourly Classifications Effective July 9, 2023. **Seconded** by Vice Mayor Badame.

**VOTE:** Motion passed unanimously.

#### **PUBLIC HEARING**

19. Consider the Following Actions for the Adult Recreation Center - Americans with Disabilities Act (ADA) Compliant Public Restroom Project (CIP No. 821-2601):
  - a. Consider a Protest in Opposition of the Intent to Award a Construction Agreement for the Adult Recreation Center - Americans with Disabilities Act (ADA) Compliant Public Restroom Project (CIP No. 821-2601) to Tucker Construction;
  - b. Authorize the Town Manager to Award and Execute a Construction Agreement with Tucker Construction Inc. in an Amount not to Exceed \$249,490; and
  - c. Authorize Staff to Execute Change Orders in an Amount Not to Exceed Ten Percent of the Contract Award Amount.

Dan Keller, Facilities and Environmental Services Manager, presented the staff report.

Opened public comment.

No one spoke.

Closed public comment.

**MOTION:** **Motion** by **Council Member Hudes** to deny the bid protest and reject the bid from San Jose Demolition as non-responsive and award the construction agreement in Attachment 5 to the staff report to Tucker Construction; and authorize the Town Manager to execute the contract on behalf of the Town. **Seconded** by **Council Member Moore**.

**VOTE:** **Motion passed unanimously.**

#### **OTHER BUSINESS**

20. Receive Report on the Status of the Shower Ministry and Provide Direction on the Placement of a Temporary Restroom and the Proposed Parameters for a Hotel Voucher Program for Los Gatos Unhoused Residents.

Laurel Prevetti, Town Manager, presented staff report.

Opened public comment.

Ed Lozowicki, St. Vincent de Paul Society

- Spoke in support of the hotel voucher program for unhoused residents.

Closed public comment.

**MOTION:** **Motion** by **Mayor Ristow** to approve the Shower Ministry, the placement of a temporary restroom, and the proposed parameters Hotel Voucher Program for Los Gatos unhoused residents, leaving it to staff to figure out how the financial part of the vouchers will be managed moving forward. **AMENDMENT:** to ask staff to define medical stay. **Seconded** by **Council Member Moore**.

**VOTE:** **Motion passed by a vote of 4-1. (Council Member Hudes voted no)**

#### **PUBLIC HEARINGS**

21. Introduce an Ordinance Titled "An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 18, Article VII, "Weapons," of the Town Code Update the Town's Concealed Carry Firearm Licensing Ordinance and Prohibit the Carry of Firearms in Sensitive Places".



Gabrielle Whelan, Town Attorney, presented the staff report.

Opened public comment.

Jared Ajlonny

- Commented on the County Sheriff's process for a Carry Concealed Weapon permit.

Heidi Owens, Moms Demand Action

- Commented in support of the item.

Erica Mittelhauser

- Commented in support of the item.

Marie Rector, Moms Demand Action

- Commented in support of the item.

Bernadette, Moms Demand Action

- Commented in support of the item.

Fred Faltersack

- Commented in support of the item.

Kim B

- Commented in support of the item.

Carrie Walton

- Commented in support of the item.

Maria Gerst

- Commented in support of the item.

Closed public comment.

**MOTION:** **Motion** by **Vice Mayor Badame** to introduce an Ordinance titled "An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 18, Article VII, "Weapons," of the Town Code Update the Town's Concealed Carry Firearm Licensing Ordinance and Prohibit the Carry of Firearms in Sensitive Places."  
**Seconded** by **Council Member Moore**.

**VOTE:** **Motion passed unanimously.**

22. Introduce an Ordinance Titled “An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, “Zoning Regulations,” of the Town Code Regarding Land Use and Economic Recovery Amendments Related to Personal Service Businesses, Bars, Tap/Tasting Rooms, Specialty Food Retail, Banks, Financial and Investment Services, Office Activities, Formula Retail, Group Classes, Veterinarians, and Definitions.” The Proposed Amendments to the Town Code are Not Considered a Project Under the California Environmental Quality Act. Town Code Amendment Application A-23-001. Project Location: Town Wide. Applicant: Town of Los Gatos.

Sean Mullin, Senior Planner, presented the staff report.

Opened public comment.

Randi Chen, Chamber of Commerce

- Commented in support of staff’s recommendations and had some concerns with the specialty retail section regarding coffee shops.

Closed public comment.

**MOTION:** Motion by **Vice Mayor Badame** to allow personal service businesses as a permitted use in the C-2 and Office zones. **Seconded** by **Council Member Hudes**.

**VOTE:** Motion passed unanimously.

**MOTION:** Motion by **Council Member Moore** to adopt the recommended changes to bars markets and other miscellaneous commercial businesses. **Seconded** by **Mayor Ristow**.

**VOTE:** Motion passed unanimously.

**MOTION:** Motion by **Vice Mayor Badame** to approve the recommended changes to specialty retail and specialty food retail. **Seconded** by **Council Member Moore**.

**VOTE:** Motion passed unanimously.

**MOTION:** Motion by **Council Member Hudes** to approve the recommendations for banks, financial and investment services adding language for office activities to include venture capital offices, technology incubator facilities, and biotechnology incubator facilities including dry lab facilities. **Seconded** by **Vice Mayor Badame**.

**VOTE:** Motion passed unanimously.

**MOTION:** Motion by Council Member Hudes to keep the definition for formula retail business and changing the number from 7 to 11 and keep formula retail business in the "Table of Conditional Uses" changing the square feet from 6,000 to 10,000. **Seconded by Vice Mayor Badame.**

**VOTE:** Motion passed unanimously.

**MOTION:** Motion by Council Member Hudes to keep the Conditional Use Permit requirement as-is for group classes. **Seconded by Mayor Ristow.**

**VOTE:** Motion passed unanimously.

**MOTION:** Motion by Council Member Moore to adopt the recommended changes for veterinary businesses in C-1 zone. **Seconded by Mayor Ristow.**

**VOTE:** Motion passed unanimously.

Sean Mullin, Senior Planner, summarized the following changes to the proposed ordinance:

Section 29.10.020 "Definitions," of Chapter 29, "Zoning Regulations," "Office activities" is amended to include the language "venture capital offices, technology incubator facilities, and biotechnology incubator facilities including dry lab facilities."

Section 29.10.020 "Definitions," of Chapter 29, "Zoning Regulations," is amended to keep the definition of "Formula retail business" changing the language to 11 or more other business locations."

Section 29.20.185 "Table of Conditional Uses," of Chapter 29, "Zoning Regulations," Subsection (1)(o) is amended to read "Formula retail business greater than 10,000 s.f." and retain the CUP requirements.

Section 29.20.185, "Table of Conditional Uses," of Chapter 29, "Zoning Regulations," Subsection (4)(h) is amended to retain Art, craft, music, dancing school, group classes and retain the CUP requirement.

Section 29.20.190, "Findings and Decision," of Chapter 29, "Zoning Regulations," Subsection (b) is amended retain the language and change six thousand (6,000) to ten thousand (10,000).

Section 29.60.210, "Permitted uses," of Chapter 29, "Zoning Regulations," Subsection (a)(1) is amended to read "Retailing up to ten thousand (10,000) square feet."

Section 29.60.320, "Permitted uses," of Chapter 29, "Zoning Regulations," Subsection (a)(1) is amended to read "Retailing including formula retail up to ten thousand (10,000) square feet."

Section 29.60.320, "Permitted uses," of Chapter 29, "Zoning Regulations," Subsection (a)(9) is amended to remove "Group classes."

Section 29.60.420, "Permitted uses," of Chapter 29, "Zoning Regulations," Subsection (a)(1) is amended to "Retailing, including formula retail up to ten thousand (10,000) square feet."

Section 29.70.100, "Permitted uses," of Chapter 29, "Zoning Regulations," Subsection (a)(1) is amended to "Retailing, including formula retail up to ten thousand (10,000) square feet."

Section 29.20.745, "'Development Review Committee," of Chapter 29, "Zoning Regulations," Subsection (21) is amended to retain the language "Determine and issue zoning approval for group classes in the C-2 zone."

**MOTION:**      **Motion by Mayor Ristow** to introduce the ordinance titled "An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, "Zoning Regulations," of the Town Code Regarding Land Use and Economic Recovery Amendments Related to Personal Service Businesses, Bars, Tap/Tasting Rooms, Specialty Food Retail, Banks, Financial and Investment Services, Office Activities, Formula Retail, Group Classes, Veterinarians, and Definitions" with the changes noted by staff. **Seconded by Council Member Hudes.**

**VOTE:**            **Motion passed unanimously.**

Mayor Ristow called for a recess at 11:11 p.m.

Reconvened at 11:17 p.m.

#### **OTHER BUSINESS**

23. Receive the Report on Potential Revisions and Community Input to the Shannon Road Pedestrian and Bicycle Improvements Project (CIP No. 813-0218) and Provide Design Direction.

Gary Heap, Town Engineer, presented the staff report.

Opened public comment.

Maria Gerst

- Expressed gratitude to the Town Council and the Engineering staff for considering the needs and wants of the residents and commented in support of the proposed option.

Ryan Rosenberg

- Thanked the Town Council and the Engineering staff for listening to the residents and believed the proposed option is a reasonable compromise.

Mark Bony

- Thanked the Town Council and the Engineering staff for listening to the residents and commented in support of the modified option one.

Bill Ehlers

- Commented in support of three-foot bike lane buffers.

Closed public comment.

**MOTION:**      **Motion by Council Member Hudes** to provide direction to staff to follow modified option one in an effort to meet the request of the Shannon Road residents and other community members while still meeting Town Council direction of the April 18, 2023, meeting. **Seconded by Vice Mayor Badame.**

**VOTE:**            **Motion passed unanimously.**

#### **ADJOURNMENT**

The meeting adjourned at 11:50 p.m.

Respectfully Submitted:

---

Wendy Wood, Town Clerk



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 08/01/2023

ITEM NO: 5

---

DATE: July 17, 2023  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Appoint Mayor Maria Ristow as the Town's Voting Delegate and Council Member Rob Moore as the Town's Alternate Voting Delegate for the League of California Cities Annual Conference Scheduled for September 20-22, 2023 in Sacramento

**RECOMMENDATION:**

Appoint Mayor Maria Ristow as the Town's voting delegate and Council Member Rob Moore as the Town's alternate voting delegate for the League of California Cities Annual Conference scheduled for September 20-22, 2023 in Sacramento.

**REMARKS:**

Each year the League of California Cities conducts an annual conference to discuss key legislative, social, fiscal, and service issues affecting California municipalities. One important aspect of the conference is its annual business meeting at which the League membership takes action on conference resolutions. Annual conference resolutions guide cities and the League in efforts to improve the quality, responsiveness, and vitality of local government in California.

To expedite the annual business meeting, participating cities/towns have been asked to designate a primary voting delegate and optionally, an alternate voting delegate should the voting delegate be unable to attend or carry out voting duties. The voting delegate is typically the Town's appointed League of California Cities representative or the appointed alternate. As the current appointed representative to the League, Mayor Maria Ristow will be attending the conference and has agreed to serve as the Town's voting delegate. Additionally, as the current appointed alternate to the League, Council Member Rob Moor will also be attending the conference and has agreed to serve as the Town's alternate voting delegate should the need arise.

**PREPARED BY:** Janette Judd  
Executive Assistant to the Town Manager and Town Council

---

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

---

PAGE 2 OF 2

SUBJECT: Appoint Mayor Maria Ristow as the Town's Voting Delegate and Council Member  
Rob Moore as the Town's Alternate Voting Delegate for the League of California  
Cities Annual Conference Scheduled for September 20 - 22, 2023 in Sacramento

DATE: July 17, 2023

REMARKS (continued):

At the time of the preparation of this report, the Town had not received the 2023 League of California Cities Conference Resolutions Packet. If it is received prior to the August 1<sup>st</sup> meeting, it will be transmitted as an Addendum or Desk Item. It has been the Town's past practice to have the appointed voting delegate determine the Town's position(s) based on the discussion of the resolution(s) at the League annual business meeting.



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 08/01/2023

ITEM NO: 6

---

DATE: July 27, 2023  
TO: Mayor and Town Council  
FROM: Gabrielle Whelan, Town Attorney  
SUBJECT: Adopt an Ordinance Titled “An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 18, Article VII, ‘Weapons,’ of the Town Code to Update the Town’s Concealed Carry Firearm Licensing Ordinance and Prohibit the Carry of Firearms in Sensitive Places”

**RECOMMENDATION:**

Adopt an ordinance titled, “An Ordinance of the Town Council of the Town of Los Gatos Amending Town Code Chapter 18, Article VII, ‘Weapons,’ of the Town Code Update the Town’s to Update the Concealed Carry Firearm Licensing Ordinance and Provisions and Prohibit Concealed the Carry of Firearms in Sensitive Places.”

**BACKGROUND:**

At its regular meeting of June 20, 2023, The Town Council held a public hearing to consider the introduction of an Ordinance titled, “An Ordinance Amending Chapter 18, Article VII, ‘Weapons,’ of the Town Code to Update the Town’s Concealed Carry Firearm Licensing Ordinance and Prohibit the Carry of Firearms in Sensitive Places.” The Town Council voted 5-0 to approve the introduction of this ordinance. The ordinance becomes effective 30 days after the adoption.

**CONCLUSION:**

Staff recommends Town Council adopt the Ordinance titled, “Ordinance Amending Chapter 18, Article VII, ‘Weapons,’ of the Town Code to Update the Town’s Concealed Carry Firearm Licensing Ordinance and Prohibit the Carry of Firearms in Sensitive Places.”

**COORDINATION:**

This report was coordinated by the Town Attorney’s Office, Town Manager’s Office, and the Police Department.

---

Reviewed by: Town Manager and Chief of Police

---



PAGE 2 OF 2

SUBJECT: Adopt Sensitive Places Ordinance

DATE: July 27, 2023

FISCAL IMPACT:

The Ordinance will not have a fiscal impact.

ENVIRONMENTAL ASSESSMENT:

Adoption of this Ordinance is not a project subject to CEQA, because it can be seen with certainty that it will not have an impact on the physical environment. (CEQA Guidelines Section 15378.)

Attachments:

1. Draft Sensitive Places Ordinance

**DRAFT ORDINANCE**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING CHAPTER 18, ARTICLE VII, "WEAPONS," OF THE TOWN CODE TO UPDATE THE TOWN'S CONCEALED CARRY FIREARM LICENSING ORDINANCE AND PROHIBIT THE CARRY OF FIREARMS IN SENSITIVE PLACES**

**WHEREAS**, the Town of Los Gatos regulates weapons in Chapter 18, Article VII, of the Town Code;

**WHEREAS**, state Penal Code Section 26155 authorizes Chiefs of Police to issue concealed carry firearm licenses;

**WHEREAS**, Town Code Section 18.70.025 addresses the issuance of concealed carry firearm licenses;

**WHEREAS**, the 2022 Supreme Court decision of *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 ("Bruen") held that a "good cause" requirement for a concealed carry firearm license is unconstitutional;

**WHEREAS**, the *Bruen* decision also held that municipalities can prohibit the carrying of concealed weapons in "sensitive places;" and

**WHEREAS**, the Town wishes to update Chapter 18, Article VII, of the Town Code to update its concealed carry firearm license procedures to remove the "good cause" requirement, use the same terminology as the state Penal Code, and add a prohibition on firearms, including concealed carry firearms, in "sensitive places;"

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Los Gatos as follows:

**SECTION I. Legislative Findings:**

- A. The Town of Los Gatos has a compelling interest in protecting the health and safety of the public and the orderly functioning of government within its bounds.
- B. The incidence of firearm-related fatalities and injuries has reached alarming and unacceptable proportions at the national, state, and local level, as described in a report by the Santa Clara County Department of Public Health, "Cost of Gun Violence in Santa Clara County" (Aug. 12, 2022), which notes that the age-adjusted firearm death rate in Santa Clara County was 4.8 people per 100,000 in 2020, the highest rate in the past

decade.

- C. According to the Gun Violence Archive (<https://www.gunviolencearchive.org>), California experienced 369 mass shootings (defined as an incident that kills or injures four or more people) between 2014 and January 2023. In Santa Clara County, mass shooting tragedies have included May 26, 2021, at the VTA railyard in San Jose (10 dead including the shooter); July 28, 2019, at the Gilroy Garlic festival (4 dead including the shooter, 17 wounded); Oct. 5, 2011, at the Lehigh Cement Plant in Cupertino (3 dead, 7 wounded); and Feb 16, 1988 at ESL Inc. in Sunnyvale (7 dead, 4 wounded).
- D. Previously, California law required applicants for permits to carry a concealed weapon to demonstrate “good cause” for the issuance of the license. The United States Supreme Court recently held, in *N.Y. State Rifle & Pistol Ass’n v. Bruen* (2022), 142 S. Ct. 2111, that such “good cause” requirements are unconstitutional under the Second and Fourteenth Amendments. This development in the law will likely result an increase in concealed carry permits issued in California.
- E. The U.S. Supreme Court has said that laws prohibiting the carrying of firearms in certain “sensitive places,” including “schools and government buildings,” and “legislative assemblies, polling places, and courthouses,” may be consistent with the Second Amendment. (*N.Y. State Rifle & Pistol Ass’n v. Bruen* (2022), 142 S. Ct. 2111; *D.C. v. Heller* (2008), 554 U.S. 570.)
- F. Through this Ordinance, the City Council desires to prohibit the carry of firearms in sensitive places, including by those who are licensed to carry a concealed weapon, consistent with the Supreme Court’s guidance in *N.Y. State Rifle & Pistol Ass’n v. Bruen*.

**SECTION II.** Article VII, “Weapons,” of Chapter 18, “Offences and Miscellaneous Provisions,” of the Town Code is amended to add section 18.70.005, “Definitions,” to read as follows:

**Sec. 18.70.005. Definitions.**

For the purpose of this Chapter, the following words and phrases have the meaning ascribed to them, unless otherwise noted:

“Ammunition” means any ammunition as defined in California Penal Code Section 16150, or any successor legislation.

“Concealed firearm” has the meaning set forth in Section 25400 of the California Penal Code or any successor legislation.

“Firearm”:

(a) Means any gun, pistol, revolver, rifle, or any devise, designated or modified to be used as a weapon, from which is expelled though a barrel a projectile by the force of an explosion of other form of combustion.

(b) Includes:

1. A firearm, as defined in California Penal Code section 16520 or any successor legislation.

2. A BB device, as defined in California Penal Code section 16250 or any successor legislation.
3. An imitation firearm, as defined in California Penal Code section 16700(a) or any successor legislation.

“Licensee” means a person granted a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person pursuant to Sections 26150, 26155, or 26170 of the California Penal Code.

“Sale” or “Sell”:

(a) Means any transaction, with or without the exchange of consideration, which:

1. Transfers ownership, title, possession, or control of a firearm, or ammunition, or both; or
2. Gives, loans, leases, or delivers a firearm, or ammunition, or both.

(b) Includes the act of placing a order for any of the aforementioned transfers.

“School” means “school zone” as defined in Penal Code Section 626.9 as well as institutions that provide preschool, post-secondary, technical, or trade or vocational education, and includes all athletic facilities, offices, cafeterias and eating establishments, health care facilities, research facilities, parking lots, and shared rooms and common areas of dormitories thereof.

“School” does not include a private residence at which education is provided for children who are all related to one another by blood, marriage, or adoption.

“Sensitive Place” means any of the following places:

- (a) Town Property;
- (b) Any polling place where voting is occurring;
- (c) Any School;
- (d) A bus, train, paratransit, or other form of transportation paid for in whole or in part with public funds where the public agency that operates the transit system has duly authorized the Town to enforce this prohibition; and
- (e) A church, synagogue, mosque or other place of worship, including in any parking area immediately adjacent threats. Unless the operation of the place of worship clearly and conspicuously posts a sign at the entrance of the building or on the premises indication that license holders are permitted to carry firearms on the property.

“Town Property” means Town government buildings, including but not limited to, the Civic Center Complex, the Police Operations Building, the Parks and Public Works Department offices, and the Town Library.

“Unloaded”:

(a) Means:

1. No ammunition is in the firearm’s chamber or cylinder; and
2. No ammunition, clip, tube, speed loader, or magazine that is compatible with the firearm and that contains ammunition is on the person who is carrying the firearm.

- (b) Does not include a muzzle-loading firearm that is capped or primed and has powder charge and ball, shot, or projectile in the barrel or cylinder.

**SECTION III.** Section 18.70.025, “Permit to carry, shoot and discharge” of Article VII, “Weapons,” of Chapter 18, of the Town Code is amended to read as follows:

**Sec. 18.70.025. License to carry pistol, revolver, or other firearm capable of being concealed upon the person.**

- (a) In accordance with Penal Code Section 26155 and the concealed carry firearm license procedures implemented by the Chief of Police, a person may apply for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person.
- (b) The Chief of Police may issue a concealed carry firearm license to that person upon proof of all of the following:
  - 1. The applicant is of good moral character.
  - 2. The applicant is a resident of the Town of Los Gatos.
  - 3. The applicant has completed a course of training as described in Penal Code Section 26165.
  - 4. The application complies with state law, the Town Code, and the Town’s concealed carry firearm license procedure adopted by the Chief of Police.
- (c) License applications shall be submitted electronically using the Town’s on-line concealed carry license application portal.
- (d) The Chief of Police or designee shall review the completed application and corresponding documents to determine whether it satisfies the requirements set forth in state law, the Town Code, and the Town’s concealed carry firearm license procedure.
- (e) Any such license issued shall contain a description of the firearm subject to such license, giving the name of the manufacturer, the serial number and caliber and gauge, and shall set forth the date issued and expiration date, which shall in no event exceed two years from the date of issuance.
- (f) In accordance with Penal Code Section 26200, the license may contain restrictions limiting the use of the concealed carry firearm.
- (g) If the Chief of Police issues a license to the applicant, a duplicate original copy thereof shall be filed and remain in the office of the Chief of Police.
- (h) The Chief of Police may deny any application that does not comply with state law, Town Code, or the Town’s concealed carry firearm license procedure or revoke any license if the license holder does not comply with state or local law, the Town’s concealed carry firearm license procedure, or a license condition. In such event, the Chief of Police shall notify such applicant or permittee of the decision in person or by mail at the address shown on the

application on file in the office of the Chief of Police. Notice shall be deemed to have been given on the day the notice is mailed or personal notice given.

Cross reference(s)—Licenses and miscellaneous business regulations, Ch. 14.

**SECTION IV.** Section 18.70.030, “Sale to, possession, use by minors,” of Article VII, “Weapons,” of Chapter 18, of the Town Code is removed.

**SECTION V.** Section 18.70.035, “Sling shots; possession prohibited,” of Article VII, “Weapons,” of Chapter 18, of the Town Code is removed.

**SECTION VI.** Article VII, “Weapons,” of Chapter 18, “Offences and Miscellaneous Provisions,” of the Town Code is amended to add section 18.70.040, “Prohibited acts – Ban on possession and sale of firearms,” to read as follows:

**Sec. 18.70.040. Prohibited acts – Ban on possession and sale of firearms.**

No person shall, including those persons holding a concealed carry weapons license:

- (a) Bring onto or possess at a sensitive place:
  - 1. A firearm, loaded or unloaded.
  - 2. Ammunition for a firearm.
- (b) Sell on Town property:
  - 1. A firearm, loaded or unloaded.
  - 2. Ammunition for a firearm.

**SECTION VII.** Article VII, “Weapons,” of Chapter 18, “Offences and Miscellaneous Provisions,” of the Town Code is amended to add section section 18.70.050, “Exceptions – Ban on possession,” to read as follows:

**Sec. 18.70.050. Exceptions – Ban on possession.**

Section 18.70.040 does not apply to the following:

- (a) A federal, state, or local law enforcement officer when such person is authorized to carry a concealed firearm or a loaded firearm under state law or under 18 U.S.C. Section 926B or 926C or any successor legislation;
- (b) An honorably retired officer or agent of a law enforcement agency, when authorized to carry a concealed or loaded firearm under State law;
- (c) A security guard or messenger of a financial institution, a guard of a contract carrier operating an armored vehicle, a licensed private investigator, a patrol operator, an alarm company operator, or security guard, when such persons are authorized by applicable state

or federal law to carry a firearm and when such persons are engaged in the exercise of their official duties;

- (d) An active member of the military forces of the State or of the United States when engaged in the performance of lawful duties and orders;
- (e) Any person bringing an unloaded firearm onto Town property in order to exchange or transfer or relinquish it to the Police Department, in compliance with any Police Department operated or sponsored program to purchase, exchange, or otherwise obtain voluntary relinquishment of firearms;
- (f) A person delivering unloaded firearms as authorized by state or federal law, to or from law enforcement;
- (g) A person lawfully possessing an unloaded firearm in the locked trunk or inside a locked container in a motor vehicle;
- (h) A person who is lawfully at and using a firearms target range in accordance with its rules and applicable law.
- (i) A patrol special police officer, animal control officer, or zookeeper when authorized by applicable California or federal law to carry a loaded firearm and when engaged in exercise of official duties on city properties.
- (j) An officer authorized to transport prisoners under applicable California or federal law.
- (k) An authorized participant in a motion picture, television, film or video production, or musical theatrical production when the participant lawfully uses an unloaded firearm as a part of that production.
- (l) A hunter with a valid hunting license when going to or returning from a legal hunting expedition; provided, however, that when transiting through any area where firearms are prohibited; any firearm is safely stored in a locked container or otherwise secured using a firearm safety device as defined by California Penal Code Section 16540 or any successor legislation;
- (m) A licensee in their residence or place of business in accordance with Section 12026 of the California Penal Code and any successor legislation.

**SECTION VIII.** Article VII, "Weapons," of Chapter 18, "Offences and Miscellaneous Provisions," of the Town Code is amended to add section 18.70.060, "Exceptions – Ban on sale," to read as follows:

**Sec. 18.70.060. Exceptions – Ban on sale.**

Section 18.70.040 does not apply to the purchase of sale of a firearm, or ammunition, or both, by a federal, state, or local law enforcement agency or by any other federal, state, or local government entity.

**SECTION IX.** Article VII, "Weapons," of Chapter 18, "Offences and Miscellaneous Provisions," of the Town Code is amended to add section 18.70.070, "Sale to, possession, use by minors," to read as follows:

**Sec. 18.70.070. Sale to, possession, use by minors.**

No person shall sell to any minor in the Town under the age of sixteen (16) years, and no person shall sell or give to any minor in the Town under the age of eighteen (18) years, without written consent of the minor's parent or guardian, any rifle, gun, pistol, revolver, air rifle, B-B gun, or other similar instrument from or by means of which any bullet, shot or other missile of any kind may be projected. No such minor shall use or possess any rifle, gun, pistol, revolver, air rifle, B-B gun or other similar instrument from or by means of which any bullet, shot or other missile of any kind may be projected. The provisions of this section shall not apply to the possession of such firearms or other instruments by such minors in carrying or transporting such firearms or other such instrument, unloaded or broken down into, through or out of the Town or in bona fide shooting galleries, gun clubs or organizations or educational institutions authorized to give military instruction, while such firearms or other instrument are being used as a part of such instruction, nor to the possession of unloaded firearms, air rifles or other such instruments by any such minor as an employee of a merchant, when such possession is in the usual course of the minor's employment. The provisions of this section shall not apply to cap pistols, dart guns or other similar toys.

**SECTION X.** Article VII, "Weapons," of Chapter 18, "Offences and Miscellaneous Provisions," of the Town Code is amended to add section 18.70.035, "Sling shots; possession prohibited," to read as follows:

**Sec. 18.70.080. Sling shots; possession prohibited.**

No person shall make use of or wear or carry or have in possession any sling shot, rubber sling or other instrument or contrivance by means of which shots or other missiles of any kind or description are or made to be hurled or projected.

**SECTION XI. Severability.**

In the event that a court of competent jurisdiction holds any Section, subsection, paragraph, sentence, clause, or phrase in this Ordinance unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this Section and shall not affect the validity of the remaining portions of this Section. The Town hereby declares that it would have adopted each Section, subsection, paragraph, sentence, clause, or phrase in this Section irrespective of the fact that any one or more Sections, subsections, paragraphs, sentences, clauses or phrases in this Section might be declared unconstitutional, preempted, or otherwise invalid.



**SECTION XII. CEQA.**

Adopting this Ordinance is not a project subject to CEQA because it can be seen with certainty that it will not impact the environment (CEQA Guidelines Section 15378).

**SECTION XIII. Publication.**

The Town Council hereby directs the Town Clerk to cause this Ordinance or a summary thereof to be published or posted in accordance with Section 36933 of the Government Code of the State of California.

**SECTION XIV. Effective Date.**

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the \_\_\_\_\_, 2023, and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the \_\_\_\_\_, 2023. This ordinance takes effect 30 days after it is adopted.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

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

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA  
DATE: \_\_\_\_\_



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 08/01/2023

ITEM NO: 7

---

DATE: July 27, 2023  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Adopt an Ordinance Titled “An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, ‘Zoning Regulations,’ of the Town Code Regarding Land Use and Economic Recovery Amendments Related to Personal Service Businesses, Bars, Tap/Tasting Rooms, Specialty Food Retail, Banks, Financial and Investment Services, Office Activities, Formula Retail, Group Classes, Veterinarians, and Definitions”

**RECOMMENDATION:**

Adopt an ordinance titled “An Ordinance of the Town Council of the Town of Los Gatos amending Chapter 29 ‘Zoning Regulations,’ of the Town Code regarding land use and economic recovery amendments related to personal service businesses, bars, tap/tasting rooms, specialty food retail, banks, financial and investment services, office activities, formula retail, group classes, veterinarians, and definitions.”

**DISCUSSION:**

On July 20, 2023, the Town Council considered and voted unanimously to introduce an Ordinance amending Chapter 29 (Zoning Regulations) of the Town Code regarding economic recovery code amendments, with specific modifications. Adoption of the attached Ordinance (Attachment 1) would finalize this decision and includes the modifications requested by the Town Council described below.

The Town Council motion included four specific modifications to the Draft Ordinance, which are reflected in Attachment 1:

**PREPARED BY:** Sean Mullin, AICP  
Senior Planner

---

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

---

DISCUSSION (continued):

1. Add the following examples to the definition of *office activities*: venture capital; technology incubator facilities; biotechnology incubator facilities, including dry-lab facilities where testing and analyses is performed using data, coding, and computer systems and excluding wet-lab facilities where testing and analyses are performed using physical samples, biological matter, chemicals, and/or hazardous substances (Section 29.10.020);
2. Retain the definition of formula retail business and amend the definition to define such businesses as those with eleven (11) or more other locations (Section 29.10.020);
3. Continue to require a conditional use permit for group classes in the C-2 zone (Section 29.20.185 (4)(h), 29.20.745 (21), and 29.60.320 (a)(9)); and
4. Revise the size limitation for formula retail as a permitted use in the C-1, C-2, CH, and LM zones from 6,000 square feet to 10,000 square feet. Formula retail businesses exceeding 10,000 square feet would require approval of a Conditional Use Permit. (Sections 29.20.185 (1)(o), 29.20.190, 29.60.210, 29.60.320, 29.60.420, and 29.70.100).

ENVIRONMENTAL ASSESSMENT:

In accordance with CEQA Guidelines Section 15378, the proposed ordinance amendments are not a “project” subject to CEQA because the proposed amendments affect processing of applications only and will not impact the physical environment. Individual projects processed in accordance with the Town’s Zoning Code will undergo CEQA review.

Attachments:

1. Draft Ordinance
2. Draft Town Code amendments with tracked changes

**DRAFT ORDINANCE**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING CHAPTER 29, "ZONING REGULATIONS," OF THE TOWN CODE REGARDING LAND USE AND ECONOMIC RECOVERY AMENDMENTS RELATED TO PERSONAL SERVICE BUSINESSES, BARS, TAP/TASTING ROOMS, SPECIALTY FOOD RETAIL, BANKS, FINANCIAL AND INVESTMENT SERVICES, OFFICE ACTIVITIES, FORMULA RETAIL, GROUP CLASSES, VETERINARIANS, AND DEFINITIONS**

**WHEREAS**, pursuant to the Town’s police power, as granted broadly under Article XI, Section 7 of the California Constitution, the Town Council has the authority to enact and enforce ordinances and regulations for the public peace, morals, and welfare of the Town and its residents; and

**WHEREAS**, due to the severe economic impacts of the COVID-19 Pandemic and its economic impacts that followed including supply chain disruptions and inflation causing hardship on the community and the Town organization, the Town Council deemed it necessary to take additional action to suspend enforcement of certain provisions of the Town of Los Gatos Town Code and provided temporary process streamlining measures to facilitate the retention and attraction of Los Gatos businesses, reduce economic impacts, foster recovery, encourage economic vitality, and reduce commercial vacancies; and

**WHEREAS**, on June 3, 2020, in response to the COVID-19 Pandemic, the Town of Los Gatos adopted Economic Recovery Resolution 2020-022, which was intended to provide economic relief to businesses experiencing economic uncertainty during the COVID-19 emergency orders. Resolution 2020-022 has since been extended and expanded by Resolutions 2021-002, 2021-051, 2022-066, and current Resolution 2023-027 with a sunset date of October 31, 2023; and

**WHEREAS**, while the emergency orders for the recent COVID-19 Pandemic have been lifted, the ongoing effects of the Pandemic, harsh winter storms, and inflation and supply chain issues have created difficult and negative impacts on the Los Gatos business community; and

**WHEREAS**, the Town Council for the Town of Los Gatos continues to prioritize economic recovery through increased flexibility and opportunity; business permit streamlining; and economic and community vitality; and

**WHEREAS**, the Town of Los Gatos Town Council has an adopted strategic priority related to Economic Vitality and Pandemic Recovery, which prioritizes: economic recovery through increased flexibility and opportunity; business permit streamlining; and economic and community vitality; and

ATTACHMENT 1

**WHEREAS**, in consideration of the recent termination of Federal, State, and local emergency orders, and the sunset date of the current Economic Recover Resolution approaching, staff prepared amendments to the Town Code to continue the Town Council’s pre-Pandemic streamlining efforts and to offer post-Pandemic economic recovery support for businesses consistent with the Town Council Strategic Priorities; and

**WHEREAS**, on April 26, 2023, the Planning Commission reviewed and commented on the proposed amendments regarding land use and economic recovery and forwarded a recommendation to the Town Council for approval of the proposed amendments with modifications; and

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on June 20, 2023; and

**WHEREAS**, on June 20, 2023, the Town Council reviewed and commented on the proposed amendments regarding land use and economic recovery and the Town Council voted to introduce the Ordinance with specific modifications; and

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on August 1, 2023.

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Los Gatos as follows:

**SECTION I.** Section 29.10.020, “Definitions,” of Chapter 29, “Zoning Regulations,” is amended to add the following between the definitions of “*Automobile wrecking*” and “*Bar*” to read as follows:

*Bank, retail* means commercial and non-profit banks and credit unions, which are primarily focused on in-person customer services such as: cash deposits/withdrawals, loans, checking and savings accounts, currency exchanges, mortgages, personal loans, and debit or credit card services. This classification does not include payday lending businesses or check cashing businesses. The term "payday lending business" as used herein means retail businesses owned or operated by a "licensee" as that term is defined in California Financial Code Section 23001(d), as amended from time to time. The term “check cashing business” as used herein means a retail business owned or operated by a “check cashier” as that term is defined in California Civil Code Section 1789.31 as amended from time to time.

**SECTION II.** Section 29.10.020, “Definitions,” of Chapter 29, “Zoning Regulations,” is amended to add the following between the definitions of “*Fence height*” and “*Home occupation*” to read as follows:

*Financial and investment services* means businesses that offer financial advice and services, including but not limited to: investment banking, portfolio management, private equity, and venture capital.

**SECTION III.** Section 29.10.020, “Definitions,” of Chapter 29, “Zoning Regulations,” is amended to add the following between the definitions of “*Occupancy*” and “*Open space*” to read as follows:

*Office activities* means office uses, including but not limited to: administrative; professional; medical; dental; optical; real estate; insurance; financial and investment services; venture capital; technology incubator facilities; biotechnology incubator facilities, including dry-lab facilities where testing and analyses is performed using data, coding, and computer systems and excluding wet-lab facilities where testing and analyses are performed using physical samples, biological matter, chemicals, and/or hazardous substances; and other similar office uses characterized by an absence of retail sales.

**SECTION IV.** Section 29.10.020, “Definitions,” of Chapter 29, “Zoning Regulations,” is amended to add the following between the definitions of “*Shopping center*” and “*Stables*” to read as follows:

*Specialty food retail* means businesses that are primarily walk-in and impulse businesses that do not generally serve meals, but offer pre-packaged/pre-prepared foods and/or made-to-order beverages and have limited to no seating. Examples include but are not limited to: tea houses, donut shops, juice/smoothie bars, and ice cream/frozen yogurt shops. Specialty food retail does not include coffee houses.

**SECTION V.** Section 29.10.020, “Definitions,” of Chapter 29, “Zoning Regulations,” is amended to add the following between the definitions of “*Swimming pools*” and “*Townhouse*” to read as follows:

*Tap/tasting room* means an establishment operating within the hours of 10:00 a.m. and 10:00 p.m. devoted to the sampling and sale of alcoholic beverages for on- and/or off-site consumption. Food service is not required.

**SECTION VI.** Section 29.10.020, “Definitions,” of Chapter 29, “Zoning Regulations,” definitions of “*Formula retail business*” is amended to read as follows:

*Formula retail business* means a retail business which, along with eleven (11) or more other business locations, is required by contractual or other arrangement to maintain any of the following: standardized merchandise, services, decor, uniforms, architecture, colors, signs or other similar features.

**SECTION VII.** Section 29.10.020, "Definitions," of Chapter 29, "Zoning Regulations," definitions of "Bar," "Convenience market," and "Personal service" are amended to read as follows:

*Bar* means a drinking place operating within the hours of 6:00 a.m. and 2:00 a.m. where alcoholic beverages are served for on-site consumption. Food service is not required.

*Convenience market* means an activity that includes the retail sale of food, beverages, and small personal convenience items, primarily for off-premises consumption and typically found in establishments with long or late hours of operation and in a relatively small building; but excluding delicatessens and specialty food retail and also excluding establishments which have a sizeable assortment of fresh fruits and vegetables and fresh-cut meat.

*Personal service business* means uses that predominately sell personal convenience services directly to the public, including but not limited to: acupressure, barbers, beauty salons and related services, cosmetologists, electrolysis, estheticians, facial and/or skin care, hair dressers and/or hair stylists, hair removal and/or replacement, manicurists, massage therapists, myofascial therapists, nail salons, pedicurists, permanent make-up, rollers (therapists), skin and body care, piercing, spas, tanning salons, tattooing, cleaners, dog grooming, tailors, and other services of a similar nature. Personal service business does not include travel agencies, insurance offices, law offices, architect offices, or any other type of office use.

**SECTION VIII.** Subsection (b) of Section 29.10.150, "Number of Off-Street Spaces Required," of Chapter 29, "Zoning Regulations," is amended to read as follows:

(b) *Parking requirements for downtown.* In addition to other parking requirements, one visitor parking space for each residential unit other than detached single-family or two-family dwelling shall be required unless the Planning Commission makes a finding that more or less visitor parking is necessary due to the size or type of housing unit(s). The parking requirement for various uses in the downtown are as follows:

- (1) *Retail and commercial stores shops, personal service businesses, specialty food retail, restaurants, bars, nightclubs, and tap/tasting rooms.* One (1) parking space for each three hundred (300) square feet of gross floor area.
- (2) *Business and professional offices, retail banks, financial and investment services, insurance companies, social service agencies and studios.* One (1) parking space for each two hundred fifty (250) square feet of gross floor area.

**SECTION IX.** Subsections (c)(9) and (10) of Section 29.10.150, "Number of Off-Street Spaces Required," of Chapter 29, "Zoning Regulations," is amended to read as follows:

- (9) *Retail and commercial stores shops, personal service businesses, specialty food retail, restaurants, bars, nightclubs, and tap/tasting rooms.* One (1) parking space for each two hundred thirty-five (235) square feet of gross floor area.

- (10) *Business and professional offices, retail banks, financial and investment services, insurance companies, social service agencies and studios.* One (1) parking space for each two hundred thirty-five (235) square feet of gross floor area.

**SECTION X.** Subsection (1) of Section 29.20.185, “Table of Conditional Uses,” of Chapter 29, “Zoning Regulations,” is amended to read as follows:

TABLE OF CONDITIONAL USES		RC	HR	R1	RD	R-M	R-1D	RMH	O	C-1	C-2	CH	LM	CM
(1)	Commercial													
	a. Banks, retail									X	X	X		
	b. Reserved													
	c. Drive-up window for any business									X	X	X		
	d. Supermarket									X	X	X		
	e. Super drugstore									X	X	X		
	f. Department store									X	X	X		
	g. Shopping center									X	X	X		
	h. Motel										X	X		
	i. Hotel										X	X		
	j. Restaurant including those with outdoor dining areas or takeout food									X	X	X	X	X
	k. Establishment selling alcoholic beverages for consumption on premises													
	1. In conjunction with a restaurant or specialty									X	X	X	X	



		food retail use													
		2. Without food service (bar)									X				
		3. Tap/tasting room								X	X	X	X		
	i.	Establishment selling alcoholic beverages for consumption off-premises (this provision only applies to establishments commencing or expanding off-premises sales after April 23, 1981)									X	X	X		
		1. In conjunction with a specialty food retail use								X	X	X	X		
	m.	Convenience market								X	X	X			
	n.	Reserved													
	o.	Formula retail business greater than 10,000 s.f								X	X	X	X		
	p.	Reserved													
	q.	New office building approved or constructed after May 1, 2006								X	X	X			
	r.	New retail sales of firearms,												X	

		ammunition and /or destructive devices as set forth in section 29.70.100												
--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

**SECTION XI.** Subsection (9)(c) of Section 29.20.185, “Table of Conditional Uses,” of Chapter 29, “Zoning Regulations,” is amended to read as follows:

TABLE OF CONDITIONAL USES		RC	HR	R1	RD	R-M	R-1D	RMH	O	C-1	C-2	CH	LM	CM
(9)	Agriculture and Animal Services													
	c. Veterinary hospital (without kennel)									X	X	X	X	

**SECTION XII.** Subsection (b) of Section 29.20.190, “Findings and Decision,” of Chapter 29, “Zoning Regulations,” is amended to read as follows:

- (b) The deciding body, on the basis of the evidence submitted at the hearing, may deny a conditional use permit for a formula retail business greater than ten thousand (10,000) square feet if any of the following findings are made:
  - (1) The proposed use of the property is not in harmony with specific provisions or objectives of the general plan and the purposes of this chapter;
  - (2) The proposed use will detract from the existing balance and diversity of businesses in the commercial district in which the use is proposed to be located;
  - (3) The proposed use would create an over-concentration of similar types of businesses, or
  - (4) The proposed use will detract from the existing land use mix and high urban design standards including uses that promote continuous pedestrian circulation and economic vitality.

**SECTION XIII.** Section 29.20.745, “Development Review Committee,” of Chapter 29, “Zoning Regulations,” is amended to read as follows:

**Sec. 29.20.745. Development Review Committee.**

The Development Review Committee shall:

- (1) Regularly review and make recommendations to the Planning Commission concerning the determination of all matters which come before the Planning Commission except zoning ordinance amendments, zone changes (not including rezoning to PD), general plan adoptions and amendments, specific plan adoptions and amendments, and capital improvement plans.
- (2) Review and make recommendations to the Council concerning community-oriented bulletin boards and kiosks proposed to be erected on public property.
- (3) May on its own motion review and make recommendations concerning matters not assigned to it.
- (4) Reserved.
- (5) Determine and issue zoning approval for the storage of hazardous materials as provided in division 1 of article VII of this chapter.
- (6) Determine appropriate screening (fencing, landscaping or a combination) for hazardous materials storage sites as provided in division 1 of article VII of this chapter.
- (7) Determine and issue zoning approval for grading permits as provided in section 29.10.09045(b) and (c) of this chapter.
- (8) Reserved.
- (9) Determine and issue zoning approval for lot line adjustments and lot mergers.
- (10) Reserved.
- (11) Under the provisions of section 29.10.070 of this chapter and section 66424.2 of the Subdivision Map Act, determine whether lots have merged.
- (12) Determine and issue zoning approval for single-family dwellings.
- (13) Determine and issue zoning approval for minor subdivisions of land consisting of four lots or less.
- (14) Determine and issue zoning approval for minor modifications to Planned Developments when the Official Development Plan is not altered.
- (15) Determine and issue zoning approval for requests for reduction to setbacks on nonconforming lots.
- (16) Determine and issue zoning approval for restaurants, specialty food retail use selling alcoholic beverages for consumption off-site or on-site, and tap/tasting rooms.
- (17) May refer any matter assigned by ordinance to the Development Review Committee for decision to the Planning Commission for decision.
- (18) Determine and issue zoning approval for special parking lot surfaces for nurseries or botanical gardens under subsection 29.10.155(1).
- (19) Determines requests for reasonable accommodation when action is not required of the Council, Planning Commission or the Planning Director.

- (20) Determines applications for demolition, conversion, and removal of accessory dwelling units.
- (21) Determine and issue zoning approval for group classes in the C-2 zone.

No Planning Commission action is invalid because of omission of review and recommendation.

**SECTION XIV.** Section 29.60.085, "Permitted uses," of Chapter 29, Zoning Regulations," is amended to read as follows:

Activities allowed in the O or office zone must be those which would not unreasonably interfere with residential uses or other activities within the O zone, and which are in the following categories:

- (1) Offices, administrative, professional, medical, dental and optical laboratories associated with a professional use, real estate, insurance, stocks and bonds; and other similar offices characterized by absence of retail sales.
- (2) Retail sales by a pharmacy within a medical building.
- (3) Group classes.
- (4) Personal service businesses.

**SECTION XV.** Section 29.60.210, "Permitted Uses," of Chapter 29, "Zoning Regulations," is amended to read as follows:

**Sec. 29.60.210. Permitted uses.**

- (a) Activities allowed in the C-1 or neighborhood commercial zone are those which do not unreasonably interfere with nearby residential uses and which are in the following categories:
  - (1) Retailing, including formula retail up to ten thousand (10,000) square feet.
  - (2) Personal service businesses and service businesses necessary for the conduct of households.
  - (3) Office activities.
  - (4) Limited manufacturing activities when a majority of sales are made, on site, to the ultimate consumer.
  - (5) Activities permitted in the LM zone which were approved on or before February 1, 1993 provided any change of use must be a conforming use in the C-1 zone.
  - (6) Group classes.
  - (7) Specialty food retail without alcoholic beverages.

- (b) Examples of proper C-1 activities are grocery stores, laundrettes, or dry cleaning agencies, drugstores, barbershops, appliance repair shops, and offices. Examples of activities which are not proper in the C-1 zone are vehicle service and sales, palmists and soothsayers, manufacturing, wholesaling, or laundry.

**SECTION XVI.** Section 29.60.320, "Permitted Uses," of Chapter 29, "Zoning Regulations," is amended to read as follows:

**Sec. 29.60.320. Permitted uses.**

- (a) Activities permitted in the C-2 or Central District Commercial Zone are those involving the conduct of commerce and general business and the sale of commodities necessary for the needs of residents and visitors of the Town, such as:
  - (1) Retailing, including formula retail up to ten thousand (10,000) square feet.
  - (2) Reserved.
  - (3) Reserved.
  - (4) Office activities subject to subsection (c) below.
  - (5) Limited manufacturing activities when a majority of sales are made, on site, to the ultimate consumer.
  - (6) Wholesaling without warehousing on the premises.
  - (7) Single-family and two-family uses, in conjunction with the other uses permitted in this section.
  - (8) Personal service businesses.
  - (9) Specialty food retail without alcoholic beverages.
- (b) Examples of proper C-2 activities are apparel stores, antique stores, artist studios, craft studios, auto part sales, artist supply shops, and EV sales, service, and repair. Examples of activities which are not proper in the C-2 zone are manufacturing, warehousing, laundry or dry cleaning plants.
- (c) Office activities in the C-2 zone shall not be located on the ground floor along any street, alleyway, or public parking lot except in the areas described below:
  - (1) Lyndon Avenue;
  - (2) Properties abutting Wood Road;
  - (3) The west side of Victory Lane;
  - (4) The south side of Los-Gatos-Saratoga Road excluding:
    - a. That portion of the property located at the southwest corner of Los-Gatos Saratoga Road and Santa Cruz Avenue described more precisely as located between a straight line extended northerly along the west side right-of-way line

of Santa Cruz Avenue and one hundred forty (140) feet west of that extended line.

- b. The south side of Los Gatos-Saratoga Road between Santa Cruz Avenue and University Avenue; and
  - (5) The east side of South Santa Cruz Avenue directly across the street from Wood Road.
  - (6) The north and south side of West Main Street west of Victory Lane.
  - (7) Tenant suites located at 114 Royce Street with entries at the rear of the building and that do not have street frontage.
- (d) Notwithstanding subsection (c), office activities on ground floors described below shall be considered conforming and shall be allowed to continue so long as the office use is not discontinued for one hundred and eighty (180) consecutive days. If the office use is discontinued for such a period, then the office use shall not be resumed, and token use shall not toll or interrupt a period of discontinuance.
- (1) Office activities existing on June 17, 1991; or
  - (2) Office activities in a building under construction on July 16, 1990, if the applicable architecture and site approval specifically stated that the building was approved for office activities.

**SECTION XVII.** Section 29.60.420, "Permitted Uses," of Chapter 29, "Zoning Regulations," is amended to read as follows:

**Sec. 29.60.420. Permitted uses.**

- (a) Activities allowed in the CH or restricted highway commercial zone are those which do not unreasonably interfere with nearby residential uses and which are in the following categories:
  - (1) Retailing, including formula retail up to ten thousand (10,000) square feet.
  - (2) Personal service businesses and service businesses necessary for the conduct of households.
  - (3) Office activities.
  - (4) Limited manufacturing activities when a majority of sales are made on site to the ultimate consumer.
  - (5) Group classes.
  - (6) Specialty food retail without alcoholic beverages.
- (b) Examples of proper CH activities are grocery stores, laundrettes or dry-cleaning agencies, drugstores, barbershops, appliance repair shops, and offices. Examples of activities which are not proper in the CH zone are palmists and soothsayers, manufacturing, wholesaling, or laundry or dry-cleaning plants.

**SECTION XVIII.** Subsection (a) of Section 29.70.100, “Permitted Uses,” of Chapter 29, “Zoning Regulations,” is amended to read as follows:

- (a) Activities allowed in the LM or commercial-industrial zone are those service-oriented and light industrial uses which may be inappropriate in a general commercial zone and which are in the following categories:
- (1) Retailing, including formula retail up to ten thousand (10,000) square feet.
  - (2) Personal service businesses.
  - (3) Service businesses necessary for the conduct of households or businesses.
  - (4) Office activities approved on or before July 1, 1982; provided, that no change of use to office shall be permitted in the LM zone.
  - (5) Limited manufacturing.
  - (6) Wholesaling and warehousing.
  - (7) Group classes.
  - (8) Specialty food retail without alcoholic beverages.

**SECTION XIX. Severability.**

In the event that a court of competent jurisdiction holds any Section, subsection, paragraph, sentence, clause, or phrase in this Ordinance unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this Section and shall not affect the validity of the remaining portions of this Section. The Town hereby declares that it would have adopted each Section, subsection, paragraph, sentence, clause, or phrase in this Section irrespective of the fact that any one or more Sections, subsections, paragraphs, sentences, clauses or phrases in this Section might be declared unconstitutional, preempted, or otherwise invalid.

**SECTION XX. CEQA.**

Adopting this Ordinance is not a project subject to CEQA because it can be seen with certainty that it will not impact the environment (CEQA Guidelines Section 15378).

**SECTION XXI. Publication.**

In accordance with Section 63937 of the Government Code of the State of California, this Ordinance takes effect 30 days from the date of its passage. The Town Council hereby directs the City Clerk to cause this Ordinance or a summary thereof to be published or posted in accordance with Section 36933 pf the Government Code of the State of California.

**SECTION XXII. Effective Date.**

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 20<sup>th</sup> day of June 2023, and adopted by the Town Council of the Town of Los Gatos at its regular meeting on the 1<sup>st</sup> day of August 2023, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

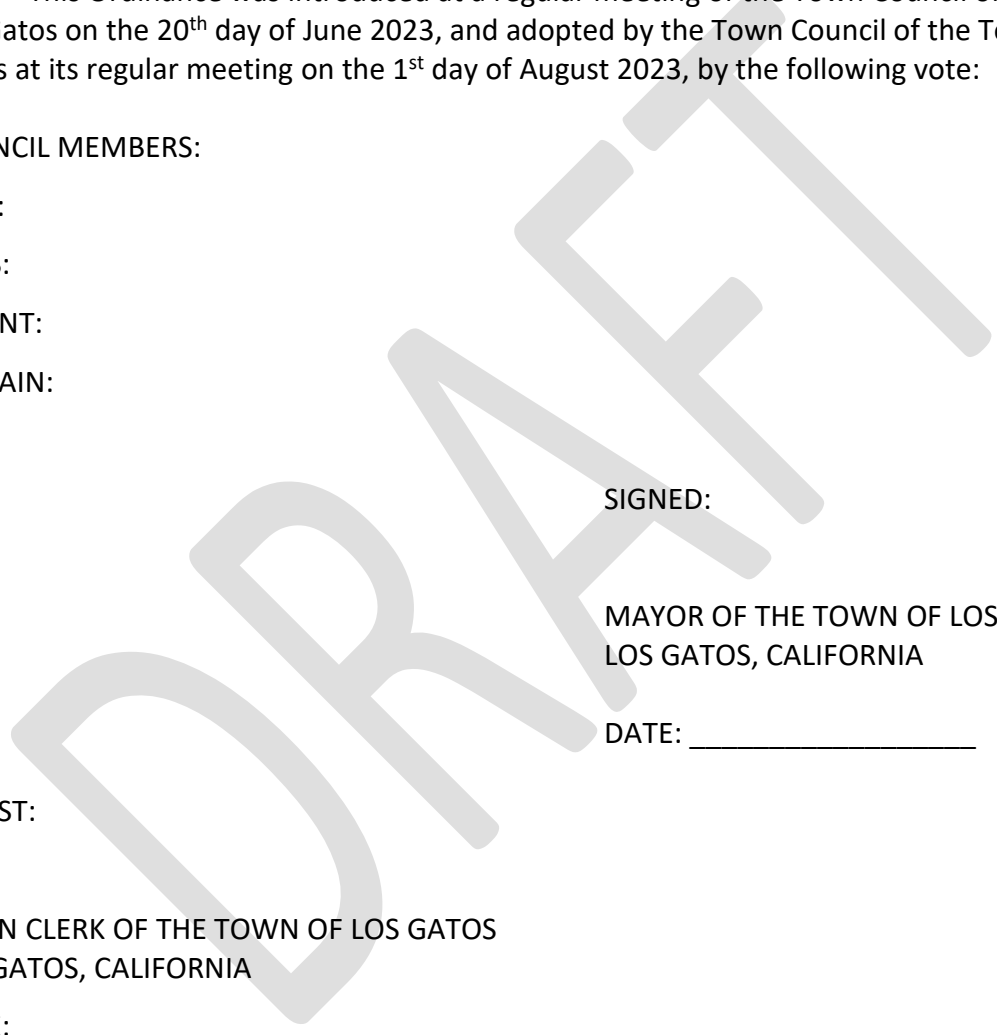
MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

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

ATTEST:

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

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





*This Page  
Intentionally  
Left Blank*

DRAFT

**ORDINANCE**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
AMENDING CHAPTER 29, "ZONING REGULATIONS," OF THE TOWN CODE  
REGARDING LAND USE AND ECONOMIC RECOVERY AMENDMENTS RELATED TO PERSONAL  
SERVICE BUSINESSES, BARS, TAP/TASTING ROOMS, SPECIALTY FOOD RETAIL, BANKS,  
FINANCIAL AND INVESTMENT SERVICES, OFFICE ACTIVITIES, FORMULA RETAIL, GROUP  
CLASSES, VETERINARIANS, AND DEFINITIONS.**

**WHEREAS**, pursuant to the Town's police power, as granted broadly under Article XI, Section 7 of the California Constitution, the Town Council has the authority to enact and enforce ordinances and regulations for the public peace, morals, and welfare of the Town and its residents; and

**WHEREAS**, due to the severe economic impacts of the COVID-19 Pandemic and its economic impacts that followed including supply chain disruptions and inflation causing hardship on the community and the Town organization, the Town Council deemed it necessary to take additional action to suspend enforcement of certain provisions of the Town of Los Gatos Town Code and provided temporary process streamlining measures to facilitate the retention and attraction of Los Gatos businesses, reduce economic impacts, foster recovery, encourage economic vitality, and reduce commercial vacancies; and

**WHEREAS**, on June 3, 2020, in response to the COVID-19 Pandemic, the Town of Los Gatos adopted Economic Recovery Resolution 2020-022, which was intended to provide economic relief to businesses experiencing economic uncertainty during the COVID-19 emergency orders. Resolution 2020-022 has since been extended and expanded by Resolutions 2021-002, 2021-051, 2022-066, and current Resolution 2023-027 with a sunset date of October 31, 2023; and

**WHEREAS**, while the emergency orders for the recent COVID-19 Pandemic have been lifted, the ongoing effects of the Pandemic, harsh winter storms, and inflation and supply chain issues have created difficult and negative impacts on the Los Gatos business community; and

**WHEREAS**, the Town Council for the Town of Los Gatos continues to prioritize economic recovery through increased flexibility and opportunity; business permit streamlining; and economic and community vitality; and

**WHEREAS**, the Town of Los Gatos Town Council has an adopted strategic priority related to Economic Vitality and Pandemic Recovery, which prioritizes: economic recovery through increased flexibility and opportunity; business permit streamlining; and economic and community vitality; and

ATTACHMENT 2

**WHEREAS**, in consideration of the recent termination of Federal, State, and local emergency orders, and the sunset date of the current Economic Recover Resolution approaching, staff prepared amendments to the Town Code to continue the Town Council’s pre-Pandemic streamlining efforts and to offer post-Pandemic economic recovery support for businesses consistent with the Town Council Strategic Priorities; and

**WHEREAS**, on April 26, 2023, the Planning Commission reviewed and commented on the proposed amendments regarding land use and economic recovery and forwarded a recommendation to the Town Council for approval of the proposed amendments with modifications; and

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on June 20, 2023; and

**WHEREAS**, on June 20, 2023, the Town Council reviewed and commented on the proposed amendments regarding land use and economic recovery and the Town Council voted to introduce the Ordinance with specific modifications.

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on August 1, 2023.

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Los Gatos as follows:

**SECTION I.** Section 29.10.020, “Definitions,” of Chapter 29, “Zoning Regulations,” is amended to add the following between the definitions of “*Automobile wrecking*” and “*Bar*” to read as follows with underlining (underlining) indicating new text:

*Bank, retail* means commercial and non-profit banks and credit unions, which are primarily focused on in-person customer services such as: cash deposits/withdrawals, loans, checking and savings accounts, currency exchanges, mortgages, personal loans, and debit or credit card services. This classification does not include payday lending businesses or check cashing businesses. The term "payday lending business" as used herein means retail businesses owned or operated by a "licensee" as that term is defined in California Financial Code Section 23001(d), as amended from time to time. The term “check cashing business” as used herein means a retail business owned or operated by a “check casher” as that term is defined in California Civil Code Section 1789.31 as amended from time to time.

**SECTION II.** Section 29.10.020, “Definitions,” of Chapter 29, “Zoning Regulations,” is amended to add the following between the definitions of “*Fence height*” and “*Home occupation*” to read as follows with underlining (underlining) indicating new text:

Financial and investment services means businesses that offer financial advice and services, including but not limited to: investment banking, portfolio management, private equity, and venture capital.

**SECTION III.** Section 29.10.020, “Definitions,” of Chapter 29, “Zoning Regulations,” is amended to add the following between the definitions of “Occupancy” and “Open space” to read as follows with underlining (underlining) indicating new text:

Office activities means office uses, including but not limited to: administrative; professional; medical; dental; optical; real estate; insurance; financial and investment services; venture capital; technology incubator facilities; biotechnology incubator facilities, including dry-lab facilities where testing and analyses is performed using data, coding, and computer systems and excluding wet-lab facilities where testing and analyses are performed using physical samples, biological matter, chemicals, and/or hazardous substances; and other similar office uses characterized by an absence of retail sales.

**SECTION IV.** Section 29.10.020, “Definitions,” of Chapter 29, “Zoning Regulations,” is amended to add the following between the definitions of “Shopping center” and “Stables” to read as follows with underlining (underlining) indicating new text:

Specialty food retail means businesses that are primarily walk-in and impulse businesses that do not generally serve meals, but offer pre-packaged/pre-prepared foods and/or made-to-order beverages and have limited to no seating. Examples include but are not limited to: tea houses, donut shops, juice/smoothie bars, and ice cream/frozen yogurt shops. Specialty food retail does not include coffee houses.

**SECTION V.** Section 29.10.020, “Definitions,” of Chapter 29, “Zoning Regulations,” is amended to add the following between the definitions of “Swimming pools” and “Townhouse” to read as follows with underlining (underlining) indicating new text:

Tap/tasting room means an establishment operating within the hours of 10:00 a.m. and 10:00 p.m. devoted to the sampling and sale of alcoholic beverages for on- and/or off-site consumption. Food service is not required.

**SECTION VI.** Section 29.10.020, “Definitions,” of Chapter 29, “Zoning Regulations,” definitions of “Formula retail business” is amended to read as follows with underlining (underlining) indicating new text and strikeouts (~~strikeouts~~) indicating deleted text:

*Formula retail business* means a retail business which, along with ~~seven (7)~~ eleven (11) or more other business locations, is required by contractual or other arrangement to maintain any of the following: standardized merchandise, services, decor, uniforms, architecture, colors, signs or other similar features.

**SECTION VII.** Section 29.10.020, “Definitions,” of Chapter 29, “Zoning Regulations,” definitions of “Bar,” “Convenience market,” and “Personal service” are amended to read as follows with underlining (underlining) indicating new text and strikeouts (~~strikeouts~~) indicating deleted text:

*Bar* means a drinking place operating within the hours of 6:00 a.m. and 2:00 a.m. where alcoholic beverages ~~and snacks~~ are served for on-site consumption. ~~possibly with entertainment such as music, television screens, video games or pool tables.~~ Food service is not required.

*Convenience market* means an activity that includes the retail sale of food, beverages, and small personal convenience items, primarily for off-premises consumption and typically found in establishments with long or late hours of operation and in a relatively small building; but excluding delicatessens and ~~other~~ specialty food ~~shops~~ retail and also excluding establishments which have a sizeable assortment of fresh fruits and vegetables and fresh-cut meat.

*Personal service business* means uses that predominately sell personal convenience services directly to the public, including but not limited to: acupressure, barbers, beauty salons and related services, cosmetologists, electrolysis, estheticians, facial and/or skin care, hair dressers and/or hair stylists, hair removal and/or replacement, manicurists, massage therapists, myofascial therapists, nail salons, pedicurists, permanent make-up, rolfers (therapists), skin and body care, piercing, spas, tanning salons, tattooing, cleaners, dog grooming, tailors, and other services of a similar nature. Personal service business does not include travel agencies, insurance offices, law offices, architect offices, or any other type of office use.

**SECTION VIII.** Subsection (b) of Section 29.10.150, “Number of Off-Street Spaces Required,” of Chapter 29, “Zoning Regulations,” is amended to read as follows with underlining (underlining) indicating new text and strikeouts (~~strikeouts~~) indicating deleted text:

(b) *Parking requirements for downtown.* In addition to other parking requirements, one visitor parking space for each residential unit other than detached single-family or two-family dwelling shall be required unless the Planning Commission makes a finding that more or less visitor parking is necessary due to the size or type of housing unit(s). The parking requirement for various uses in the downtown are as follows:

- (1) *Retail and commercial stores shops, personal service businesses, specialty food retail, restaurants, bars, ~~taverns and~~ nightclubs, and tap/tasting rooms.* One (1) parking space for each three hundred (300) square feet of gross floor area.
- (2) *Business and professional offices, retail banks, financial ~~institutions~~ and investment services, insurance companies, social service agencies and studios.* One (1) parking space for each two hundred fifty (250) square feet of gross floor area.

**SECTION IX.** Subsections (c)(9) and (10) of Section 29.10.150, “Number of Off-Street Spaces Required,” of Chapter 29, “Zoning Regulations,” is amended to read as follows with underlining (underlining) indicating new text and strikeouts (~~strikeouts~~) indicating deleted text:

- (9) *Retail and commercial stores shops, personal service businesses, specialty food retail, restaurants, bars, ~~taverns and~~ nightclubs, and tap/tasting rooms.* One (1) parking space for each two hundred thirty-five (235) square feet of gross floor area.
- (10) *Business and professional offices, retail banks, financial ~~institutions and~~ investment services, insurance companies, social service agencies and studios.* One (1) parking space for each two hundred thirty-five (235) square feet of gross floor area.

**SECTION X.** Subsection (1) of Section 29.20.185, “Table of Conditional Uses,” of Chapter 29, “Zoning Regulations,” is amended to read as follows with underlining (underlining) indicating new text and strikeouts (~~strikeouts~~) indicating deleted text:

TABLE OF CONDITIONAL USES		RC	HR	R1	RD	R-M	R-1D	RMH	O	C-1	C-2	CH	LM	CM
(1)	Commercial													
	a. <u>Banks, retail</u>									X	X	X		
	b. <del>Savings and loan office</del> <u>Reserved</u>									<del>X</del>	<del>X</del>	<del>X</del>		
	c. Drive-up window for any business									X	X	X		
	d. Supermarket									X	X	X		
	e. Super drugstore									X	X	X		
	f. Department store									X	X	X		
	g. Shopping center									X	X	X		
	h. Motel										X	X		
	i. Hotel										X	X		
	j. Restaurant including those with outdoor dining areas or takeout food									X	X	X	X	X

	k.	Establishment selling alcoholic beverages for consumption on premises												
		1. In conjunction with a restaurant <u>or specialty food retail use</u>								X	X	X	X	
		2. Without food service (bar)									X			
		3. <u>Tap/tasting room</u>								<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	
	l.	Establishment selling alcoholic beverages for consumption off-premises (this provision only applies to establishments commencing or expanding off-premises sales after April 23, 1981)									X	X	X	
		1. <u>In conjunction with a specialty food retail use</u>								<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	
	m.	Convenience market								X	X	X		
	n.	Reserved												
	o.	Formula retail business greater than <del>6,000</del> <u>10,000</u> s.f								X	X	X	X	
	p.	<del>Personal service businesses (as set</del>									X			

		<del>forth in section 29.60.320</del> Reserved												
	q.	New office building approved or constructed after May 1, 2006								X	X	X		
	r.	New retail sales of firearms, ammunition and /or destructive devices as set forth in section 29.70.100											X	

**SECTION XI.** Subsection (9)(c) of Section 29.20.185, “Table of Conditional Uses,” of Chapter 29, “Zoning Regulations,” is amended to read as follows with underlining (underlining) indicating new text:

TABLE OF CONDITIONAL USES		RC	HR	R1	RD	R-M	R-1D	RMH	O	C-1	C-2	CH	LM	CM
(9)	Agriculture and Animal Services													
	c. Veterinary hospital (without kennel)									<u>X</u>	X	X	X	

**SECTION XII.** Subsection (b) of Section 29.20.190, “Findings and Decision,” of Chapter 29, “Zoning Regulations,” is amended to read as follows with underlining (underlining) indicating new text and strikeouts (~~strikeouts~~) indicating deleted text:

- (b) The deciding body, on the basis of the evidence submitted at the hearing, may deny a conditional use permit for a formula retail business greater than ~~six thousand (6,000)~~ ten thousand (10,000) square feet or a personal service business if any of the following findings are made:
- (1) The proposed use of the property is not in harmony with specific provisions or objectives of the general plan and the purposes of this chapter;
  - (2) The proposed use will detract from the existing balance and diversity of businesses in the commercial district in which the use is proposed to be located;
  - (3) The proposed use would create an over-concentration of similar types of businesses, or



- (4) The proposed use will detract from the existing land use mix and high urban design standards including uses that promote continuous pedestrian circulation and economic vitality.

**SECTION XIII.** Section 29.20.745, “Development Review Committee,” of Chapter 29, “Zoning Regulations,” is amended to read as follows with underlining (underlining) indicating new text:

**Sec. 29.20.745. Development Review Committee.**

The Development Review Committee shall:

- (1) Regularly review and make recommendations to the Planning Commission concerning the determination of all matters which come before the Planning Commission except zoning ordinance amendments, zone changes (not including rezoning to PD), general plan adoptions and amendments, specific plan adoptions and amendments, and capital improvement plans.
- (2) Review and make recommendations to the Council concerning community-oriented bulletin boards and kiosks proposed to be erected on public property.
- (3) May on its own motion review and make recommendations concerning matters not assigned to it.
- (4) Reserved.
- (5) Determine and issue zoning approval for the storage of hazardous materials as provided in division 1 of article VII of this chapter.
- (6) Determine appropriate screening (fencing, landscaping or a combination) for hazardous materials storage sites as provided in division 1 of article VII of this chapter.
- (7) Determine and issue zoning approval for grading permits as provided in section 29.10.09045(b) and (c) of this chapter.
- (8) Reserved.
- (9) Determine and issue zoning approval for lot line adjustments and lot mergers.
- (10) Reserved.
- (11) Under the provisions of section 29.10.070 of this chapter and section 66424.2 of the Subdivision Map Act, determine whether lots have merged.
- (12) Determine and issue zoning approval for single-family dwellings.
- (13) Determine and issue zoning approval for minor subdivisions of land consisting of four lots or less.
- (14) Determine and issue zoning approval for minor modifications to Planned Developments when the Official Development Plan is not altered.
- (15) Determine and issue zoning approval for requests for reduction to setbacks on nonconforming lots.

- (16) Determine and issue zoning approval for restaurants, specialty food retail use selling alcoholic beverages for consumption off-site or on-site, and tap/tasting rooms.
- (17) May refer any matter assigned by ordinance to the Development Review Committee for decision to the Planning Commission for decision.
- (18) Determine and issue zoning approval for special parking lot surfaces for nurseries or botanical gardens under subsection 29.10.155(1).
- (19) Determines requests for reasonable accommodation when action is not required of the Council, Planning Commission or the Planning Director.
- (20) Determines applications for demolition, conversion, and removal of accessory dwelling units.
- (21) Determine and issue zoning approval for group classes in the C-2 zone.

No Planning Commission action is invalid because of omission of review and recommendation.

**SECTION XIV.** Section 29.60.085, “Permitted uses,” of Chapter 29, Zoning Regulations,” is amended to read as follows with underlining (underlining) indicating new text and strikeouts (~~strikeouts~~) indicating deleted text:

Activities allowed in the O or office zone must be those which would not unreasonably interfere with residential uses or other activities within the O zone, and which are in the following categories:

- (1) Offices, administrative, professional, medical, dental and optical laboratories associated with a professional use, real estate, insurance, stocks and bonds; and other similar offices characterized by absence of retail sales.
- (2) Retail sales by a pharmacy within a medical building.
- (3) Group classes.
- (4) Personal service businesses.

**SECTION XV.** Section 29.60.210, “Permitted Uses,” of Chapter 29, “Zoning Regulations,” is amended to read as follows with underlining (underlining) indicating new text and strikeouts (~~strikeouts~~) indicating deleted text:

**Sec. 29.60.210. Permitted uses.**

- (a) Activities allowed in the C-1 or neighborhood commercial zone are those which do not unreasonably interfere with nearby residential uses and which are in the following categories:
  - (1) Retailing, including formula retail up to ~~six thousand (6,000)~~ ten thousand (10,000) square feet.

- (2) Personal service businesses and service businesses necessary for the conduct of households.
- (3) Office activities.
- (4) Limited manufacturing activities when a majority of sales are made, on site, to the ultimate consumer.
- (5) Activities permitted in the LM zone which were approved on or before February 1, 1993 provided any change of use must be a conforming use in the C-1 zone.
- (6) Group classes.
- (7) Specialty food retail without alcoholic beverages.

(b) Examples of proper C-1 activities are grocery stores, laundrettes, or dry cleaning agencies, drugstores, barbershops, appliance repair shops, and offices. Examples of activities which are not proper in the C-1 zone are vehicle service and sales, palmists and soothsayers, manufacturing, wholesaling, or laundry.

**SECTION XVI.** Section 29.60.320, “Permitted Uses,” of Chapter 29, “Zoning Regulations,” is amended to read as follows with underlining (underlining) indicating new text and strikeouts (~~strikeouts~~) indicating deleted text:

**Sec. 29.60.320. Permitted uses.**

- (a) Activities permitted in the C-2 or Central District Commercial Zone are those involving the conduct of commerce and general business and the sale of commodities necessary for the needs of residents and visitors of the Town, such as:
  - (1) Retailing, including formula retail up to ~~six thousand (6,000)~~ ten thousand (10,000) square feet.
  - (2) Reserved.
  - (3) Reserved.
  - (4) Office activities subject to subsection (c) below.
  - (5) Limited manufacturing activities when a majority of sales are made, on site, to the ultimate consumer.
  - (6) Wholesaling without warehousing on the premises.
  - (7) Single-family and two-family uses, in conjunction with the other uses permitted in this section.
  - (8) Personal service businesses.
  - (9) Specialty food retail without alcoholic beverages.

- (b) Examples of proper C-2 activities are apparel stores, antique stores, artist studios, craft studios, auto part sales, artist supply shops, and EV sales, service, and repair. Examples of activities which are not proper in the C-2 zone are manufacturing, warehousing, laundry or dry cleaning plants.
- (c) ~~Personal service businesses and office activities in the C-2 zone are subject to the following:~~ Office activities in the C-2 zone shall not be located on the ground floor along any street, alleyway, or public parking lot except in the areas described below:
- ~~(1) Personal service businesses may be allowed on the ground floor in the C-2 zone with a conditional use permit. However, personal service businesses are considered a permitted use in the areas described in subsection (2)a-g below and in the remainder of the C-2 zone.~~
- ~~(2) Office activities in the C-2 zone shall not be located on the ground floor along any street, alleyway, or public parking lot except in the areas described below:~~
- ~~a.~~(1) Lyndon Avenue;
- ~~b.~~(2) Properties abutting Wood Road;
- ~~c.~~(3) The west side of Victory Lane;
- ~~d.~~(4) The south side of Los-Gatos-Saratoga Road excluding:
- ~~i.~~a. That portion of the property located at the southwest corner of Los-Gatos Saratoga Road and Santa Cruz Avenue described more precisely as located between a straight line extended northerly along the west side right-of-way line of Santa Cruz Avenue and one hundred forty (140) feet west of that extended line.
- ~~ii.~~b. The south side of Los Gatos-Saratoga Road between Santa Cruz Avenue and University Avenue; and
- ~~e.~~(5) The east side of South Santa Cruz Avenue directly across the street from Wood Road.
- ~~f.~~(6) The north and south side of West Main Street west of Victory Lane.
- ~~g.~~(7) Tenant suites located at 114 Royce Street with entries at the rear of the building and that do not have street frontage.
- ~~(3)~~d) Notwithstanding subsection (c)~~(2)~~, office activities on ground floors described below shall be considered conforming and shall be allowed to continue so long as the office use is not discontinued for one hundred and eighty (180) consecutive days. If the office use is discontinued for such a period, then the office use shall not be resumed, and token use shall not toll or interrupt a period of discontinuance.
- ~~a.~~(1) Office activities existing on June 17, 1991; or

- ~~b.~~(2) Office activities in a building under construction on July 16, 1990, if the applicable architecture and site approval specifically stated that the building was approved for office activities.

**SECTION XVII.** Section 29.60.420, “Permitted Uses,” of Chapter 29, “Zoning Regulations,” is amended to read as follows with underlining (underlining) indicating new text and strikeouts (~~strikeouts~~) indicating deleted text:

**Sec. 29.60.420. Permitted uses.**

- (a) Activities allowed in the CH or restricted highway commercial zone are those which do not unreasonably interfere with nearby residential uses and which are in the following categories:
- (1) Retailing, including formula retail up to ~~six thousand (6,000)~~ ten thousand (10,000) square feet.
  - (2) Personal service businesses and service businesses necessary for the conduct of households.
  - (3) Office activities.
  - (4) Limited manufacturing activities when a majority of sales are made on site to the ultimate consumer.
  - (5) Group classes.
  - (6) Specialty food retail without alcoholic beverages.
- (b) Examples of proper CH activities are grocery stores, laundrettes or dry-cleaning agencies, drugstores, barbershops, appliance repair shops, and offices. Examples of activities which are not proper in the CH zone are palmists and soothsayers, manufacturing, wholesaling, or laundry or dry-cleaning plants.

**SECTION XIII.** Subsection (a) of Section 29.70.100, “Permitted Uses,” of Chapter 29, “Zoning Regulations,” is amended to read as follows with underlining (underlining) indicating new text and strikeouts (~~strikeouts~~) indicating deleted text:

- (a) Activities allowed in the LM or commercial-industrial zone are those service-oriented and light industrial uses which may be inappropriate in a general commercial zone and which are in the following categories:
- (1) Retailing, including formula retail up to ~~six thousand (6,000)~~ ten thousand (10,000) square feet.
  - (2) Personal service businesses.
  - (3) Service businesses necessary for the conduct of households or businesses.

- (4) Office activities approved on or before July 1, 1982; provided, that no change of use to office shall be permitted in the LM zone.
- (5) Limited manufacturing.
- (6) Wholesaling and warehousing.
- (7) Group classes.
- (8) Specialty food retail without alcoholic beverages.

**SECTION XIX. Severability.**

In the event that a court of competent jurisdiction holds any Section, subsection, paragraph, sentence, clause, or phrase in this Ordinance unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this Section and shall not affect the validity of the remaining portions of this Section. The Town hereby declares that it would have adopted each Section, subsection, paragraph, sentence, clause, or phrase in this Section irrespective of the fact that any one or more Sections, subsections, paragraphs, sentences, clauses or phrases in this Section might be declared unconstitutional, preempted, or otherwise invalid.

**SECTION XX. CEQA.**

Adopting this Ordinance is not a project subject to CEQA because it can be seen with certainty that it will not impact the environment (CEQA Guidelines Section 15378).

**SECTION XXI. Publication.**

In accordance with Section 63937 of the Government Code of the State of California, this Ordinance takes effect 30 days from the date of its passage. The Town Council hereby directs the City Clerk to cause this Ordinance or a summary thereof to be published or posted in accordance with Section 36933 of the Government Code of the State of California.

**SECTION XXII. Effective Date.**

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 20<sup>th</sup> day of June 2023, and adopted by the Town Council of the Town of Los Gatos at its regular meeting on the 1<sup>st</sup> day of August 2023, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

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

ATTEST:

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

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



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 08/01/2023

ITEM NO: 8

---

DATE: July 19, 2023  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Approve the Modification to Town Council Policy 2-17: Solicitation and Donation Policy as Recommended by the Policy Committee

**RECOMMENDATION:**

Approve the modification to Town Council Policy 2-17: Solicitation and Donation Policy (Attachment 4) as recommended by the Policy Committee.

**BACKGROUND:**

In 2015, the Town Council established a Solicitation and Donation Policy (Attachment 1) to recognize the annual donations from the Friends of the Library, Police Foundation, and other organizations. The Policy also allows for solicitations which were needed when the Town operated Music in the Park and sought in-kind and other support for this beloved concert series.

Every year, consistent with the Policy, the Council identifies specific donation opportunities and adopts a list when it considers the annual Budget. Attachment 2 contains the approved list for Fiscal Year 2023-24.

During the Council discussion of the donation list, the Council requested that the Town Council Policy Committee review the Solicitation and Donation Policy to determine potential changes needed to align with the Council's Strategic Priorities (Attachment 3).

**DISCUSSION:**

In June, the Policy Committee discussed the Solicitation and Donation Policy. The Policy itself sets forth definitions, parameters, and procedures without directing any specific requirements for establishing the Town Council's annual list of donation opportunities. Members of the public were present at the meeting and did not provide comments on this item.

---

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

---



PAGE 2 OF 2

SUBJECT: Approve the Modification to Town Council Policy 2-17: Solicitation and Donation Policy as Recommended by the Policy Committee

DATE: July 19, 2023

DISCUSSION (continued):

After discussion, the Committee voted to recommend to the Town Council to amend the first sentence in the section titled "Procedure for Establishing Council Approved Town Needs" to read, "The Council shall direct the Town Manager to develop a list of recommended Town needs for donation opportunities, including but not limited to items related to the Town Council's Strategic Priorities, Town programs, and/or capital project needs." The proposed new language is redlined in Attachment 4.

CONCLUSION:

The proposed modification clarifies the alignment between the Strategic Priorities and the annual donation opportunities list, consistent with Council's original direction.

COORDINATION:

This report was coordinated with the Town Attorney.

FISCAL IMPACT:

There is no fiscal impact associated with the Town Council considering modifications to the Donation Policy.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Existing Town Council Policy 2-17: Solicitation and Donation Policy
2. Donation Opportunities for Fiscal Year 2023-24
3. Strategic Priorities
4. Proposed Town Council Policy 2-17: Solicitation and Donation Policy - Redlined



**Title: Solicitation and Donation Policy**

**Policy Number: 2-17**

**Effective Date: 10/6/15**

**Pages: 4**

**Enabling Actions:**

**Revised Date:**

**Approved:**

**PURPOSE**

The purpose of this policy is to effect Town donations and solicitations in a manner that complies with both the letter and spirit of California ethics laws and, within that that framework, to expand the potential for community donations by establishing a mechanism by which individuals and organizations may be more readily advised of donation opportunities.

**SOLICITATION GUIDELINES**

*Targeted Solicitation*

Targeted solicitation is defined as the direct petition or contact of specific individuals, companies, foundations or other entities initiated by the Town Council and other elected officials, Council advisory bodies, and Town employees herein called "Town Officials" for the purpose of receiving goods, services, or other contributions for the Town. Targeted solicitation excludes the direct petition for government, private, or non-profit grants for Council-approved programs, projects, and services. Unless prior approval has been given by the Council, Town Officials shall not engage in targeted solicitation activities on behalf of the Town.

**BROAD OUTREACH GUIDELINES**

*Broad Outreach*

Broad outreach is defined as the process of informing a broad spectrum of individuals, companies, foundations, non-profit organizations, or other entities of donation opportunities through various communication vehicles, including but not limited to written, electronic, or internet-related publications, flyers, brochures, news releases, and television or radio announcements. Broad outreach is permitted by the Town Manager or designee subject to the guidelines provided in this policy.

The following broad outreach guidelines apply when communicating a Town need for goods, services, or other contributions:

- Broad outreach must relate to a Town Council-approved purpose, service, project, or program.
- Broad outreach for goods, services, or other contributions should be made by using a variety of communication methodologies to ensure outreach to the entire community.
- Donations shall not be made under the guise, pretense, or presumption of receiving official Town endorsement or approval of the donating party, product, project, or activity.

**PROCEDURE FOR ESTABLISHING COUNCIL APPROVED TOWN NEEDS**

The Council shall direct the Town Manager to develop a list of recommended Town needs for donation opportunities. Council consideration and approval of the list of Town needs may occur as part of the annual operating and capital budget development process and can be amended by Council at any time.

**DONATION ACCEPTANCE GUIDELINES**

All goods, services, or other contributions offered by individuals, companies, foundations, non-profit organizations, or other entities will be considered for acceptance or rejection, including items offered for donation that are identified on a Council approved list of needs. The acceptance of all donations to the Town will be based on the following guidelines.

- Purpose of the donation.
- Community or municipal need for the donation.
- Compatibility of the donation with Los Gatos Municipal Code, policies, programs, and other applicable laws.
- Timeliness of the donation as it relates to implementation.
- Level of benefit and financial impact to the Town.

All donations should be reviewed by the Town Manager or designee in advance of acceptance to ensure consistency with established policy guidelines.

**AUTHORITY TO ACCEPT DONATIONS**

The authority to accept all donations is based on the market value of the donation as reasonably determined.

*Donations \$25,000 and Under*

The Town Manager or designee is authorized to accept or reject all minor donations that have a market value equal to or less than \$25,000.

*Donations over \$25,000*

<b>Title:</b> Solicitation and Donation	<b>Page:</b> 3 of 4	<b>Policy Number:</b> 2-17
---	------------------------	----------------------------

The Town Council shall consider and accept or reject all major donations that have a market value greater than \$25,000.

*Ongoing Annual Donations from 501(c)(3) Organizations dedicated to supporting specific Town Departments in Offering Community Services:*

- Potential uses for donation funds will be discussed and agreed upon with the respective non-profit bodies, in accordance with the Council approved Solicitation and Donation Policy.
- Funds donated will be placed into accounts as designated by the Finance Director.
- The departments may expend donated funds once received and deposited into the appropriate account only for items identified on the Council approved Town of Los Gatos Donation Opportunities List of Town Needs, which is approved annually with the Town’s operating budget.
- At the end of each fiscal year, a written listing of items purchased from these accounts, in accordance with the Donation Policy, shall be provided to the Town Manager and Town Council.

**PROCEDURES FOR ACCEPTING MAJOR DONATIONS**

For all major donations, a staff report, containing analysis based on the donation acceptance guidelines established in this policy, will be written to guide the Council when considering major donations. The report will also provide donation recognition alternatives for Council consideration should the donation be accepted. The Council will determine on a case by case basis if the donation should be accepted or rejected.

**DONOR RECOGNITION GUIDELINES**

Acceptance of donations shall be acknowledged by the Town. Donation recognition practices shall be implemented in a consistent manner and adhere to Town Municipal Code, all applicable laws, regulations, and policies. Recognition of donations will be determined by the Council or Town Manager and shall be consistent with acceptance requirements of this policy and the guidelines set forth below:

Donations accepted by the Town may be acknowledged through one or more of the forms of recognition as indicated below. Other forms of recognition may be approved by the Town Council via resolution if compelled by special circumstances which shall be specified in the resolution.

- Written and/or verbal recognition.
- Public recognition at Town Council meetings.
- Inclusion in Town public communication materials, such as electronic media and selected publications.
- Plaques.

<b>Title:</b> Solicitation and Donation	<b>Page:</b> 4 of 4	<b>Policy Number:</b> 2-17
---	------------------------	----------------------------

Plaques may be used to commemorate donations accepted by the Town from persons, businesses, and organizations according to the following standards:

Plaques used for recognition purposes may be affixed to an appropriate Town facility, which includes, but is not limited to a building or any portion thereof, structure, equipment, furniture or natural asset. Plaques shall include the name(s) of the person(s) being recognized and applicable date, with standard wording limited to:

- The Town of Los Gatos recognizes and appreciates \_\_\_\_\_ [and his/her family] for [his/her/their] donation to [identify facility].
- The Town of Los Gatos recognizes and appreciates \_\_\_\_\_ [business or organization] for its donation to [identify facility].
- The Town of Los Gatos recognizes and appreciates \_\_\_\_\_ for [his/her/its] donation to [identify facility] in the name of \_\_\_\_\_.
- Or language acceptable to the Town Council.

The size of the plaque shall not exceed 8"x10," unless the number of donors exceeds the allowable space. For multiple donors, the names of the donors should be proportioned thereto, and the size of the plaque shall not exceed four (4) square feet. The location, materials, size and color of plaques shall be consistent with acceptance requirements of this policy or by Council on a case by case basis should special circumstances exist, which shall be specified in a resolution. Unless compelled by special circumstances and approved by the Town Council via resolution, Town facilities shall not be named after an individual, group, organization or business as a result of any donated good, service, or other contribution to the Town.

APPROVED AS TO FORM:

  
 \_\_\_\_\_  
 Robert Schultz, Town Attorney

**TOWN OF LOS GATOS DONATION OPPORTUNITIES  
FY 2023/24 LIST OF TOWN NEEDS**

To ensure that all donations and contributions are sought and accepted in an ethical manner, the Council established a Donation and Solicitation Policy. A list of Town needs was developed to identify goods, services, and other contributions to enhance Town services, programs, and events. The recommended needs for FY 2023/24

**PUBLIC SAFETY**

- Volunteer Program Materials and Equipment
- Specialized Public Safety Equipment and Supplies, including Support for Canine Program
- Training Support for Public Safety Staff and Volunteers
- Equipment, Supplies and Materials to support Police Operations
- Community Outreach Program Supplies

**LIBRARY SERVICES**

- Children, Youth, and Adult Program Collections, Supplies and Services
- Media items and other items for public circulation
- Funding to Support Technological Enhancements, including Digital Services
- Equipment and Services to Support Historical Preservation Efforts
- Resource support for Collection Development and Reference, Local History, and Library Policy

**SENIOR SERVICES**

- Home emergency kits geared towards the needs of seniors
- Senior Service Committee seeks targeted solicitations for community engagement per the Town Solicitation and Donation Policy.

**COMMUNITY EVENTS**

- Supplies, Materials, and Services for Special Community and Volunteer Events and Activities
- Funding for the realization of Public Art projects or Donations of Public Art subject to Public Art Selection Policy

**TOWN PARKS AND FACILITIES**

- Beautification Materials and Services for Town Parks, Open Space, and Infrastructure; Land for Parks and Open Space
- Contributions that Support Recreation or Expansion of Athletic Fields
- Contributions that support multi-modal transportation.

**SUSTAINABILITY**

- Contributions to Help Minimize Impacts on Local, Regional, and Global Ecosystems through Conservation, Reduced Pollution, Increased Efficiency, and Protection of Wildlife, Vegetation, and other Ecosystems.

**TECHNOLOGY**

- Equipment, Software and Services to Enhance Communication with the Public and Organizational Productivity



# Ongoing Strategic Priorities 2023-2025

## SAFETY

- Community Policing
- Emergency Preparedness
  - CERT Recruitment & Training
  - Communications, EOC Readiness & Emergency Plan Development
- Fire Protection
  - Implementation of Ad Hoc Wildfire Mitigation Plan
- Vegetation and Hazardous Tree Management

## PRUDENT FINANCIAL MANAGEMENT

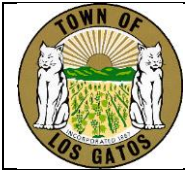
- Address Pension & OPEB Obligations
- Sell or Lease Certain Town Properties
- Develop a Five-Year Structurally Balanced and Sustainable Operating Forecast
  - Explore New Revenue Opportunities
  - Cure Forecasted Structural Deficit
- Develop a Five-Year Full Funded Capital Plan

## TRAFFIC/TRANSPORTATION

- Comprehensive Parking Study
  - Short, Medium, and Long-Term Actions
- Transportation Demand Management
  - Measure B Transportation Projects
  - Bicycle & Pedestrian Improvements
  - Community Shuttle
  - Summer/Rush Hour/School Traffic
  - Regional Transportation Issues
- Traffic Calming/Safety for All Users

## QUALITY OF LIFE

- Community Vitality
  - Diversity, Equity & Inclusion Efforts
  - Community Where Older Adults Thrive
    - Adopt a Senior Road Map
  - Events & Other Town-Wide Efforts
  - Community Engagement
  - Environmental Sustainability/Climate Resiliency
- Economic Vitality & Pandemic Recovery
  - Policies & Ordinances
  - Semi-Permanent Parklets
  - Streamline Permit Process
- Land Use Planning
  - General Plan 2040
  - Housing Element
  - Affordable Housing Partnerships
  - SB9 Implementation
- Work with Town Partners to Support Needs of Unhoused Residents
- Redefine Town Commissions in Alignment with Strategic Priorities



**Title: Solicitation and Donation Policy**

**Policy Number: 2-17**

**Effective Date: 10/6/15**

**Pages: 4**

**Enabling Actions:**

**Revised Date: 8-1-23**

**Approved:**

## **PURPOSE**

The purpose of this policy is to effect Town donations and solicitations in a manner that complies with both the letter and spirit of California ethics laws and, within that framework, to expand the potential for community donations by establishing a mechanism by which individuals and organizations may be more readily advised of donation opportunities.

## **SOLICITATION GUIDELINES**

### *Targeted Solicitation*

Targeted solicitation is defined as the direct petition or contact of specific individuals, companies, foundations or other entities initiated by the Town Council and other elected officials, Council advisory bodies, and Town employees herein called "Town Officials" for the purpose of receiving goods, services, or other contributions for the Town. Targeted solicitation excludes the direct petition for government, private, or non-profit grants for Council-approved programs, projects, and services. Unless prior approval has been given by the Council, Town Officials shall not engage in targeted solicitation activities on behalf of the Town.

## **BROAD OUTREACH GUIDELINES**

### *Broad Outreach*

Broad outreach is defined as the process of informing a broad spectrum of individuals, companies, foundations, non-profit organizations, or other entities of donation opportunities through various communication vehicles, including but not limited to written, electronic, or internet-related publications, flyers, brochures, news releases, and television or radio announcements. Broad outreach is permitted by the Town Manager or designee subject to the guidelines provided in this policy.

The following broad outreach guidelines apply when communicating a Town need for goods, services, or other contributions:



<b>Title:</b> Solicitation and Donation Policy	<b>Page:</b> 2 of 4	<b>Policy Number:</b> 2-17
--	------------------------	-------------------------------

- Broad outreach must relate to a Town Council-approved purpose, service, project, or program.
- Broad outreach for goods, services, or other contributions should be made by using a variety of communication methodologies to ensure outreach to the entire community.
- Donations shall not be made under the guise, pretense, or presumption of receiving official Town endorsement or approval of the donating party, product, project, or activity.

**PROCEDURE FOR ESTABLISHING COUNCIL APPROVED TOWN NEEDS**

The Council shall direct the Town Manager to develop a list of recommended Town needs for donation opportunities, including but not limited to items related to the Town Council’s Strategic Priorities, Town programs, and/or capital project needs. Council consideration and approval of the list of Town needs may occur as part of the annual operating and capital budget development process and can be amended by Council at any time.

**DONATION ACCEPTANCE GUIDELINES**

All goods, services, or other contributions offered by individuals, companies, foundations, non-profit organizations, or other entities will be considered for acceptance or rejection, including items offered for donation that are identified on a Council approved list of needs. The acceptance of all donations to the Town will be based on the following guidelines.

- Purpose of the donation.
- Community or municipal need for the donation.
- Compatibility of the donation with Los Gatos Municipal Code, policies, programs, and other applicable laws.
- Timeliness of the donation as it relates to implementation.
- Level of benefit and financial impact to the Town.

All donations should be reviewed by the Town Manager or designee in advance of acceptance to ensure consistency with established policy guidelines.

**AUTHORITY TO ACCEPT DONATIONS**

The authority to accept all donations is based on the market value of the donation as reasonably determined.

*Donations \$25,000 and Under*

The Town Manager or designee is authorized to accept or reject all minor donations that have a market value equal to or less than \$25,000.

*Donations over \$25,000*

<b>Title:</b> Solicitation and Donation Policy	<b>Page:</b> 3 of 4	<b>Policy Number:</b> 2-17
--	------------------------	-------------------------------

The Town Council shall consider and accept or reject all major donations that have a market value greater than \$25,000.

*Ongoing Annual Donations from 501(c)(3) Organizations dedicated to supporting specific Town Departments in Offering Community Services:*

- Potential uses for donation funds will be discussed and agreed upon with the respective non-profit bodies, in accordance with the Council approved Solicitation and Donation Policy.
- Funds donated will be placed into accounts as designated by the Finance Director.
- The departments may expend donated funds once received and deposited into the appropriate account only for items identified on the Council approved Town of Los Gatos Donation Opportunities List of Town Needs, which is approved annually with the Town’s operating budget.
- At the end of each fiscal year, a written listing of items purchased from these accounts, in accordance with the Donation Policy, shall be provided to the Town Manager and Town Council.

**PROCEDURES FOR ACCEPTING MAJOR DONATIONS**

For all major donations, a staff report, containing analysis based on the donation acceptance guidelines established in this policy, will be written to guide the Council when considering major donations. The report will also provide donation recognition alternatives for Council consideration should the donation be accepted. The Council will determine on a case by case basis if the donation should be accepted or rejected.

**DONOR RECOGNITION GUIDELINES**

Acceptance of donations shall be acknowledged by the Town. Donation recognition practices shall be implemented in a consistent manner and adhere to Town Municipal Code, all applicable laws, regulations, and policies. Recognition of donations will be determined by the Council or Town Manager and shall be consistent with acceptance requirements of this policy and the guidelines set forth below:

Donations accepted by the Town may be acknowledged through one or more of the forms of recognition as indicated below. Other forms of recognition may be approved by the Town Council via resolution if compelled by special circumstances which shall be specified in the resolution.

- Written and/or verbal recognition.
- Public recognition at Town Council meetings.
- Inclusion in Town public communication materials, such as electronic media and selected publications.
- Plaques.

<b>Title:</b> Solicitation and Donation Policy	<b>Page:</b> 4 of 4	<b>Policy Number:</b> 2-17
--	------------------------	-------------------------------

Plaques may be used to commemorate donations accepted by the Town from persons, businesses, and organizations according to the following standards:

Plaques used for recognition purposes may be affixed to an appropriate Town facility, which includes, but is not limited to a building or any portion thereof, structure, equipment, furniture or natural asset. Plaques shall include the name(s) of the person(s) being recognized and applicable date, with standard wording limited to:

- The Town of Los Gatos recognizes and appreciates \_\_\_\_\_ [and his/her family] for [his/her/their] donation to [identify facility].
- The Town of Los Gatos recognizes and appreciates \_\_\_\_\_ [business or organization] for its donation to [identify facility].
- The Town of Los Gatos recognizes and appreciates \_\_\_\_\_ for [his/her/its] donation to [identify facility] in the name of \_\_\_\_\_.
- Or language acceptable to the Town Council.

The size of the plaque shall not exceed 8"x10," unless the number of donors exceeds the allowable space. For multiple donors, the names of the donors should be proportioned thereto, and the size of the plaque shall not exceed four (4) square feet. The location, materials, size and color of plaques shall be consistent with acceptance requirements of this policy or by Council on a case by case basis should special circumstances exist, which shall be specified in a resolution. Unless compelled by special circumstances and approved by the Town Council via resolution, Town facilities shall not be named after an individual, group, organization or business as a result of any donated good, service, or other contribution to the Town.

APPROVED AS TO FORM:

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



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 08/01/2023

ITEM NO: 9

---

DATE: July 27, 2023

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Authorize the Construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505), Federal Project No. CML-5067(021), by taking the following actions:

- a. Reject the bid from AB Construction Company received on April 6, 2023 for Construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project; and
- b. Authorize the Town Manager to Execute a Construction Agreement with Granite Construction in the Amount of \$6,529,395.78 with a 10% Construction Contingency in the Amount of \$652,939.58 for a Total Contract Amount Not to Exceed \$7,182,335.36 for Construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project; and
- c. Authorize Staff to Execute Contract Change Orders Up To and Within the Not to Exceed 10% Construction Contingency of \$652,939.58; and
- d. Authorize the Town Manager to Execute the Second Amendment to the Agreement for Consultant Services with Mott MacDonald Group to Provide Design Consultant Construction Support Services in an Amount Not to Exceed \$206,371; and
- e. Authorize the Town Manager to Execute an Agreement for Consultant Services with Zoon Engineering for Construction Management, Inspection, and Materials Testing Services in an amount not to exceed \$1,220,822.07 and also to encumber a 2% contingency in the amount of \$29,177.93 for a total agreement amount not to exceed \$1,250,000; and
- f. Authorize Advances from the General Fund to the Town's Grant Fund not to Exceed the Approved Grant Funding of \$8,054,305 to Bridge Expenses and Reimbursement Timing.

PREPARED BY: Nicolle Burnham  
Parks and Public Works Director

---

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

---

SUBJECT: Authorize the Construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505) and Associated Actions.

DATE: July 27, 2023

RECOMMENDATION:

Authorize the construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505), Federal Project No. CML-5067(021), by taking the following actions:

- a. Reject the bid from AB Construction Company received for Construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project; and
- b. Authorize the Town Manager to execute a Construction Agreement with Granite Construction in the amount of \$6,529,395.78 with a 10% construction contingency in the amount of \$652,939.58 for a total contract amount not to exceed \$7,182,335.36 for construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project; and
- c. Authorize staff to execute contract change orders u to and within the not to exceed 10% construction contingency of \$652,939.58; and
- d. Authorize the Town Manager to execute the Second Amendment to the Agreement for Consultant Services with Mott MacDonald Group to provide design consultant construction support services in an amount not to exceed \$206,371; and
- e. Authorize the Town Manager to execute an Agreement for Consultant Services with Zoon Engineering for construction management, inspection, and materials testing services in an amount not to exceed \$1,220,822.07 and also to encumber a 2% contingency in the amount of \$29,177.93 for a total agreement amount not to exceed \$1,250,000; and
- f. Authorize advances from the General Fund to the Town's Grant Fund not to exceed the approved grant funding of \$8,054,305 to bridge expenses and reimbursement timing.

BACKGROUND:

The Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (Project) was identified as a priority in the 2017 Bicycle and Pedestrian Master Plan and the 2020 Update to the Plan. Design of the Project was started in 2018 and staff has been working on design, environmental clearance, and development of construction documents ever since.

On January 17, 2023, Town Council authorized staff to issue two bids for the Project: one for construction and a second for construction management, inspection, and material testing services. Construction bids were opened on April 6, 2023 and a total of five bids were received. The bids submitted by contractors for construction exceeded the Engineer's Estimate for the Project and the available construction budget. After a thorough review of the bids submitted, the project team determined that the bids received were representative of the current cost for the construction of the project.

On June 6, 2023, Town Council authorized a revised funding plan for the project which included the approval of additional General Fund Appropriated Reserve (GFAR) and grant funding. The grant funding occurs as reimbursements and the Fiscal Impact section of this report identifies additional fiscal actions needed to cover the upfront costs of this project.

SUBJECT: Authorize the Construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505) and Associated Actions.

DATE: July 27, 2023

BACKGROUND (continued):

Bids for construction management, inspection, and material testing were based on qualifications.

DISCUSSION:

Construction Contract

The five bids were received by the Town and opened on April 6, 2023. At the bid opening, the following bids were read aloud as follows:

- A&B Construction \$5,868,881.42\*
- Granite Construction \$6,529,395.78
- Ghilotti Construction Company, Inc. \$6,635,782.95
- Gordon N. Ball, Inc. \$6,760,897.80
- Robert A. Bothman Construction \$6,869,055.70

\*Subsequently, staff determined that the submitted bid total was incorrect.

The final bid summary is included in Attachment 1. The apparent low bidder, A&B Construction, omitted Bid Item No. 45 – Tree Removal from their bid, and also provided an incorrect bid total. Per statements in the call for bids, omitting a bid item renders the bid non-responsive and requires the bid from A&B Construction to be rejected. Additionally, Granite Construction Company has submitted a formal protest of the A&B Construction bid, requesting the bid be rejected for the reasons noted above. The next lowest bid was submitted by Granite Construction and was subsequently reviewed and determined to be the lowest responsive and responsible bid.

Staff is therefore recommending the Town Council reject the bid received from A&B Construction and authorize the Town Manager to execute the Construction Agreement with Granite Construction in the amount of \$6,529,395.78, including a 10% construction contingency in the amount of \$652,939.58 for a total contract amount not to exceed \$7,182,335.36. The proposed Construction Contract is contained in Attachment 2. Staff is also recommending the Town Council authorize staff to execute construction contract change orders up to the construction contingency amount of \$652,939.58 to allow for the efficient and expedient resolution of any unforeseen construction issues.

Construction Support Services - Mott MacDonald Group – Second Amendment

Mott MacDonald Group completed the original design documents for the project under an Agreement for Consultant Services with the Town. A First Amendment to this agreement provided additional services necessary to complete the project design. The proposed Second

SUBJECT: Authorize the Construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505) and Associated Actions.

DATE: July 27, 2023

DISCUSSION (continued):

Amendment to the Agreement for Consultant Services is being presented to allow for the design engineers to be available at specific key points during the project construction for review of documents and field procedures to ensure compliance with the design intent. This is recommended as the review of specific structural and architectural shop drawings by the original design team is the most effective and efficient process for review of these drawings and calculations. Although Mott MacDonald did propose on providing construction support services during the original consultant selection process, the project team did not include these services in the original contract since construction funding had not been secured at that time.

With construction funds secured, staff is now recommending the Town Council authorize the Town Manager to execute the Second Amendment to the Agreement for Consultant Services with Mott MacDonald Group in an amount not to exceed \$206,371 to provide the construction support services needed from the design engineering team, bringing the total contract amount for engineering services for this project to \$783,118 (approximately 12% of the base construction contract amount). The proposed Second Amendment is contained in Attachment 3.

Construction Management, Inspection, and Materials Testing Services – Zoon Engineering

A Request for Proposals (RFP) to provide construction management, inspection, and materials testing services for this project was released by the Town's Parks and Public Works Department on February 23, 2023. Four proposals were received and evaluated by a three-member selection committee comprised of Town staff. After a comprehensive review of the proposals submitted, the Zoon Engineering team was determined to be the most qualified firm to provide the Construction Management, Inspection and Materials Testing Services for the project.

Per federal consultant selection guidelines, cost negotiations with the selected consultant began only after the most qualified firm, Zoon Engineering, was determined. The selection committee has completed the final cost and scope of services negotiations with Zoon Engineering and staff has prepared the proposed Consultant Services Agreement (Attachment 4). Staff is recommending the Town Council authorize the Town Manager to execute the Consultant Services Agreement with Zoon Engineering in an amount not to exceed \$1,220,822.07 and also to encumber a 2% contingency in the amount of \$29,177.93 for a total contract amount not to exceed \$1,250,000.

CONCLUSION:

Should Council approve the recommended actions, the project is anticipated to move forward into construction beginning in September 2023. The project is anticipated to be completed within 14 months, with completion anticipated by the end of 2024. The project team will use

PAGE 5 OF 7

SUBJECT: Authorize the Construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505) and Associated Actions.

DATE: July 27, 2023

CONCLUSION (continued):

the project page on the Town's website to keep the community updated on the project progress.

ALTERNATIVES:

Alternatives to postpone construction are likely to result in additional project costs due to re-certifications that would be required for various project components including environmental clearances, Caltrans construction standards, and updates to the plans and permits issued for the project construction. Rebids of the construction and consultant services contracts would likely not result in savings to the project given the current bidding climate. Projects of similar nature have been experiencing higher than anticipated construction costs, and there is no indication that construction costs will decrease in the future. Should the Town wish to cancel the project, the OBAG grant funds received for design (\$343,000) would be required to be reimbursed, and the Town would not be moving forward to complete the project as identified in the Bicycle and Pedestrian Master Plan. For these reasons, staff is not recommending alternatives to the proposed actions.

COORDINATION:

This memorandum was coordinated with the Town's Complete Streets and Transportation Commission, the Town Attorney's Office and Finance Department and Santa Clara County Transportation Authority (VTA).



SUBJECT: Authorize the Construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505) and Associated Actions.

DATE: July 27, 2023

FISCAL IMPACT:

Los Gatos Creek Trail to Highway 9 Trailhead Connector		
CIP No. 832-4505		
	Budget	Costs
<b>SOURCE OF FUNDS*</b>		
GFAR (Available Now)	\$ 1,428,127	
OBAG Cycle II Grant - CMAQ (Previously Reimbursed for Design)	\$ 343,000	
OBAG Cycle II Grant - CMAQ (Funds Allocated for Construction - to be Reimbursed)	\$ 3,351,000	
OBAG Cycle II Grant - CMAQ (Funds Allocated for Construction - to be Reimbursed)	\$ 2,842,000	
Measure B - 2016 Program Bicycle and Pedestrian Program (Funds Allocated for Construction - to be Reimbursed)	\$ 693,500	
TFCA Grant Funds (Funds Allocated for Construction - to be Reimbursed)	\$ 755,921	
TDA3 Grant Funds (Funds Allocated for Construction - to be Reimbursed)	\$ 68,884	
<b>Total Source of Funds</b>	<b>\$ 9,482,432</b>	
<b>USE OF FUNDS</b>		
<i>Design Phase (Completed - OBAG Cycle II CMAQ Reimbursement of \$343,000 Received)</i>		
Consultant Services (Mott MacDonald Group)		\$ 576,747
Part-Time Staff		\$ 99,297
Misc. Project Delivery Costs		\$ 490
<b>Design Total (Completed)</b>		<b>\$ 676,534</b>
<b>Construction Phase</b>		
Construction Contract (Granite Construction)		\$ 6,529,396
Construction Contingency (10%)		\$ 652,940
Construction Management, Inspection and Materials Testing (Zoon Eng.)		\$ 1,220,822
Consultant Contract Contingency		\$ 29,178
Town Project Management		\$ 127,000
Construction Support Services (Mott MacDonald Group)		\$ 206,371
Misc. Project Delivery Costs		\$ 40,192
<b>Construction Totals</b>		<b>\$ 8,805,898</b>
<b>Total Project Expenditures</b>		<b>\$ 9,482,432</b>
<b>Remaining Budget</b>		<b>\$0</b>

\*GFAR - General Fund Appropriated Reserve

\*OBAG - One Bay Area Grant \*CMAQ - Congestion Mitigation and Air Quality

\*TFCA - Transportation Fund for Clean Air

\*TDA - Transportation and Development Act Article 3

PAGE 7 OF 7

SUBJECT: Authorize the Construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505) and Associated Actions.

DATE: July 27, 2023

FISCAL IMPACT (continued):

The grant funds that support this project are reimbursement grants, meaning the Town must pay its contractors, consultants and staff and submit invoices to the granting agencies for reimbursement.

Staff requests that Town Council approve advances from the General Fund to the Town's Grant Fund not to exceed the approved grant funding of \$8,054,305. Based on the timing of the reimbursement, staff anticipates pulling cash from the Town's Local Agency Investment Fund (LAIF) as needed. The Town's interest income will decrease if LAIF balance is decreased. The cash advances from the General Fund can be recorded in the Town's general ledger and tracked on an ongoing basis with updates on the cash flows provided at mid-year and at fiscal year-end.

ENVIRONMENTAL ASSESSMENT:

Caltrans opted to be the lead agency for the CEQA and NEPA environmental clearances for the project and has provided the final CEQA Categorical Exemption and NEPA Categorical Exclusion environmental certifications.

This is a project as defined under CEQA but is Categorically Exempt Class 1 (CEQA Section 15301)(PRC 21084;14 CCR 15300 et seq).

The project has been determined to be Categorically Excluded under NEPA 23 CRF 771.117(c) activity (c)(3).

Attachments:

1. Bid Summary
2. Construction Agreement – Granite Construction, with Exhibits
3. Second Amendment – Consultant Services Agreement – Mott MacDonald Group, with Exhibits
4. Construction Management, Inspection, and Materials Testing Consultant Services Agreement – Zoon Engineering, with Exhibits

Los Gatos Creek Trail to Highway 9 Trailhead Connector Project  
 BID SUMMARY



Item No.	Item Code	Item Description	Unit	Estimated Quantity	A & B Construction		Granite Construction Company		Ghilotti Construction Company, Inc.		Gordon N. Ball, Inc.		Robert A. Bothman Construction	
					Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
1	05005A	Construction Staking	LS	1	\$ 60,000.00	\$ 60,000.00	\$ 50,000.00	\$ 50,000.00	\$ 31,240.00	\$ 31,240.00	\$ 30,000.00	\$ 30,000.00	\$ 36,000.00	\$ 36,000.00
2	146002	Contractor Supplied Biologist and Natural Resources Protection Plan	LS	1	\$ 50,000.00	\$ 50,000.00	\$ 30,000.00	\$ 30,000.00	\$ 52,200.00	\$ 52,200.00	\$ 25,000.00	\$ 25,000.00	\$ 34,000.00	\$ 34,000.00
3	070030	Lead Compliance Plan	LS	1	\$ 8,000.00	\$ 8,000.00	\$ 10,000.00	\$ 10,000.00	\$ 4,000.00	\$ 4,000.00	\$ 10,000.00	\$ 10,000.00	\$ 8,125.00	\$ 8,125.00
4	080050	Progress Schedule (Critical Path Method)	LS	1	\$ 20,000.00	\$ 20,000.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,000.00	\$ 2,000.00	\$ 26,000.00	\$ 26,000.00
5	120090	Construction Area Signs	LS	1	\$ 5,000.00	\$ 5,000.00	\$ 15,000.00	\$ 15,000.00	\$ 5,000.00	\$ 5,000.00	\$ 7,000.00	\$ 7,000.00	\$ 2,000.00	\$ 2,000.00
6	120100	Traffic Control System	LS	1	\$ 100,000.00	\$ 100,000.00	\$ 295,000.00	\$ 295,000.00	\$ 370,000.00	\$ 370,000.00	\$ 230,000.00	\$ 230,000.00	\$ 650,000.00	\$ 650,000.00
7	128652	Portable Changeable Message Sign (LS)	EA	5	\$ 10,000.00	\$ 50,000.00	\$ 5,000.00	\$ 25,000.00	\$ 12,000.00	\$ 60,000.00	\$ 12,000.00	\$ 60,000.00	\$ 6,000.00	\$ 30,000.00
8	130100	Job Site Management	LS	1	\$ 15,000.00	\$ 15,000.00	\$ 100,000.00	\$ 100,000.00	\$ 18,800.00	\$ 18,800.00	\$ 125,000.00	\$ 125,000.00	\$ 635,000.00	\$ 635,000.00
9	130200	Prepare Water Pollution Control Program	LS	1	\$ 20,000.00	\$ 20,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 5,000.00	\$ 5,000.00	\$ 1,000.00	\$ 1,000.00
10	130620	Temporary Drainage Inlet Protection	EA	3	\$ 400.00	\$ 1,200.00	\$ 300.00	\$ 900.00	\$ 700.00	\$ 2,100.00	\$ 100.00	\$ 300.00	\$ 425.00	\$ 1,275.00
11	130640	Temporary Fiber Roll	LF	509	\$ 4.00	\$ 2,036.00	\$ 8.00	\$ 4,072.00	\$ 18.00	\$ 9,162.00	\$ 4.00	\$ 2,036.00	\$ 9.00	\$ 4,581.00
12	130680	Temporary Silt Fence	LF	488	\$ 6.00	\$ 2,928.00	\$ 7.00	\$ 3,416.00	\$ 20.00	\$ 9,760.00	\$ 4.00	\$ 1,952.00	\$ 8.00	\$ 3,904.00
13	130710	Temporary Construction Entrance	EA	1	\$ 8,000.00	\$ 8,000.00	\$ 6,000.00	\$ 6,000.00	\$ 5,000.00	\$ 5,000.00	\$ 1,000.00	\$ 1,000.00	\$ 15,000.00	\$ 15,000.00
14	130900	Temporary Concrete Washout	LS	1	\$ 6,000.00	\$ 6,000.00	\$ 10,000.00	\$ 10,000.00	\$ 4,400.00	\$ 4,400.00	\$ 1,000.00	\$ 1,000.00	\$ 4,700.00	\$ 4,700.00
15	141103	Remove Yellow Thermoplastic Traffic Stripe (Hazardous Waste)	LF	230	\$ 100.00	\$ 23,000.00	\$ 15.00	\$ 3,450.00	\$ 15.00	\$ 3,450.00	\$ 15.00	\$ 3,450.00	\$ 16.25	\$ 3,737.50
16	160110	Temporary High-Visibility Fence	LF	1147	\$ 5.00	\$ 5,735.00	\$ 9.00	\$ 10,323.00	\$ 30.00	\$ 34,410.00	\$ 4.00	\$ 4,588.00	\$ 3.50	\$ 4,014.50
17	170103	Clearing and Grubbing (LS)	LS	1	\$ 62,000.00	\$ 62,000.00	\$ 100,000.00	\$ 100,000.00	\$ 58,800.00	\$ 58,800.00	\$ 100,000.00	\$ 100,000.00	\$ 16,000.00	\$ 16,000.00
18	190101	Roadway Excavation	CY	18	\$ 195.00	\$ 3,510.00	\$ 300.00	\$ 5,400.00	\$ 3,800.00	\$ 68,400.00	\$ 1,000.00	\$ 18,000.00	\$ 87.00	\$ 1,566.00
19	190106	Roadway Excavation (Type Z-3) (Aerially Deposited Lead)	CY	12	\$ 500.00	\$ 6,000.00	\$ 970.00	\$ 11,640.00	\$ 1,340.00	\$ 16,080.00	\$ 400.00	\$ 4,800.00	\$ 150.00	\$ 1,800.00
20	190163	Roadway Excavation (Type R-1) (Aerially Deposited Lead)	CY	2	\$ 180.00	\$ 360.00	\$ 300.00	\$ 600.00	\$ 1,340.00	\$ 2,680.00	\$ 400.00	\$ 800.00	\$ 400.00	\$ 800.00
21F	192003	Structure Excavation (Bridge)	CY	97	\$ 165.00	\$ 16,005.00	\$ 225.00	\$ 21,825.00	\$ 350.00	\$ 33,950.00	\$ 200.00	\$ 19,400.00	\$ 440.00	\$ 42,680.00
22	192011	Structure Excavation (Type R-1) (Aerially Deposited Lead)	CY	358	\$ 70.00	\$ 25,060.00	\$ 300.00	\$ 107,400.00	\$ 225.00	\$ 80,550.00	\$ 85.00	\$ 30,430.00	\$ 111.00	\$ 39,738.00
23F	192037	Structure Excavation (Retaining Wall)	CY	1700	\$ 120.00	\$ 204,000.00	\$ 225.00	\$ 382,500.00	\$ 275.00	\$ 467,500.00	\$ 360.00	\$ 612,000.00	\$ 87.00	\$ 147,900.00
24	192054	Structure Excavation (Type Z-3) (Aerially Deposited Lead)	CY	49	\$ 350.00	\$ 17,150.00	\$ 970.00	\$ 47,530.00	\$ 1,000.00	\$ 49,000.00	\$ 400.00	\$ 19,600.00	\$ 400.00	\$ 19,600.00
25F	193003	Structure Backfill (Bridge)	CY	73	\$ 350.00	\$ 25,550.00	\$ 290.00	\$ 21,170.00	\$ 350.00	\$ 25,550.00	\$ 100.00	\$ 7,300.00	\$ 82.00	\$ 5,986.00
26F	193013	Structure Backfill (Retaining Wall)	CY	2316	\$ 151.00	\$ 349,716.00	\$ 220.00	\$ 509,520.00	\$ 200.00	\$ 463,200.00	\$ 150.00	\$ 347,400.00	\$ 85.00	\$ 196,860.00
27F	193031	Pervious Backfill Material (Retaining Wall)	CY	177	\$ 190.00	\$ 33,630.00	\$ 190.00	\$ 33,630.00	\$ 148.00	\$ 26,196.00	\$ 200.00	\$ 35,400.00	\$ 145.00	\$ 25,665.00
28	210300	Hydromulch	SF	9939	\$ 0.40	\$ 3,975.60	\$ 0.14	\$ 1,391.46	\$ 0.30	\$ 2,981.70	\$ 0.20	\$ 1,987.80	\$ 0.40	\$ 3,975.60
29	210430	Hydroseed	SF	9939	\$ 0.60	\$ 5,963.40	\$ 0.88	\$ 8,746.32	\$ 0.40	\$ 3,975.60	\$ 1.00	\$ 9,939.00	\$ 0.70	\$ 6,957.30

Los Gatos Creek Trail to Highway 9 Trailhead Connector Project

BID SUMMARY



Item No.	Item Code	Item Description	Unit	Estimated Quantity	A & B Construction		Granite Construction Company		Ghilotti Construction Company, Inc.		Gordon N. Ball, Inc.		Robert A. Bothman Construction	
					Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
30	210610	Compost (CY)	CY	17	\$ 300.00	\$ 5,100.00	\$ 491.00	\$ 8,347.00	\$ 220.00	\$ 3,740.00	\$ 550.00	\$ 9,350.00	\$ 270.00	\$ 4,590.00
31	260203	Class 2 Aggregate Base (CY)	CY	243	\$ 280.00	\$ 68,040.00	\$ 240.00	\$ 58,320.00	\$ 380.00	\$ 92,340.00	\$ 250.00	\$ 60,750.00	\$ 54.00	\$ 13,122.00
32	390132	Hot Mix Asphalt (Type A)	TON	50	\$ 600.00	\$ 30,000.00	\$ 400.00	\$ 20,000.00	\$ 625.00	\$ 31,250.00	\$ 500.00	\$ 25,000.00	\$ 551.00	\$ 27,550.00
33	394073	Place Hot Mix Asphalt Dike (Type A)	LF	5	\$ 40.00	\$ 200.00	\$ 150.00	\$ 750.00	\$ 680.00	\$ 3,400.00	\$ 10.00	\$ 50.00	\$ 1,015.00	\$ 5,075.00
34F	510053	Structural Concrete, Bridge	CY	27	\$ 1,600.00	\$ 43,200.00	\$ 1,800.00	\$ 48,600.00	\$ 6,000.00	\$ 162,000.00	\$ 3,000.00	\$ 81,000.00	\$ 2,400.00	\$ 64,800.00
35F	510054	Structural Concrete, Bridge (Polymer Fiber)	CY	17	\$ 1,500.00	\$ 25,500.00	\$ 1,075.00	\$ 18,275.00	\$ 1,800.00	\$ 30,600.00	\$ 2,000.00	\$ 34,000.00	\$ 1,165.00	\$ 19,805.00
36F	510060	Structural Concrete, Retaining Wall	CY	1136	\$ 850.00	\$ 965,600.00	\$ 1,440.00	\$ 1,635,840.00	\$ 1,400.00	\$ 1,590,400.00	\$ 1,575.00	\$ 1,789,200.00	\$ 1,190.00	\$ 1,351,840.00
37F	510094	Structural Concrete, Drainage Inlet	CY	2	\$ 4,000.00	\$ 8,000.00	\$ 1,500.00	\$ 3,000.00	\$ 8,000.00	\$ 16,000.00	\$ 4,000.00	\$ 8,000.00	\$ 666.00	\$ 1,332.00
38F	510502	Minor Concrete (Minor Structure)	CY	8	\$ 800.00	\$ 6,400.00	\$ 4,500.00	\$ 36,000.00	\$ 5,200.00	\$ 41,600.00	\$ 5,000.00	\$ 40,000.00	\$ 4,250.00	\$ 34,000.00
39F	511055	Concrete Surface Texture	SF	4554	\$ 25.00	\$ 113,850.00	\$ 22.00	\$ 100,188.00	\$ 65.00	\$ 296,010.00	\$ 22.00	\$ 100,188.00	\$ 15.15	\$ 68,993.10
40F	520102	Bar Reinforcing Steel (Bridge)	LB	5689	\$ 1.75	\$ 9,955.75	\$ 5.50	\$ 31,289.50	\$ 5.22	\$ 29,696.58	\$ 7.00	\$ 39,823.00	\$ 5.75	\$ 32,711.75
41F	520103	Bar Reinforcing Steel (Retaining Wall)	LB	92337	\$ 1.75	\$ 161,589.75	\$ 2.00	\$ 184,674.00	\$ 1.71	\$ 157,896.27	\$ 2.00	\$ 184,674.00	\$ 1.85	\$ 170,823.45
42	550203A	Furnish Prefabricated Bridge	LS	1	\$ 442,000.00	\$ 442,000.00	\$ 200,000.00	\$ 200,000.00	\$ 272,000.00	\$ 272,000.00	\$ 225,000.00	\$ 225,000.00	\$ 835,000.00	\$ 835,000.00
43	550204A	Install Prefabricated Bridge	LS	1	\$ 46,000.00	\$ 46,000.00	\$ 50,000.00	\$ 50,000.00	\$ 144,000.00	\$ 144,000.00	\$ 80,000.00	\$ 80,000.00	\$ 65,000.00	\$ 65,000.00
44	600029	Remove Asphalt Concrete Surfacing	SF	30	\$ 40.00	\$ 1,200.00	\$ 45.00	\$ 1,350.00	\$ 240.00	\$ 7,200.00	\$ 30.00	\$ 900.00	\$ 7.00	\$ 210.00
45	600093A	Remove Tree	EA	36	\$ -	\$ -	\$ 1,750.00	\$ 63,000.00	\$ 615.00	\$ 22,140.00	\$ 2,500.00	\$ 90,000.00	\$ 817.00	\$ 29,412.00
46	610108	18" Alternative Pipe Culvert	LF	89	\$ 800.00	\$ 71,200.00	\$ 225.00	\$ 20,025.00	\$ 150.00	\$ 13,350.00	\$ 300.00	\$ 26,700.00	\$ 420.00	\$ 37,380.00
47	665007	10" Corrugated Metal Pipe	LF	3	\$ 3,259.62	\$ 9,778.86	\$ 300.00	\$ 900.00	\$ 2,500.00	\$ 7,500.00	\$ 600.00	\$ 1,800.00	\$ 2,200.00	\$ 6,600.00
48	680287	3" Slotted Plastic Pipe Underdrain	LF	240	\$ 110.00	\$ 26,400.00	\$ 30.00	\$ 7,200.00	\$ 65.00	\$ 15,600.00	\$ 50.00	\$ 12,000.00	\$ 55.00	\$ 13,200.00
49	680405	8" Perforated Steel Pipe Underdrain (.064" Thick)	LF	322	\$ 330.00	\$ 106,260.00	\$ 70.00	\$ 22,540.00	\$ 75.00	\$ 24,150.00	\$ 60.00	\$ 19,320.00	\$ 115.00	\$ 37,030.00
50	680604	8" Non-Perforated Steel Pipe Underdrain	LF	27	\$ 460.00	\$ 12,420.00	\$ 35.00	\$ 945.00	\$ 75.00	\$ 2,025.00	\$ 100.00	\$ 2,700.00	\$ 210.00	\$ 5,670.00
51	681132	Geocomposite Drain	SQFT	1099	\$ 8.00	\$ 8,792.00	\$ 5.00	\$ 5,495.00	\$ 8.00	\$ 8,792.00	\$ 1.00	\$ 1,099.00	\$ 5.50	\$ 6,044.50
52	705311	18" Alternative Flared End Section	EA	2	\$ 3,600.00	\$ 7,200.00	\$ 3,000.00	\$ 6,000.00	\$ 400.00	\$ 800.00	\$ 1,000.00	\$ 2,000.00	\$ 2,600.00	\$ 5,200.00
53	709522	Drainage Inlet Depression	EA	1	\$ 600.00	\$ 600.00	\$ 3,000.00	\$ 3,000.00	\$ 2,150.00	\$ 2,150.00	\$ 1,000.00	\$ 1,000.00	\$ 6,500.00	\$ 6,500.00
54	710136	Remove 12" CMP Drainage Pipe (LF)	LF	44	\$ 45.68	\$ 2,009.92	\$ 60.00	\$ 2,640.00	\$ 70.00	\$ 3,080.00	\$ 25.00	\$ 1,100.00	\$ 150.00	\$ 6,600.00
55	710152	Remove Headwall	EA	2	\$ 700.00	\$ 1,400.00	\$ 1,000.00	\$ 2,000.00	\$ 3,000.00	\$ 6,000.00	\$ 2,000.00	\$ 4,000.00	\$ 2,000.00	\$ 4,000.00
56	710196	Adjust Drainage Inlet	EA	1	\$ 2,200.00	\$ 2,200.00	\$ 6,000.00	\$ 6,000.00	\$ 2,500.00	\$ 2,500.00	\$ 1,000.00	\$ 1,000.00	\$ 1,500.00	\$ 1,500.00
57	723080	Rock Slope Protection (60 lb, Class II, Method B) (CY)	CY	6	\$ 550.00	\$ 3,300.00	\$ 400.00	\$ 2,400.00	\$ 1,200.00	\$ 7,200.00	\$ 500.00	\$ 3,000.00	\$ 550.00	\$ 3,300.00
58	729011	Rock Slope Protection Fabric (Class 8)	SQYD	8	\$ 225.00	\$ 1,800.00	\$ 25.00	\$ 200.00	\$ 15.00	\$ 120.00	\$ 2.00	\$ 16.00	\$ 100.00	\$ 800.00
59	730020	Minor Concrete (Curb)(CY)	CY	11	\$ 2,100.00	\$ 23,100.00	\$ 750.00	\$ 8,250.00	\$ 1,000.00	\$ 11,000.00	\$ 5,000.00	\$ 55,000.00	\$ 2,050.00	\$ 22,550.00

Los Gatos Creek Trail to Highway 9 Trailhead Connector Project  
 BID SUMMARY



Item No.	Item Code	Item Description	Unit	Estimated Quantity	A & B Construction		Granite Construction Company		Ghilotti Construction Company, Inc.		Gordon N. Ball, Inc.		Robert A. Bothman Construction	
					Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
60	731511A	Minor Concrete (Cobblestone Paving)	CY	3	\$ 4,400.00	\$ 13,200.00	\$ 4,500.00	\$ 13,500.00	\$ 5,500.00	\$ 16,500.00	\$ 5,000.00	\$ 15,000.00	\$ 6,400.00	\$ 19,200.00
61	731516A	Minor Concrete (Bike Ramp)	CY	2	\$ 3,000.00	\$ 6,000.00	\$ 750.00	\$ 1,500.00	\$ 7,500.00	\$ 15,000.00	\$ 1,500.00	\$ 3,000.00	\$ 15,000.00	\$ 30,000.00
62	731521	Minor Concrete (Sidewalk)	CY	31	\$ 1,500.00	\$ 46,500.00	\$ 1,000.00	\$ 31,000.00	\$ 1,000.00	\$ 31,000.00	\$ 900.00	\$ 27,900.00	\$ 1,600.00	\$ 49,600.00
63	731521A	Minor Concrete (Pathway)	CY	140	\$ 1,000.00	\$ 140,000.00	\$ 1,400.00	\$ 196,000.00	\$ 1,000.00	\$ 140,000.00	\$ 1,500.00	\$ 210,000.00	\$ 520.00	\$ 72,800.00
64	731780	Remove Concrete Sidewalk (SQYD)	SY	94	\$ 110.00	\$ 10,340.00	\$ 100.00	\$ 9,400.00	\$ 95.00	\$ 8,930.00	\$ 40.00	\$ 3,760.00	\$ 60.00	\$ 5,640.00
65F	750001	Miscellaneous Iron and Steel	LB	326	\$ 30.00	\$ 9,780.00	\$ 5.00	\$ 1,630.00	\$ 10.00	\$ 3,260.00	\$ 2.00	\$ 652.00	\$ 6.00	\$ 1,956.00
66F	750501	Miscellaneous Metal (Bridge)	LB	442	\$ 12.00	\$ 5,304.00	\$ 22.00	\$ 9,724.00	\$ 5.00	\$ 2,210.00	\$ 20.00	\$ 8,840.00	\$ 6.00	\$ 2,652.00
67	780440	Prepare and Stain Concrete	SQFT	5407	\$ 50.00	\$ 270,350.00	\$ 31.50	\$ 170,320.50	\$ 35.00	\$ 189,245.00	\$ 30.00	\$ 162,210.00	\$ 40.00	\$ 216,280.00
68F	780460	Anti-Graffiti Coating	SQFT	4964	\$ 14.00	\$ 69,496.00	\$ 17.00	\$ 84,388.00	\$ 5.20	\$ 25,812.80	\$ 7.00	\$ 34,748.00	\$ 3.00	\$ 14,892.00
69	800320A	Chain Link Fence - Black Vinyl Clad (Type CL-4)	LF	509	\$ 108.00	\$ 54,972.00	\$ 90.00	\$ 45,810.00	\$ 65.00	\$ 33,085.00	\$ 90.00	\$ 45,810.00	\$ 100.00	\$ 50,900.00
70	800360A	Chain Link Fence - Black Vinyl Clad (Type CL-6)	LF	172	\$ 145.00	\$ 24,940.00	\$ 109.00	\$ 18,748.00	\$ 71.25	\$ 12,255.00	\$ 110.00	\$ 18,920.00	\$ 120.00	\$ 20,640.00
71	800360B	Chain Link Fence - Standard (Type CL-6)	LF	410	\$ 81.00	\$ 33,210.00	\$ 63.30	\$ 25,953.00	\$ 60.00	\$ 24,600.00	\$ 65.00	\$ 26,650.00	\$ 69.00	\$ 28,290.00
72	803020	Remove Fence	LF	691	\$ 8.00	\$ 5,528.00	\$ 6.00	\$ 4,146.00	\$ 30.00	\$ 20,730.00	\$ 10.00	\$ 6,910.00	\$ 8.00	\$ 5,528.00
73	803060A	Remove Bollard	EA	2	\$ 200.00	\$ 400.00	\$ 200.00	\$ 400.00	\$ 650.00	\$ 1,300.00	\$ 500.00	\$ 1,000.00	\$ 450.00	\$ 900.00
74	800103	Temporary Fence (Type CL-6)	LS	1	\$ 13,000.00	\$ 13,000.00	\$ 2,500.00	\$ 2,500.00	\$ 38,000.00	\$ 38,000.00	\$ 10,000.00	\$ 10,000.00	\$ 4,000.00	\$ 4,000.00
75	800103A	Temporary Tree Protection Fence	LS	1	\$ 15,000.00	\$ 15,000.00	\$ 7,700.00	\$ 7,700.00	\$ 22,000.00	\$ 22,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
76	820250	Remove Roadside Sign	EA	1	\$ 520.00	\$ 520.00	\$ 300.00	\$ 300.00	\$ 125.00	\$ 125.00	\$ 500.00	\$ 500.00	\$ 325.00	\$ 325.00
77	820630	Relocate Roadside Sign (Wood Post)	EA	1	\$ 520.00	\$ 520.00	\$ 600.00	\$ 600.00	\$ 275.00	\$ 275.00	\$ 600.00	\$ 600.00	\$ 650.00	\$ 650.00
78	820840	Roadside Sign - One Post	EA	19	\$ 1,250.00	\$ 23,750.00	\$ 650.00	\$ 12,350.00	\$ 595.00	\$ 11,305.00	\$ 650.00	\$ 12,350.00	\$ 705.00	\$ 13,395.00
79F	833020	Chain Link Railing (Mod)	LF	287	\$ 120.00	\$ 34,440.00	\$ 90.00	\$ 25,830.00	\$ 75.00	\$ 21,525.00	\$ 90.00	\$ 25,830.00	\$ 100.00	\$ 28,700.00
80F	833085	Pipe Handrailing	LF	570	\$ 675.00	\$ 384,750.00	\$ 521.00	\$ 296,970.00	\$ 188.00	\$ 107,160.00	\$ 520.00	\$ 296,400.00	\$ 515.00	\$ 293,550.00
81F	833085A	Pipe Handrailing (Chain Link Railing Mounted)	LF	135	\$ 265.00	\$ 35,775.00	\$ 207.00	\$ 27,945.00	\$ 180.00	\$ 24,300.00	\$ 210.00	\$ 28,350.00	\$ 205.00	\$ 27,675.00
82F	833085B	Pipe Handrailing (Side Wall Mounted)	LF	199	\$ 285.00	\$ 56,715.00	\$ 221.00	\$ 43,979.00	\$ 280.00	\$ 55,720.00	\$ 220.00	\$ 43,780.00	\$ 225.00	\$ 44,775.00
83F	833085C	Pipe Handrailing (Top Wall Mounted)	LF	132	\$ 415.00	\$ 54,780.00	\$ 321.00	\$ 42,372.00	\$ 270.00	\$ 35,640.00	\$ 320.00	\$ 42,240.00	\$ 320.00	\$ 42,240.00
84F	833085D	Pipe Handrailing (Pedestrian Guardrail Mounted)	LF	414	\$ 410.00	\$ 169,740.00	\$ 319.00	\$ 132,066.00	\$ 140.00	\$ 57,960.00	\$ 320.00	\$ 132,480.00	\$ 325.00	\$ 134,550.00
85F	833085E	Pipe Handrailing (Curb Mounted)	LF	78	\$ 420.00	\$ 32,760.00	\$ 323.00	\$ 25,194.00	\$ 345.00	\$ 26,910.00	\$ 325.00	\$ 25,350.00	\$ 340.00	\$ 26,520.00
86F	833088A	Pedestrian Guardrail	LF	407	\$ 760.00	\$ 309,320.00	\$ 589.00	\$ 239,723.00	\$ 415.00	\$ 168,905.00	\$ 580.00	\$ 236,060.00	\$ 635.00	\$ 258,445.00

Los Gatos Creek Trail to Highway 9 Trailhead Connector Project  
 BID SUMMARY



Item No.	Item Code	Item Description	Unit	Estimated Quantity	A & B Construction		Granite Construction Company		Ghilotti Construction Company, Inc.		Gordon N. Ball, Inc.		Robert A. Bothman Construction	
					Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
87	840501A	4" Thermoplastic Traffic Stripe	LF	592	\$ 16.00	\$ 9,472.00	\$ 3.00	\$ 1,776.00	\$ 3.00	\$ 1,776.00	\$ 3.00	\$ 1,776.00	\$ 5.50	\$ 3,256.00
88	840505	6" Thermoplastic Traffic Stripe	LF	33	\$ 160.00	\$ 5,280.00	\$ 6.00	\$ 198.00	\$ 6.00	\$ 198.00	\$ 6.00	\$ 198.00	\$ 6.50	\$ 214.50
89	840515	Thermoplastic Pavement Marking	SQFT	395	\$ 50.00	\$ 19,750.00	\$ 13.00	\$ 5,135.00	\$ 13.00	\$ 5,135.00	\$ 13.00	\$ 5,135.00	\$ 23.00	\$ 9,085.00
90	840501B	4" Thermoplastic Traffic Stripe (Broken)	LF	599	\$ 14.00	\$ 8,386.00	\$ 4.00	\$ 2,396.00	\$ 4.00	\$ 2,396.00	\$ 4.00	\$ 2,396.00	\$ 6.50	\$ 3,893.50
91	870200A	Relocate Lighting Standard	LS	1	\$ 42,000.00	\$ 42,000.00	\$ 29,600.00	\$ 29,600.00	\$ 29,600.00	\$ 29,600.00	\$ 28,000.00	\$ 28,000.00	\$ 33,000.00	\$ 33,000.00
92	204035A	Allocated Tree Replacement Cost	LS	1	\$ 3,500.00	\$ 3,500.00	\$ 3,500.00	\$ 3,500.00	\$ 3,500.00	\$ 3,500.00	\$ 5,000.00	\$ 5,000.00	\$ 15,000.00	\$ 15,000.00
93	999990	Mobilization	LS	1	\$ 586,888.14	\$ 586,888.14	\$ 650,500.00	\$ 650,500.00	\$ 582,000.00	\$ 582,000.00	\$ 675,000.00	\$ 675,000.00	\$ 551,000.00	\$ 551,000.00
<b>TOTAL BID</b>						<b>\$ 5,829,281.42</b>		<b>\$ 6,529,395.78</b>		<b>\$ 6,635,782.95</b>		<b>\$ 6,760,897.80</b>		<b>\$ 6,869,055.70</b>

## **CONSTRUCTION AGREEMENT**

This Agreement is dated for identification this \_\_\_\_ day of \_\_\_\_\_, 2023, and is made by and between the TOWN OF LOS GATOS, a California municipal corporation, whose address is 110 East Main Street, Los Gatos, California 95030 (hereinafter "TOWN"), and Granite Construction Company, whose address is 715 Comstock Street, Santa Clara, CA 95054 (hereinafter "CONTRACTOR").

NOW, THEREFORE, the parties agree:

### **ARTICLE I: WORK TO BE DONE AND DOCUMENTS FORMING THE CONTRACT.**

That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the said TOWN, and under the conditions expressed in the two bonds hereunto annexed, the said CONTRACTOR agrees with the said TOWN, at his own proper cost and expense, to do all the work and furnish all the materials and equipment necessary to construct and complete, in accordance with the plans and specifications hereinafter mentioned, in a good, workmanlike and substantial manner, under the supervision of the Town Engineer, or his, of the TOWN OF LOS GATOS, California, all the works and improvements described, mentioned and set forth in those plans, specifications, and addenda on file in the Office of the Parks and Public Works of said TOWN, entitled:

"Plans and Specifications for Project #18-832-4505, Federal Project No. CML-5067(021)  
Los Gatos Creek Trail to Highway 9 Trailhead Connector Project"

which said plans, specifications and addenda and all the documents therein contained, including the TOWN OF LOS GATOS's Standard Provisions, are hereby specially referred to and by such reference made part of this contract.

### **ARTICLE II: CONTRACTOR'S ACCEPTANCE**

CONTRACTOR agrees to receive and accept the prices shown on Exhibit "A," which is attached hereto and incorporated by reference herewith, as full compensation for furnishing all materials and equipment and for doing all the work described in the contract documents; also for all loss or damage as provided in the contract documents in the prosecution of the work until its acceptance by the Town Council of the TOWN OF LOS GATOS, and for well and faithfully completing the work, and the whole thereof, in the manner and according to the contract documents, plans and specifications, and the requirements of the Town Engineer.

CONTRACTOR understands and acknowledges that the Project #18-832-4505 Los Gatos Creek Trail to Highway 9 Trailhead Connector Federal Project No. CML 5067(021),

includes federal grant funding. Language found in the project specifications, with minor edits, was taken from the Code of Federal Regulations. The Contractor shall maintain records and submit reports documenting their performance under this Contract.

CONTRACTOR acknowledges that the Project #18-832-4505 Los Gatos Creek Trail to Highway 9 Trailhead Connector Federal Project No. CML 5067(021), includes federal grant funds. Pursuant to requirements related to the use of these funds, CONTRACTOR agrees to accept and adhere to the requirements set forth in the Federal Labor Standards Provisions, Federal Prevailing Wage Decision, and Federal Contract Requirements as noted in the Project Specifications.

### **ARTICLE III: ACCEPTANCE BY TOWN**

The said TOWN hereby promises and agrees with the said CONTRACTOR to employ, and does hereby employ the said CONTRACTOR to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, in the manner and upon the conditions above set forth; and the said parties for themselves their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

### **ARTICLE IV: COMPLETION OF AGREEMENT**

Reference is made to Part I – Pages 1-4 of the TOWN's Project Specifications - Notice to Contractors which are hereby made a part of this contract. Inasmuch as the work called for under this contract concerns a needed public improvement, the time of performance and completion of this work is of the essence of this contract. It is expressly understood and agreed by the parties hereto that all the work called for under this contract, in all its parts and requirements, shall be completed 270 working days from the date of the Notice to Proceed.

### **ARTICLE V: HOURS OF LABOR**

The CONTRACTOR shall forfeit, as a penalty, to the TOWN, Twenty-Five Dollars (\$25) for each workman employed in the execution of the contract by him or by any subcontractor for each calendar day during which any workman is required or permitted to labor more than eight (8) hours in violation of the provisions of Sections 1810-1815 inclusive of the Labor Code and all amendments thereto.

### **ARTICLE VI: APPRENTICES**

Attention is directed to the provisions in Sections 1777.5, 1777.6 and 1777.7 of the Labor Code governing the employment of apprentices by the CONTRACTOR or any



subcontractor under him. CONTRACTOR and any of his subcontractors shall comply with the requirements of said sections of the Labor Code; CONTRACTOR shall have full responsibility for compliance with the said sections regardless of any other contractual or employment relationships alleged to exist.

Information relative to apprenticeship standards and other requirements may be obtained from the Director of Industrial Relations ex officio the Administrator of Apprenticeship, San Francisco, California or from the Division of Apprenticeship Standards at its branch offices.

#### **ARTICLE VII: NONDISCRIMINATION**

The CONTRACTOR sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts.

Failure by CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as recipient deems appropriate.

#### **ARTICLE VIII: INDEPENDENT CONTRACTOR**

It is agreed that CONTRACTOR is an independent contractor, and all persons working for or under the direction of CONTRACTOR are CONTRACTOR's agents, servants and employees, and said persons shall not be deemed agents, servants or employees of TOWN.

#### **ARTICLE IX: OWNERSHIP OF DATA AND DOCUMENTS**

CONTRACTOR agrees that all records, specifications, data, maps, designs, graphics, writings, recordings and other tangible materials regardless of form or format, including, without limitation, electronically transmitted documents and ACAD files, and other collateral materials collected, compiled, drafted, prepared, produced and/or generated in the performance of this Agreement shall be the property of TOWN. CONTRACTOR shall regularly provide such documents to TOWN upon TOWN's request. In the event that this Agreement is terminated prior to completion of the scope of work, CONTRACTOR shall provide all such data and documents to TOWN forthwith.

#### **ARTICLE X: INSURANCE**

Without limiting CONTRACTOR's obligation to indemnify and hold harmless TOWN and VTA, CONTRACTOR must procure and maintain for the duration of the

CONTRACT insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by CONTRACTOR, its agents, representatives, employees, or SUBCONTRACTORS. The cost of such insurance must be borne exclusively by CONTRACTOR. In the event of any material change in the contract, TOWN AND VTA reserve the right to change the insurance requirements set forth herein. CONTRACTOR must furnish complete copies of all insurance policies, within three (3) business days of any request for such by TOWN or VTA.

## **A. Liability and Workers' Compensation Insurance**

### **1. Minimum Scope of Coverage**

Coverage must be at least as broad as:

- a. General Liability coverage; Insurance Services Office "occurrence" form CG 0001. General Liability insurance written on a "claims made" basis is not acceptable. Completed Operations coverage must be continuously maintained for at least two (2) years after Final Acceptance of the Work.
- b. Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.
- c. Workers' Compensation insurance, as required by the Labor Code of the State of California, and Employer's Liability insurance.
- d. Professional Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of CONTRACTOR'S services under this contract. This coverage must be continuously maintained for a minimum of two (2) years following completion of this contract. This coverage may be written on a "claims made" basis, if so, please see special provisions in Section B.
- e. CONTRACTOR'S Pollution/Environmental Impairment Liability: covering liability arising out of the treatment, handling, storage, transportation, or accidental release of any hazardous material.

### **2. Minimum Limits of Insurance**

- a. CONTRACTOR must maintain limits no less than:

1. General Liability (including umbrella/excess liability): \$5,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit. This requirement may be satisfied by a combination of General Liability with Excess or Umbrella, but in no event may the General Liability primary policy limit per occurrence be less than \$2,000,000, unless Umbrella/Excess policies feature inception and expiration dates concurrent with the underlying General Liability policy, "Follow Form" coverage, and a "Drop Down" provision.
2. Automobile Liability (including umbrella/excess liability): \$4,000,000 limit per accident for bodily injury and property damage. This requirement may be satisfied by a combination of Auto with Excess or Umbrella, but in no event may the Automobile Liability primary policy limit per occurrence be less than \$2,000,000, unless Excess policies feature inception and expiration dates concurrent with the underlying auto liability policy, "Follow Form" coverage, and a "Drop Down" provision.
3. Workers' Compensation and Employer's Liability: Statutory Workers' Compensation limits and Employer's Liability limits of \$1,000,000 per accident.

CONTRACTOR is familiar with the Workers' Compensation laws of California (generally contained in Section 3700 of the Labor Code), including those provisions which provide for specific exemptions from the requirement that all employers must carry Workers' Compensation insurance, and CONTRACTOR maintains they are exempted under the law from the requirement to maintain Workers' Compensation insurance coverage.

In addition, during the term of any work for TOWN under said contract: (1) CONTRACTOR will not employ any person in any manner so as to become subject to the Workers' Compensation laws of California, or (2) should CONTRACTOR become subject to the Workers' Compensation provisions of Section 3700 of the Labor Code for any reason, CONTRACTOR shall forthwith comply with those provisions and send evidence of financial compliance to TOWN.

4. Professional Liability: \$2,000,000 each occurrence/aggregate minimum limit per claim. This requirement may be satisfied by a combination of Professional Liability insurance with Excess or Umbrella policies, but in no event may the Professional Liability primary policy limit per occurrence be less than \$2,000,000, unless Umbrella/Excess policies feature inception and expiration dates concurrent with the underlying policy, "Follow Form" coverage, and a "Drop Down" provision.
  5. CONTRACTOR'S Pollution/Environmental Impairment Liability: \$3,000,000 per occurrence. This requirement may be satisfied by a combination of Pollution Liability insurance with Excess or Umbrella policies. Umbrella/Excess policies must feature inception and expiration dates concurrent with the underlying policy, "Follow Form" coverage, and a "Drop Down" provision.
- b. Notwithstanding any language in this contract to the contrary, if CONTRACTOR carries insurance limits exceeding the minima stated in Section 2(a)(1)-(5) immediately above, such greater limits will apply to this contract.

#### **1. Self-Insured Retention**

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

#### **B. Reserved.**

#### **C. Claims Made Provisions**

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber. For coverage written on a claims-made basis, it must be clearly stated on the Certificate of Insurance. In addition to all other coverage requirements, such policy must provide that:

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

#### **D. Other Provisions**

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

##### **1. General Liabilities and Automobile Liability**

- a. The TOWN and VTA, its directors, officers, officials, employees and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of CONTRACTOR, including TOWN'S general supervision of CONTRACTOR; products and completed operations of CONTRACTOR and its SUBCONTRACTORS; premises owned, occupied or used by CONTRACTOR; or automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage must contain no special limitations on the scope of protection afforded to TOWN and VTA, its directors, officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.
- b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to TOWN and VTA, its directors, officers, officials, employees, or volunteers.
- c. Contractor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- d. The General Liability General Aggregate limit must apply per project, not per policy.

## **2. All Coverages**

- a. The insurer must agree to waive all rights of subrogation against TOWN and VTA, its directors, officers, officials, employees, and volunteers for losses arising from work performed by CONTRACTOR and its SUBCONTRACTORS for TOWN and VTA.
- b. CONTRACTOR's insurance coverage must be primary insurance as respects TOWN AND VTA, its directors, officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by TOWN AND VTA, its directors, officers, officials, employees, or volunteers may apply only as excess to CONTRACTOR's insurance. CONTRACTOR's insurance must not seek contribution from TOWN or VTA's insurance programs.
- c. Each insurance policy required shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced coverage or in limits except after a thirty (30) calendar days prior written notice by certified mail, return receipt required, has been given to TOWN..
- d. TOWN will not be responsible for any premiums or assessments on the CONTRACTOR'S policies.
- e. In the event CONTRACTOR employs SUBCONTRACTORS as part of the work covered by this contract, it shall be the responsibility of CONTRACTOR to ensure that all SUBCONTRACTORS are included as additional insured under the CONTRACTORS policies or shall furnish separate certificates and endorsements for each SUBCONTRACTOR. All coverages for SUBCONTRACTORS shall be subject to all of the requirements stated herein and shall comply with the same insurance requirements that are stated in this contract.

## **3. Other Insurance Provisions**

- a. For all lines of coverage, the Certificate must disclose the actual amount of the Deductible or Self-Insured Retention and shall be subject to TOWN'S approval.

- b. If any coverage forms or endorsements required by this contract are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services Office, or the American Association of Insurance Services, during the duration of this contract, TOWN AND VTA reserves the rights to require CONTRACTOR to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.
- c. CONTRACTOR agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this contract. In the event that said insurance coverage expires at any time or times during the term of this contract, CONTRACTOR agrees to provide at least thirty (30) calendar days prior notice to said expiration date; and a new Certificate of Insurance evidencing the insurance coverage as provided for herein, for not less than either the remainder of the term of the contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of the TOWN. In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, TOWN may, in addition to any other remedies it may have, terminate the contract upon occurrence of such event.
- d. Approval of the insurance by TOWN or acceptance of the Certificate of Insurance by TOWN shall not relieve or decrease the extent to which CONTRACTOR may be held responsible for payment of damages resulting from CONTRACTOR'S services or operation pursuant to this contract, nor shall it be deemed a waiver of TOWN'S rights to insurance coverage hereunder.
- e. If, for any reason, CONTRACTOR fails to maintain insurance coverage that is required pursuant to this contract, the same shall be deemed a material breach of contract. TOWN, at its sole option, may terminate this contract and obtain damages from CONTRACTOR resulting from said breach.

**E. Acceptability of Insurers**

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

**F. Certificates of Insurance**

CONTRACTOR must furnish TOWN with Certificates of Insurance and with original endorsements effecting coverage required. The certificates and endorsements for each insurance policy must be signed by an authorized representative of that insurer. The certificates must be issued on a standard ACORD Form. CONTRACTOR must instruct their insurance broker/agent to submit all insurance certificates and endorsements and required notices electronically in PDF format to the TOWN. All endorsements must be attached to the ACORD certificate in a single PDF document. All insurance must be in effect for the duration of the contract. The absence of insurance or a reduction of the stated limits shall cause all work on the project to cease. Any delays shall not increase costs to TOWN or increase the duration of the project. The TOWN reserves the right to require complete, certified copies of all required insurance policies, at any time.

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

Town of Los Gatos  
41 Miles Avenue  
Los Gatos, CA 95030

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

In the Description of Operations/Locations/Vehicles/Special Items Box, the TOWN and VTA property leased must appear, the list of policies scheduled as underlying on the Umbrella/Excess policy must be listed, Certificate Holder must be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the contract documents.

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

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



## **G. Maintenance of Insurance**

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

## **H. Hold Harmless**

CONTRACTOR hereby agrees to and shall hold TOWN and VTA, its elective and appointive boards, commissions, officers, agents, registered volunteers, and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage and any other claims of any sort what so ever, including, but not limited to, any liabilities, claims, losses, or expenses in any manner caused by, arising out of, or in connection with, either directly or indirectly, the construction or installation of the work, the guarding of the work, the use of improper materials in construction of the work, or the negligent, willful, or intentional acts or omissions by CONTRACTOR or CONTRACTOR's SUBCONTRACTORS, agents, or employee operations under this contract, whether such operations by CONTRACTOR or by any of CONTRACTOR's SUBCONTRACTORS, or by any one or more persons directly or indirectly employed by, or acting as agent for CONTRACTOR or any of CONTRACTOR's SUBCONTRACTORS during the progress of the work or at any time before its completion and final acceptance, excepting suits and actions brought by the CONTRACTOR for default of this contract or arising from the sole active negligence or willful misconduct of the TOWN. The Town Council may retain as much of the money due to the CONTRACTOR as shall be reasonably necessary to protect the TOWN, until disposition has been made of such suits or claims for damages as aforesaid.

CONTRACTOR agrees to and shall pay TOWN's cost of defense (or, at the sole option of the TOWN, CONTRACTOR shall defend with counsel approved by the TOWN Attorney) and indemnify TOWN and its elective and appointive boards, commissions, officers, agents, and employees from any suits or actions at law or in equity arising out of the execution, adoption or implementation of this contract (exclusive of any such actions brought by CONTRACTOR), such indemnification to include all costs of defense, judgments, and any awards of attorneys' fees.

Should any accident or incident causing death, personal injury or property damage occur between the date CONTRACTOR is notified that its General Liability and/or Workers Compensation Insurance is canceled and the effective date of such cancellation, CONTRACTOR's obligation to indemnify, defend and save harmless the TOWN, as provided for hereinabove, shall in no manner be affected by the fact that the TOWN had not received the notice of cancellation prior to the date of such accident or incident.

## **ARTICLE XII: BONDING REQUIREMENT**

CONTRACTOR agrees to post a Faithful Performance Bond and a payment bond for Labor and Materials, or other guarantees, in the required amounts upon bond forms provided by the TOWN, guarantying the performance of the terms of this Contract. Surety issuing bonds for CONTRACTOR shall be approved by the U.S. Department of Treasury's Financial Management Service and shall be listed on the most current Treasury Circular 570 as contained in the Federal Register.

Contractor agrees to allow five percent of the faithful performance bond to remain in effect for a period of two years following Town Council project acceptance as guarantee for any needed repair or replacement caused by defective materials and workmanship.

## **ARTICLE XIII: MAINTENANCE AND GUARANTY**

CONTRACTOR shall promptly repair, replace, restore, or rebuild, as the TOWN may determine, any finished product in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during a two (2) year period subsequent to the date of final acceptance.

This article does not in any way limit the guaranty on any items for which a longer guaranty is specified or on any items which a manufacturer gives a guaranty for a longer period, nor does it limit the other remedies of the TOWN in respect to a latent defect, fraud or implied warranties. CONTRACTOR shall furnish the TOWN all appropriate guaranties or warranty certificates upon completion of the project.

## **ARTICLE XIV: SHORING FOR TRENCHES**

If the contract specifies an expenditure of Twenty-Five Thousand Dollars (\$25,000) or greater for trenching, and if the depth of the trench is five feet (5') or more, then Section 6705 of the Labor Code shall also be applicable.

## **ARTICLE XV: APPLICABLE LAWS AND ATTORNEY'S FEES**

This Agreement shall be construed and enforced pursuant to the laws of the State of California. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court. Reasonable attorneys' fees of the TOWN Attorney's Office, if private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County.

## **ARTICLE XVI: LIQUIDATED DAMAGES**

It is mutually agreed by CONTRACTOR and TOWN that in the event that completion of the construction by CONTRACTOR under this Agreement is delayed beyond the 270 working days allocated for project completion plus any authorized extensions (DATE), TOWN will suffer damages and will incur other costs and expenses of a nature and amount which is difficult or impractical to determine. The Parties agree that by way of ascertaining and fixing the amount of damages, costs and expenses, and not by way of penalty, CONTRACTOR shall pay to TOWN the sum as outlined in the Caltrans Standard Specifications Section 8-1.10A in liquidated damages for each and every calendar day such delay in completion of the services under this Agreement continues beyond DATE. In the event that the liquidated damages are not paid, CONTRACTOR agrees that TOWN may deduct the amount of unpaid damages from any money due or that may become due to CONTRACTOR under this Agreement.

## **ARTICLE XVII: INTERPRETATION OF CONTRACT**

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal of said CONTRACTOR, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

## **ARTICLE XVIII: AMENDMENTS AND CHANGE ORDERS**

This Agreement may be amended from time to time as necessary by formal and written amendment or authorized change order executed by the Town Manager or designee and principal acting on behalf of the CONTRACTOR.

## **ARTICLE XIX: DBE RESPONSIBILITIES**

For projects that are State or Federal funding; With respect to Disadvantaged Business Enterprises, CONTRACTOR shall do the following:

(1) Pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from TOWN. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of TOWN. This clause applies to both DBE and non-DBE subcontractors.

(2) Release all retainage owed to a subcontractor for satisfactory completion of the accepted work within seven (7) days after TOWN's payment to CONTRACTOR. Any delay or postponement of payment from the above-referenced time frame may

occur only for good cause following written approval of TOWN. This clause applies to both DBE and non-DBE subcontractors.

## **ARTICLE XX: PREVAILING WAGES**

Prevailing Wage. 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 \$1,000.00, 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 includes service and warranty work on public buildings and structures.

1. The applicable California prevailing wage rate can be found at [www.dir.ca.gov](http://www.dir.ca.gov) and are on file with the Town of Los Gatos Parks and Public Works Department, which shall be available to any interested party upon request. The contractor is also required to have a copy of the applicable wage determination posted and/or available at each jobsite.
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)].
7. No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
8. Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the TOWN for any fines assessed by the California Department of Industrial Relations against the TOWN for such violation, including all staff costs and attorney's fee relating to such fine.
9. The TOWN shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., the TOWN may continue to hold sufficient funds to cover estimated wages and penalties under the agreement.

#### **ARTICLE XXI: ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or

understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

**ARTICLE XXII: PUBLIC RECORDS**

The parties recognize and acknowledge that TOWN is subject to the California Public Records Act, California Government Code Section 6250 and following. Public records are subject to disclosure.

**ARTICLE XXIII: NOTICES**

Any notice required to be given to CONTRACTOR shall be deemed to be duly and properly given if mailed to CONTRACTOR, postage prepaid, addressed to:

CONTRACTOR NAME: Granite Construction Company  
ADDRESS: 715 Comstock Street  
CITY, ST ZIP: Santa Clara, CA 95054

or personally delivered to CONTRACTOR at such address or at such other addresses as CONTRACTOR may designate in writing to TOWN.

Any notice required to be given TOWN shall be deemed to be duly and properly given if mailed to TOWN, postage prepaid, addressed to:

Nicolle Burnham  
Parks and Public Works Director  
TOWN OF LOS GATOS  
41 Miles Avenue  
Los Gatos, CA 95030

or personally delivered to TOWN at such address or at such other addresses as TOWN may designate in writing to CONTRACTOR.

**ARTICLE XXIV: FEDERAL REQUIREMENTS**

The Federal Requirements found in Exhibits B and C are hereby physically incorporated into the signed Contract Documents.

The Minimum Federal Wage Rates Determination is hereby physically attached, in conformance with federal 10-day rule as a part of this contract (Exhibit B). This wage rate determination applies to federal-aid contracts and all work performed exceeding \$2000 by subcontracts and subsequent lower-tier subcontracts and are required to be physically included in each executed contract.

The provisions of Form FHWA 1273 are hereby physically attached, unmodified as a part of this contract (Exhibit C). This provision applies to federal-aid contracts and all work performed by subcontracts and subsequent lower-tier subcontracts and are required be physically included in each executed contract.

**ARTICLE XXV: SECTION 7106 FORM**

Attached to the Agreement is a fully executed and sworn non-collusion affidavit as required by Section 7106 of the California Public Contracts Code. Said affidavit is incorporated herein by this reference.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date first written above.

APPROVED AS TO CONTENT:

"TOWN":  
TOWN OF LOS GATOS

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

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

APPROVED AS TO FORM:

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

ATTEST:  
\_\_\_\_\_  
Wendy Wood, Town Clerk

CONTRACTOR:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

Tax ID No. or SSAN:

\_\_\_\_\_



CONTRACT BONDS

**CONTRACTOR'S BOND FOR LABOR AND MATERIAL**

KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_, as Principal, and

\_\_\_\_\_  
,  
incorporated under the laws of the State of \_\_\_\_\_  
and authorized to execute bonds and undertakings as Surety, are held and firmly bound unto any and all materialmen, persons, companies or corporations furnishing materials, provisions, provender or other supplies used in, upon, for or about the performance of the work contracted to be executed or performed under the contract hereinafter mentioned, and all persons, companies or corporations renting implements or machinery, or hiring crews, for or contributing to said work to be done, and all persons who perform work or labor upon the same, and all persons who supply both work and materials, and whose claim has not been paid by the contractor, company, or corporations in the just and full sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for the payment whereof, well and truly to be made, said Principal and Surety bind themselves, their administrators, successors and assigns, jointly and severally firmly by these presents.

The condition of the foregoing obligation is such that; WHEREAS, the above-bounden Principal has entered into a certain contract attached hereto and incorporated herein by reference as though fully set forth, with the TOWN OF LOS GATOS, to do and perform the following work; to wit:

TLG Project #18-832-4505 – Federal Project # CML 5067(021) LOS GATOS CREEK TRAIL TO HIGHWAY 9 TRAILHEAD CONNECTOR PROJECT

as required by the plans and specifications, pursuant to the award made to said contractor per Council report dated \_\_\_\_\_, 2022  
, as will more fully appear by reference to the minutes of said Council of said TOWN of said date.

NOW, THEREFORE, if the above-bounden Principal, contractor, person, company, or corporation, or his agent, or the subcontractors, fails to pay for any materials, provisions, provender, or other supplies, or crews used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amount required to be deducted, withheld, and paid over to Franchise Tax Board, from the wages of employees of the contractor or subcontractor, pursuant to Section 18806 of the Revenue and Tax Code, then the Surety of this bond will also pay the same in an amount not exceeding the sum specified in the bond; and

also, in case suit is brought upon this bond, a reasonable attorney's fee, which shall be awarded by the court to the prevailing party in said suit, said attorney's fee to be taxed as costs in said suit and to be included in the judgment therein rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligation on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

This bond is executed and filed to comply with the provisions of Sections 3247, *et seq.*, of the Civil Code.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

BY: \_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CONTRACTOR

SURETY (Address and Phone No.)

(CORPORATE SEAL)

(SURETY SEAL)

The amount of the within obligation is hereby fixed by the TOWN Council in the sum of (AMOUNT OF CONTRACT) Dollars (\$\_\_\_\_\_), that sum being one hundred percent (100%) of the contract price, is by said TOWN Council deemed adequate, and is the sum fixed by it for that purpose and the TOWN Manager is hereby authorized to approve said bond.

APPROVED AS TO FORM:

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

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

ATTEST: \_\_\_\_\_  
Wendy Wood, Town Clerk

**CONTRACTOR'S BOND FOR FAITHFUL PERFORMANCE**

KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_, as Principal, and \_\_\_\_\_, incorporated under the laws of the State of \_\_\_\_\_, and authorized to execute bonds and undertakings as Surety, are held firmly bound unto the TOWN OF LOS GATOS, a municipal corporation of the State of California, in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for payment whereof, well and truly to be made, said Principal and Surety bind themselves, their administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that: WHEREAS, the above-bounden Principal has entered into a certain contract attached hereto and incorporated herein by reference as though fully set forth, with the TOWN OF LOS GATOS, to do and perform the following work; to wit:

TLG Project #18-832-4505 – Federal Project # CML 5067(021) LOS GATOS CREEK TRAIL TO HIGHWAY 9 TRAILHEAD CONNECTOR PROJECT

as required by the plans and specifications, pursuant to the award made to said contractor per Council report dated \_\_\_\_\_, 202\_, as will more fully appear by reference to the minutes of said Council of said TOWN of said date.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligation on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

NOW, THEREFORE, if the above-bounden Principal shall well and truly perform the work contracted to be performed under said contract, then this obligation shall be void; otherwise, to remain in full force and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

BY: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CONTRACTOR

(CORPORATE SEAL)

BY: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SURETY (Address and Phone No.)

(SURETY SEAL)

The amount of the within obligation is hereby fixed by the TOWN Council in the sum of (AMOUNT OF CONTRACT) Dollars (\$ ), that sum being one hundred percent (100%) of the contract price, is by said TOWN Council deemed sufficient and adequate, and is the sum fixed by it for that purpose.

APPROVED AS TO FORM:

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

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

ATTEST: \_\_\_\_\_  
Wendy Wood, Town Clerk

EXHIBIT A  
Bid Proposal – Granite Construction Company



# BID PROPOSAL FORM

**TO:** The Town of Los Gatos, County of Santa Clara,  
State of California, herein called Owner

**FROM:** Granite Construction ComPanY, herein called Contractor

## A. UNIT PRICE SCHEDULE

Pursuant to and in compliance with your Notice to Contractors and the Contract Documents relating to the **Project #18-832-4505 Los Gatos Creek Trail to Highway 9 Trailhead Connector Project - Federal Project No. CML-5067(021)**, including Addenda No. 1, 2, 3, \_\_\_\_\_, \_\_\_\_\_,

The undersigned bidder, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person firm or corporation; that the bidder has thoroughly read and examined and has full knowledge of and understands all the provisions and contents of this proposal, the Notice to Contractors, and the contract documents including the Plans and Specifications entitled "**TLG Project #18-832-4505; Federal Project # CML 5067(021) - Los Gatos Creek Trail to Highway 9 Trailhead Connector Project**" approved for advertising and opening by the Town of Los Gatos on 4-6-23 and on file in the office of the Director of Parks and Public Works of the Town of Los Gatos; including all Addenda; that the bidder has thoroughly examined said Plans and Specifications and the bidder has full knowledge of and understands said Plans and Specifications and the requirements thereof; that the bidder has further read and understands, and has knowledge of the contents of any and all addenda to said Plans and Specifications on file; that the undersigned bidder, has become thoroughly familiar with the terms and conditions of the Contract Documents and with the local conditions affecting the performance and the costs of the Project at the place where the Project is to be done, and has inspected the site in all particulars, and therefore hereby proposes and agrees and do all the work required to construct and to complete said work in accordance with the Contract Documents, and that the bidder proposes and agrees, if this proposal is accepted, that the bidder will contract with the Town of Los Gatos, in the form of the copy of the contract on file in the office of the Director of Parks and Public Works, to do all the work and furnish any and all labor and materials specified or referred to in the contract, in the manner and time therein prescribed, and according to the requirements of the Town of Los Gatos or Director of Parks and Public Works as therein set forth, to furnish the contract, bonds and insurance specified in the Specifications, and to do all the work required to construct and to complete said work in accordance with the Contract Documents, and that Contractor will take in full payment therefore the amounts shown on the following price or unit price schedule:

**SCHEDULE OF QUANTITIES – Items with designation “F” are Final Pay Quantities**

Item No.	Item Code	Item Description	Unit	Estimated Quantity	Unit Price	Extension
1	05005A	Construction Staking	LS	1	50,000 <sup>-</sup>	50,000 <sup>-</sup>
2	146002	Contractor Supplied Biologist and Natural Resource Protection Plan	LS	1	30,000 <sup>-</sup>	30,000 <sup>-</sup>
3	070030	Lead Compliance Plan	LS	1	10,000 <sup>-</sup>	10,000 <sup>-</sup>
4	080050	Progress Schedule (Critical Path Method)	LS	1	2,500 <sup>-</sup>	2,500 <sup>-</sup>
5	120090	Construction Area Signs	LS	1	15,000 <sup>-</sup>	15,000 <sup>-</sup>
6	120100	Traffic Control System	LS	1	295,000 <sup>-</sup>	295,000 <sup>-</sup>
7	128652	Portable Changeable Message Sign (LS)	EA	5	5,000 <sup>-</sup>	25,000 <sup>-</sup>
8	130100	Job Site Management	LS	1	100,000 <sup>-</sup>	100,000 <sup>-</sup>
9	130200	Prepare Water Pollution Control Program	LS	1	2,000 <sup>-</sup>	2,000 <sup>-</sup>
10	130620	Temporary Drainage Inlet Protection	EA	3	300 <sup>-</sup>	900 <sup>-</sup>
11	130640	Temporary Fiber Roll	LF	509	8 <sup>-</sup>	4,072 <sup>-</sup>
12	130680	Temporary Silt Fence	LF	488	7 <sup>-</sup>	3,416 <sup>-</sup>
13	130710	Temporary Construction Entrance	EA	1	6,000 <sup>-</sup>	6,000 <sup>-</sup>
14	130900	Temporary Concrete Washout	LS	1	10,000 <sup>-</sup>	10,000 <sup>-</sup>
15	141103	Remove Yellow Thermoplastic Traffic Stripe (Hazardous Waste)	LF	230	15 <sup>-</sup>	3,450 <sup>-</sup>
16	160110	Temporary High-Visibility Fence	LF	1147	9 <sup>-</sup>	10,323 <sup>-</sup>
17	170103	Clearing and Grubbing (LS)	LS	1	100,000 <sup>-</sup>	100,000 <sup>-</sup>
18	190101	Roadway Excavation	CY	18	300 <sup>-</sup>	5,400 <sup>-</sup>
19	190106	Roadway Excavation (Type Z-3) (Aerially Deposited Lead)	CY	12	970 <sup>-</sup>	11,640 <sup>-</sup>
20	190163	Roadway Excavation (Type R-1) (Aerially Deposited Lead)	CY	2	300 <sup>-</sup>	600 <sup>-</sup>
21F	192003	Structure Excavation (Bridge)	CY	97	225 <sup>-</sup>	21,825 <sup>-</sup>
22	192011	Structure Excavation (Type R-1) (Aerially Deposited Lead)	CY	358	300 <sup>-</sup>	107,400 <sup>-</sup>
23F	192037	Structure Excavation (Retaining Wall)	CY	1700	225 <sup>-</sup>	382,500 <sup>-</sup>
24	192054	Structure Excavation (Type Z-3) (Aerially Deposited Lead)	CY	49	970 <sup>-</sup>	47,530 <sup>-</sup>
25F	193003	Structure Backfill (Bridge)	CY	73	290 <sup>-</sup>	21,170 <sup>-</sup>
26F	193013	Structure Backfill (Retaining Wall)	CY	2316	220 <sup>-</sup>	509,520 <sup>-</sup>
27F	193031	Pervious Backfill Material (Retaining Wall)	CY	177	190 <sup>-</sup>	33,630 <sup>-</sup>
28	210300	Hydromulch	SF	9939	0 <sup>14</sup>	1,391 <sup>46</sup>
29	210430	Hydroseed	SF	9939	0 <sup>82</sup>	8,746 <sup>32</sup>
30	210610	Compost (CY)	CY	17	491 <sup>-</sup>	8,347 <sup>-</sup>

Item No.	Item Code	Item Description	Unit	Estimated Quantity	Unit Price	Extension
31	260203	Class 2 Aggregate Base (CY)	CY	243	240 <sup>-</sup>	58,320 <sup>-</sup>
32	390132	Hot Mix Asphalt (Type A)	TON	50	400 <sup>-</sup>	20,000 <sup>-</sup>
33	394073	Place Hot Mix Asphalt Dike (Type A)	LF	5	150 <sup>-</sup>	750 <sup>-</sup>
34F	510053	Structural Concrete, Bridge	CY	27	1800 <sup>-</sup>	48,600 <sup>-</sup>
35F	510054	Structural Concrete, Bridge (Polymer Fiber)	CY	17	1075 <sup>-</sup>	18,275 <sup>-</sup>
36F	510060	Structural Concrete, Retaining Wall	CY	1136	1440 <sup>-</sup>	1,635,840 <sup>-</sup>
37F	510094	Structural Concrete, Drainage Inlet	CY	2	1500 <sup>-</sup>	3000 <sup>-</sup>
38F	510502	Minor Concrete (Minor Structure)	CY	8	4500 <sup>-</sup>	36,000 <sup>-</sup>
39F	511055	Concrete Surface Texture	SF	4554	22 <sup>-</sup>	100,188 <sup>-</sup>
40F	520102	Bar Reinforcing Steel (Bridge)	LB	5689	5 <sup>58</sup>	31,289 <sup>52</sup>
41F	520103	Bar Reinforcing Steel (Retaining Wall)	LB	92337	2 <sup>-</sup>	184,674 <sup>-</sup>
42	550203A	Furnish Prefabricated Bridge	LS	1	200,000 <sup>-</sup>	200,000 <sup>-</sup>
43	550204A	Install Prefabricated Bridge	LS	1	50,000 <sup>-</sup>	50,000 <sup>-</sup>
44	600029	Remove Asphalt Concrete Surfacing	SF	30	45 <sup>-</sup>	1,350 <sup>-</sup>
45	600093A	Remove Tree	EA	36	1750 <sup>-</sup>	63,000 <sup>-</sup>
46	610108	18" Alternative Pipe Culvert	LF	89	225 <sup>-</sup>	20,025 <sup>-</sup>
47	665007	10" Corrugated Metal Pipe	LF	3	300 <sup>-</sup>	900 <sup>-</sup>
48	680287	3" Slotted Plastic Pipe Underdrain	LF	240	30 <sup>-</sup>	7,200 <sup>-</sup>
49	680405	8" Perforated Steel Pipe Underdrain (.064" Thick)	LF	322	70 <sup>-</sup>	22,540 <sup>-</sup>
50	680604	8" Non-Perforated Steel Pipe Underdrain	LF	27	35 <sup>-</sup>	945 <sup>-</sup>
51	681132	Geocomposite Drain	SF	1099	5 <sup>-</sup>	5495 <sup>-</sup>
52	705311	18" Alternative Flared End Section	EA	2	3000 <sup>-</sup>	6000 <sup>-</sup>
53	709522	Drainage Inlet Depression	EA	1	3000 <sup>-</sup>	3000 <sup>-</sup>
54	710136	Remove 12" CMP Drainage Pipe (LF)	LF	44	60 <sup>-</sup>	2,640 <sup>-</sup>
55	710152	Remove Headwall	EA	2	1000 <sup>-</sup>	2000 <sup>-</sup>
56	710196	Adjust Drainage Inlet	EA	1	6000 <sup>-</sup>	6000 <sup>-</sup>
57	723080	Rock Slope Protection (60 lb, Class II, Method B) (CY)	CY	6	400 <sup>-</sup>	2,400 <sup>-</sup>
58	729011	Rock Slope Protection Fabric (Class 8)	SY	8	25 <sup>-</sup>	200 <sup>-</sup>
59	730020	Minor Concrete (Curb)(CY)	CY	11	750 <sup>-</sup>	8250 <sup>-</sup>
60	731511A	Minor Concrete (Cobblestone Paving)	CY	3	4500 <sup>-</sup>	13,500 <sup>-</sup>
61	731516A	Minor Concrete (Bike Ramp)	CY	2	750 <sup>-</sup>	1,500 <sup>-</sup>
62	731521	Minor Concrete (Sidewalk)	CY	31	1000 <sup>-</sup>	31,000 <sup>-</sup>
63	731521A	Minor Concrete (Pathway)	CY	140	1400 <sup>-</sup>	196,000 <sup>-</sup>

Item No.	Item Code	Item Description	Unit	Estimated Quantity	Unit Price	Extension
64	731780	Remove Concrete Sidewalk (SQYD)	SY	94	100 <sup>-</sup>	9,400 <sup>-</sup>
65F	750001	Miscellaneous Iron and Steel	LB	326	5 <sup>-</sup>	1,630 <sup>-</sup>
66F	750501	Miscellaneous Metal (Bridge)	LB	442	22 <sup>-</sup>	9,724 <sup>-</sup>
67	780440	Prepare and Stain Concrete	SF	5407	31 <sup>50</sup>	170,320 <sup>50</sup>
68F	780460	Anti-Graffiti Coating	SF	4964	17 <sup>-</sup>	84,388 <sup>-</sup>
69	800320A	Chain Link Fence - Black Vinyl Clad (Type CL-4)	LF	509	90 <sup>-</sup>	45,810 <sup>-</sup>
70	800360A	Chain Link Fence - Black Vinyl Clad (Type CL-6)	LF	172	109 <sup>-</sup>	18,748 <sup>-</sup>
71	800360B	Chain Link Fence - Standard (Type CL-6)	LF	410	63 <sup>30</sup>	25,953 <sup>-</sup>
72	803020	Remove Fence	LF	691	6 <sup>-</sup>	4,146 <sup>-</sup>
73	803060A	Remove Bollard	EA	2	200 <sup>-</sup>	400 <sup>-</sup>
74	800103	Temporary Fence (Type CL-6)	LS	1	2500 <sup>-</sup>	2,500 <sup>-</sup>
75	800103A	Temporary Tree Protection Fence	LS	1	7700 <sup>-</sup>	7,700 <sup>-</sup>
76	820250	Remove Roadside Sign	EA	1	300 <sup>-</sup>	300 <sup>-</sup>
77	820630	Relocate Roadside Sign (Wood Post)	EA	1	600 <sup>-</sup>	600 <sup>-</sup>
78	820840	Roadside Sign - One Post	EA	19	650 <sup>-</sup>	12,350 <sup>-</sup>
79F	833020	Chain Link Railing (Mod)	LF	287	90 <sup>-</sup>	25,830 <sup>-</sup>
80F	833085	Pipe Handrailing	LF	570	521 <sup>-</sup>	296,970 <sup>-</sup>
81F	833085A	Pipe Handrailing (Chain Link Railing Mounted)	LF	135	207 <sup>-</sup>	27,945 <sup>-</sup>
82F	833085B	Pipe Handrailing (Side Wall Mounted)	LF	199	221 <sup>-</sup>	43,979 <sup>-</sup>
83F	833085C	Pipe Handrailing (Top Wall Mounted)	LF	132	321 <sup>-</sup>	42,372 <sup>-</sup>
84F	833085D	Pipe Handrailing (Pedestrian Guardrail Mounted)	LF	414	319 <sup>-</sup>	132,066 <sup>-</sup>
85F	833085E	Pipe Handrailing (Curb Mounted)	LF	78	323 <sup>-</sup>	25,194 <sup>-</sup>
86F	833088A	Pedestrian Guardrail	LF	407	589 <sup>-</sup>	239,723 <sup>-</sup>
87	840501A	4" Thermoplastic Traffic Stripe	LF	592	3 <sup>-</sup>	1,776 <sup>-</sup>
88	840505	6" Thermoplastic Traffic Stripe	LF	33	6 <sup>-</sup>	198 <sup>-</sup>
89	840515	Thermoplastic Pavement Marking	SF	395	13 <sup>-</sup>	5,135 <sup>-</sup>
90	840501B	4" Thermoplastic Traffic Stripe (Broken)	LF	599	4 <sup>-</sup>	2,396 <sup>-</sup>
91	870200A	Relocate Lighting Standard	LS	1	29600 <sup>-</sup>	29,600 <sup>-</sup>
92	204035A	Allocated Tree Replacement Cost	LS	1	3500 <sup>-</sup>	3,500 <sup>-</sup>
93	999990	Mobilization	LS	1	650,500 <sup>-</sup>	650,500 <sup>-</sup>

**BASE BID TOTAL (Items #1-#93) \$** 6,529,395<sup>78</sup>

**B. BID FORM**

The quantities shown on this bid form are approximate only, being given as a basis for the comparison of bids, and the Owner does not, expressly or by implication agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount or class or portion of the work as may be deemed necessary or advisable by the Director of Parks & Public Works. This bid will be rejected if bidder fails to provide a bid for each item. The Owner reserves the right to make a comparison of bids based on the base bid plus any additive alternative bid items considered in the order presented.

**C. RESERVATION**

It is understood that the Owner reserves the right to reject this bid, but that this bid shall not be withdrawn for a period of 120 days from the date prescribed for its opening.

**D. SUBCONTRACTORS**

Attached hereto and incorporated herein is the complete and entire list of subcontractors to be employed by the undersigned in the performance of the work.

**E. NOTICE**

If written notice of the acceptance of this bid is mailed or delivered personally to the undersigned within 120 days after the date set for the opening of this bid, or at any time thereafter before it is withdrawn, the undersigned bidder shall execute and deliver the Contract Documents to Owner in accordance with this bid as accepted, and will also furnish and deliver to Owner the Performance Bond, Labor and Material Bond as specified, and proof of insurance coverage as required in Part I, under "Construction Agreement," of these Specifications, all within 10 calendar days after personal delivery or after deposit in the mails, of the notification of acceptance of this bid. The above mentioned bonds shall be satisfactory to, and on the forms approved by Owner.

If this proposal shall be accepted and the undersigned shall fail to contract, and to give the Contractor's Bond For Faithful Performance and the Contractor's Payment Bond required by the Specifications and contract by law, and to provide all insurance as required by said contract, within 10 calendar days after the bidder has received notice from the Town of Los Gatos, the Town may, at its option, determine that the bidder has abandoned his/her contract, and thereupon this proposal and the acceptance thereof shall be null and void, and the forfeiture of such security accompanying this proposal shall operate and the same shall be the property of the Town of Los Gatos.

In accordance with Public Contracts Code Section 10232, the Contractor, hereby states under penalty of perjury, that no more than one final unappealable finding on contempt of court by a federal court has been issued against the Contractor within the immediately preceding two year period because of the Contractor's failure to comply with an or of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board. Signing this Proposal on the signature portion thereof shall constitute signature of this Statement.

Notice of acceptance or request for additional information may be addressed to the undersigned at the address set forth below.

**F. DISCLOSURE**

The undersigned declares that this bid is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation; that the bid is genuine and not collusive or sham; that the undersigned has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid and has not directly or indirectly colluded or agreed with any bidder or anyone else to put in a sham bid or to refrain from bidding; that the undersigned has not directly or indirectly sought by agreement, communication or conference with anyone to fix his/her bid price or the bid price of any other bidder, or to fix any overhead, profit or cost element of such bid price or of that of any other bidder, or to secure any advantage against the Town of Los Gatos or anyone interested in the proposed Contract; that the only persons or parties interested in this bid as principals are those named herein; that all statements contained in this bid are true; that the undersigned has not directly or indirectly, submitted his/her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any other persons, partnership, corporation, or association except to such person or persons as have a direct financial interest in bidder's general business; and that the undersigned has not accepted any bid from any subcontractor or vendor through any bid depository, the Bylaws, Rules or Regulations of which prohibit or prevent the undersigned from considering any bid from any subcontractor or vendor, which is not processed through said bid depository, or which may prevent any subcontractor or vendor from bidding to any general contractor who does not use the facilities of or accept bids from or through such bid depository; and that the undersigned has not paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

#### G. WORDS AND PHRASES

Wherever in this bid an amount is stated in both words and figures, in case of discrepancy between words and figures, the words shall prevail; if all or any portion of the proposal is required to be given in unit prices and totals and a discrepancy exists between any such unit prices and totals so given, the unit prices shall prevail.

#### H. CERTIFICATION

The undersigned certifies that the Contract Documents have been thoroughly read and understood and that, except as may be specifically noted and contained in addenda, there are no discrepancies or misunderstandings as to the meaning, purpose or intent of any provision in the Contract Documents or as to the interpretation of the same. The undersigned hereby incorporates by reference, the same as though set out in full, all provisions of the Notice to Contractors and Information for Bidders published by Owner and pertaining to the work described in this bid.

Accompanying this bid is Bidder's Bond [insert words "cash", "cashier's check", "certified check", or "bidder's bond", as the case may be], in amount equal to at least 10% of total of the bid, naming the Owner as Oblige or Payee, as applicable.

The names of all persons interested in the foregoing bid as principals are as follows:

<p><b>IMPORTANT NOTICE:</b> If bidder or other interested person is a corporation, give legal name of corporation, state where incorporated and names of the president and secretary thereof; if a partnership, give name of the firm, also names of all individual co-partners composing firm; if bidder or other interested person is an individual, give first and last names in full.</p>
---

## I. LICENSING

The undersigned is licensed in accordance with State Law providing for the registration of Contractors, License No. 89. [A class "A" General Contractor's License is required.] The License expiration date is 5-31-2023. No payment for work or material under this Contract will be made by Owner unless and until the Owner receives verification from the State Registrar of Contractors that the records of the Contractor's State License Board indicate the successful bidder was properly licensed at the time the Contract was awarded.

Any bidder not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, an appropriate disciplinary action by the Contractor's State License Board.

In addition, failure of the bidder to obtain and maintain proper and adequate licensing for the Contract shall constitute a failure to execute or perform this Contract and shall result in the forfeiture of the security of the bidder. The representations made herein are under penalty of perjury.

**NOTE:** If bidder is a corporation, the legal name of the corporation shall be set forth below, together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation; if bidder is a co-partnership, the name of the firm shall be set forth below, together with the signatures of the partner or partners authorized to sign contracts in behalf of the co-partnership; and if bidder is an individual, his/her signature shall be placed below.

## J. ADDITIONAL DOCUMENTS

Included in this notarized proposal are the following documents, completely filled in by the bidder and the same are incorporated herein by reference:

1. Bid Schedule of Quantities/Unit Costs/Extended Prices
2. Exhibit 12-B (DBE and Non-DBE), Part I and II-Bidder's List of Subcontractors
3. Equal Employment Opportunity Certification
4. Public Contract Code Section 10285.1 Statement
5. Public Contract Code Section 10162 Questionnaire
6. Public Contract Code Section 10232 Statement
7. Non-Collusion Affidavit
8. Certification Regarding Debarment
9. Debarment and Suspension Certification, Title 49, Code of Federal Regulations, Part 29
10. Non-lobbying Certification for Federal Aid Contracts
11. Disclosure of Lobbying Activities
12. Exhibit 15-G Construction Contract DBE Commitment \*
13. Exhibit 15H DBE Information – Good Faith Efforts \*
14. Bidder's Bond

\*Optional at time of bid. If not provided with bid, remove from Bid Proposal Forms before submitting bid and deliver forms to Town no later than 4 pm on the 5<sup>th</sup> day after bid opening.

I declare under penalty of perjury that I have the authority to execute this bid form and that the foregoing is true and correct. Furthermore, by my signature on this Bid Proposal I certify, under penalty of perjury under the laws of the State of California, that the questionnaire and statements of California Public Contract Code Sections 10162, 10232 and 10285.1 are true and correct and that the bidder has complied with the requirements of Section 8103 of the Fair Employment and Housing Commission Regulations (Chapter 5, Title 2 of the California Administrative Code). By my signature on this Bid Proposal I further certify, under penalty of perjury under the laws of the State of California and the United States of America, that the statements made in the Noncollusion Affidavit required by Title 23 United States Code, Section 112 and Public Contract Code Section 7106; and the Title 49 Code of Federal Regulations, Part 29 Debarment and Suspension Certification are true and correct.

BIDDER: Granite Construction Company  
(FIRM NAME)

SIGNATURE:  PRINTED NAME: John Boies

TITLE: Chief Estimator DATE: 4-6-23

ADDRESS / TELEPHONE / E-MAIL: 715 Comstock St. Santa Clara, CA 95054

408-327-7000 john.boies@gcinc.com and teresa.rothney@gcinc.com

DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION NUMBER: 1000000085

FEDERAL I.D. NO.: 94-0519552

TOWN BUSINESS LICENSE NO: will apply if awarded

STATE CONTRACTOR'S LICENSE NO: 89 EXP. DATE 5-31-23

CLASSIFICATION: A,B

**NOTE--Signature(s) of bidder(s) must be notarized.**

**NOTE: If any addenda to the contract documents are issued for this project, this Bid Proposal signature page and all associated bid forms must be signed and dated no earlier than the date the last addenda is issued and acknowledged.**





# NOTARY ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

State of California


County of Santa Clara )

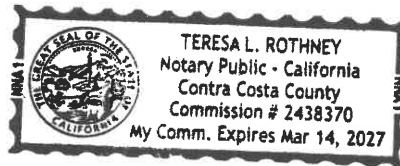
On 4-6-23 before me, Teresa Rothney, Public Notary personally  
(insert name and title of officer)

appeared John Boies, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)  
Notary Public



**Exhibit 12-B Bidder's List of Subcontractor (DBE and Non-DBE) Part 1**

As of March 1, 2015 Contractors (and sub-contractors) wishing to bid on public works contracts shall be registered with the State Division of Industrial Relations and certified to bid on Public Works contracts. Please register at: <https://www.dir.ca.gov/Public-Works/Contractor-Registration.html>

In accordance with Title 49, Section 26.11 of the Code of Federal Regulations, and Section 4104 of the Public Contract Code of the State of California, as amended, the following information is required for each sub-contractor who will perform work amounting to more than one half of one percent (0.5%) of the Total Base Bid or \$10,000 (whichever is greater). **Photocopy this form for additional firms** Federal Project Number: CML-5067 (021)

Subcontractor Name and Location	Line Item & Description	Subcontract Amount	Percentage of Bid Item Sub-contracted	Contractor License Number	DBE (Y/N)	DBE Cert Number	Annual Gross Receipts
				DIR Reg Number			
Name: <i>Reliable Tree Experts</i> City, State: <i>Berkeley, CA</i>	<i>45 - Tree Removal</i>	<i>63,000</i>	<i>100%</i>	<i>1083768</i>	<i>N</i>		<input type="checkbox"/> <\$1 million
<i>1000844691</i>				<input checked="" type="checkbox"/> <\$5 million			
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: <i>2</i> yrs.
Name: <i>Associated Rebar</i> City, State: <i>Salinas, CA</i>	<i>40 - Reinforcement steel Bridge (P) 41 - Reinforcement steel Wall (P)</i>	<i>187,593</i>	<i>40-95% 41-85%</i>	<i>574321</i>	<i>N</i>		<input type="checkbox"/> <\$1 million
				<i>1000007289</i>			<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input checked="" type="checkbox"/> <\$15 million
							Age of Firm: <i>34</i> yrs.
Name: <i>IMRAE</i> City, State: <i>Morricho, CA</i>	<i>67 - Concrete Stain 68 - Anti Graffiti Coating 93 - MOB</i>	<i>263,711</i>	<i>67-100% 68-99% 93-1.5%</i>	<i>1009316</i>	<i>Y</i>	<i>42556</i>	<input type="checkbox"/> <\$1 million
				<i>1000035256</i>			<input checked="" type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: <i>16</i> yrs.
Name: <i>Golden Bay Fence</i> City, State: <i>Stockton, CA</i>	<i>69 - CL Fence - 4 70 - CL Fence - 6 71 - Temp. Fence J.B 72 - Remove Fences</i>		<i>69 - 100% 70 - 100% 71 - 100%</i>	<i>664905</i>	<i>Y</i>	<i>9140</i>	<input type="checkbox"/> <\$1 million
				<i>1000005720</i>			<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input checked="" type="checkbox"/> <\$15 million
							Age of Firm: <i>34</i> yrs.
Name: <i>SAME AS ABOVE</i> City, State: <i>SAME AS ABOVE</i>	<i>74 - Temp. CL Gate J.B 79 - CL Railing 80 - Pipe Handrailing 81 - Hand Railing CL Mounted</i>	<i>924,590</i>	<i>79 - 100% 80 - 100% 81 - 100%</i>				<input type="checkbox"/> <\$1 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.
Name: <i>SAME AS ABOVE</i> City, State: <i>SAME AS ABOVE</i>	<i>82 - Handrail side Wall 83 - TW Mounted 84 - Handrail Ped Guardrail 85 - Handrail curb Mounted 86 - Ped Guardrail</i>		<i>82 - 100% 83 - 100% 84 - 100% 85 - 100% 86 - 100%</i>				<input type="checkbox"/> <\$1 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.

Distribution: 1) Original-Local Agency File 2) Copy-DLAE w/ Award Package

Project #18-832-4505 LGCT to Hwy 9 Trailhead Connector Part I - Page 14  
Federal Project No. CML-5067(021)

Bid Project Specifications  
ADDENDUM NO. 2

**Exhibit 12-B Bidder's List of Subcontractor (DBE and Non-DBE) Part 1**

As of March 1, 2015 Contractors (and sub-contractors) wishing to bid on public works contracts shall be registered with the State Division of Industrial Relations and certified to bid on Public Works contracts. Please register at: <https://www.dir.ca.gov/Public-Works/Contractor-Registration.html>

In accordance with Title 49, Section 26.11 of the Code of Federal Regulations, and Section 4104 of the Public Contract Code of the State of California, as amended, the following information is required for each sub-contractor who will perform work amounting to more than one half of one percent (0.5%) of the Total Base Bid or \$10,000 (whichever is greater). **Photocopy this form for additional firms** Federal Project Number: CML-5067 (021)

Subcontractor Name and Location	Line Item & Description	Subcontract Amount	Percentage of Bid Item Sub-contracted	Contractor License Number	DBE (Y/N)	DBE Cert Number	Annual Gross Receipts
				DIR Reg Number			
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.

Distribution: 1) Original-Local Agency File 2) Copy-DLAE w/ Award Package

Project #18-832-4505 LGCT to Hwy 9 Trailhead Connector Part I – Page 14  
Federal Project No. CML-5067(021)

Bid Project Specifications  
ADDENDUM NO. 2

**Exhibit 12-B Bidder's List of Subcontractor (DBE and Non-DBE) Part 1**

As of March 1, 2015 Contractors (and sub-contractors) wishing to bid on public works contracts shall be registered with the State Division of Industrial Relations and certified to bid on Public Works contracts. Please register at: <https://www.dir.ca.gov/Public-Works/Contractor-Registration.html>

In accordance with Title 49, Section 26.11 of the Code of Federal Regulations, and Section 4104 of the Public Contract Code of the State of California, as amended, the following information is required for each sub-contractor who will perform work amounting to more than one half of one percent (0.5%) of the Total Base Bid or \$10,000 (whichever is greater). **Photocopy this form for additional firms** Federal Project Number: **CML-5067 (021)**

Subcontractor Name and Location	Line Item & Description	Subcontract Amount	Percentage of Bid Item Sub-contracted	Contractor License Number DIR Reg Number	DBE (Y/N)	DBE Cert Number	Annual Gross Receipts
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.

Distribution: 1) Original-Local Agency File 2) Copy-DLAE w/ Award Package

Project #18-832-4505 LGCT to Hwy 9 Trailhead Connector Part I – Page 14  
Federal Project No. CML-5067(021)

Bid Project Specifications  
ADDENDUM NO. 2

**Exhibit 12-B Bidder's List of Subcontractor (DBE and Non-DBE) Part 1**

As of March 1, 2015 Contractors (and sub-contractors) wishing to bid on public works contracts shall be registered with the State Division of Industrial Relations and certified to bid on Public Works contracts. Please register at: <https://www.dir.ca.gov/Public-Works/Contractor-Registration.html>

In accordance with Title 49, Section 26.11 of the Code of Federal Regulations, and Section 4104 of the Public Contract Code of the State of California, as amended, the following information is required for each sub-contractor who will perform work amounting to more than one half of one percent (0.5%) of the Total Base Bid or \$10,000 (whichever is greater). **Photocopy this form for additional firms** Federal Project Number: **CML-5067 (021)**

Subcontractor Name and Location	Line Item & Description	Subcontract Amount	Percentage of Bid Item Sub-contracted	Contractor License Number DIR Reg Number	DBE (Y/N)	DBE Cert Number	Annual Gross Receipts
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ___ yrs.

Distribution: 1) Original-Local Agency File 2) Copy-DLAE w/ Award Package

Project #18-832-4505 LGCT to Hwy 9 Trailhead Connector Part I – Page 14  
Federal Project No. CML-5067(021)

Bid Project Specifications  
**ADDENDUM NO. 2**

**Exhibit 12-B Bidder's List of Subcontractor (DBE and Non-DBE) Part 2**

In accordance with Title 49, Section 26 of the Code of Federal Regulations, the Bidder shall list all subcontractor who provided a quote or bid but were not selected to participate as a subcontractor on this project. **Photocopy this form for additional firms.** Federal Project Number: \_\_\_\_\_

Subcontractor Name and Location	Line Item & Description	Subcontract Amount	Percentage of Bid Item Subcontracted	Contractor License Number	DBE (Y/N)	DBE Cert Number	Annual Gross Receipts
				DIR Reg Number			
Name: <b>Farwest</b>	<b>CAS + Traffic Control</b>			<b>523187</b>			<input type="checkbox"/> <\$1 million
City, State: <b>Lodi, CA</b>				<b>1000001571</b>			<input type="checkbox"/> <\$5 million
							<input checked="" type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: <b>34</b> yrs.
Name: <b>Green Growth</b>	<b>Erosion Control</b>			<b>662718</b>			<input type="checkbox"/> <\$1 million
City, State: <b>Pleasanton, CA</b>				<b>1000004803</b>			<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input checked="" type="checkbox"/> <\$15 million
							Age of Firm: <b>30</b> yrs.
Name: <b>Calco Fence</b>	<b>Fence</b>			<b>458341</b>			<input type="checkbox"/> <\$1 million
City, State: <b>Livermore CA</b>							<input type="checkbox"/> <\$5 million
							<input checked="" type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: <b>40</b> yrs.
Name: <b>St Francis</b>	<b>Electrical</b>			<b>1003811</b>			<input type="checkbox"/> <\$1 million
City, State: <b>San Leandro CA</b>				<b>1000022208</b>			<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input checked="" type="checkbox"/> <\$15 million
							Age of Firm: <b>77</b> yrs.
Name: <b>Chrisp</b>	<b>Striping</b>			<b>374600</b>			<input type="checkbox"/> <\$1 million
City, State: <b>Fremont CA</b>				<b>100000306</b>			<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input checked="" type="checkbox"/> <\$15 million
							Age of Firm: <b>43</b> yrs.
Name: <b>Cmc</b>	<b>Rebar</b>			<b>778010</b>			<input type="checkbox"/> <\$1 million
City, State: <b>Tracy, CA</b>				<b>100000298</b>			<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input checked="" type="checkbox"/> <\$15 million
							Age of Firm: <b>105</b> yrs.

Distribution: 1) Original-Local Agency File 2) Copy-DLAE w/ Award Package

**Exhibit 12-B Bidder's List of Subcontractor (DBE and Non-DBE) Part 2**

In accordance with Title 49, Section 26 of the Code of Federal Regulations, the Bidder shall list all subcontractor who provided a quote or bid but **were not selected** to participate as a subcontractor on this project. **Photocopy this form for additional firms.** Federal Project Number: \_\_\_\_\_

Subcontractor Name and Location	Line Item & Description	Subcontract Amount	Percentage of Bid Item Subcontracted	Contractor License Number	DBE (Y/N)	DBE Cert Number	Annual Gross Receipts
				DIR Reg Number			
Name: <u>Camblin</u>	<u>Rebar</u>			<u>218839</u>			<input type="checkbox"/> <\$1 million
City, State: <u>Rocklin CA</u>				<u>1000003852</u>			<input type="checkbox"/> <\$5 million
Name: <u>Transpacific</u>	<u>Rebar</u>			<u>1069288</u>			<input type="checkbox"/> <\$10 million
City, State: <u>San Francisco CA</u>				<u>1600693082</u>			<input checked="" type="checkbox"/> <\$15 million
Name: <u>Lonestar</u>	<u>Erosion Control</u>			<u>463280</u>			Age of Firm: <u>60</u> yrs.
City, State: <u>San Martin, CA</u>				<u>1000002345</u>			<input type="checkbox"/> <\$1 million
Name: <u>Jeddo</u>	<u>Paint Grabbitt</u>			<u>364702</u>			<input type="checkbox"/> <\$5 million
City, State: <u>Vallejo CA</u>				<u>1000001665</u>			<input type="checkbox"/> <\$10 million
Name:							<input checked="" type="checkbox"/> <\$15 million
City, State:							Age of Firm: <u>45</u> yrs.
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
Name:							<input type="checkbox"/> <\$10 million
City, State:							<input type="checkbox"/> <\$15 million
Name:							Age of Firm: _____ yrs.
City, State:							<input type="checkbox"/> <\$1 million
Name:							<input type="checkbox"/> <\$5 million
City, State:							<input type="checkbox"/> <\$10 million
Name:							<input type="checkbox"/> <\$15 million
City, State:							Age of Firm: _____ yrs.

Distribution: 1) Original-Local Agency File 2) Copy-DLAE w/ Award Package

# EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The bidder Granite Construction Company,  
proposed subcontractor \_\_\_\_\_, hereby  
certifies that he/she has , has not \_\_\_\_\_, participated in a previous contract or subcontract  
subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or  
11246, and that, where required, he/she has filed with the Joint Reporting Committee, the  
Director of the Office of Federal Contract Compliance, a Federal Government contracting or  
administering agency, or the former President's Committee on Equal Employment Opportunity,  
all reports due under the applicable filing requirements.

**Note:**

The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.         

---



## PUBLIC CONTRACT CODE

### **PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT**

In conformance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the bidder hereby declares under penalty of perjury under the laws of the State of California that the bidder

has \_\_\_\_\_, has not

been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

**Note:**

**The bidder must place a checkmark after "has" or "has not" in one of the blank spaces provided. The above Statement is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Statement. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.**

## PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE

In conformance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the bidder, any officer of the bidder, or any employee of the bidder who has a proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes \_\_\_\_\_ No

If the answer is yes, explain the circumstances in the following space.

## PUBLIC CONTRACT CODE 10232 STATEMENT

In conformance with Public Contract Code Section 10232, the Contractor, hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

**Note:**

**The above Statements and Questionnaire are part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Statement and Questionnaire. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.**

**NONCOLLUSION AFFIDAVIT**  
(Title 23 United States Code Section 112 and  
Public Contract Code Section 7106)

To the TOWN OF LOS GATOS PARKS AND PUBLIC WORKS DEPARTMENT.

In conformance with Title 23 United States Code Section 112 and Public Contract Code 7106 the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Note: The above Non-collusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Non-collusion Affidavit.  
Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

**CERTIFICATION REGARDING DEBARMENT**

To the TOWN OF LOS GATOS PARKS AND PUBLIC WORKS DEPARTMENT

By submitting its bid, the bidder certifies in accordance with California Public Contract Code Section 6109 that neither the bidder nor any subcontractor included on the list of proposed subcontractors submitted with the bid is ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109, contractors and subcontractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform as a subcontractor on public works projects.

Note: The above Certification Regarding Debarment is part of the Bid Form. Signing the Bid Form on the signature portion thereof shall also constitute signature of this Certification Regarding Debarment.

---

# **DEBARMENT AND SUSPENSION CERTIFICATION**

## **Title 49, Code of Federal Regulations, Part 29**

The bidder, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Out of an abundance of caution, Granite Construction Company ("GCC") makes the following disclosure to avoid any potential argument of GCC being nonresponsive. On August 25, 2022, the Securities and Exchange Commission ("SEC") filed a Complaint against Granite Construction Incorporated (GCC's parent company) alleging, among other things, that Granite Construction Incorporated, by and through the acts of a former employee, committed violations of Section 10(b) and Section 13 of the Exchange Act, as well as Section 17 of the Securities Act. Granite Construction Incorporated entered into a Consent Judgment with the SEC on September 9, 2022, which resolved all allegations against Granite Construction Incorporated. GCC believes the precise language of the bid certification does not directly apply to the Consent Judgement, because "a civil judgement" was not "rendered against" Granite Construction Incorporated, but instead was a settlement between the parties to the lawsuit which was entered by the Court. Moreover, the Consent Judgement had no findings of facts, and in particular, no finding of wrongdoing. Instead, Granite Construction Incorporated chose to resolve the allegations through a Consent Judgment to avoid the burden and uncertainty of litigation while neither admitting nor denying the allegations advanced by the SEC.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

### **Notes:**

**Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.**

## NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in conformance with its instructions.

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

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

**EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES**  
 COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

<p><b>1. Type of Federal Action:</b></p> <p><input type="checkbox"/> a. contract  <input type="checkbox"/> b. grant  <input type="checkbox"/> c. cooperative agreement  <input type="checkbox"/> d. loan  <input type="checkbox"/> e. loan guarantee  <input type="checkbox"/> f. loan insurance</p>	<p><b>2. Status of Federal Action:</b></p> <p><input type="checkbox"/> a. bid/offer/application  <input type="checkbox"/> b. initial award  <input type="checkbox"/> c. post-award</p>	<p><b>3. Report Type:</b></p> <p><input type="checkbox"/> a. initial  <input type="checkbox"/> b. material change</p> <p><b>For Material Change Only:</b>                  year _____ quarter _____                  date of last report _____</p>
<p><b>4. Name and Address of Reporting Entity</b></p> <p><input type="checkbox"/> Prime                      <input type="checkbox"/> Subawardee                  Tier _____, if known</p> <p>Congressional District, if known _____</p>	<p><b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b></p> <p>Congressional District, if known _____</p>	
<p><b>6. Federal Department/Agency:</b></p>	<p><b>7. Federal Program Name/Description:</b></p> <p>CFDA Number, if applicable _____</p>	
<p><b>8. Federal Action Number, if known:</b></p>	<p><b>9. Award Amount, if known:</b></p>	
<p><b>10. Name and Address of Lobby Entity</b>                  (If individual, last name, first name, MI)</p>	<p><b>11. Individuals Performing Services</b>                  (including address if different from No. 10)                  (last name, first name, MI)</p>	
(attach Continuation Sheet(s) if necessary)		
<p><b>12. Amount of Payment (check all that apply)</b></p> <p>\$ _____    <input type="checkbox"/> actual    <input type="checkbox"/> planned</p>	<p><b>14. Type of Payment (check all that apply)</b></p> <p><input type="checkbox"/> a. retainer  <input type="checkbox"/> b. one-time fee  <input type="checkbox"/> c. commission  <input type="checkbox"/> d. contingent fee  <input type="checkbox"/> e. deferred  <input type="checkbox"/> f. other, specify _____</p>	
<p><b>13. Form of Payment (check all that apply):</b></p> <p><input type="checkbox"/> a. cash  <input type="checkbox"/> b. in-kind; specify: nature _____                  Value _____</p>		
<p><b>15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:</b></p> <p align="center">(attach Continuation Sheet(s) if necessary)</p>		
<p><b>16. Continuation Sheet(s) attached:</b>    <input type="checkbox"/> Yes    <input type="checkbox"/> No</p>		
<p><b>17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b></p>		
		<p align="center">N/A</p> <p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p>
Authorized for Local Reproduction Standard Form - LLL		

**Federal Use Only:**

Standard Form LLL Rev. 04-28-06

**Distribution:** Orig- Local Agency Project Files  
 Project #18-832-4505 LGCT to Hwy 9 Trailhead Connector    Part I – Page 23  
 Federal Project No. CML-5067(021)

Bid Project Specifications  
**ADDENDUM NO. 2**

## INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to: subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
11. Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
12. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
13. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Check all boxes that apply. If other, specify nature.
15. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
16. Check whether or not a continuation sheet(s) is attached.
17. The certifying official shall sign and date the form, and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04



# BIDDER'S BOND

## KNOW ALL PERSONS BY THESE PRESENTS:

That we, Granite Construction Company as Principal, and Travelers Casualty and Surety Company of America as Surety, are held and firmly bound unto the Town of Los Gatos, a municipal corporation of the State of California (hereinafter called "Town") in the penal sum of 10% of the total aggregate amount of the bid of the Principal above named, submitted by said Principal to the Town for the Project listed below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. In no case shall the liability of the Surety hereunder exceed the sum of Ten Percent (10%) of Bid Amount (\$ 10% of Bid Amount) dollars.

TLG Project #18-832-4505- Federal Project No. CML 5067(021)  
Los Gatos Creek Trail to Highway 9 Trailhead Connector Project

The condition of this obligation is such that a bid to the Town for this project, for which bids are to be opened on 4-6-23, at **2:00 p.m.**, has been submitted by Principal to Town:

**BID TOTAL from BID SCHEDULE:** 6,529,395<sup>78</sup>

The quantities shown on the bid form are approximate only, being given as a basis for the comparison of bids, and the Owner does not, expressly or by implication agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount or class or portion of the work as may be deemed necessary or advisable by the Director of Parks & Public Works.

NOW THEREFORE, if the Principal is awarded the Contract and within the time and manner required under the Specifications, after the prescribed forms are presented to the Principal for signature, enters into a written contract, in the prescribed form, in accordance with the bid, and files 2 bonds with the Town, to guarantee faithful performance of the Contract and to guarantee payment for labor and materials as provided by law as well as files insurance certificates and equal employment opportunity documentation required under the bid, then this obligation shall be null and void; otherwise, it shall remain in full force.

In the event suit is brought upon said bond by Town, and judgment is recovered, the Surety shall pay all costs incurred by Town in such suit, including a reasonable attorney's fee to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 31st day of  
March, 2023.

**PRINCIPAL:**

Granite Construction Company



*[Handwritten signature]*

John Boies, Chief Estimator

(Seal) (Principal)

715 Comstock St

(Address)

Santa Clara, CA 95054

(City, State, Zip)

408-327-7000

(Phone Number)

**SURETY:**

Travelers Casualty and Surety Company of America

(Seal)

*[Handwritten signature]*

(Seal)

Isabel Barron, Attorney-in-Fact

(Seal) (Principal)

1 Tower Square

(Address)

Hartford, CT 06183

(City, State, Zip)

(860) 277-8170

(Phone Number)



NOTE: Attach Notary Acknowledgment for signatures of those executing for **PRINCIPAL** (owner) and **SURETY**.

**END BID PROPOSAL FORMS**

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Santa Clara

On 4-6-23 before me, Teresa Rothney, Notary Public  
(insert name and title of the officer)

personally appeared John Boies,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

## ACKNOWLEDGMENT

State of California  
County of Santa Cruz )

On March 31, 2023 before me, Mariella Rubio, Notary Public  
(insert name and title of the officer)

personally appeared Isabel Barron,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)  
Mariella Rubio, Notary Public





**Travelers Casualty and Surety Company of America  
Travelers Casualty and Surety Company  
St. Paul Fire and Marine Insurance Company**

**POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS:** That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Isabel Barron** of **WATSONVILLE, California**, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**IN WITNESS WHEREOF**, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **21st day of April, 2021**.



State of Connecticut

City of Hartford ss.

By:   
Robert L. Raney, Senior Vice President

On this the **21st day of April, 2021**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

**IN WITNESS WHEREOF**, I hereunto set my hand and official seal.

My Commission expires the **30th day of June, 2026**



  
Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is


**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is


**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **March 31, 2023**



  
Kevin E. Hughes, Assistant Secretary



**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.  
Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.**

**GRANITE CONSTRUCTION COMPANY**

**CERTIFICATE OF SECRETARY**

---

**RESOLVED**, that, effective January 1, 2023 through December 31, 2023, the individuals named on the attached Exhibit 1 are authorized to negotiate, execute and/or attest electronic and paper documents necessary for the conduct of the Company's affairs with respect to the submission and execution of construction project bids, bid proposals, bid addenda and all other bid-related documents prepared and submitted on behalf of the Company not to exceed \$75 million, relating to any and all domestic construction projects arising out of the Company's operations.

**RESOLVED FURTHER**, that, effective January 1, 2023 through December 31, 2023, the individuals named on the attached Exhibit 2 are authorized to negotiate, execute and/or attest electronic and paper documents necessary for the conduct of the Company's affairs with respect to the submission and execution of construction project bids, bid proposals, bid addenda and all other bid-related documents prepared and submitted on behalf of the Company in excess of \$75 million, relating to any and all domestic construction projects arising out of the Company's operations.

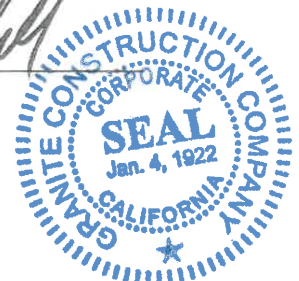
**RESOLVED FURTHER**, that, effective January 1, 2023 through December 31, 2023, the individuals named on the attached Exhibit 1 and Exhibit 2 are authorized to negotiate, execute and/or attest electronic and paper construction contract documents prepared and submitted on behalf of the Company relating to domestic construction projects arising out of the Company's operations.

**RESOLVED FURTHER**, that the authority provided for herein shall be in accordance with applicable policies, procedures, and limits of authority previously approved and the Granite Construction Incorporated Delegation of Authority and Policy then in effect.

I, M. Craig Hall, Secretary of GRANITE CONSTRUCTION COMPANY, a California corporation (the "Company"), do hereby certify that the following is a true and correct copy of resolutions duly adopted effective January 1, 2023 by a Unanimous Written Consent of the Board of Directors in accordance with the provisions of Article III, Section 9 of the Bylaws of the Company; that the Directors acting were duly and regularly elected; and that the resolutions adopted have not been repealed and are still in full force and effect:

Dated: January 1, 2023

  
M. Craig Hall



**EXHIBIT 1**

**AUTHORIZED SIGNERS**

**Granite Construction Company  
California Group  
Coastal Region  
Bay Area/Monterey Bay Area/North Coast Area**

**AUTHORIZED SIGNERS**

Brent Fogg, VP Coastal Region  
Chelsea M. Alameda, Regional Controller  
Justin Ingram Region/Division Project Executive  
Pennington B. Shortes, Regional Project Executive  
Steven C. Kaesler, Construction Manager III  
John Boies, Chief Estimator III  
Matthew J. Storm, Construction Manager  
Brian D. Hussar, Construction Manager  
Darren L. Hiatt, Construction Manager  
Patrick K. Amaris, Private Works Manager  
Terry D. Richards, Senior Estimator

**ATTESTORS**

Brent Fogg, VP Coastal Region  
Chelsea M. Alameda, Regional Controller  
Justin Ingram, Region/Division Project Executive  
Pennington B. Shortes, Regional Project Executive  
Steven C. Kaesler, Construction Manager III  
John Boies, Chief Estimator III  
Matthew J. Storm, Construction Manager  
Brian D. Hussar, Construction Manager  
Darren L. Hiatt, Construction Manager  
Patrick K. Amaris, Private Works Manager  
Jason Woelbing, Operations Finance Manager  
Terry D. Richards, Senior Estimator  
Patricia A. Arnett, Estimating Assistant  
Teresa Rothney, Estimating Assistant  
Mikki Witter, Estimating Assistant  
Jenni McKenzie, Subcontracts Admin

**EXHIBIT 2**

**AUTHORIZED SIGNERS**  
**Granite Construction Company**

**AUTHORIZED SIGNERS**

Kyle T. Larkin, President & CEO

Elizabeth L. Curtis, Executive Vice President

James A. Radich, Executive Vice President & Chief Operating Officer

Kenneth B. Olson, Senior Vice President of Corporate Finance & Treasurer

Brian R. Dowd, Senior Vice President Group Operations

Michael G. Tatusko, Senior Vice President Group Operations

Bradley J. Williams, Senior Vice President Group Operations



EXHIBIT B  
Minimum Federal Wage Rates Determination

"General Decision Number: CA20230018 03/17/2023

Superseded General Decision Number: CA20220018

State: California

Construction Types: Building, Heavy (Heavy and Dredging) and Highway

Counties: Alameda, Calaveras, Contra Costa, Fresno, Kings, Madera, Mariposa, Merced, Monterey, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Stanislaus and Tuolumne Counties in California.

BUILDING CONSTRUCTION PROJECTS; DREDGING PROJECTS (does not include hopper dredge work); HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<ul style="list-style-type: none"> <li>. Executive Order 14026 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.</li> </ul>
<p>If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:</p>	<ul style="list-style-type: none"> <li>. Executive Order 13658 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.</li> </ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

protections under the Executive Orders is available at  
<http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/06/2023
1	01/13/2023
2	01/20/2023
3	02/10/2023
4	02/24/2023
5	03/03/2023
6	03/10/2023
7	03/17/2023

ASBE0016-004 01/01/2021

AREA 1: CALAVERAS, FRESNO, KINGS, MADERA, MARIPOSA, MERCED,  
MONTEREY, SAN BENITO, SAN JOAQUIN, SANTA CRUZ, STANISLAUS &  
TOULMNE COUNTIES

AREA 2: ALAMEDA, CONTRA COSTA, SAN FRANSICO, SAN MATEO & SANTA  
CLARA COUNTIES

	Rates	Fringes
Asbestos Removal worker/hazardous material handler (Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials from mechanical systems, whether they contain asbestos or not)		
Area 1.....	\$ 30.45	10.60
Area 2.....	\$ 36.53	9.27

-----  
ASBE0016-008 08/01/2022

AREA 1: ALAMEDA, CONTRA COSTA, MONTEREY, SAN BENITO, SAN  
FRANSICO, SAN MATEO, SANTA CLARA, & SANTA CRUZ

AREA 2: CALAVERAS, COLUSA, FRESNO, KINGS, MADERA, MARIPOSA,  
MERCED, SAN JOAQUIN, STANISLAU, & TUOLUMNE

	Rates	Fringes
Asbestos Workers/Insulator (Includes the application of all insulating materials, Protective Coverings, Coatings, and Finishes to all types of mechanical systems)		
Area 1.....	\$ 81.16	23.57
Area 2.....	\$ 62.51	23.57

-----  
BOIL0549-001 01/01/2021

AREA 1: ALAMEDA, CONTRA COSTA, SAN FRANCISCO, SAN MATEO & SANTA  
CLARA COUNTIES

	Rates	Fringes
BOILERMAKER		
Area 1.....	\$ 49.62	41.27
Area 2.....	\$ 45.60	38.99

-----  
BRCA0003-001 08/01/2022

	Rates	Fringes
MARBLE FINISHER.....	\$ 39.20	18.31

-----  
BRCA0003-003 08/01/2022

	Rates	Fringes
MARBLE MASON.....	\$ 56.98	28.54

-----  
BRCA0003-005 05/01/2022

	Rates	Fringes
BRICKLAYER		
( 1) Fresno, Kings, Madera, Mariposa, Merced....	\$ 47.88	23.29
( 7) San Francisco, San Mateo.....	\$ 53.69	26.03
( 8) Alameda, Contra Costa, San Benito, Santa Clara.....	\$ 53.61	23.81
( 9) Calaveras, San Joaquin, Stanislaus, Toulumne.....	\$ 45.12	21.55
(16) Monterey, Santa Cruz...	\$ 50.78	25.42

-----  
BRCA0003-008 07/01/2022

	Rates	Fringes
TERRAZZO FINISHER.....	\$ 41.93	18.98
TERRAZZO WORKER/SETTER.....	\$ 56.84	27.53

-----  
BRCA0003-011 04/01/2022

AREA 1: Alameda, Contra Costa, Monterey, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz

AREA 2: Calaveras, San Joaquin, Stanislaus, Tuolumne

AREA 3: Fresno, Kings, Madera, Mariposa, Merced

	Rates	Fringes
TILE FINISHER		
Area 1.....	\$ 33.86	17.54
Area 2.....	\$ 30.90	17.67
Area 3.....	\$ 29.89	16.80
Tile Layer		
Area 1.....	\$ 55.41	20.50
Area 2.....	\$ 50.66	20.40
Area 3.....	\$ 45.76	19.92

CARP0022-001 07/01/2021

San Francisco County

	Rates	Fringes
Carpenters		
Bridge Builder/Highway Carpenter.....	\$ 54.85	31.49
Hardwood Floorlayer, Shingler, Power Saw Operator, Steel Scaffold & Steel Shoring Erector, Saw Filer.....	\$ 55.00	31.49
Journeyman Carpenter.....	\$ 54.85	31.49
Millwright.....	\$ 54.95	33.08

-----  
CARP0034-001 07/01/2021

	Rates	Fringes
Diver		
Assistant Tender, ROV Tender/Technician.....	\$ 54.10	34.69
Diver standby.....	\$ 60.51	34.69
Diver Tender.....	\$ 59.51	34.69
Diver wet.....	\$ 103.62	34.69
Manifold Operator (mixed gas).....	\$ 64.51	34.69
Manifold Operator (Standby).\$	59.51	34.69

DEPTH PAY (Surface Diving):  
 050 to 100 ft     \$2.00 per foot  
 101 to 150 ft     \$3.00 per foot  
 151 to 220 ft     \$4.00 per foot  
 221 ft.-deeper     \$5.00 per foot

SATURATION DIVING:  
 The standby rate shall apply until saturation starts. The saturation diving rate applies when divers are under pressure continuously until work task and decompression are complete. The diver rate shall be paid for all saturation hours.

DIVING IN ENCLOSURES:  
 Where it is necessary for Divers to enter pipes or tunnels, or other enclosures where there is no vertical ascent, the following premium shall be paid: Distance traveled from entrance 26 feet to 300 feet: \$1.00 per foot. When it is necessary for a diver to enter any pipe, tunnel or other enclosure less than 48" in height, the premium will be \$1.00 per foot.

WORK IN COMBINATION OF CLASSIFICATIONS:  
 Employees working in any combination of classifications within the diving crew (except dive supervisor) in a shift are paid in the classification with the highest rate for that shift.

-----  
CARP0034-003 07/01/2021

	Rates	Fringes
ver.....	\$ 54.10	34.69

-----  
CARP0035-007 07/01/2020

AREA 1: Alameda, Contra Costa, San Francisco, San Mateo, Santa Clara counties

AREA 2: Monterey, San Benito, Santa Cruz Counties

AREA 3: Calaveras, Fresno, Kings, Madera, Mariposa, Merced, San Joaquin, Stanislaus, Tuolumne Counties

	Rates	Fringes
Modular Furniture Installer		
Area 1		
Installer.....	\$ 28.76	22.53
Lead Installer.....	\$ 32.21	23.03
Master Installer.....	\$ 36.43	23.03
Area 2		
Installer.....	\$ 26.11	22.53
Lead Installer.....	\$ 29.08	23.03
Master Installer.....	\$ 32.71	23.03
Area 3		
Installer.....	\$ 25.16	22.53
Lead Installer.....	\$ 27.96	23.03
Master Installer.....	\$ 31.38	23.03

-----  
CARP0035-008 08/01/2020

AREA 1: Alameda, Contra Costa, San Francisco, San Mateo, Santa Clara counties

AREA 2: Monterey, San Benito, Santa Cruz Counties

AREA 3: San Joaquin

AREA 4: Calaveras, Fresno, Kings, Madera, Mariposa, Merced, Stanislaus, Tuolumne Counties

	Rates	Fringes
Drywall Installers/Lathers:		
Area 1.....	\$ 52.65	31.26
Area 2.....	\$ 46.77	31.26
Area 3.....	\$ 47.27	31.26
Area 4.....	\$ 45.92	31.26
Drywall Stocker/Scrapper		
Area 1.....	\$ 26.33	18.22
Area 2.....	\$ 23.39	18.22
Area 3.....	\$ 23.64	18.22
Area 4.....	\$ 22.97	18.22

-----  
CARP0152-001 07/01/2020

Contra Costa County

	Rates	Fringes
Carpenters		
Bridge Builder/Highway		
Carpenter.....	\$ 52.65	30.82
Hardwood Floorlayer,		
Angler, Power Saw		

Operator, Steel Scaffold & Steel Shoring Erector, Saw Filer.....	\$ 52.80	30.82
Journeyman Carpenter.....	\$ 52.65	30.82
Millwright.....	\$ 52.75	32.41

CARP0152-002 07/01/2020

San Joaquin County

	Rates	Fringes
Carpenters		
Bridge Builder/Highway Carpenter.....	\$ 52.65	30.82
Hardwood Floorlayer, Shingler, Power Saw Operator, Steel Scaffold & Steel Shoring Erector, Saw Filer.....	\$ 46.92	30.82
Journeyman Carpenter.....	\$ 46.77	30.82
Millwright.....	\$ 49.27	32.41

CARP0152-004 07/01/2020

Calaveras, Mariposa, Merced, Stanislaus and Tuolumne Counties

	Rates	Fringes
Carpenters		
Bridge Builder/Highway Carpenter.....	\$ 52.65	30.82
Hardwood Floorlayer, Shingler, Power Saw Operator, Steel Scaffold & Steel Shoring Erector, Saw Filer.....	\$ 45.57	30.82
Journeyman Carpenter.....	\$ 45.42	30.82
Millwright.....	\$ 47.92	32.41

CARP0217-001 07/01/2021

San Mateo County

	Rates	Fringes
Carpenters		
Bridge Builder/Highway Carpenter.....	\$ 54.85	31.49
Hardwood Floorlayer, Shingler, Power Saw Operator, Steel Scaffold & Steel Shoring Erector, Saw Filer.....	\$ 55.00	31.49
Journeyman Carpenter.....	\$ 54.85	31.49
Millwright.....	\$ 54.95	33.08

CARP0405-001 07/01/2021

Santa Clara County

	Rates	Fringes
Carpenters		
Bridge Builder/Highway		

Carpenter.....	\$ 54.85	31.49
Hardwood Floorlayer, Shingler, Power Saw Operator, Steel Scaffold & Steel Shoring Erector, Saw Filer.....	\$ 55.00	31.49
Journeyman Carpenter.....	\$ 54.85	31.49
Millwright.....	\$ 54.95	33.08

-----  
 CARP0405-002 07/01/2021

San Benito County

	Rates	Fringes
Carpenters		
Bridge Builder/Highway Carpenter.....	\$ 54.85	31.49
Hardwood Floorlayer, Shingler, Power Saw Operator, Steel Scaffold & Steel Shoring Erector, Saw Filer.....	\$ 49.12	31.49
Journeyman Carpenter.....	\$ 48.97	31.49
Millwright.....	\$ 51.47	33.08

-----  
 CARP0505-001 07/01/2021

Santa Cruz County

	Rates	Fringes
Carpenters		
Bridge Builder/Highway Carpenter.....	\$ 54.85	31.49
Hardwood Floorlayer, Shingler, Power Saw Operator, Steel Scaffold & Steel Shoring Erector, Saw Filer.....	\$ 49.12	31.49
Journeyman Carpenter.....	\$ 48.97	31.49
Millwright.....	\$ 51.47	33.08

-----  
 CARP0605-001 07/01/2021

Monterey County

	Rates	Fringes
Carpenters		
Bridge Builder/Highway Carpenter.....	\$ 54.85	31.49
Hardwood Floorlayer, Shingler, Power Saw Operator, Steel Scaffold & Steel Shoring Erector, Saw Filer.....	\$ 49.12	31.49
Journeyman Carpenter.....	\$ 48.97	31.49
Millwright.....	\$ 51.47	33.08

-----  
 CARP0701-001 07/01/2021

Fresno and Madera Counties

	Rates	Fringes
--	-------	---------



Carpenters

Bridge Builder/Highway Carpenter.....	\$ 54.85	31.49
Hardwood Floorlayer, Shingler, Power Saw Operator, Steel Scaffold & Steel Shoring Erector, Saw Filer.....	\$ 47.77	31.49
Journeyman Carpenter.....	\$ 47.62	31.49
Millwright.....	\$ 50.12	33.08

-----  
CARP0713-001 07/01/2021

Alameda County

Rates Fringes

Carpenters

Bridge Builder/Highway Carpenter.....	\$ 54.85	31.49
Hardwood Floorlayer, Shingler, Power Saw Operator, Steel Scaffold & Steel Shoring Erector, Saw Filer.....	\$ 55.00	31.49
Journeyman Carpenter.....	\$ 54.85	31.49
Millwright.....	\$ 54.95	33.08

-----  
CARP1109-001 07/01/2021

Kings County

Rates Fringes

Carpenters

Bridge Builder/Highway Carpenter.....	\$ 54.85	31.49
Hardwood Floorlayer, Shingler, Power Saw Operator, Steel Scaffold & Steel Shoring Erector, Saw Filer.....	\$ 47.77	31.49
Journeyman Carpenter.....	\$ 47.62	31.49
Millwright.....	\$ 50.12	33.08

-----  
ELEC0006-004 12/01/2021

SAN FRANCISCO COUNTY

Rates Fringes

Sound & Communications

Installer.....	\$ 48.43	3%+23.15
Technician.....	\$ 55.69	3%+23.15

SCOPE OF WORK: Including any data system whose only function is to transmit or receive information; excluding all other data systems or multiple systems which include control function or power supply; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding fire alarm work when installed in raceways (including wire and cable pulling) and when performed on new or major remodel building projects or for which the conductors for the fire alarm system are

installed in conduit; excluding installation of raceway systems, line voltage work, industrial work, life-safety systems (all buildings having floors located more than 75' above the lowest floor level having building access); excluding energy management systems.

FOOTNOTE: Fire alarm work when installed in raceways (including wire and cable pulling), on projects which involve new or major remodel building construction, for which the conductors for the fire alarm system are installed in the conduit, shall be performed by the inside electrician.

-----  
 ELEC0006-007 01/01/2023

SAN FRANCISCO COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 84.50	3%+40.315

-----  
 ELEC0100-002 03/01/2023

FRESNO, KINGS, AND MADERA COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 43.50	27.655

-----  
 ELEC0100-005 12/01/2022

FRESNO, KINGS, MADERA

	Rates	Fringes
Communications System		
Installer.....	\$ 38.24	23.80
Technician.....	\$ 47.80	24.08

SCOPE OF WORK

Includes the installation testing, service and maintenance, of the following systems which utilize the transmission and/or transference of voice, sound, vision and digital for commercial, education, security and entertainment purposes for the following: TV monitoring and surveillance, background-foreground music, intercom and telephone interconnect, inventory control systems, microwave transmission, multi-media, multiplex, nurse call system, radio page, school intercom and sound, burglar alarms, and low voltage master clock systems.

A. SOUND AND VOICE TRANSMISSION/TRANSFERENCE SYSTEMS

Background foreground music, Intercom and telephone interconnect systems, Telephone systems Nurse call systems, Radio page systems, School intercom and sound systems, Burglar alarm systems, Low voltage, master clock systems, Multi-media/multiplex systems, Sound and musical entertainment systems, RF systems, Antennas and Wave Guide,

B. FIRE ALARM SYSTEMS Installation, wire pulling and testing

C. TELEVISION AND VIDEO SYSTEMS      Television monitoring and surveillance systems Video security systems, Video entertainment systems, Video educational systems, Microwave

transmission systems, CATV and CCTV

D. SECURITY SYSTEMS Perimeter security systems Vibration sensor systems Card access systems Access control systems, Sonar/infrared monitoring equipment

E. COMMUNICATIONS SYSTEMS THAT TRANSMIT OR RECEIVE INFORMATION AND/OR CONTROL SYSTEMS THAT ARE INTRINSIC TO THE ABOVE LISTED SYSTEMS SCADA (Supervisory Control and Data Acquisition) PCM (Pulse Code Modulation) Inventory Control Systems, Digital Data Systems Broadband and Baseband and Carriers Point of Sale Systems, VSAT Data Systems Data Communication Systems RF and Remote Control Systems, Fiber Optic Data Systems

WORK EXCLUDED Raceway systems are not covered (excluding Ladder-Rack for the purpose of the above listed systems). Chases and/or nipples (not to exceed 10 feet) may be installed on open wiring systems. Energy management systems. SCADA (Supervisory Control and Data Acquisition) when not intrinsic to the above listed systems (in the scope). Fire alarm systems when installed in raceways (including wire and cable pulling) shall be performed at the electrician wage rate, when either of the following two (2) conditions apply:

1. The project involves new or major remodel building trades construction.
2. The conductors for the fire alarm system are installed in conduit.

-----  
ELEC0234-001 12/26/2022

MONTEREY, SAN BENITO AND SANTA CRUZ COUNTIES

	Rates	Fringes
ELECTRICIAN		
Zone A.....	\$ 60.91	29.43
Zone B.....	\$ 67.00	29.61

Zone A: All of Santa Cruz, Monterey, and San Benito Counties within 25 air miles of Highway 1 and Dolan Road in Moss Landing, and an area extending 5 miles east and west of Highway 101 South to the San Luis Obispo County Line

Zone B: Any area outside of Zone A

-----  
ELEC0234-003 12/01/2021

MONTEREY, SAN BENITO, AND SANTA CRUZ COUNTIES

	Rates	Fringes
Sound & Communications		
Installer.....	\$ 47.93	24.09
Technician.....	\$ 55.12	24.30

SCOPE OF WORK: Including any data system whose only function is to transmit or receive information; excluding all other data systems or multiple systems which include control function or power supply; inclusion or exclusion of terminations and testings of conductors determined by function; excluding fire alarm work when installed

in raceways (including wire and cable pulling) and when performed on new or major remodel building projects or jobs for which the conductors for the fire alarm system are installed in conduit; excluding installation of raceway systems, line voltage work, industrial work, life-safety systems (all buildings having floors located more than 75' above the lowest floor level having building access); excluding energy management systems.

FOOTNOTE: Fire alarm work when installed in raceways (including wire and cable pulling), on projects which involve new or major remodel building construction, for which the conductors for the fire alarm system are installed in the conduit, shall be performed by the inside electrician.

-----  
 ELEC0302-001 02/27/2023

CONTRA COSTA COUNTY

	Rates	Fringes
CABLE SPLICER.....	\$ 68.92	32.67
ELECTRICIAN.....	\$ 61.26	32.44

-----  
 ELEC0302-003 12/01/2022

CONTRA COSTA COUNTY

	Rates	Fringes
Sound & Communications		
Installer.....	\$ 46.64	25.30
Technician.....	\$ 53.64	25.51

SCOPE OF WORK: Including any data system whose only function is to transmit or receive information; excluding all other data systems or multiple systems which include control function or power supply; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding fire alarm work when installed in raceways (including wire and cable pulling) and when performed on new or major remodel building projects or jobs for which the conductors for the fire alarm system are installed in conduit; excluding installation of raceway systems, line voltage work, industrial work, life-safety systems (all buildings having floors located more than 75' above the lowest floor level having building access); excluding energy management systems.

FOOTNOTE: Fire alarm work when installed in raceways (including wire and cable pulling), on projects which involve new or major remodel building construction, for which the conductors for the fire alarm system are installed in the conduit, shall be performed by the inside electrician.

-----  
 ELEC0332-001 06/01/2022

SANTA CLARA COUNTY

Rates	Fringes
-------	---------

CABLE SPLICER.....	\$ 92.20	42.316
ELECTRICIAN.....	\$ 80.17	41.955

FOOTNOTES: Work under compressed air or where gas masks are required, or work on ladders, scaffolds, stacks, "Bosun's chairs," or other structures and where the workers are not protected by permanent guard rails at a distance of 40 to 60 ft. from the ground or supporting structures: to be paid one and one-half times the straight-time rate of pay. Work on structures of 60 ft. or over (as described above): to be paid twice the straight-time rate of pay.

-----  
 ELEC0332-003 12/01/2022

SANTA CLARA COUNTY

	Rates	Fringes
Sound & Communications		
Installer.....	\$ 51.18	25.435
Technician.....	\$ 58.86	25.666

SCOPE OF WORK: Including any data system whose only function is to transmit or receive information; excluding all other data systems or multiple systems which include control function or power supply; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding fire alarm work when installed in raceways (including wire and cable pulling) and when performed on new or major remodel building projects or jobs for which the conductors for the fire alarm system are installed in conduit; excluding installation of raceway systems, line voltage work, industrial work, life-safety systems (all buildings having floors located more than 75' above the lowest floor level having building access); excluding energy management systems.

FOOTNOTE: Fire alarm work when installed in raceways (including wire and cable pulling), on projects which involve new or major remodel building construction, for which the conductors for the fire alarm system are installed in the conduit, shall be performed by the inside electrician.

-----  
 ELEC0595-001 06/01/2021

ALAMEDA COUNTY

	Rates	Fringes
CABLE SPLICER.....	\$ 72.80	3%+39.94
ELECTRICIAN.....	\$ 63.30	3%+39.94

-----  
 ELEC0595-002 12/01/2022

CALAVERAS AND SAN JOAQUIN COUNTIES

	Rates	Fringes
CABLE SPLICER.....	\$ 53.34	7.75%+25.88
ELECTRICIAN		
(1) Tunnel work.....	\$ 46.67	7.75%+25.88
) All other work.....	\$ 44.45	7.75%+25.88

ALAMEDA COUNTY

	Rates	Fringes
Sound & Communications		
Installer.....	\$ 51.18	3%+23.90
Technician.....	\$ 58.86	3%+23.90

SCOPE OF WORK: Including any data system whose only function is to transmit or receive information; excluding all other data systems or multiple systems which include control function or power supply; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding fire alarm work when installed in raceways (including wire and cable pulling) and when performed on new or major remodel building projects or jobs for which the conductors for the fire alarm system are installed in conduit; excluding installation of raceway systems, line voltage work, industrial work, life-safety systems (all buildings having floors located more than 75' above the lowest floor level having building access); excluding energy management systems.

FOOTNOTE: Fire alarm work when installed in raceways (including wire and cable pulling), on projects which involve new or major remodel building construction, for which the conductors for the fire alarm system are installed in the conduit, shall be performed by the inside electrician.

CALAVERAS AND SAN JOAQUIN COUNTIES

	Rates	Fringes
Communications System		
Installer.....	\$ 40.88	3%+23.90
Technician.....	\$ 47.01	3%+23.90

SCOPE OF WORK: Including any data system whose only function is to transmit or receive information; excluding all other data systems or multiple systems which include control function or power supply; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding fire alarm work when installed in raceways (including wire and cable pulling) and when performed on new or major remodel building projects or jobs for which the conductors for the fire alarm system are installed in conduit; excluding installation of raceway systems, line voltage work, industrial work, life-safety systems (all buildings having floors located more than 75' above the lowest floor level having building access); excluding energy management systems.

FOOTNOTE: Fire alarm work when installed in raceways (including wire and cable pulling), on projects which involve new or major remodel building construction, for which the conductors for the fire alarm system are installed in the conduit, shall be performed by the inside electrician.

-----  
ELEC0617-001 06/01/2022

SAN MATEO COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 74.00	43.76

-----  
ELEC0617-003 12/01/2022

SAN MATEO COUNTY

	Rates	Fringes
Sound & Communications		
Installer.....	\$ 51.18	25.44
Technician.....	\$ 58.86	25.67

SCOPE OF WORK: Including any data system whose only function is to transmit or receive information; excluding all other data systems or multiple systems which include control function or power supply; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding fire alarm work when installed in raceways (including wire and cable pulling) and when performed on new or major remodel building projects or jobs for which the conductors for the fire alarm system are installed in conduit; excluding installation of raceway systems, line voltage work, industrial work, life-safety systems (all buildings having floors located more than 75' above the lowest floor level having building access); excluding energy management systems.

FOOTNOTE: Fire alarm work when installed in raceways (including wire and cable pulling), on projects which involve new or major remodel building construction, for which the conductors for the fire alarm system are installed in the conduit, shall be performed by the inside electrician.

-----  
ELEC0684-001 06/01/2022

MARIPOSA, MERCED, STANISLAUS AND TUOLUMNE COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 44.25	3%+26.63

CABLE SPLICER = 110% of Journeyman Electrician

-----  
ELEC0684-004 12/01/2021

MARIPOSA, MERCED, STANISLAUS AND TUOLUMNE COUNTIES

	Rates	Fringes
Communications System		
Installer.....	\$ 38.24	23.80
Technician.....	\$ 43.98	23.97

SCOPE OF WORK: Including any data system whose only function is to transmit or receive information; excluding all other

data systems or multiple systems which include control function or power supply; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding fire alarm work when installed in raceways (including wire and cable pulling) and when performed on new or major remodel building projects or jobs for which the conductors for the fire alarm system are installed in conduit; excluding installation of raceway systems, line voltage work, industrial work, life-safety systems (all buildings having floors located more than 75' above the lowest floor level having building access); excluding energy management systems.

FOOTNOTE: Fire alarm work when installed in raceways (including wire and cable pulling), on projects which involve new or major remodel building construction, for which the conductors for the fire alarm system are installed in the conduit, shall be performed by the inside electrician.

-----  
 ELEC1245-001 06/01/2022

	Rates	Fringes
LINE CONSTRUCTION		
(1) Lineman; Cable splicer..	\$ 64.40	22.58
(2) Equipment specialist (operates crawler tractors, commercial motor vehicles, backhoes, trenchers, cranes (50 tons and below), overhead & underground distribution line equipment).....	\$ 50.00	21.30
(3) Groundman.....	\$ 38.23	20.89
(4) Powderman.....	\$ 51.87	18.79

HOLIDAYS: New Year's Day, M.L. King Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and day after Thanksgiving, Christmas Day

-----  
 ELEV0008-001 01/01/2023

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 77.61	37.335+a+b

FOOTNOTE:  
 a. PAID VACATION: Employer contributes 8% of regular hourly rate as vacation pay credit for employees with more than 5 years of service, and 6% for 6 months to 5 years of service.  
 b. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

-----  
 ENGI0003-001 06/28/2021

""AREA 1"" WAGE RATES ARE LISTED BELOW  
 ""AREA 2"" RECEIVES AN ADDITIONAL \$2.00 PER HOUR ABOVE AREA 1



SEE AREA DEFINITIONS BELOW

	Rates	Fringes
OPERATOR: Power Equipment		
(AREA 1:)		
GROUP 1.....	\$ 53.92	31.54
GROUP 2.....	\$ 52.39	31.54
GROUP 3.....	\$ 50.91	31.54
GROUP 4.....	\$ 49.53	31.54
GROUP 5.....	\$ 48.26	31.54
GROUP 6.....	\$ 46.94	31.54
GROUP 7.....	\$ 45.80	31.54
GROUP 8.....	\$ 44.66	31.54
GROUP 8-A.....	\$ 42.45	31.54
OPERATOR: Power Equipment		
(Cranes and Attachments -		
AREA 1:)		
GROUP 1		
Cranes.....	\$ 52.30	31.15
Oiler.....	\$ 43.79	31.15
Truck crane oiler.....	\$ 46.08	31.15
GROUP 2		
Cranes.....	\$ 50.54	31.15
Oiler.....	\$ 42.83	31.15
Truck crane oiler.....	\$ 45.07	31.15
GROUP 3		
Cranes.....	\$ 48.80	31.15
Hydraulic.....	\$ 44.44	31.15
Oiler.....	\$ 42.55	31.15
Truck crane oiler.....	\$ 44.83	31.15
GROUP 4		
Cranes.....	\$ 45.76	31.15
OPERATOR: Power Equipment		
(Piledriving - AREA 1:)		
GROUP 1		
Lifting devices.....	\$ 52.64	31.15
Oiler.....	\$ 43.38	31.15
Truck Crane Oiler.....	\$ 45.66	31.15
GROUP 2		
Lifting devices.....	\$ 50.82	31.15
Oiler.....	\$ 43.11	31.15
Truck Crane Oiler.....	\$ 45.41	31.15
GROUP 3		
Lifting devices.....	\$ 49.14	31.15
Oiler.....	\$ 42.89	31.15
Truck Crane Oiler.....	\$ 45.12	31.15
GROUP 4		
Lifting devices.....	\$ 47.37	31.15
GROUP 5		
Lifting devices.....	\$ 44.73	31.15
GROUP 6		
Lifting devices.....	\$ 42.50	31.15
OPERATOR: Power Equipment		
(Steel Erection - AREA 1:)		
GROUP 1		
Cranes.....	\$ 53.27	31.15
Oiler.....	\$ 43.72	31.15
Truck Crane Oiler.....	\$ 45.95	31.15
GROUP 2		
Cranes.....	\$ 51.50	31.15
Oiler.....	\$ 43.45	31.15
Truck Crane Oiler.....	\$ 45.73	31.15
GROUP 3		

Cranes.....	\$ 50.02	31.15
Hydraulic.....	\$ 45.07	31.15
Oiler.....	\$ 43.23	31.15
Truck Crane Oiler.....	\$ 45.46	31.15
GROUP 4		
Cranes.....	\$ 48.00	31.15
GROUP 5		
Cranes.....	\$ 46.70	31.15
OPERATOR: Power Equipment		
(Tunnel and Underground Work		
- AREA 1:)		
SHAFTS, STOPES, RAISES:		
GROUP 1.....	\$ 47.52	31.15
GROUP 1-A.....	\$ 49.99	31.15
GROUP 2.....	\$ 46.26	31.15
GROUP 3.....	\$ 44.93	31.15
GROUP 4.....	\$ 43.79	31.15
GROUP 5.....	\$ 42.65	31.15
UNDERGROUND:		
GROUP 1.....	\$ 47.42	31.15
GROUP 1-A.....	\$ 49.89	31.15
GROUP 2.....	\$ 46.16	31.15
GROUP 3.....	\$ 44.83	31.15
GROUP 4.....	\$ 43.69	31.15
GROUP 5.....	\$ 42.55	31.15

FOOTNOTE: Work suspended by ropes or cables, or work on a Yo-Yo Cat: \$.60 per hour additional.

#### POWER EQUIPMENT OPERATOR CLASSIFICATIONS

GROUP 1: Operator of helicopter (when used in erection work); Hydraulic excavator, 7 cu. yds. and over; Power shovels, over 7 cu. yds.

GROUP 2: Highline cableway; Hydraulic excavator, 3-1/2 cu. yds. up to 7 cu. yds.; Licensed construction work boat operator, on site; Power blade operator (finish); Power shovels, over 1 cu. yd. up to and including 7 cu. yds. m.r.c.

GROUP 3: Asphalt milling machine; Cable backhoe; Combination backhoe and loader over 3/4 cu. yds.; Continuous flight tie back machine assistant to engineer or mechanic; Crane mounted continuous flight tie back machine, tonnage to apply; Crane mounted drill attachment, tonnage to apply; Dozer, slope brd; Gradall; Hydraulic excavator, up to 3 1/2 cu. yds.; Loader 4 cu. yds. and over; Long reach excavator; Multiple engine scraper (when used as push pull); Power shovels, up to and including 1 cu. yd.; Pre-stress wire wrapping machine; Side boom cat, 572 or larger; Track loader 4 cu. yds. and over; Wheel excavator (up to and including 750 cu. yds. per hour)

GROUP 4: Asphalt plant engineer/box person; Chicago boom; Combination backhoe and loader up to and including 3/4 cu. yd.; Concrete batch plant (wet or dry); Dozer and/or push cat; Pull- type elevating loader; Gradesetter, grade checker (GPS, mechanical or otherwise); Grooving and grinding machine; Heading shield operator; Heavy-duty drilling equipment, Hughes, LDH, Watson 3000 or similar; Heavy-duty repairperson and/or welder; Lime spreader; Feeder under 4 cu. yds.; Lubrication and service engineer (oil and grease rack); Mechanical finishers or spreader

machine (asphalt, Barber-Greene and similar); Miller Formless M-9000 slope paver or similar; Portable crushing and screening plants; Power blade support; Roller operator, asphalt; Rubber-tired scraper, self-loading (paddle-wheels, etc.); Rubber-tired earthmoving equipment (scrapers); Slip form paver (concrete); Small tractor with drag; Soil stabilizer (P & H or equal); Spider plow and spider puller; Tubex pile rig; Unlicensed construction work boat operator, on site; Timber skidder; Track loader up to 4 yds.; Tractor-drawn scraper; Tractor, compressor drill combination; Welder; Woods-Mixer (and other similar Pugmill equipment)

GROUP 5: Cast-in-place pipe laying machine; Combination slusher and motor operator; Concrete conveyor or concrete pump, truck or equipment mounted; Concrete conveyor, building site; Concrete pump or pumpcrete gun; Drilling equipment, Watson 2000, Texoma 700 or similar; Drilling and boring machinery, horizontal (not to apply to waterliners, wagon drills or jackhammers); Concrete mixer/all; Person and/or material hoist; Mechanical finishers (concrete) (Clary, Johnson, Bidwell Bridge Deck or similar types); Mechanical burm, curb and/or curb and gutter machine, concrete or asphalt); Mine or shaft hoist; Portable crusher; Power jumbo operator (setting slip-forms, etc., in tunnels); Screed (automatic or manual); Self-propelled compactor with dozer; Tractor with boom D6 or smaller; Trenching machine, maximum digging capacity over 5 ft. depth; Vermeer T-600B rock cutter or similar

GROUP 6: Armor-Coater (or similar); Ballast jack tamper; Boom-type backfilling machine; Assistant plant engineer; Bridge and/or gantry crane; Chemical grouting machine, truck-mounted; Chip spreading machine operator; Concrete saw (self-propelled unit on streets, highways, airports and canals); Deck engineer; Drilling equipment Texoma 600, Hughes 200 Series or similar up to and including 30 ft. m.r.c.; Drill doctor; Helicopter radio operator; Hydro-hammer or similar; Line master; Skidsteer loader, Bobcat larger than 743 series or similar (with attachments); Locomotive; Lull hi-lift or similar; Oiler, truck mounted equipment; Pavement breaker, truck-mounted, with compressor combination; Paving fabric installation and/or laying machine; Pipe bending machine (pipelines only); Pipe wrapping machine (tractor propelled and supported); Screed (except asphaltic concrete paving); Self-propelled pipeline wrapping machine; Tractor; Self-loading chipper; Concrete barrier moving machine

GROUP 7: Ballast regulator; Boom truck or dual-purpose A-frame truck, non-rotating - under 15 tons; Cargy lift or similar; Combination slurry mixer and/or cleaner; Drilling equipment, 20 ft. and under m.r.c.; Firetender (hot plant); Grouting machine operator; Highline cableway signalperson; Stationary belt loader (Kolman or similar); Lift slab machine (Vagtborg and similar types); Maginnes internal full slab vibrator; Material hoist (1 drum); Mechanical trench shield; Pavement breaker with or without compressor combination); Pipe cleaning machine (tractor propelled and supported); Post driver; Roller (except asphalt); Chip Seal; Self-propelled automatically applied concrete curing machine (on streets, highways, airports and canals); Self-propelled compactor (without dozer); Signalperson; Slip form pumps (lifting device for concrete forms); Tie  
r; Tower mobile; Trenching machine, maximum digging

capacity up to and including 5 ft. depth; Truck- type loader

GROUP 8: Bit sharpener; Boiler tender; Box operator; Brakeperson; Combination mixer and compressor (shotcrete/gunite); Compressor operator; Deckhand; Fire tender; Forklift (under 20 ft.); Generator; Gunite/shotcrete equipment operator; Hydraulic monitor; Ken seal machine (or similar); Mixermobile; Oiler; Pump operator; Refrigeration plant; Reservoir-debris tug (self-propelled floating); Ross Carrier (construction site); Rotomist operator; Self-propelled tape machine; Shuttlecar; Self-propelled power sweeper operator (includes vacuum sweeper); Slusher operator; Surface heater; Switchperson; Tar pot firetender; Tugger hoist, single drum; Vacuum cooling plant; Welding machine (powered other than by electricity)

GROUP 8-A: Elevator operator; Skidsteer loader-Bobcat 743 series or smaller, and similar (without attachments); Mini excavator under 25 H.P. (backhoe-trencher); Tub grinder wood chipper

---

#### ALL CRANES AND ATTACHMENTS

GROUP 1: Clamshell and dragline over 7 cu. yds.; Crane, over 100 tons; Derrick, over 100 tons; Derrick barge pedestal-mounted, over 100 tons; Self-propelled boom-type lifting device, over 100 tons

GROUP 2: Clamshell and dragline over 1 cu. yd. up to and including 7 cu. yds.; Crane, over 45 tons up to and including 100 tons; Derrick barge, 100 tons and under; Self-propelled boom-type lifting device, over 45 tons; Tower crane

GROUP 3: Clamshell and dragline up to and including 1 cu. yd.; Cranes 45 tons and under; Self-propelled boom-type lifting device 45 tons and under;

GROUP 4: Boom Truck or dual purpose A-frame truck, non-rotating over 15 tons; Truck-mounted rotating telescopic boom type lifting device, Manitex or similar (boom truck) over 15 tons; Truck-mounted rotating telescopic boom type lifting device, Manitex or similar (boom truck) - under 15 tons;

---

#### PILEDRIVERS

GROUP 1: Derrick barge pedestal mounted over 100 tons; Clamshell over 7 cu. yds.; Self-propelled boom-type lifting device over 100 tons; Truck crane or crawler, land or barge mounted over 100 tons

GROUP 2: Derrick barge pedestal mounted 45 tons to and including 100 tons; Clamshell up to and including 7 cu. yds.; Self-propelled boom-type lifting device over 45 tons; Truck crane or crawler, land or barge mounted, over 45 tons up to and including 100 tons; Fundex F-12 hydraulic pile rig

GROUP 3: Derrick barge pedestal mounted under 45 tons; Self-propelled boom-type lifting device 45 tons and under;

Skid/scow piledriver, any tonnage; Truck crane or crawler, land or barge mounted 45 tons and under

GROUP 4: Assistant operator in lieu of assistant to engineer; Forklift, 10 tons and over; Heavy-duty repairperson/welder

GROUP 5: Deck engineer

GROUP 6: Deckhand; Fire tender

---

STEEL ERECTORS

GROUP 1: Crane over 100 tons; Derrick over 100 tons; Self-propelled boom-type lifting device over 100 tons

GROUP 2: Crane over 45 tons to 100 tons; Derrick under 100 tons; Self-propelled boom-type lifting device over 45 tons to 100 tons; Tower crane

GROUP 3: Crane, 45 tons and under; Self-propelled boom-type lifting device, 45 tons and under

GROUP 4: Chicago boom; Forklift, 10 tons and over; Heavy-duty repair person/welder

GROUP 5: Boom cat

---

TUNNEL AND UNDERGROUND WORK

GROUP 1-A: Tunnel bore machine operator, 20' diameter or more

GROUP 1: Heading shield operator; Heavy-duty repairperson; Mucking machine (rubber tired, rail or track type); Raised bore operator (tunnels); Tunnel mole bore operator

GROUP 2: Combination slusher and motor operator; Concrete pump or pumpcrete gun; Power jumbo operator

GROUP 3: Drill doctor; Mine or shaft hoist

GROUP 4: Combination slurry mixer cleaner; Grouting Machine operator; Motorman

GROUP 5: Bit Sharpener; Brakeman; Combination mixer and compressor (gunite); Compressor operator; Oiler; Pump operator; Slusher operator

---

AREA DESCRIPTIONS:

POWER EQUIPMENT OPERATORS, CRANES AND ATTACHMENTS, TUNNEL AND UNDERGROUND [These areas do not apply to Piledrivers and Steel Erectors]

AREA 1: ALAMEDA, CALAVERAS, CONTRA COSTA, FRESNO, KINGS, MADERA, MARIPOSA, MERCED, MONTEREY, SAN BENITO, SAN FRANCISCO, SAN JOAQUIN, SAN MATEO, SANTA CLARA, SANTA CRUZ, SANISLAUS, TUOLUMNE

THE REMAINING COUNTIES ARE SPLIT BETWEEN AREA 1 AND AREA 2 AS NOTED BELOW:

CALAVERAS COUNTY:

Area 1: Remainder  
Area 2: Eastern Part

FRESNO COUNTY:

Area 1: Remainder  
Area 2: Eastern Part

MADERA COUNTY:

Area 1: Remainder  
Area 2: Eastern Part

MARIPOSA COUNTY:

Area 1: Remainder  
Area 2: Eastern Part

MONTEREY COUNTY:

Area 1: Remainder  
Area 2: Southwestern part

TUOLUMNE COUNTY:

Area 1: Remainder  
Area 2: Eastern Part

-----  
ENGI0003-008 08/01/2022

	Rates	Fringes
Dredging: (DREDGING: CLAMSHELL & DIPPER DREDGING; HYDRAULIC SUCTION DREDGING:)		
AREA 1:		
(1) Leverman.....	\$ 55.15	35.46
(2) Dredge Dozer; Heavy duty repairman.....	\$ 50.19	35.46
(3) Booster Pump Operator; Deck Engineer; Deck mate; Dredge Tender; Winch Operator.....	\$ 49.07	35.46
(4) Bargeman; Deckhand; Fireman; Leveehand; Oiler..	\$ 45.77	35.46
AREA 2:		
(1) Leverman.....	\$ 57.15	35.46
(2) Dredge Dozer; Heavy duty repairman.....	\$ 52.19	35.46
(3) Booster Pump Operator; Deck Engineer; Deck mate; Dredge Tender; Winch Operator.....	\$ 51.07	35.46
(4) Bargeman; Deckhand; Fireman; Leveehand; Oiler..	\$ 47.77	35.46

AREA DESCRIPTIONS

AREA 1: ALAMEDA, BUTTE, CONTRA COSTA, KINGS, MARIN, MERCED,  
NAPA, SACRAMENTO, SAN BENITO, SAN FRANCISCO, SAN JOAQUIN,  
SAN MATEO, SANTA CLARA, SANTA CRUZ, SOLANO, STANISLAUS,  
SUTTER, YOLO, AND YUBA COUNTIES

AREA 2: MODOC COUNTY

THE REMAINING COUNTIES ARE SPLIT BETWEEN AREA 1 AND AREA 2  
AS NOTED BELOW:

ALPINE COUNTY:

Area 1: Northernmost part  
Area 2: Remainder

CALAVERAS COUNTY:

Area 1: Remainder  
Area 2: Eastern part

COLUSA COUNTY:

Area 1: Eastern part  
Area 2: Remainder

ELDORADO COUNTY:

Area 1: North Central part  
Area 2: Remainder

FRESNO COUNTY:

Area 1: Remainder  
Area 2: Eastern part

GLENN COUNTY:

Area 1: Eastern part  
Area 2: Remainder

LASSEN COUNTY:

Area 1: Western part along the Southern portion of border  
with Shasta County  
Area 2: Remainder

MADERA COUNTY:

Area 1: Except Eastern part  
Area 2: Eastern part

MARIPOSA COUNTY

Area 1: Except Eastern part  
Area 2: Eastern part

MONTERREY COUNTY

Area 1: Except Southwestern part  
Area 2: Southwestern part

NEVADA COUNTY:

Area 1: All but the Northern portion along the border of  
Sierra County  
Area 2: Remainder

PLACER COUNTY:

Area 1: All but the Central portion  
Area 2: Remainder

PLUMAS COUNTY:

Area 1: Western portion  
Area 2: Remainder

SHASTA COUNTY:

Area 1: All but the Northeastern corner  
Area 2: Remainder

COUNTY:

Area 1: Western part  
Area 2: Remainder

SISKIYOU COUNTY:  
Area 1: Central part  
Area 2: Remainder

SONOMA COUNTY:  
Area 1: All but the Northwestern corner  
Area 2: Remainder

TEHAMA COUNTY:  
Area 1: All but the Western border with Mendocino & Trinity  
Counties  
Area 2: Remainder

TRINITY COUNTY:  
Area 1: East Central part and the Northeastern border with  
Shasta County  
Area 2: Remainder

TUOLUMNE COUNTY:  
Area 1: Except Eastern part  
Area 2: Eastern part

-----  
ENGI0003-019 06/29/2020

SEE AREA DESCRIPTIONS BELOW

	Rates	Fringes
OPERATOR: Power Equipment (LANDSCAPE WORK ONLY)		
GROUP 1		
AREA 1.....	\$ 39.95	30.28
AREA 2.....	\$ 41.95	30.28
GROUP 2		
AREA 1.....	\$ 36.35	30.28
AREA 2.....	\$ 38.35	30.28
GROUP 3		
AREA 1.....	\$ 31.74	30.28
AREA 2.....	\$ 33.74	30.28

GROUP DESCRIPTIONS:

GROUP 1: Landscape Finish Grade Operator: All finish grade work regardless of equipment used, and all equipment with a rating more than 65 HP.

GROUP 2: Landscape Operator up to 65 HP: All equipment with a manufacturer's rating of 65 HP or less except equipment covered by Group 1 or Group 3. The following equipment shall be included except when used for finish work as long as manufacturer's rating is 65 HP or less: A-Frame and Winch Truck, Backhoe, Forklift, Hydragraphic Seeder Machine, Roller, Rubber-Tired and Track Earthmoving Equipment, Skiploader, Straw Blowers, and Trencher 31 HP up to 65 HP.

GROUP 3: Landscae Utility Operator: Small Rubber-Tired Tractor, Trencher Under 31 HP.

AREA DESCRIPTIONS:



AREA 1: ALAMEDA, BUTTE, CONTRA COSTA, KINGS, MARIN, MERCED,  
NAPA, SACRAMENTO, SAN BENITO, SAN FRANCISCO, SAN JOAQUIN,  
SAN MATEO, SANTA CLARA, SANTA CRUZ, SOLANO, STANISLAUS,  
SUTTER, YOLO, AND YUBA COUNTIES

AREA 2 - MODOC COUNTY

THE REMAINING COUNTIES ARE SPLIT BETWEEN AREA 1 AND AREA 2 AS  
NOTED BELOW:

ALPINE COUNTY:

Area 1: Northernmost part

Area 2: Remainder

CALAVERAS COUNTY:

Area 1: Except Eastern part

Area 2: Eastern part

COLUSA COUNTY:

Area 1: Eastern part

Area 2: Remainder

DEL NORTE COUNTY:

Area 1: Extreme Southwestern corner

Area 2: Remainder

ELDORADO COUNTY:

Area 1: North Central part

Area 2: Remainder

FRESNO COUNTY

Area 1: Except Eastern part

Area 2: Eastern part

GLENN COUNTY:

Area 1: Eastern part

Area 2: Remainder

HUMBOLDT COUNTY:

Area 1: Except Eastern and Southwestern parts

Area 2: Remainder

LAKE COUNTY:

Area 1: Southern part

Area 2: Remainder

LASSEN COUNTY:

Area 1: Western part along the Southern portion of border  
with Shasta County

Area 2: Remainder

MADERA COUNTY

Area 1: Remainder

Area 2: Eastern part

MARIPOSA COUNTY

Area 1: Remainder

Area 2: Eastern part

MENDOCINO COUNTY:

Area 1: Central and Southeastern parts

Area 2: Remainder

MONTEREY COUNTY

Remainder

Area 2: Southwestern part

NEVADA COUNTY:

Area 1: All but the Northern portion along the border of  
Sierra County  
Area 2: Remainder

PLACER COUNTY:

Area 1: All but the Central portion  
Area 2: Remainder

PLUMAS COUNTY:

Area 1: Western portion  
Area 2: Remainder

SHASTA COUNTY:

Area 1: All but the Northeastern corner  
Area 2: Remainder

SIERRA COUNTY:

Area 1: Western part  
Area 2: Remainder

SISKIYOU COUNTY:

Area 1: Central part  
Area 2: Remainder

SONOMA COUNTY:

Area 1: All but the Northwestern corner  
Area 2: Reaminder

TEHAMA COUNTY:

Area 1: All but the Western border with mendocino & Trinity  
Counties  
Area 2: Remainder

TRINITY COUNTY:

Area 1: East Central part and the Northeaster border with  
Shasta County  
Area 2: Remainder

TULARE COUNTY;

Area 1: Remainder  
Area 2: Eastern part

TUOLUMNE COUNTY:

Area 1: Remainder  
Area 2: Eastern Part

-----  
IRON0377-001 01/01/2023

ALAMEDA, CONTRA COSTA, SAN MATEO, SANTA CLARA COUNTIES

	Rates	Fringes
Ironworkers:		
Fence Erector.....	\$ 41.28	25.66
Ornamental, Reinforcing and Structural.....	\$ 49.88	34.30

PREMIUM PAY:

~~\$6.00~~ additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland, Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

\$4.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base, Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

\$2.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

-----  
IRON0377-003 01/01/2023

SAN FRANCISCO CITY and COUNTY

	Rates	Fringes
Ironworkers:		
Fence Erector.....	\$ 41.28	25.66
Ornamental, Reinforcing and Structural.....	\$ 50.38	34.30

PREMIUM PAY:

\$6.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland, Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

\$4.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base, Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

\$2.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

-----  
IRON0433-005 01/01/2023

REMAINING COUNTIES

	Rates	Fringes
IRONWORKER		
Fence Erector.....	\$ 41.28	25.66
Ornamental, Reinforcing and Structural.....	\$ 46.20	34.30

\$6.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland, Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

\$4.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base, Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

\$2.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

-----  
LABO0067-002 06/27/2022

AREA "A" - ALAMEDA, CONTRA COSTA, SAN FRANCISCO, SAN MATEO AND SANTA CLARA COUNTIES

AREA "B" - CALAVERAS, FRESNO, KINGS, MADERA, MARIPOSA, MERCED, MONTEREY, SAN BENITO, SAN JOAQUIN, STANISLAUS, AND TUOLUMNE COUNTIES

	Rates	Fringes
Asbestos Removal Laborer		
All Counties.....	\$ 27.05	13.50
LABORER (Lead Removal)		
Area A.....	\$ 35.37	26.95
Area B.....	\$ 34.37	26.95

ASBESTOS REMOVAL-SCOPE OF WORK: Site mobilization; initial site clean-up; site preparation; removal of asbestos-containing materials from walls and ceilings; or from pipes, boilers and mechanical systems only if they are being scrapped; encapsulation, enclosure and disposal of asbestos-containing materials by hand or with equipment or machinery; scaffolding; fabrication of temporary wooden barriers; and assembly of decontamination stations.

-----  
LABO0073-002 06/28/2021

CALAVERAS AND SAN JOAQUIN COUNTIES

	Rates	Fringes
LABORER (TRAFFIC CONTROL/LANE CLOSURE)		
Escort Driver, Flag Person..	\$ 33.48	26.21
Traffic Control Person I....	\$ 33.78	26.21
Traffic Control Person II...\$	31.28	26.21

TRAFFIC CONTROL PERSON I: Layout of traffic control, crash locations, construction area and roadside signage.

TRAFFIC CONTROL PERSON II: Installation and removal of temporary/permanent signs, markers, delineators and crash cushions.

-----  
LABO0073-003 07/01/2022

SAN JOAQUIN COUNTY

	Rates	Fringes
LABORER		
Mason Tender-Brick.....	\$ 35.29	25.21

-----  
LABO0073-005 07/01/2021

	Rates	Fringes
Tunnel and Shaft Laborers:		
GROUP 1.....	\$ 42.00	25.71
GROUP 2.....	\$ 41.77	25.71
GROUP 3.....	\$ 41.52	25.71
GROUP 4.....	\$ 41.07	25.71
GROUP 5.....	\$ 40.53	25.71
Shotcrete Specialist.....	\$ 42.52	25.71

TUNNEL AND SHAFT CLASSIFICATIONS

GROUP 1: Diamond driller; Groundmen; Gunite and shotcrete nozzlemen

GROUP 2: Rodmen; Shaft work & raise (below actual or excavated ground level)

GROUP 3: Bit grinder; Blaster, driller, powdermen, heading; Cherry pickermen - where car is lifted; Concrete finisher in tunnel; Concrete screedman; Grout pumpman and potman; Gunite & shotcrete gunman & potman; Headermen; High pressure nozzleman; Miner - tunnel, including top and bottom man on shaft and raise work; Nipper; Nozzleman on slick line; Sandblaster - potman, Robotic Shotcrete Placer, Segment Erector, Tunnel Muck Hauler, Steel Form raiser and setter; Timberman, retimberman (wood or steel or substitute materials therefore); Tugger (for tunnel laborer work); Cable tender; Chuck tender; Powderman - primer house

GROUP 4: Vibrator operator, pavement breaker; Bull gang - muckers, trackmen; Concrete crew - includes rodding and spreading, Dumpmen (any method)

GROUP 5: Grout crew; Reboundman; Swamper/ Brakeman

-----  
LABO0073-007 06/25/2018

CALAVERAS AND SAN JOAQUIN COUNTIES

	Rates	Fringes
LABORER (CONSTRUCTION CRAFT LABORERS)		
Construction Specialist		
Group.....	\$ 30.49	23.20
GROUP 1.....	\$ 29.79	23.20
GROUP 1-a.....	\$ 30.01	23.20

GROUP 1-c.....	\$ 29.84	23.20
GROUP 1-e.....	\$ 30.34	23.20
GROUP 1-f.....	\$ 30.37	23.20
GROUP 2.....	\$ 29.64	23.20
GROUP 3.....	\$ 29.54	23.20
GROUP 4.....	\$ 23.23	23.20

See groups 1-b and 1-d under laborer classifications.

LABORER (GARDENERS,  
HORTICULTURAL & LANDSCAPE  
LABORERS)

(1) New Construction.....	\$ 29.54	23.20
(2) Establishment Warranty Period.....	\$ 23.23	23.20

LABORER (GUNITE)

GROUP 1.....	\$ 29.75	22.31
GROUP 2.....	\$ 29.25	22.31
GROUP 3.....	\$ 28.66	22.31
GROUP 4.....	\$ 28.54	22.31

LABORER (WRECKING)

GROUP 1.....	\$ 29.79	23.20
GROUP 2.....	\$ 29.64	23.20

FOOTNOTES:

Laborers working off or with or from bos'n chairs, swinging scaffolds, belts shall receive \$0.25 per hour above the applicable wage rate. This shall not apply to workers entitled to receive the wage rate set forth in Group 1-a below.

LABORER CLASSIFICATIONS

CONSTRUCTION SPECIALIST GROUP: Asphalt ironer and raker; Chainsaw; Laser beam in connection with laborers' work; Cast-in- place manhole form setter; Pressure pipelayer; Davis trencher - 300 or similar type (and all small trenchers); Blaster; Diamond driller; Multiple unit drill; Hydraulic drill

GROUP 1: Asphalt spreader boxes (all types); Barko, Wacker and similar type tampers; Buggymobile; Caulker, bander, pipewrapper, conduit layer, plastic pipelayer; Certified hazardous waste worker including Leade Abatement; Compactors of all types; Concrete and magnesite mixer, 1/2 yd. and under; Concrete pan work; Concrete sander; Concrete saw; Cribber and/or shoring; Cut granite curb setter; Dri-pak-it machine; Faller, logloader and bucket; Form raiser, slip forms; Green cutter; Headerboard, Hubsetter, aligner, by any method; High pressure blow pipe (1-1/2" or over, 100 lbs. pressure/over); Hydro seeder and similar type; Jackhammer operator; Jacking of pipe over 12 inches; Jackson and similar type compactor; Kettle tender, pot and worker applying asphalt, lay-kold, creosote, lime, caustic and similar type materials (applying means applying, dipping or handling of such materials); Lagging, sheeting, whaling, bracing, trenchjacking, lagging hammer; Magnesite, epoxyresin, fiberglass, mastic worker (wet or dry); No joint pipe and stripping of same, including repair of voids; Pavement breaker and spader, including tool grinder; Perma curb; Pipelayer (including grade checking in connection with pipelaying); Precast-manhole setter; Pressure pipe tester; Post hole digger, air, gas and electric; Power broom sweeper; Power tampers of all types

(except as shown in Group 2); Ram set gun and stud gun; Riprap stonepaver and rock-slinger, including placing of sacked concrete and/or sand (wet or dry) and gabions and similar type; Rotary scarifier or multiple head concrete chipping scarifier; Roto and Ditch Witch; Rototiller; Sandblaster, pot, gun, nozzle operators; Signalling and rigging; Tank cleaner; Tree climber; Turbo blaster; Vibrascreed, bull float in connection with laborers' work; Vibrator; Hazardous waste worker (lead removal); Asbestos and mold removal worker

GROUP 1-a: Joy drill model TWM-2A; Gardner-Denver model DH143 and similar type drills; Track driller; Jack leg driller; Wagon driller; Mechanical drillers, all types regardless of type or method of power; Mechanical pipe layers, all types regardless of type or method of power; Blaster and powder; All work of loading, placing and blasting of all powder and explosives of whatever type regardless of method used for such loading and placing; High scalars (including drilling of same); Tree topper; Bit grinder

GROUP 1-b: Sewer cleaners shall receive \$4.00 per day above Group 1 wage rates. "Sewer cleaner" means any worker who handles or comes in contact with raw sewage in small diameter sewers. Those who work inside recently active, large diameter sewers, and all recently active sewer manholes shall receive \$5.00 per day above Group 1 wage rates.

GROUP 1-c: Burning and welding in connection with laborers' work; Synthetic thermoplastics and similar type welding

GROUP 1-d: Maintenance and repair track and road beds. All employees performing work covered herein shall receive \$ .25 per hour above their regular rate for all work performed on underground structures not specifically covered herein. This paragraph shall not be construed to apply to work below ground level in open cut. It shall apply to cut and cover work of subway construction after the temporary cover has been placed.

GROUP 1-e: Work on and/or in bell hole footings and shafts thereof, and work on and in deep footings. (A deep footing is a hole 15 feet or more in depth.) In the event the depth of the footing is unknown at the commencement of excavation, and the final depth exceeds 15 feet, the deep footing wage rate would apply to all employees for each and every day worked on or in the excavation of the footing from the date of inception.

GROUP 1-f: Wire winding machine in connection with guniting or shot crete

GROUP 2: Asphalt shoveler; Cement dumper and handling dry cement or gypsum; Choke-setter and rigger (clearing work); Concrete bucket dumper and chute; Concrete chipping and grinding; Concrete laborer (wet or dry); Driller tender, chuck tender, nipper; Guinea chaser (stake), grout crew; High pressure nozzle, adductor; Hydraulic monitor (over 100 lbs. pressure); Loading and unloading, carrying and hauling of all rods and materials for use in reinforcing concrete construction; Pittsburgh chipper and similar type brush shredders; Sloper; Single foot, hand-held, pneumatic tender; All pneumatic, air, gas and electric tools not listed in Groups 1 through 1-f; Jacking of pipe - under 12

inches

GROUP 3: Construction laborers, including bridge and general laborer; Dump, load spotter; Flag person; Fire watcher; Fence erector; Guardrail erector; Gardener, horticultural and landscape laborer; Jetting; Limber, brush loader and piler; Pavement marker (button setter); Maintenance, repair track and road beds; Streetcar and railroad construction track laborer; Temporary air and water lines, Victaulic or similar; Tool room attendant (jobsite only)

GROUP 4: Final clean-up work of debris, grounds and building including but not limited to: street cleaner; cleaning and washing windows; brick cleaner (jobsite only); material cleaner (jobsite only). The classification "material cleaner" is to be utilized under the following conditions:  
A: at demolition site for the salvage of the material.

B: at the conclusion of a job where the material is to be salvaged and stocked to be reused on another job.

C: for the cleaning of salvage material at the jobsite or temporary jobsite yard.

The material cleaner classification should not be used in the performance of "form stripping, cleaning and oiling and moving to the next point of erection".

-----  
GUNITE LABORER CLASSIFICATIONS

GROUP 1: Structural Nozzleman

GROUP 2: Nozzleman, Gunman, Potman, Groundman

GROUP 3: Reboundman

GROUP 4: Gunitite laborer  
-----

WRECKING WORK LABORER CLASSIFICATIONS

GROUP 1: Skilled wrecker (removing and salvaging of sash, windows and materials)

GROUP 2: Semi-skilled wrecker (salvaging of other building materials)  
-----

LABO0073-009 07/01/2021

CALAVERAS AND SAN JOAQUIN COUNTIES

	Rates	Fringes
LABORER (Plaster Tender).....	\$ 35.82	28.45

Work on a swing stage scaffold: \$1.00 per hour additional.  
-----

LABO0261-003 06/28/2021

SAN FRANCISCO AND SAN MATEO COUNTIES

Rates Fringes



LABORER (TRAFFIC CONTROL/LANE CLOSURE)

Escort Driver, Flag Person..\$ 34.48	26.21
Traffic Control Person I....\$ 34.78	26.21
Traffic Control Person II...\$ 32.28	26.21

TRAFFIC CONTROL PERSON I: Layout of traffic control, crash cushions, construction area and roadside signage.

TRAFFIC CONTROL PERSON II: Installation and removal of temporary/permanent signs, markers, delineators and crash cushions.

-----  
LABO0261-005 07/01/2021

SAN FRANCISCO AND SAN MATEO COUNTIES

	Rates	Fringes
Tunnel and Shaft Laborers:		
GROUP 1.....\$ 42.00		25.71
GROUP 2.....\$ 41.77		25.71
GROUP 3.....\$ 41.52		25.71
GROUP 4.....\$ 41.07		25.71
GROUP 5.....\$ 40.53		25.71
Shotcrete Specialist.....\$ 42.52		25.71

TUNNEL AND SHAFT CLASSIFICATIONS

GROUP 1: Diamond driller; Groundmen; Gunite and shotcrete nozzlemen

GROUP 2: Rodmen; Shaft work & raise (below actual or excavated ground level)

GROUP 3: Bit grinder; Blaster, driller, powdermen, heading; Cherry pickermen - where car is lifted; Concrete finisher in tunnel; Concrete screedman; Grout pumpman and potman; Gunite & shotcrete gunman & potman; Headermen; High pressure nozzleman; Miner - tunnel, including top and bottom man on shaft and raise work; Nipper; Nozzleman on slick line; Sandblaster - potman, Robotic Shotcrete Placer, Segment Erector, Tunnel Muck Hauler, Steel Form raiser and setter; Timberman, retimberman (wood or steel or substitute materials therefore); Tugger (for tunnel laborer work); Cable tender; Chuck tender; Powderman - primer house

GROUP 4: Vibrator operator, pavement breaker; Bull gang - muckers, trackmen; Concrete crew - includes rodding and spreading, Dumpmen (any method)

GROUP 5: Grout crew; Reboundman; Swamper/ Brakeman

-----  
LABO0261-009 06/25/2018

SAN FRANCISCO, AND SAN MATEO COUNTIES

	Rates	Fringes
LABORER (CONSTRUCTION CRAFT LABORERS - AREA A:)		
Construction Specialist		
Group.....\$ 31.49		23.20

GROUP 1.....	\$ 30.79	23.20
GROUP 1-a.....	\$ 31.01	23.20
GROUP 1-c.....	\$ 30.84	23.20
GROUP 1-e.....	\$ 31.34	23.20
GROUP 1-f.....	\$ 31.37	23.20
GROUP 2.....	\$ 30.64	23.20
GROUP 3.....	\$ 30.54	23.20
GROUP 4.....	\$ 24.23	23.20

See groups 1-b and 1-d under laborer classifications.

LABORER (GARDENERS,  
HORTICULTURAL & LANDSCAPE

LABORERS - AREA A:)

(1) New Construction.....	\$ 30.54	23.20
(2) Establishment Warranty Period.....	\$ 24.23	23.20

LABORER (WRECKING - AREA A:)

GROUP 1.....	\$ 30.79	23.20
GROUP 2.....	\$ 30.64	23.20

Laborers: (GUNITE - AREA A:)

GROUP 1.....	\$ 30.75	22.31
GROUP 2.....	\$ 30.25	22.31
GROUP 3.....	\$ 29.66	22.31
GROUP 4.....	\$ 29.54	22.31

FOOTNOTES:

Laborers working off or with or from bos'n chairs, swinging scaffolds, belts shall receive \$0.25 per hour above the applicable wage rate. This shall not apply to workers entitled to receive the wage rate set forth in Group 1-a below.

LABORER CLASSIFICATIONS

CONSTRUCTION SPECIALIST GROUP: Asphalt ironer and raker; Chainsaw; Laser beam in connection with laborers' work; Cast-in- place manhole form setter; Pressure pipelayer; Davis trencher - 300 or similar type (and all small trenchers); Blaster; Diamond driller; Multiple unit drill; Hydraulic drill

GROUP 1: Asphalt spreader boxes (all types); Barko, Wacker and similar type tampers; Buggymobile; Caulker, bander, pipewrapper, conduit layer, plastic pipelayer; Certified hazardous waste worker including Leade Abatement; Compactors of all types; Concrete and magnesite mixer, 1/2 yd. and under; Concrete pan work; Concrete sander; Concrete saw; Cribber and/or shoring; Cut granite curb setter; Dri-pak-it machine; Faller, logloader and bucket; Form raiser, slip forms; Green cutter; Headerboard, Hubsetter, aligner, by any method; High pressure blow pipe (1-1/2" or over, 100 lbs. pressure/over); Hydro seeder and similar type; Jackhammer operator; Jacking of pipe over 12 inches; Jackson and similar type compactor; Kettle tender, pot and worker applying asphalt, lay-kold, creosote, lime, caustic and similar type materials (applying means applying, dipping or handling of such materials); Lagging, sheeting, whaling, bracing, trenchjacking, lagging hammer; Magnesite, epoxyresin, fiberglass, mastic worker (wet or dry); No joint pipe and stripping of same, including repair of voids; Pavement breaker and spader, including tool grinder; Precast curb; Pipelayer (including grade checking in connection with pipelaying); Precast-manhole setter;

Pressure pipe tester; Post hole digger, air, gas and electric; Power broom sweeper; Power tampers of all types (except as shown in Group 2); Ram set gun and stud gun; Riprap stonepaver and rock-slinger, including placing of sacked concrete and/or sand (wet or dry) and gabions and similar type; Rotary scarifier or multiple head concrete chipping scarifier; Roto and Ditch Witch; Rototiller; Sandblaster, pot, gun, nozzle operators; Signalling and rigging; Tank cleaner; Tree climber; Turbo blaster; Vibrascreed, bull float in connection with laborers' work; Vibrator; Hazardous waste worker (lead removal); Asbestos and mold removal worker

GROUP 1-a: Joy drill model TWM-2A; Gardner-Denver model DH143 and similar type drills; Track driller; Jack leg driller; Wagon driller; Mechanical drillers, all types regardless of type or method of power; Mechanical pipe layers, all types regardless of type or method of power; Blaster and powder; All work of loading, placing and blasting of all powder and explosives of whatever type regardless of method used for such loading and placing; High scalers (including drilling of same); Tree topper; Bit grinder

GROUP 1-b: Sewer cleaners shall receive \$4.00 per day above Group 1 wage rates. "Sewer cleaner" means any worker who handles or comes in contact with raw sewage in small diameter sewers. Those who work inside recently active, large diameter sewers, and all recently active sewer manholes shall receive \$5.00 per day above Group 1 wage rates.

GROUP 1-c: Burning and welding in connection with laborers' work; Synthetic thermoplastics and similar type welding

GROUP 1-d: Maintenance and repair track and road beds. All employees performing work covered herein shall receive \$ .25 per hour above their regular rate for all work performed on underground structures not specifically covered herein. This paragraph shall not be construed to apply to work below ground level in open cut. It shall apply to cut and cover work of subway construction after the temporary cover has been placed.

GROUP 1-e: Work on and/or in bell hole footings and shafts thereof, and work on and in deep footings. (A deep footing is a hole 15 feet or more in depth.) In the event the depth of the footing is unknown at the commencement of excavation, and the final depth exceeds 15 feet, the deep footing wage rate would apply to all employees for each and every day worked on or in the excavation of the footing from the date of inception.

GROUP 1-f: Wire winding machine in connection with guniting or shot crete

GROUP 2: Asphalt shoveler; Cement dumper and handling dry cement or gypsum; Choke-setter and rigger (clearing work); Concrete bucket dumper and chute; Concrete chipping and grinding; Concrete laborer (wet or dry); Driller tender, chuck tender, nipper; Guinea chaser (stake), grout crew; High pressure nozzle, adductor; Hydraulic monitor (over 100 lbs. pressure); Loading and unloading, carrying and hauling of all rods and materials for use in reinforcing concrete construction; Pittsburgh chipper and similar type brush cutters; Sloper; Single foot, hand-held, pneumatic

tamper; All pneumatic, air, gas and electric tools not listed in Groups 1 through 1-f; Jacking of pipe - under 12 inches

GROUP 3: Construction laborers, including bridge and general laborer; Dump, load spotter; Flag person; Fire watcher; Fence erector; Guardrail erector; Gardener, horticultural and landscape laborer; Jetting; Limber, brush loader and piler; Pavement marker (button setter); Maintenance, repair track and road beds; Streetcar and railroad construction track laborer; Temporary air and water lines, Victaulic or similar; Tool room attendant (jobsite only)

GROUP 4: Final clean-up work of debris, grounds and building including but not limited to: street cleaner; cleaning and washing windows; brick cleaner (jobsite only); material cleaner (jobsite only). The classification "material cleaner" is to be utilized under the following conditions:

- A: at demolition site for the salvage of the material.
- B: at the conclusion of a job where the material is to be salvaged and stocked to be reused on another job.
- C: for the cleaning of salvage material at the jobsite or temporary jobsite yard.

The material cleaner classification should not be used in the performance of "form stripping, cleaning and oiling and moving to the next point of erection".

-----

GUNITE LABORER CLASSIFICATIONS

- GROUP 1: Structural Nozzleman
- GROUP 2: Nozzleman, Gunman, Potman, Groundman
- GROUP 3: Reboundman
- GROUP 4: Gunitite laborer

-----

WRECKING WORK LABORER CLASSIFICATIONS

- GROUP 1: Skilled wrecker (removing and salvaging of sash, windows and materials)
- GROUP 2: Semi-skilled wrecker (salvaging of other building materials)

-----

LABO0261-011 07/01/2021

SAN FRANCISCO AND SAN MATEO COUNTIES:

	Rates	Fringes
MASON TENDER, BRICK.....	\$ 34.85	26.32

FOOTNOTES: Underground work such as sewers, manholes, catch basins, sewer pipes, telephone conduits, tunnels and cut trenches: \$5.00 per day additional. Work in live sewage: \$2.50 per day additional.

-----

SAN FRANCISCO AND SAN MATEO COUNTIES:

	Rates	Fringes
PLASTER TENDER.....	\$ 40.48	30.23

Work on a swing stage scaffold: \$1.00 per hour additional.

-----  
LABO0270-003 06/28/2021

AREA A: SANTA CLARA

AREA B: MONTEREY, SAN BENITO AND SANTA CRUZ COUNTIES

	Rates	Fringes
LABORER (TRAFFIC CONTROL/LANE CLOSURE)		
Escort Driver, Flag Person		
Area A.....	\$ 34.48	26.21
Area B.....	\$ 33.48	26.21
Traffic Control Person I		
Area A.....	\$ 34.78	26.21
Area B.....	\$ 33.78	26.21
Traffic Control Person II		
Area A.....	\$ 32.28	26.21
Area B.....	\$ 31.28	26.21

TRAFFIC CONTROL PERSON I: Layout of traffic control, crash cushions, construction area and roadside signage.

TRAFFIC CONTROL PERSON II: Installation and removal of temporary/permanent signs, markers, delineators and crash cushions.

-----  
LABO0270-004 07/01/2021

MONTEREY, SAN BENITO, SANTA CLARA, AND SANTA CRUZ COUNTIES

	Rates	Fringes
Tunnel and Shaft Laborers:		
GROUP 1.....	\$ 42.00	25.71
GROUP 2.....	\$ 41.77	25.71
GROUP 3.....	\$ 41.52	25.71
GROUP 4.....	\$ 41.07	25.71
GROUP 5.....	\$ 40.53	25.71
Shotcrete Specialist.....	\$ 42.52	25.71

TUNNEL AND SHAFT CLASSIFICATIONS

GROUP 1: Diamond driller; Groundmen; Guniting and shotcrete nozzlemen

GROUP 2: Rodmen; Shaft work & raise (below actual or excavated ground level)

GROUP 3: Bit grinder; Blaster, driller, powdermen, heading; Cherry pickermen - where car is lifted; Concrete finisher in tunnel; Concrete screedman; Grout pumpman and potman; Shotcrete gunman & potman; Headermen; High

pressure nozzleman; Miner - tunnel, including top and bottom man on shaft and raise work; Nipper; Nozzleman on slick line; Sandblaster - potman, Robotic Shotcrete Placer, Segment Erector, Tunnel Muck Hauler, Steel Form raiser and setter; Timberman, retimberman (wood or steel or substitute materials therefore); Tugger (for tunnel laborer work); Cable tender; Chuck tender; Powderman - primer house

GROUP 4: Vibrator operator, pavement breaker; Bull gang - muckers, trackmen; Concrete crew - includes rodding and spreading, Dumpmen (any method)

GROUP 5: Grout crew; Reboundman; Swamper/ Brakeman

-----  
LABO0270-005 07/01/2022

MONTEREY AND SAN BENITO COUNTIES

	Rates	Fringes
LABORER		
Mason Tender-Brick.....	\$ 35.29	25.21

-----  
LABO0270-007 06/25/2018

MONTEREY, SAN BENITO, AND SANTA CRUZ, COUNTIES

	Rates	Fringes
LABORER (CONSTRUCTION CRAFT		
LABORERS - AREA B)		
Construction Specialist		
Group.....	\$ 30.40	23.20
GROUP 1.....	\$ 29.79	23.20
GROUP 1-a.....	\$ 30.01	23.20
GROUP 1-c.....	\$ 29.84	23.20
GROUP 1-e.....	\$ 30.34	23.20
GROUP 1-f.....	\$ 30.37	23.20
GROUP 2.....	\$ 29.64	23.20
GROUP 3.....	\$ 29.54	23.20
GROUP 4.....	\$ 23.23	23.20

See groups 1-b and 1-d under laborer classifications.

LABORER (GARDENERS,  
HORTICULTURAL & LANDSCAPE

LABORERS - AREA B)		
(1) New Construction.....	\$ 29.54	23.20
(2) Establishment Warranty		
Period.....	\$ 23.23	23.20

LABORER (GUNITE - AREA B)		
GROUP 1.....	\$ 29.75	22.31
GROUP 2.....	\$ 29.25	22.31
GROUP 3.....	\$ 28.66	22.31
GROUP 4.....	\$ 28.54	22.31

LABORER (WRECKING - AREA B)		
GROUP 1.....	\$ 29.79	23.20
GROUP 2.....	\$ 29.64	23.20

FOOTNOTES:

Laborers working off or with or from bos'n chairs, swinging scaffolds, belts shall receive \$0.25 per hour above the applicable wage rate. This shall not apply to workers entitled to receive the wage rate set forth in Group 1-a

-----

LABORER CLASSIFICATIONS

CONSTRUCTION SPECIALIST GROUP: Asphalt ironer and raker; Chainsaw; Laser beam in connection with laborers' work; Cast-in-place manhole form setter; Pressure pipelayer; Davis trencher - 300 or similar type (and all small trenchers); Blaster; Diamond driller; Multiple unit drill; Hydraulic drill

GROUP 1: Asphalt spreader boxes (all types); Barko, Wacker and similar type tampers; Buggymobile; Caulker, bander, pipewrapper, conduit layer, plastic pipelayer; Certified hazardous waste worker including Leade Abatement; Compactors of all types; Concrete and magnesite mixer, 1/2 yd. and under; Concrete pan work; Concrete sander; Concrete saw; Cribber and/or shoring; Cut granite curb setter; Dri-pak-it machine; Faller, logloader and bucket; Form raiser, slip forms; Green cutter; Headerboard, Hubsetter, aligner, by any method; High pressure blow pipe (1-1/2" or over, 100 lbs. pressure/over); Hydro seeder and similar type; Jackhammer operator; Jacking of pipe over 12 inches; Jackson and similar type compactor; Kettle tender, pot and worker applying asphalt, lay-kold, creosote, lime, caustic and similar type materials (applying means applying, dipping or handling of such materials); Lagging, sheeting, whaling, bracing, trenchjacking, lagging hammer; Magnesite, epoxyresin, fiberglass, mastic worker (wet or dry); No joint pipe and stripping of same, including repair of voids; Pavement breaker and spader, including tool grinder; Perma curb; Pipelayer (including grade checking in connection with pipelaying); Precast-manhole setter; Pressure pipe tester; Post hole digger, air, gas and electric; Power broom sweeper; Power tampers of all types (except as shown in Group 2); Ram set gun and stud gun; Riprap stonepaver and rock-slinger, including placing of sacked concrete and/or sand (wet or dry) and gabions and similar type; Rotary scarifier or multiple head concrete chipping scarifier; Roto and Ditch Witch; Rototiller; Sandblaster, pot, gun, nozzle operators; Signalling and rigging; Tank cleaner; Tree climber; Turbo blaster; Vibrascreed, bull float in connection with laborers' work; Vibrator; Hazardous waste worker (lead removal); Asbestos and mold removal worker

GROUP 1-a: Joy drill model TWM-2A; Gardner-Denver model DH143 and similar type drills; Track driller; Jack leg driller; Wagon driller; Mechanical drillers, all types regardless of type or method of power; Mechanical pipe layers, all types regardless of type or method of power; Blaster and powder; All work of loading, placing and blasting of all powder and explosives of whatever type regardless of method used for such loading and placing; High scalers (including drilling of same); Tree topper; Bit grinder

GROUP 1-b: Sewer cleaners shall receive \$4.00 per day above Group 1 wage rates. "Sewer cleaner" means any worker who handles or comes in contact with raw sewage in small diameter sewers. Those who work inside recently active, large diameter sewers, and all recently active sewer manholes shall receive \$5.00 per day above Group 1 wage

GROUP 1-c: Burning and welding in connection with laborers' work; Synthetic thermoplastics and similar type welding

GROUP 1-d: Maintenance and repair track and road beds. All employees performing work covered herein shall receive \$ .25 per hour above their regular rate for all work performed on underground structures not specifically covered herein. This paragraph shall not be construed to apply to work below ground level in open cut. It shall apply to cut and cover work of subway construction after the temporary cover has been placed.

GROUP 1-e: Work on and/or in bell hole footings and shafts thereof, and work on and in deep footings. (A deep footing is a hole 15 feet or more in depth.) In the event the depth of the footing is unknown at the commencement of excavation, and the final depth exceeds 15 feet, the deep footing wage rate would apply to all employees for each and every day worked on or in the excavation of the footing from the date of inception.

GROUP 1-f: Wire winding machine in connection with guniting or shot crete

GROUP 2: Asphalt shoveler; Cement dumper and handling dry cement or gypsum; Choke-setter and rigger (clearing work); Concrete bucket dumper and chute; Concrete chipping and grinding; Concrete laborer (wet or dry); Driller tender, chuck tender, nipper; Guinea chaser (stake), grout crew; High pressure nozzle, adductor; Hydraulic monitor (over 100 lbs. pressure); Loading and unloading, carrying and hauling of all rods and materials for use in reinforcing concrete construction; Pittsburgh chipper and similar type brush shredders; Sloper; Single foot, hand-held, pneumatic tamper; All pneumatic, air, gas and electric tools not listed in Groups 1 through 1-f; Jacking of pipe - under 12 inches

GROUP 3: Construction laborers, including bridge and general laborer; Dump, load spotter; Flag person; Fire watcher; Fence erector; Guardrail erector; Gardener, horticultural and landscape laborer; Jetting; Limber, brush loader and piler; Pavement marker (button setter); Maintenance, repair track and road beds; Streetcar and railroad construction track laborer; Temporary air and water lines, Victaulic or similar; Tool room attendant (jobsite only)

GROUP 4: Final clean-up work of debris, grounds and building including but not limited to: street cleaner; cleaning and washing windows; brick cleaner (jobsite only); material cleaner (jobsite only). The classification "material cleaner" is to be utilized under the following conditions:

- A: at demolition site for the salvage of the material.
- B: at the conclusion of a job where the material is to be salvaged and stocked to be reused on another job.
- C: for the cleaning of salvage material at the jobsite or temporary jobsite yard.

The material cleaner classification should not be used in the performance of "form stripping, cleaning and oiling and moving to the next point of erection".



GROUP 1: Structural Nozzleman

GROUP 2: Nozzleman, Gunman, Potman, Groundman

GROUP 3: Reboundman

GROUP 4: Gunite laborer

-----  
WRECKING WORK LABORER CLASSIFICATIONS

GROUP 1: Skilled wrecker (removing and salvaging of sash, windows and materials)

GROUP 2: Semi-skilled wrecker (salvaging of other building materials)

-----  
LABO0270-010 06/25/2018

SANTA CLARA COUNTY

	Rates	Fringes
LABORER (CONSTRUCTION CRAFT		
LABORERS - AREA A:)		
Construction Specialist		
Group.....	\$ 31.49	23.20
GROUP 1.....	\$ 30.79	23.20
GROUP 1-a.....	\$ 31.01	23.20
GROUP 1-c.....	\$ 30.84	23.20
GROUP 1-e.....	\$ 31.34	23.20
GROUP 1-f.....	\$ 30.37	23.20
GROUP 2.....	\$ 30.64	23.20
GROUP 3.....	\$ 30.54	23.20
GROUP 4.....	\$ 24.23	23.20

See groups 1-b and 1-d under laborer classifications.

LABORER (GARDENERS, HORTICULTURAL & LANDSCAPE		
LABORERS - AREA A:)		
(1) New Construction.....	\$ 30.54	23.20
(2) Establishment Warranty Period.....	\$ 24.23	23.20

LABORER (GUNITE - AREA A:)		
GROUP 1.....	\$ 30.75	22.31
GROUP 2.....	\$ 30.25	22.31
GROUP 3.....	\$ 29.66	22.31
GROUP 4.....	\$ 29.54	22.31

LABORER (WRECKING - AREA A:)		
GROUP 1.....	\$ 30.79	23.20
GROUP 2.....	\$ 30.64	23.20

FOOTNOTES:

Laborers working off or with or from bos'n chairs, swinging scaffolds, belts shall receive \$0.25 per hour above the applicable wage rate. This shall not apply to workers entitled to receive the wage rate set forth in Group 1-a below.

CONSTRUCTION SPECIALIST GROUP: Asphalt ironer and raker; Chainsaw; Laser beam in connection with laborers' work; Cast-in-place manhole form setter; Pressure pipelayer; Davis trencher - 300 or similar type (and all small trenchers); Blaster; Diamond driller; Multiple unit drill; Hydraulic drill

GROUP 1: Asphalt spreader boxes (all types); Barko, Wacker and similar type tampers; Buggymobile; Caulker, bander, pipewrapper, conduit layer, plastic pipelayer; Certified hazardous waste worker including Leade Abatement; Compactors of all types; Concrete and magnesite mixer, 1/2 yd. and under; Concrete pan work; Concrete sander; Concrete saw; Cribber and/or shoring; Cut granite curb setter; Dri-pak-it machine; Faller, logloader and bucket; Form raiser, slip forms; Green cutter; Headerboard, Hubsetter, aligner, by any method; High pressure blow pipe (1-1/2" or over, 100 lbs. pressure/over); Hydro seeder and similar type; Jackhammer operator; Jacking of pipe over 12 inches; Jackson and similar type compactor; Kettle tender, pot and worker applying asphalt, lay-kold, creosote, lime, caustic and similar type materials (applying means applying, dipping or handling of such materials); Lagging, sheeting, whaling, bracing, trenchjacking, lagging hammer; Magnesite, epoxyresin, fiberglass, mastic worker (wet or dry); No joint pipe and stripping of same, including repair of voids; Pavement breaker and spader, including tool grinder; Perma curb; Pipelayer (including grade checking in connection with pipelaying); Precast-manhole setter; Pressure pipe tester; Post hole digger, air, gas and electric; Power broom sweeper; Power tampers of all types (except as shown in Group 2); Ram set gun and stud gun; Riprap stonepaver and rock-slinger, including placing of sacked concrete and/or sand (wet or dry) and gabions and similar type; Rotary scarifier or multiple head concrete chipping scarifier; Roto and Ditch Witch; Rototiller; Sandblaster, pot, gun, nozzle operators; Signalling and rigging; Tank cleaner; Tree climber; Turbo blaster; Vibrascreed, bull float in connection with laborers' work; Vibrator; Hazardous waste worker (lead removal); Asbestos and mold removal worker

GROUP 1-a: Joy drill model TWM-2A; Gardner-Denver model DH143 and similar type drills; Track driller; Jack leg driller; Wagon driller; Mechanical drillers, all types regardless of type or method of power; Mechanical pipe layers, all types regardless of type or method of power; Blaster and powder; All work of loading, placing and blasting of all powder and explosives of whatever type regardless of method used for such loading and placing; High scalers (including drilling of same); Tree topper; Bit grinder

GROUP 1-b: Sewer cleaners shall receive \$4.00 per day above Group 1 wage rates. "Sewer cleaner" means any worker who handles or comes in contact with raw sewage in small diameter sewers. Those who work inside recently active, large diameter sewers, and all recently active sewer manholes shall receive \$5.00 per day above Group 1 wage rates.

GROUP 1-c: Burning and welding in connection with laborers' work; Synthetic thermoplastics and similar type welding

employees performing work covered herein shall receive \$ .25 per hour above their regular rate for all work performed on underground structures not specifically covered herein. This paragraph shall not be construed to apply to work below ground level in open cut. It shall apply to cut and cover work of subway construction after the temporary cover has been placed.

GROUP 1-e: Work on and/or in bell hole footings and shafts thereof, and work on and in deep footings. (A deep footing is a hole 15 feet or more in depth.) In the event the depth of the footing is unknown at the commencement of excavation, and the final depth exceeds 15 feet, the deep footing wage rate would apply to all employees for each and every day worked on or in the excavation of the footing from the date of inception.

GROUP 1-f: Wire winding machine in connection with guniting or shot crete

GROUP 2: Asphalt shoveler; Cement dumper and handling dry cement or gypsum; Choke-setter and rigger (clearing work); Concrete bucket dumper and chute; Concrete chipping and grinding; Concrete laborer (wet or dry); Driller tender, chuck tender, nipper; Guinea chaser (stake), grout crew; High pressure nozzle, adductor; Hydraulic monitor (over 100 lbs. pressure); Loading and unloading, carrying and hauling of all rods and materials for use in reinforcing concrete construction; Pittsburgh chipper and similar type brush shredders; Sloper; Single foot, hand-held, pneumatic tamper; All pneumatic, air, gas and electric tools not listed in Groups 1 through 1-f; Jacking of pipe - under 12 inches

GROUP 3: Construction laborers, including bridge and general laborer; Dump, load spotter; Flag person; Fire watcher; Fence erector; Guardrail erector; Gardener, horticultural and landscape laborer; Jetting; Limber, brush loader and piler; Pavement marker (button setter); Maintenance, repair track and road beds; Streetcar and railroad construction track laborer; Temporary air and water lines, Victaulic or similar; Tool room attendant (jobsite only)

GROUP 4: Final clean-up work of debris, grounds and building including but not limited to: street cleaner; cleaning and washing windows; brick cleaner (jobsite only); material cleaner (jobsite only). The classification "material cleaner" is to be utilized under the following conditions:  
A: at demolition site for the salvage of the material.  
B: at the conclusion of a job where the material is to be salvaged and stocked to be reused on another job.  
C: for the cleaning of salvage material at the jobsite or temporary jobsite yard.

The material cleaner classification should not be used in the performance of "form stripping, cleaning and oiling and moving to the next point of erection".

-----

#### GUNITE LABORER CLASSIFICATIONS

GROUP 1: Structural Nozzleman

GROUP 3: Reboundman

GROUP 4: Gunite laborer

-----  
WRECKING WORK LABORER CLASSIFICATIONS

GROUP 1: Skilled wrecker (removing and salvaging of sash, windows and materials)

GROUP 2: Semi-skilled wrecker (salvaging of other building materials)

-----  
LABO0270-011 07/01/2017

MONTEREY, SAN BENITO, SANTA CRUZ, SANTA CLARA COUNTIES

	Rates	Fringes
LABORER (Plaster Tender).....	\$ 34.70	21.22

Work on a swing stage scaffold: \$1.00 per hour additional.

-----  
LABO0294-001 07/01/2022

FRESNO, KINGS AND MADERA COUNTIES

	Rates	Fringes
LABORER (Brick) Mason Tender-Brick.....	\$ 35.29	25.21

-----  
LABO0294-002 06/28/2021

FRESNO, KINGS, AND MADERA COUNTIES

	Rates	Fringes
LABORER (TRAFFIC CONTROL/LANE CLOSURE)		
Escort Driver, Flag Person..	\$ 33.48	26.21
Traffic Control Person I....	\$ 33.78	26.21
Traffic Control Person II...\$	31.28	26.21

TRAFFIC CONTROL PERSON I: Layout of traffic control, crash cushions, construction area and roadside signage.

TRAFFIC CONTROL PERSON II: Installation and removal of temporary/permanent signs, markers, delineators and crash cushions.

-----  
LABO0294-005 07/01/2021

FRESNO, KINGS, AND MADERA COUNTIES

	Rates	Fringes
Tunnel and Shaft Laborers:		
GROUP 1.....	\$ 42.00	25.71
GROUP 2.....	\$ 41.77	25.71
GROUP 3.....	\$ 41.52	25.71

GROUP 4.....	\$ 41.07	25.71
GROUP 5.....	\$ 40.53	25.71
Shotcrete Specialist.....	\$ 42.52	25.71

TUNNEL AND SHAFT CLASSIFICATIONS

GROUP 1: Diamond driller; Groundmen; Guniting and shotcrete nozzle men

GROUP 2: Rodmen; Shaft work & raise (below actual or excavated ground level)

GROUP 3: Bit grinder; Blaster, driller, powdermen, heading; Cherry pickers - where car is lifted; Concrete finisher in tunnel; Concrete screedman; Grout pumpman and potman; Guniting & shotcrete gunman & potman; Headermen; High pressure nozzle man; Miner - tunnel, including top and bottom man on shaft and raise work; Nipper; Nozzle man on slick line; Sandblaster - potman, Robotic Shotcrete Placer, Segment Erector, Tunnel Muck Hauler, Steel Form raiser and setter; Timberman, retimberman (wood or steel or substitute materials therefore); Tugger (for tunnel laborer work); Cable tender; Chuck tender; Powderman - primer house

GROUP 4: Vibrator operator, pavement breaker; Bull gang - muckers, trackmen; Concrete crew - includes rodding and spreading, Dumpmen (any method)

GROUP 5: Grout crew; Reboundman; Swamper/ Brakeman

-----  
LABO0294-008 06/25/2018

FRESNO, KINGS, AND MADERA COUNTIES

	Rates	Fringes
LABORER (CONSTRUCTION CRAFT LABORERS - AREA B:)		
Construction Specialist		
Group.....	\$ 30.49	23.20
GROUP 1.....	\$ 29.79	23.20
GROUP 1-a.....	\$ 30.01	23.20
GROUP 1-c.....	\$ 29.84	23.20
GROUP 1-e.....	\$ 30.34	23.20
GROUP 1-f.....	\$ 30.37	23.20
GROUP 2.....	\$ 29.64	23.20
GROUP 3.....	\$ 29.54	23.20
GROUP 4.....	\$ 23.23	23.20
See groups 1-b and 1-d under laborer classifications.		
LABORER (GARDENERS, HORTICULTURAL & LANDSCAPE LABORERS - AREA B:)		
(1) New Construction.....	\$ 29.54	23.20
(2) Establishment Warranty Period.....	\$ 23.23	23.20
LABORER (GUNITING - AREA B:)		
GROUP 1.....	\$ 29.75	22.31
GROUP 2.....	\$ 29.25	22.31
GROUP 3.....	\$ 28.66	22.31
GROUP 4.....	\$ 28.54	22.31
LABORER (WRECKING - AREA B:)		
GROUP 1.....	\$ 29.79	23.20
GROUP 2.....	\$ 29.64	23.20

FOOTNOTES:

Laborers working off or with or from bos'n chairs, swinging scaffolds, belts shall receive \$0.25 per hour above the applicable wage rate. This shall not apply to workers entitled to receive the wage rate set forth in Group 1-a below.

-----

LABORER CLASSIFICATIONS

CONSTRUCTION SPECIALIST GROUP: Asphalt ironer and raker; Chainsaw; Laser beam in connection with laborers' work; Cast-in-place manhole form setter; Pressure pipelayer; Davis trencher - 300 or similar type (and all small trenchers); Blaster; Diamond driller; Multiple unit drill; Hydraulic drill

GROUP 1: Asphalt spreader boxes (all types); Barko, Wacker and similar type tampers; Buggymobile; Caulker, bander, pipewrapper, conduit layer, plastic pipelayer; Certified hazardous waste worker including Leade Abatement; Compactors of all types; Concrete and magnesite mixer, 1/2 yd. and under; Concrete pan work; Concrete sander; Concrete saw; Cribber and/or shoring; Cut granite curb setter; Dri-pak-it machine; Faller, logloader and bucket; Form raiser, slip forms; Green cutter; Headerboard, Hubsetter, aligner, by any method; High pressure blow pipe (1-1/2" or over, 100 lbs. pressure/over); Hydro seeder and similar type; Jackhammer operator; Jacking of pipe over 12 inches; Jackson and similar type compactor; Kettle tender, pot and worker applying asphalt, lay-kold, creosote, lime, caustic and similar type materials (applying means applying, dipping or handling of such materials); Lagging, sheeting, whaling, bracing, trenchjacking, lagging hammer; Magnesite, epoxyresin, fiberglass, mastic worker (wet or dry); No joint pipe and stripping of same, including repair of voids; Pavement breaker and spader, including tool grinder; Perma curb; Pipelayer (including grade checking in connection with pipelaying); Precast-manhole setter; Pressure pipe tester; Post hole digger, air, gas and electric; Power broom sweeper; Power tampers of all types (except as shown in Group 2); Ram set gun and stud gun; Riprap stonepaver and rock-slinger, including placing of sacked concrete and/or sand (wet or dry) and gabions and similar type; Rotary scarifier or multiple head concrete chipping scarifier; Roto and Ditch Witch; Rototiller; Sandblaster, pot, gun, nozzle operators; Signalling and rigging; Tank cleaner; Tree climber; Turbo blaster; Vibrascreed, bull float in connection with laborers' work; Vibrator; Hazardous waste worker (lead removal); Asbestos and mold removal worker

GROUP 1-a: Joy drill model TWM-2A; Gardner-Denver model DH143 and similar type drills; Track driller; Jack leg driller; Wagon driller; Mechanical drillers, all types regardless of type or method of power; Mechanical pipe layers, all types regardless of type or method of power; Blaster and powder; All work of loading, placing and blasting of all powder and explosives of whatever type regardless of method used for such loading and placing; High scalers (including drilling of same); Tree topper; Bit grinder

Group 1 wage rates. "Sewer cleaner" means any worker who handles or comes in contact with raw sewage in small diameter sewers. Those who work inside recently active, large diameter sewers, and all recently active sewer manholes shall receive \$5.00 per day above Group 1 wage rates.

GROUP 1-c: Burning and welding in connection with laborers' work; Synthetic thermoplastics and similar type welding

GROUP 1-d: Maintenance and repair track and road beds. All employees performing work covered herein shall receive \$ .25 per hour above their regular rate for all work performed on underground structures not specifically covered herein. This paragraph shall not be construed to apply to work below ground level in open cut. It shall apply to cut and cover work of subway construction after the temporary cover has been placed.

GROUP 1-e: Work on and/or in bell hole footings and shafts thereof, and work on and in deep footings. (A deep footing is a hole 15 feet or more in depth.) In the event the depth of the footing is unknown at the commencement of excavation, and the final depth exceeds 15 feet, the deep footing wage rate would apply to all employees for each and every day worked on or in the excavation of the footing from the date of inception.

GROUP 1-f: Wire winding machine in connection with guniting or shot crete

GROUP 2: Asphalt shoveler; Cement dumper and handling dry cement or gypsum; Choke-setter and rigger (clearing work); Concrete bucket dumper and chute; Concrete chipping and grinding; Concrete laborer (wet or dry); Driller tender, chuck tender, nipper; Guinea chaser (stake), grout crew; High pressure nozzle, adductor; Hydraulic monitor (over 100 lbs. pressure); Loading and unloading, carrying and hauling of all rods and materials for use in reinforcing concrete construction; Pittsburgh chipper and similar type brush shredders; Sloper; Single foot, hand-held, pneumatic tamper; All pneumatic, air, gas and electric tools not listed in Groups 1 through 1-f; Jacking of pipe - under 12 inches

GROUP 3: Construction laborers, including bridge and general laborer; Dump, load spotter; Flag person; Fire watcher; Fence erector; Guardrail erector; Gardener, horticultural and landscape laborer; Jetting; Limber, brush loader and piler; Pavement marker (button setter); Maintenance, repair track and road beds; Streetcar and railroad construction track laborer; Temporary air and water lines, Victaulic or similar; Tool room attendant (jobsite only)

GROUP 4: Final clean-up work of debris, grounds and building including but not limited to: street cleaner; cleaning and washing windows; brick cleaner (jobsite only); material cleaner (jobsite only). The classification "material cleaner" is to be utilized under the following conditions:

- A: at demolition site for the salvage of the material.
- B: at the conclusion of a job where the material is to be salvaged and stocked to be reused on another job.
- C: for the cleaning of salvage material at the jobsite or temporary jobsite yard.

The material cleaner classification should not be used in the performance of "form stripping, cleaning and oiling and moving to the next point of erection".

-----  
GUNITE LABORER CLASSIFICATIONS

GROUP 1: Structural Nozzleman

GROUP 2: Nozzleman, Gunman, Potman, Groundman

GROUP 3: Reboundman

GROUP 4: Gunitite laborer  
-----

WRECKING WORK LABORER CLASSIFICATIONS

GROUP 1: Skilled wrecker (removing and salvaging of sash, windows and materials)

GROUP 2: Semi-skilled wrecker (salvaging of other building materials)  
-----

LABO0294-010 07/01/2021

CALAVERAS, FRESNO, KINGS, MADERA, MARIPOSA, MERCED, SAN JOAQUIN, STANISLAUS & TUOLUMNE

	Rates	Fringes
Plasterer tender.....	\$ 35.82	28.45
Work on a swing stage scaffold:	\$1.00 per hour additional.	

-----

LABO0294-011 07/01/2021

FRESNO, KINGS, AND MADERA COUNTIES

	Rates	Fringes
LABORER (Plaster Tender).....	\$ 35.82	28.45
Work on a swing stage scaffold:	\$1.00 per hour additional.	

-----

LABO0304-002 06/28/2021

ALAMEDA COUNTY

	Rates	Fringes
LABORER (TRAFFIC CONTROL/LANE CLOSURE)		
Escort Driver, Flag Person..	\$ 34.48	26.21
Traffic Control Person I....	\$ 34.78	26.21
Traffic Control Person II...	\$ 32.28	26.21

TRAFFIC CONTROL PERSON I: Layout of traffic control, crash cushions, construction area and roadside signage.



temporary/permanent signs, markers, delineators and crash cushions.

-----  
LABO0304-003 07/01/2021

ALAMEDA COUNTY

	Rates	Fringes
Tunnel and Shaft Laborers:		
GROUP 1.....	\$ 42.00	25.71
GROUP 2.....	\$ 41.77	25.71
GROUP 3.....	\$ 41.52	25.71
GROUP 4.....	\$ 41.07	25.71
GROUP 5.....	\$ 40.53	25.71
Shotcrete Specialist.....	\$ 42.52	25.71

TUNNEL AND SHAFT CLASSIFICATIONS

GROUP 1: Diamond driller; Groundmen; Gunite and shotcrete nozzlemen

GROUP 2: Rodmen; Shaft work & raise (below actual or excavated ground level)

GROUP 3: Bit grinder; Blaster, driller, powdermen, heading; Cherry pickermen - where car is lifted; Concrete finisher in tunnel; Concrete screedman; Grout pumpman and potman; Gunite & shotcrete gunman & potman; Headermen; High pressure nozzleman; Miner - tunnel, including top and bottom man on shaft and raise work; Nipper; Nozzleman on slick line; Sandblaster - potman, Robotic Shotcrete Placer, Segment Erector, Tunnel Muck Hauler, Steel Form raiser and setter; Timberman, retimberman (wood or steel or substitute materials therefore); Tugger (for tunnel laborer work); Cable tender; Chuck tender; Powderman - primer house

GROUP 4: Vibrator operator, pavement breaker; Bull gang - muckers, trackmen; Concrete crew - includes rodding and spreading, Dumpmen (any method)

GROUP 5: Grout crew; Reboundman; Swamper/ Brakeman

-----  
LABO0304-004 06/25/2018

ALAMEDA COUNTY

	Rates	Fringes
LABORER (CONSTRUCTION CRAFT		
LABORERS - AREA A:)		
Construction Specialist		
Group.....	\$ 31.49	23.20
GROUP 1.....	\$ 30.79	23.20
GROUP 1-a.....	\$ 31.01	23.20
GROUP 1-c.....	\$ 30.84	23.20
GROUP 1-e.....	\$ 31.34	23.20
GROUP 1-f.....	\$ 30.37	23.20
GROUP 2.....	\$ 30.64	23.20
GROUP 3.....	\$ 30.54	23.20
GROUP 4.....	\$ 24.23	23.20

See groups 1-b and 1-d under laborer classifications.

(GARDENERS,

HORTICULTURAL & LANDSCAPE

LABORERS - AREA A:)

(1) New Construction.....\$ 30.54	23.20
(2) Establishment Warranty Period.....\$ 24.23	23.20

LABORER (GUNITE - AREA A:)

GROUP 1.....\$ 30.75	22.31
GROUP 2.....\$ 30.25	22.31
GROUP 3.....\$ 29.66	22.31
GROUP 4.....\$ 29.54	22.31

LABORER (WRECKING - AREA A:)

GROUP 1.....\$ 30.79	23.20
GROUP 2.....\$ 30.64	23.20

FOOTNOTES:

Laborers working off or with or from bos'n chairs, swinging scaffolds, belts shall receive \$0.25 per hour above the applicable wage rate. This shall not apply to workers entitled to receive the wage rate set forth in Group 1-a below.

LABORER CLASSIFICATIONS

CONSTRUCTION SPECIALIST GROUP: Asphalt ironer and raker; Chainsaw; Laser beam in connection with laborers' work; Cast-in-place manhole form setter; Pressure pipelayer; Davis trencher - 300 or similar type (and all small trenchers); Blaster; Diamond driller; Multiple unit drill; Hydraulic drill

GROUP 1: Asphalt spreader boxes (all types); Barko, Wacker and similar type tampers; Buggymobile; Caulker, bander, pipewrapper, conduit layer, plastic pipelayer; Certified hazardous waste worker including Leade Abatement; Compactors of all types; Concrete and magnesite mixer, 1/2 yd. and under; Concrete pan work; Concrete sander; Concrete saw; Cribber and/or shoring; Cut granite curb setter; Dri-pak-it machine; Faller, logloader and bucket; Form raiser, slip forms; Green cutter; Headerboard, Hubsetter, aligner, by any method; High pressure blow pipe (1-1/2" or over, 100 lbs. pressure/over); Hydro seeder and similar type; Jackhammer operator; Jacking of pipe over 12 inches; Jackson and similar type compactor; Kettle tender, pot and worker applying asphalt, lay-kold, creosote, lime, caustic and similar type materials (applying means applying, dipping or handling of such materials); Lagging, sheeting, whaling, bracing, trenchjacking, lagging hammer; Magnesite, epoxyresin, fiberglass, mastic worker (wet or dry); No joint pipe and stripping of same, including repair of voids; Pavement breaker and spader, including tool grinder; Perma curb; Pipelayer (including grade checking in connection with pipelaying); Precast-manhole setter; Pressure pipe tester; Post hole digger, air, gas and electric; Power broom sweeper; Power tampers of all types (except as shown in Group 2); Ram set gun and stud gun; Riprap stonepaver and rock-slinger, including placing of sacked concrete and/or sand (wet or dry) and gabions and similar type; Rotary scarifier or multiple head concrete chipping scarifier; Roto and Ditch Witch; Rototiller; Sandblaster, pot, gun, nozzle operators; Signalling and timing; Tank cleaner; Tree climber; Turbo blaster; screed, bull float in connection with laborers' work;

Vibrator; Hazardous waste worker (lead removal); Asbestos and mold removal worker

GROUP 1-a: Joy drill model TWM-2A; Gardner-Denver model DH143 and similar type drills; Track driller; Jack leg driller; Wagon driller; Mechanical drillers, all types regardless of type or method of power; Mechanical pipe layers, all types regardless of type or method of power; Blaster and powder; All work of loading, placing and blasting of all powder and explosives of whatever type regardless of method used for such loading and placing; High scalars (including drilling of same); Tree topper; Bit grinder

GROUP 1-b: Sewer cleaners shall receive \$4.00 per day above Group 1 wage rates. "Sewer cleaner" means any worker who handles or comes in contact with raw sewage in small diameter sewers. Those who work inside recently active, large diameter sewers, and all recently active sewer manholes shall receive \$5.00 per day above Group 1 wage rates.

GROUP 1-c: Burning and welding in connection with laborers' work; Synthetic thermoplastics and similar type welding

GROUP 1-d: Maintenance and repair track and road beds. All employees performing work covered herein shall receive \$ .25 per hour above their regular rate for all work performed on underground structures not specifically covered herein. This paragraph shall not be construed to apply to work below ground level in open cut. It shall apply to cut and cover work of subway construction after the temporary cover has been placed.

GROUP 1-e: Work on and/or in bell hole footings and shafts thereof, and work on and in deep footings. (A deep footing is a hole 15 feet or more in depth.) In the event the depth of the footing is unknown at the commencement of excavation, and the final depth exceeds 15 feet, the deep footing wage rate would apply to all employees for each and every day worked on or in the excavation of the footing from the date of inception.

GROUP 1-f: Wire winding machine in connection with guniting or shot crete

GROUP 2: Asphalt shoveler; Cement dumper and handling dry cement or gypsum; Choke-setter and rigger (clearing work); Concrete bucket dumper and chute; Concrete chipping and grinding; Concrete laborer (wet or dry); Driller tender, chuck tender, nipper; Guinea chaser (stake), grout crew; High pressure nozzle, adductor; Hydraulic monitor (over 100 lbs. pressure); Loading and unloading, carrying and hauling of all rods and materials for use in reinforcing concrete construction; Pittsburgh chipper and similar type brush shredders; Sloper; Single foot, hand-held, pneumatic tamper; All pneumatic, air, gas and electric tools not listed in Groups 1 through 1-f; Jacking of pipe - under 12 inches

GROUP 3: Construction laborers, including bridge and general laborer; Dump, load spotter; Flag person; Fire watcher; Fence erector; Guardrail erector; Gardener, horticultural and landscape laborer; Jetting; Limber, brush loader and roller; Pavement marker (button setter); Maintenance, repair and road beds; Streetcar and railroad construction

track laborer; Temporary air and water lines, Victaulic or similar; Tool room attendant (jobsite only)

GROUP 4: Final clean-up work of debris, grounds and building including but not limited to: street cleaner; cleaning and washing windows; brick cleaner (jobsite only); material cleaner (jobsite only). The classification "material cleaner" is to be utilized under the following conditions:

- A: at demolition site for the salvage of the material.
- B: at the conclusion of a job where the material is to be salvaged and stocked to be reused on another job.
- C: for the cleaning of salvage material at the jobsite or temporary jobsite yard.

The material cleaner classification should not be used in the performance of "form stripping, cleaning and oiling and moving to the next point of erection".

-----

GUNITE LABORER CLASSIFICATIONS

- GROUP 1: Structural Nozzleman
- GROUP 2: Nozzleman, Gunman, Potman, Groundman
- GROUP 3: Reboundman
- GROUP 4: Gunitite laborer

-----

WRECKING WORK LABORER CLASSIFICATIONS

- GROUP 1: Skilled wrecker (removing and salvaging of sash, windows and materials)
- GROUP 2: Semi-skilled wrecker (salvaging of other building materials)

-----

LABO0304-005 05/01/2018

ALAMEDA COUNTY

	Rates	Fringes
Brick Tender.....	\$ 35.37	20.70

FOOTNOTES: Work on jobs where heat-protective clothing is required: \$2.00 per hour additional. Work at grinders: \$.25 per hour additional. Manhole work: \$2.00 per day additional.

-----

LABO0304-008 07/01/2017

ALAMEDA AND CONTRA COSTA COUNTIES:

	Rates	Fringes
Plasterer tender.....	\$ 34.70	23.11

Work on a swing stage scaffold: \$1.00 per hour additional.

-----

CONTRA COSTA COUNTY

	Rates	Fringes
LABORER (TRAFFIC CONTROL/LANE CLOSURE)		
Escort Driver, Flag Person..\$	34.48	26.21
Traffic Control Person I....\$	34.78	26.21
Traffic Control Person II...\$	32.28	26.21

TRAFFIC CONTROL PERSON I: Layout of traffic control, crash cushions, construction area and roadside signage.

TRAFFIC CONTROL PERSON II: Installation and removal of temporary/permanent signs, markers, delineators and crash cushions.

-----  
LABO0324-006 06/25/2018

CONTRA COSTA COUNTY

	Rates	Fringes
Tunnel and Shaft Laborers:		
GROUP 1.....\$	37.82	24.11
GROUP 2.....\$	37.59	24.11
GROUP 3.....\$	37.34	24.11
GROUP 4.....\$	36.89	24.11
GROUP 5.....\$	36.35	24.11
Shotcrete Specialist.....\$	38.34	24.11

TUNNEL AND SHAFT CLASSIFICATIONS

GROUP 1: Diamond driller; Groundmen; Gunite and shotcrete nozzlemen

GROUP 2: Rodmen; Shaft work & raise (below actual or excavated ground level)

GROUP 3: Bit grinder; Blaster, driller, powdermen, heading; Cherry pickermen - where car is lifted; Concrete finisher in tunnel; Concrete screedman; Grout pumpman and potman; Gunite & shotcrete gunman & potman; Headermen; High pressure nozzleman; Miner - tunnel, including top and bottom man on shaft and raise work; Nipper; Nozzleman on slick line; Sandblaster - potman, Robotic Shotcrete Placer, Segment Erector, Tunnel Muck Hauler, Steel Form raiser and setter; Timberman, retimberman (wood or steel or substitute materials therefore); Tugger (for tunnel laborer work); Cable tender; Chuck tender; Powderman - primer house

GROUP 4: Vibrator operator, pavement breaker; Bull gang - muckers, trackmen; Concrete crew - includes rodding and spreading, Dumpmen (any method)

GROUP 5: Grout crew; Reboundman; Swamper/ Brakeman

-----  
LABO0324-012 06/25/2018

CONTRA COSTA COUNTY

LABORER (CONSTRUCTION CRAFT

LABORERS - AREA A:)

Construction Specialist

Group.....	\$ 31.49	23.20
GROUP 1.....	\$ 30.79	23.20
GROUP 1-a.....	\$ 31.01	23.20
GROUP 1-c.....	\$ 30.84	23.20
GROUP 1-e.....	\$ 31.34	23.20
GROUP 1-f.....	\$ 30.37	23.20
GROUP 1-g.....	\$ 30.99	23.20
GROUP 2.....	\$ 30.64	23.20
GROUP 3.....	\$ 30.54	23.20
GROUP 4.....	\$ 24.23	23.20

See groups 1-b and 1-d under laborer classifications.

LABORER (GARDENERS,  
HORTICULURAL & LANDSCAPE

LABORERS - AREA A:)

(1) New Construction.....	\$ 30.54	23.20
(2) Establishment Warranty Period.....	\$ 24.23	23.20

LABORER (GUNITE - AREA A:)

GROUP 1.....	\$ 30.75	22.31
GROUP 2.....	\$ 30.25	22.31
GROUP 3.....	\$ 29.66	22.31
GROUP 4.....	\$ 29.54	22.31

LABORER (WRECKING - AREA A:)

GROUP 1.....	\$ 30.79	23.20
GROUP 2.....	\$ 30.64	23.20

FOOTNOTES:

Laborers working off or with or from bos'n chairs, swinging scaffolds, belts shall receive \$0.25 per hour above the applicable wage rate. This shall not apply to workers entitled to receive the wage rate set forth in Group 1-a below.

LABORER CLASSIFICATIONS

CONSTRUCTION SPECIALIST GROUP: Asphalt ironer and raker; Chainsaw; Laser beam in connection with laborers' work; Cast-in- place manhole form setter; Pressure pipelayer; Davis trencher - 300 or similar type (and all small trenchers); Blaster; Diamond driller; Multiple unit drill; Hydraulic drill

GROUP 1: Asphalt spreader boxes (all types); Barko, Wacker and similar type tampers; Buggymobile; Caulker, bander, pipewrapper, conduit layer, plastic pipelayer; Certified hazardous waste worker including Leade Abatement; Compactors of all types; Concrete and magnesite mixer, 1/2 yd. and under; Concrete pan work; Concrete sander; Concrete saw; Cribber and/or shoring; Cut granite curb setter; Dri-pak-it machine; Faller, logloader and bucket; Form raiser, slip forms; Green cutter; Headerboard, Hubsetter, aligner, by any method; High pressure blow pipe (1-1/2" or over, 100 lbs. pressure/over); Hydro seeder and similar type; Jackhammer operator; Jacking of pipe over 12 inches; Jackson and similar type compactor; Kettle tender, pot and worker applying asphalt, lay-kold, creosote, lime, caustic and similar type materials (applying means applying, spreading or handling of such materials); Lagging, sheeting,

whaling, bracing, trenchjacking, lagging hammer; Magnesite, epoxyresin, fiberglass, mastic worker (wet or dry); No joint pipe and stripping of same, including repair of voids; Pavement breaker and spader, including tool grinder; Perma curb; Pipelayer (including grade checking in connection with pipelaying); Precast-manhole setter; Pressure pipe tester; Post hole digger, air, gas and electric; Power broom sweeper; Power tampers of all types (except as shown in Group 2); Ram set gun and stud gun; Riprap stonepaver and rock-slinger, including placing of sacked concrete and/or sand (wet or dry) and gabions and similar type; Rotary scarifier or multiple head concrete chipping scarifier; Roto and Ditch Witch; Rototiller; Sandblaster, pot, gun, nozzle operators; Signalling and rigging; Tank cleaner; Tree climber; Turbo blaster; Vibrascreed, bull float in connection with laborers' work; Vibrator; Hazardous waste worker (lead removal); Asbestos and mold removal worker

GROUP 1-a: Joy drill model TWM-2A; Gardner-Denver model DH143 and similar type drills; Track driller; Jack leg driller; Wagon driller; Mechanical drillers, all types regardless of type or method of power; Mechanical pipe layers, all types regardless of type or method of power; Blaster and powder; All work of loading, placing and blasting of all powder and explosives of whatever type regardless of method used for such loading and placing; High scalars (including drilling of same); Tree topper; Bit grinder

GROUP 1-b: Sewer cleaners shall receive \$4.00 per day above Group 1 wage rates. "Sewer cleaner" means any worker who handles or comes in contact with raw sewage in small diameter sewers. Those who work inside recently active, large diameter sewers, and all recently active sewer manholes shall receive \$5.00 per day above Group 1 wage rates.

GROUP 1-c: Burning and welding in connection with laborers' work; Synthetic thermoplastics and similar type welding

GROUP 1-d: Maintenance and repair track and road beds. All employees performing work covered herein shall receive \$ .25 per hour above their regular rate for all work performed on underground structures not specifically covered herein. This paragraph shall not be construed to apply to work below ground level in open cut. It shall apply to cut and cover work of subway construction after the temporary cover has been placed.

GROUP 1-e: Work on and/or in bell hole footings and shafts thereof, and work on and in deep footings. (A deep footing is a hole 15 feet or more in depth.) In the event the depth of the footing is unknown at the commencement of excavation, and the final depth exceeds 15 feet, the deep footing wage rate would apply to all employees for each and every day worked on or in the excavation of the footing from the date of inception.

GROUP 1-f: Wire winding machine in connection with guniting or shot crete

GROUP 1-g, CONTRA COSTA COUNTY: Pipelayer (including grade checking in connection with pipelaying); Caulker; Bander; Pipe rapper; Conduit layer; Plastic pipe layer; Pressure tester; No joint pipe and stripping of same, including

repair of voids; Precast manhole setters, cast in place manhole form setters

GROUP 2: Asphalt shoveler; Cement dumper and handling dry cement or gypsum; Choke-setter and rigger (clearing work); Concrete bucket dumper and chute; Concrete chipping and grinding; Concrete laborer (wet or dry); Driller tender, chuck tender, nipper; Guinea chaser (stake), grout crew; High pressure nozzle, adductor; Hydraulic monitor (over 100 lbs. pressure); Loading and unloading, carrying and hauling of all rods and materials for use in reinforcing concrete construction; Pittsburgh chipper and similar type brush shredders; Sloper; Single foot, hand-held, pneumatic tamper; All pneumatic, air, gas and electric tools not listed in Groups 1 through 1-f; Jacking of pipe - under 12 inches

GROUP 3: Construction laborers, including bridge and general laborer; Dump, load spotter; Flag person; Fire watcher; Fence erector; Guardrail erector; Gardener, horticultural and landscape laborer; Jetting; Limber, brush loader and piler; Pavement marker (button setter); Maintenance, repair track and road beds; Streetcar and railroad construction track laborer; Temporary air and water lines, Victaulic or similar; Tool room attendant (jobsite only)

GROUP 4: Final clean-up work of debris, grounds and building including but not limited to: street cleaner; cleaning and washing windows; brick cleaner (jobsite only); material cleaner (jobsite only). The classification "material cleaner" is to be utilized under the following conditions:

- A: at demolition site for the salvage of the material.
- B: at the conclusion of a job where the material is to be salvaged and stocked to be reused on another job.
- C: for the cleaning of salvage material at the jobsite or temporary jobsite yard.

The material cleaner classification should not be used in the performance of "form stripping, cleaning and oiling and moving to the next point of erection".

-----  
GUNITE LABORER CLASSIFICATIONS

GROUP 1: Structural Nozzleman

GROUP 2: Nozzleman, Gunman, Potman, Groundman

GROUP 3: Reboundman

GROUP 4: Gunite laborer

-----  
WRECKING WORK LABORER CLASSIFICATIONS

GROUP 1: Skilled wrecker (removing and salvaging of sash, windows and materials)

GROUP 2: Semi-skilled wrecker (salvaging of other building materials)

GROUP 1-g, CONTRA COSTA COUNTY: Pipelayer (including grade  
ing in connection with pipelaying); Caulker; Bander;



Pipewrapper; Conduit layer; Plastic pipe layer; Pressure pipe tester; No joint pipe and stripping of same, including repair of voids; Precast manhole setters, cast in place manhole form setters

-----  
 LABO0324-014 05/01/2018

CONTRA COSTA COUNTY:

	Rates	Fringes
Brick Tender.....	\$ 35.37	20.70

FOOTNOTES: Work on jobs where heat-protective clothing is required: \$2.00 per hour additional. Work at grinders: \$.25 per hour additional. Manhole work: \$2.00 per day additional.

-----  
 LABO0324-018 07/01/2021

ALAMEDA AND CONTRA COSTA COUNTIES:

	Rates	Fringes
Plasterer tender.....	\$ 38.28	29.43

Work on a swing stage scaffold: \$1.00 per hour additional.

-----  
 LABO1130-002 06/28/2021

MARIPOSA, MERCED, STANISLAUS, AND TUOLUMNE COUNTIES

	Rates	Fringes
LABORER (TRAFFIC CONTROL/LANE CLOSURE)		
Escort Driver, Flag Person..	\$ 33.48	26.21
Traffic Control Person I....	\$ 33.78	26.21
Traffic Control Person II...	\$ 31.28	26.21

TRAFFIC CONTROL PERSON I: Layout of traffic control, crash cushions, construction area and roadside signage.

TRAFFIC CONTROL PERSON II: Installation and removal of temporary/permanent signs, markers, delineators and crash cushions.

-----  
 LABO1130-003 06/26/2017

MARIPOSA, MERCED, STANISLAUS, AND TUOLUMNE COUNTIES

	Rates	Fringes
Tunnel and Shaft Laborers:		
GROUP 1.....	\$ 36.60	24.83
GROUP 2.....	\$ 36.37	24.83
GROUP 3.....	\$ 36.12	24.83
GROUP 4.....	\$ 35.67	24.83
GROUP 5.....	\$ 35.13	24.83
Shotcrete Specialist.....	\$ 37.12	24.83

GROUP 1: Diamond driller; Groundmen; Gunitite and shotcrete nozzlemen

GROUP 2: Rodmen; Shaft work & raise (below actual or excavated ground level)

GROUP 3: Bit grinder; Blaster, driller, powdermen, heading; Cherry pickermen - where car is lifted; Concrete finisher in tunnel; Concrete screedman; Grout pumpman and potman; Gunitite & shotcrete gunman & potman; Headermen; High pressure nozzleman; Miner - tunnel, including top and bottom man on shaft and raise work; Nipper; Nozzleman on slick line; Sandblaster - potman, Robotic Shotcrete Placer, Segment Erector, Tunnel Muck Hauler, Steel Form raiser and setter; Timberman, retimberman (wood or steel or substitute materials therefore); Tugger (for tunnel laborer work); Cable tender; Chuck tender; Powderman - primer house

GROUP 4: Vibrator operator, pavement breaker; Bull gang - muckers, trackmen; Concrete crew - includes rodding and spreading, Dumpmen (any method)

GROUP 5: Grout crew; Reboundman; Swamper/ Brakeman

-----  
LABO1130-005 07/01/2022

MARIPOSA, MERCED, STANISLAUS AND TUOLUMNE COUNTIES

	Rates	Fringes
LABORER		
Mason Tender-Brick.....	\$ 35.29	25.21

-----  
LABO1130-007 06/25/2018

MARIPOSA, MERCED, STANISLAUS, AND TUOLUMNE , COUNTIES

	Rates	Fringes
LABORER (CONSTRUCTION CRAFT		
LABORERS - AREA B:)		
Construction Specialist		
Group.....	\$ 30.49	23.20
GROUP 1.....	\$ 29.79	23.20
GROUP 1-a.....	\$ 30.01	23.20
GROUP 1-c.....	\$ 29.84	23.20
GROUP 1-e.....	\$ 30.34	23.20
GROUP 1-f.....	\$ 29.37	23.20
GROUP 2.....	\$ 29.64	23.20
GROUP 3.....	\$ 29.54	23.20
GROUP 4.....	\$ 23.23	23.20

See groups 1-b and 1-d under laborer classifications.

LABORER (GARDENERS, HORTICULTURAL & LANDSCAPE LABORERS - AREA B:)		
(1) New Construction.....	\$ 29.54	23.20
(2) Establishment Warranty Period.....	\$ 23.23	23.20
LABORER (GUNITITE - AREA B:)		
GROUP 1.....	\$ 29.75	22.31
GROUP 2.....	\$ 29.25	22.31
GROUP 3.....	\$ 28.66	22.31
GROUP 4.....	\$ 28.54	22.31

LABORER (WRECKING - AREA B:)

GROUP 1.....	\$ 29.79	23.20
GROUP 2.....	\$ 29.64	23.20

FOOTNOTES:

Laborers working off or with or from bos'n chairs, swinging scaffolds, belts shall receive \$0.25 per hour above the applicable wage rate. This shall not apply to workers entitled to receive the wage rate set forth in Group 1-a below.

LABORER CLASSIFICATIONS

CONSTRUCTION SPECIALIST GROUP: Asphalt ironer and raker; Chainsaw; Laser beam in connection with laborers' work; Cast-in- place manhole form setter; Pressure pipelayer; Davis trencher - 300 or similar type (and all small trenchers); Blaster; Diamond driller; Multiple unit drill; Hydraulic drill

GROUP 1: Asphalt spreader boxes (all types); Barko, Wacker and similar type tampers; Buggymobile; Caulker, bander, pipewrapper, conduit layer, plastic pipelayer; Certified hazardous waste worker including Leade Abatement; Compactors of all types; Concrete and magnesite mixer, 1/2 yd. and under; Concrete pan work; Concrete sander; Concrete saw; Cribber and/or shoring; Cut granite curb setter; Dri-pak-it machine; Faller, logloader and bucket; Form raiser, slip forms; Green cutter; Headerboard, Hubsetter, aligner, by any method; High pressure blow pipe (1-1/2" or over, 100 lbs. pressure/over); Hydro seeder and similar type; Jackhammer operator; Jacking of pipe over 12 inches; Jackson and similar type compactor; Kettle tender, pot and worker applying asphalt, lay-kold, creosote, lime, caustic and similar type materials (applying means applying, dipping or handling of such materials); Lagging, sheeting, whaling, bracing, trenchjacking, lagging hammer; Magnesite, epoxyresin, fiberglass, mastic worker (wet or dry); No joint pipe and stripping of same, including repair of voids; Pavement breaker and spader, including tool grinder; Perma curb; Pipelayer (including grade checking in connection with pipelaying); Precast-manhole setter; Pressure pipe tester; Post hole digger, air, gas and electric; Power broom sweeper; Power tampers of all types (except as shown in Group 2); Ram set gun and stud gun; Riprap stonepaver and rock-slinger, including placing of sacked concrete and/or sand (wet or dry) and gabions and similar type; Rotary scarifier or multiple head concrete chipping scarifier; Roto and Ditch Witch; Rototiller; Sandblaster, pot, gun, nozzle operators; Signalling and rigging; Tank cleaner; Tree climber; Turbo blaster; Vibrascreed, bull float in connection with laborers' work; Vibrator; Hazardous waste worker (lead removal); Asbestos and mold removal worker

GROUP 1-a: Joy drill model TWM-2A; Gardner-Denver model DH143 and similar type drills; Track driller; Jack leg driller; Wagon driller; Mechanical drillers, all types regardless of type or method of power; Mechanical pipe layers, all types regardless of type or method of power; Blaster and powder; ... work of loading, placing and blasting of all powder and ... sives of whatever type regardless of method used for

such loading and placing; High scalers (including drilling of same); Tree topper; Bit grinder

GROUP 1-b: Sewer cleaners shall receive \$4.00 per day above Group 1 wage rates. "Sewer cleaner" means any worker who handles or comes in contact with raw sewage in small diameter sewers. Those who work inside recently active, large diameter sewers, and all recently active sewer manholes shall receive \$5.00 per day above Group 1 wage rates.

GROUP 1-c: Burning and welding in connection with laborers' work; Synthetic thermoplastics and similar type welding

GROUP 1-d: Maintenance and repair track and road beds. All employees performing work covered herein shall receive \$ .25 per hour above their regular rate for all work performed on underground structures not specifically covered herein. This paragraph shall not be construed to apply to work below ground level in open cut. It shall apply to cut and cover work of subway construction after the temporary cover has been placed.

GROUP 1-e: Work on and/or in bell hole footings and shafts thereof, and work on and in deep footings. (A deep footing is a hole 15 feet or more in depth.) In the event the depth of the footing is unknown at the commencement of excavation, and the final depth exceeds 15 feet, the deep footing wage rate would apply to all employees for each and every day worked on or in the excavation of the footing from the date of inception.

GROUP 1-f: Wire winding machine in connection with guniting or shot crete

GROUP 2: Asphalt shoveler; Cement dumper and handling dry cement or gypsum; Choke-setter and rigger (clearing work); Concrete bucket dumper and chute; Concrete chipping and grinding; Concrete laborer (wet or dry); Driller tender, chuck tender, nipper; Guinea chaser (stake), grout crew; High pressure nozzle, adductor; Hydraulic monitor (over 100 lbs. pressure); Loading and unloading, carrying and hauling of all rods and materials for use in reinforcing concrete construction; Pittsburgh chipper and similar type brush shredders; Sloper; Single foot, hand-held, pneumatic tamper; All pneumatic, air, gas and electric tools not listed in Groups 1 through 1-f; Jacking of pipe - under 12 inches

GROUP 3: Construction laborers, including bridge and general laborer; Dump, load spotter; Flag person; Fire watcher; Fence erector; Guardrail erector; Gardener, horticultural and landscape laborer; Jetting; Limber, brush loader and piler; Pavement marker (button setter); Maintenance, repair track and road beds; Streetcar and railroad construction track laborer; Temporary air and water lines, Victaulic or similar; Tool room attendant (jobsite only)

GROUP 4: Final clean-up work of debris, grounds and building including but not limited to: street cleaner; cleaning and washing windows; brick cleaner (jobsite only); material cleaner (jobsite only). The classification "material cleaner" is to be utilized under the following conditions:  
Demolition site for the salvage of the material.

the conclusion of a job where the material is to be

salvaged and stocked to be reused on another job.  
C: for the cleaning of salvage material at the jobsite or temporary jobsite yard.

The material cleaner classification should not be used in the performance of "form stripping, cleaning and oiling and moving to the next point of erection".

-----

GUNITE LABORER CLASSIFICATIONS

- GROUP 1: Structural Nozzleman
- GROUP 2: Nozzleman, Gunman, Potman, Groundman
- GROUP 3: Reboundman
- GROUP 4: Gunitite laborer

-----

WRECKING WORK LABORER CLASSIFICATIONS

- GROUP 1: Skilled wrecker (removing and salvaging of sash, windows and materials)
- GROUP 2: Semi-skilled wrecker (salvaging of other building materials)

-----

LABO1130-008 07/01/2021

CALAVERAS, FRESNO, KINGS, MADERA, MARIPOSA, MERCED, SAN JOAQUIN, STANISLAUS & TUOLUMNE

	Rates	Fringes
Plasterer tender.....	\$ 35.82	28.45
Work on a swing stage scaffold: \$1.00 per hour additional.		

-----

LABO1130-009 07/01/2021

MARIPOSA, MERCED, STANISLAUS, AND TUOLUMNE COUNTIES

	Rates	Fringes
LABORER (Plaster Tender).....	\$ 35.82	28.45
Work on a swing stage scaffold: \$1.00 per hour additional.		

-----

PAIN0016-001 01/01/2023

ALAMEDA, CONTRA COSTA, MONTEREY, SAN BENITO, SAN MATEO, SANTA CLARA, AND SANTA CRUZ COUNTIES

	Rates	Fringes
Painters:.....	\$ 47.42	27.28

PREMIUMS:

EXOTIC MATERIALS - \$1.25 additional per hour.  
 SPRAY WORK: - \$0.50 additional per hour.  
 INDUSTRIAL PAINTING - \$0.25 additional per hour  
 [Work on industrial buildings used for the manufacture and  
 processing of goods for sale or service; steel construction  
 (bridges), stacks, towers, tanks, and similar structures]

HIGH WORK:  
 over 50 feet - \$2.00 per hour additional  
 100 to 180 feet - \$4.00 per hour additional  
 Over 180 feet - \$6.00 per hour additional

-----  
 \* PAIN0016-003 01/01/2023

AREA 1: ALAMEDA, CONTRA COSTA, SAN FRANCISCO, SAN MATEO & SANTA CLARA COUNTIES

AREA 2: CALAVERAS, MARIPOSA, MERCED, MONTEREY, SAN BENITO, SAN JOAQUIN, SANTA CRUZ, STANISLAUS & TUOLUMNE COUNTIES

	Rates	Fringes
Drywall Finisher/Taper		
AREA 1.....	\$ 57.16	30.24
AREA 2.....	\$ 53.03	28.84

-----  
 PAIN0016-012 01/01/2023

ALAMEDA, CONTRA COSTA, MARIPOSA, MERCED, MONTEREY, SAN BENITO, SAN FRANCISCO, SAN MATEO, SANTA CLARA AND SANTA CRUZ COUNTIES

	Rates	Fringes
SOFT FLOOR LAYER.....	\$ 55.25	32.63

-----  
 PAIN0016-015 01/01/2023

CALAVERAS, MARIPOSA, MERCED, SAN JOAQUIN, STANISLAUS & TUOLUMNE COUNTIES

	Rates	Fringes
PAINTER		
Brush.....	\$ 38.23	22.05

FOOTNOTES:  
 SPRAY/SANDBLAST: \$0.50 additional per hour.  
 EXOTIC MATERIALS: \$1.25 additional per hour.  
 HIGH TIME: Over 50 ft above ground or water level \$2.00 additional per hour. 100 to 180 ft above ground or water level \$4.00 additional per hour. Over 180 ft above ground or water level \$6.00 additional per hour.

-----  
 \* PAIN0016-022 01/01/2023

SAN FRANCISCO COUNTY

	Rates	Fringes
Page 206 .....	\$ 51.04	27.28

-----  
\* PAIN0169-001 01/01/2023

FRESNO, KINGS, MADERA, MARIPOSA AND MERCED COUNTIES:

	Rates	Fringes
GLAZIER.....	\$ 44.33	28.88

-----  
PAIN0169-005 01/01/2023

ALAMEDA CONTRA COSTA, MONTEREY, SAN BENITO, SAN FRANCISCO, SAN MATEO, SANTA CLARA & SANTA CRUZ COUNTIES

	Rates	Fringes
GLAZIER.....	\$ 55.77	32.45

-----  
\* PAIN0294-004 01/01/2023

FRESNO, KINGS AND MADERA COUNTIES

	Rates	Fringes
PAINTER		
Brush, Roller.....	\$ 32.99	21.30
Drywall Finisher/Taper.....	\$ 47.11	28.99

FOOTNOTE:

Spray Painters & Paperhangers recive \$1.00 additional per hour. Painters doing Drywall Patching receive \$1.25 additional per hour. Lead Abaters & Sandblasters receive \$1.50 additional per hour. High Time - over 30 feet (does not include work from a lift) \$0.75 per hour additional.

-----  
\* PAIN0294-005 01/01/2023

FRESNO, KINGS & MADERA

	Rates	Fringes
SOFT FLOOR LAYER.....	\$ 38.53	23.19

-----  
PAIN0767-001 01/01/2023

CALAVERAS, SAN JOAQUIN, STANISLAUS AND TUOLUMNE COUNTIES:

	Rates	Fringes
GLAZIER.....	\$ 43.15	33.72

PAID HOLIDAYS: New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day.

Employee required to wear a body harness shall receive \$1.50 per hour above the basic hourly rate at any elevation.

-----  
PAIN1176-001 07/01/2022

-----  
HIGHWAY IMPROVEMENT

	Rates	Fringes
Parking Lot Striping/Highway Marking:		
GROUP 1.....	\$ 40.83	17.62
GROUP 2.....	\$ 34.71	17.62
GROUP 3.....	\$ 35.11	17.62

CLASSIFICATIONS

GROUP 1: Striper: Layout and application of painted traffic stripes and marking; hot thermo plastic; tape, traffic stripes and markings

GROUP 2: Gamecourt & Playground Installer

GROUP 3: Protective Coating, Pavement Sealing

-----  
PAIN1237-003 01/01/2023

CALAVERAS; SAN JOAQUIN COUNTIES; STANISLAUS AND TUOLUMNE COUNTIES:

	Rates	Fringes
SOFT FLOOR LAYER.....	\$ 46.24	25.96

-----  
PLAS0066-002 07/01/2019

ALAMEDA, CONTRA COSTA, SAN MATEO AND SAN FRANCISCO COUNTIES:

	Rates	Fringes
PLASTERER.....	\$ 42.41	30.73

-----  
PLAS0300-001 07/01/2018

	Rates	Fringes
PLASTERER		
AREA 188: Fresno.....	\$ 32.70	31.68
AREA 224: San Benito, Santa Clara, Santa Cruz.....	\$ 32.88	31.68
AREA 295: Calaveras & San Joaquin Counties.....	\$ 32.70	31.68
AREA 337: Monterey County..	\$ 32.88	31.68
AREA 429: Mariposa, Merced, Stanislaus, Tuolumne Counties.....	\$ 32.70	31.68

-----  
PLAS0300-005 07/01/2016

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 32.15	23.27

-----  
PLUM0038-001 07/01/2022

SAN FRANCISCO COUNTY

Rates Fringes



Steamfitter, Refrigeration  
 Fitter).....\$ 82.00 48.18

-----  
 PLUM0038-005 07/01/2022

SAN FRANCISCO COUNTY

	Rates	Fringes
Landscape/Irrigation Fitter (Underground/Utility Fitter).....	\$ 69.70	33.15

-----  
 PLUM0062-001 01/01/2023

MONTEREY AND SANTA CRUZ COUNTIES

	Rates	Fringes
PLUMBER & STEAMFITTER.....	\$ 50.00	39.35

-----  
 PLUM0159-001 07/01/2022

CONTRA COSTA COUNTY

	Rates	Fringes
Plumber and steamfitter		
(1) Refrigeration.....	\$ 56.93	41.04
(2) All other work.....	\$ 62.12	45.24

-----  
 PLUM0246-001 01/01/2023

FRESNO, KINGS & MADERA COUNTIES

	Rates	Fringes
PLUMBER & STEAMFITTER.....	\$ 46.95	38.59

-----  
 \* PLUM0246-004 01/01/2017

FRESNO, MERCED & SAN JOAQUIN COUNTIES

	Rates	Fringes
PLUMBER (PIPE TRADESMAN).....	\$ 13.00 **	10.74

PIPE TRADESMAN SCOPE OF WORK:

Installation of corrugated metal piping for drainage, as well as installation of corrugated metal piping for culverts in connection with storm sewers and drains; Grouting, dry packing and diapering of joints, holes or chases including paving over joints, in piping; Temporary piping for dirt work for building site preparation; Operating jack hammers, pavement breakers, chipping guns, concrete saws and spades to cut holes, chases and channels for piping systems; Digging, grading, backfilling and ground preparation for all types of pipe to all points of the jobsite; Ground preparation including ground leveling, layout and planting of shrubbery, trees and ground cover, including watering, mowing, edging, pruning and fertilizing, the breaking of concrete, digging, backfilling and tamping for the preparation and completion of all work in connection with lawn sprinkler and landscaping; Loading, unloading and distributing materials at jobsite; Putting away materials storage bins in jobsite secure storage area; Demolition

of piping and fixtures for remodeling and additions;  
 Setting up and tearing down work benches, ladders and job  
 shacks; Clean-up and sweeping of jobsite; Pipe wrapping and  
 waterproofing where tar or similar material is applied for  
 protection of buried piping; Flagman

-----  
 PLUM0342-001 07/01/2022

ALAMEDA & CONTRA COSTA COUNTIES

	Rates	Fringes
PIPEFITTER		
CONTRA COSTA COUNTY.....	\$ 72.00	45.70
PLUMBER, PIPEFITTER, STEAMFITTER		
ALAMEDA COUNTY.....	\$ 72.00	45.70

-----  
 PLUM0355-004 07/01/2022

ALAMEDA, CALAVERAS, CONTRA COSTA, FRESNO, KINGS, MADERA,  
 MARIPOSA, MERCED, MONTEREY, SAN BENITO, SAN JOAQUIN, SAN MATEO,  
 SANTA CLARA, SANTA CRUZ, STANISLAUS, AND TUOLUMNE COUNTIES:

	Rates	Fringes
Underground Utility Worker /Landscape Fitter.....	\$ 32.22	17.55

-----  
 PLUM0393-001 07/01/2021

SAN BENITO AND SANTA CLARA COUNTIES

	Rates	Fringes
PLUMBER/PIPEFITTER.....	\$ 68.76	46.63

-----  
 PLUM0442-001 01/01/2023

CALAVERAS, MARIPOSA, MERCED, SAN JOAQUIN, STANISLAUS & TUOLUMNE  
 COUNTIES

	Rates	Fringes
PLUMBER & STEAMFITTER.....	\$ 50.75	35.14

-----  
 PLUM0467-001 07/01/2021

SAN MATEO COUNTY

	Rates	Fringes
Plumber/Pipefitter/Steamfitter...	\$ 73.10	38.61

-----  
 ROOF0027-002 01/01/2023

FRESNO, KINGS, AND MADERA COUNTIES

	Rates	Fringes
ROOFER.....	\$ 41.31	15.31

FOOTNOTE: Work with pitch, pitch base of pitch impregnated products or any material containing coal tar pitch, on any building old or new, where both asphalt and pitchers are used in the application of a built-up roof or tear off: \$2.00 per hour additional.

-----  
 ROOF0040-002 08/01/2022

SAN FRANCISCO & SAN MATEO COUNTIES:

	Rates	Fringes
ROOFER.....	\$ 49.83	21.14

-----  
 ROOF0081-001 08/01/2022

ALAMEDA AND CONTRA COSTA COUNTIES:

	Rates	Fringes
Rofer.....	\$ 50.27	20.66

-----  
 ROOF0081-004 08/01/2022

CALAVERAS, MARIPOSA, MERCED, SAN JOAQUIN, STANISLAUS AND TUOLUMNE COUNTIES:

	Rates	Fringes
ROOFER.....	\$ 43.13	19.71

-----  
 ROOF0095-002 08/01/2022

MONTEREY, SAN BENITO, SANTA CLARA, AND SANTA CRUZ COUNTIES:

	Rates	Fringes
ROOFER		
Bitumastic, Enameler, Coal		
Tar, Pitch and Mastic		
worker.....	\$ 55.16	20.82
Journeyman.....	\$ 51.16	20.82
Kettle person (2 kettles)...	\$ 53.16	20.82

-----  
 SFCA0483-001 01/01/2023

ALAMEDA, CONTRA COSTA, SAN FRANCISCO, SAN MATEO AND SANTA CLARA COUNTIES:

	Rates	Fringes
SPRINKLER FITTER (FIRE).....	\$ 72.59	36.95

-----  
 SFCA0669-011 01/01/2023

CALAVERAS, FRESNO, KINGS, MADERA, MARIPOSA, MERCED, MONTEREY, SAN BENITO, SAN JOAQUIN, SANTA CRUZ, STANISLAUS AND TUOLUMNE COUNTIES:

Rates	Fringes
-------	---------

SPRINKLER FITTER.....\$ 42.30 27.25

-----  
SHEE0104-001 07/01/2020

AREA 1: ALAMEDA, CONTRA COSTA, SAN FRANCISCO, SAN MATEO, SANTA CLARA

AREA 2: MONTEREY & SAN BENITO

AREA 3: SANTA CRUZ

	Rates	Fringes
SHEET METAL WORKER		
AREA 1:		
Mechanical Contracts		
under \$200,000.....\$	55.92	45.29
All Other Work.....\$	64.06	46.83
AREA 2.....\$	52.90	36.44
AREA 3.....\$	55.16	34.18

-----  
SHEE0104-003 07/01/2021

CALAVERAS AND SAN JOAQUIN COUNTIES:

	Rates	Fringes
SHEET METAL WORKER.....\$	44.34	39.22

-----  
SHEE0104-005 07/01/2021

MARIPOSA, MERCED, STANISLAUS AND TUOLUMNE COUNTIES:

	Rates	Fringes
SHEET METAL WORKER (Excluding metal deck and siding).....\$	41.28	45.41

-----  
SHEE0104-007 07/01/2021

FRESNO, KINGS, AND MADERA COUNTIES:

	Rates	Fringes
SHEET METAL WORKER.....\$	44.07	40.79

-----  
SHEE0104-015 07/01/2020

ALAMEDA, CONTRA COSTA, MONTEREY, SAN BENITO, SAN FRANCISCO, SAN MATEO, SANTA CLARA AND SANTA CRUZ COUNTIES:

	Rates	Fringes
SHEET METAL WORKER (Metal Decking and Siding only).....\$	44.45	35.55

-----  
SHEE0104-018 07/01/2020

CALAVERAS, FRESNO, KINGS, MADERA, MARIPOSA, MERCED, SAN JOAQUIN, STANISLAUS AND TUOLUMNE COUNTIES:

Sheet metal worker (Metal decking and siding only).....\$ 44.45 35.55

-----  
TEAM0094-001 07/01/2022

	Rates	Fringes
Truck drivers:		
GROUP 1.....	\$ 36.95	31.14
GROUP 2.....	\$ 37.25	31.14
GROUP 3.....	\$ 37.55	31.14
GROUP 4.....	\$ 37.90	31.14
GROUP 5.....	\$ 38.25	31.14

FOOTNOTES:

Articulated dump truck; Bulk cement spreader (with or without auger); Dumpcrete truck; Skid truck (debris box); Dry pre-batch concrete mix trucks; Dumpster or similar type; Slurry truck: Use dump truck yardage rate. Heater planer; Asphalt burner; Scarifier burner; Industrial lift truck (mechanical tailgate); Utility and clean-up truck: Use appropriate rate for the power unit or the equipment utilized.

TRUCK DRIVER CLASSIFICATIONS

GROUP 1: Dump trucks, under 6 yds.; Single unit flat rack (2-axle unit); Nipper truck (when flat rack truck is used appropriate flat rack shall apply); Concrete pump truck (when flat rack truck is used appropriate flat rack shall apply); Concrete pump machine; Fork lift and lift jitneys; Fuel and/or grease truck driver or fuel person; Snow buggy; Steam cleaning; Bus or personhaul driver; Escort or pilot car driver; Pickup truck; Teamster oiler/greaser and/or serviceperson; Hook tender (including loading and unloading); Team driver; Tool room attendant (refineries)

GROUP 2: Dump trucks, 6 yds. and under 8 yds.; Transit mixers, through 10 yds.; Water trucks, under 7,000 gals.; Jetting trucks, under 7,000 gals.; Single-unit flat rack (3-axle unit); Highbed heavy duty transport; Scissor truck; Rubber-tired muck car (not self-loaded); Rubber-tired truck jumbo; Winch truck and "A" frame drivers; Combination winch truck with hoist; Road oil truck or bootperson; Buggymobile; Ross, Hyster and similar straddle carriers; Small rubber-tired tractor

GROUP 3: Dump trucks, 8 yds. and including 24 yds.; Transit mixers, over 10 yds.; Water trucks, 7,000 gals. and over; Jetting trucks, 7,000 gals. and over; Vacuum trucks under 7500 gals. Trucks towing tilt bed or flat bed pull trailers; Lowbed heavy duty transport; Heavy duty transport tiller person; Self-propelled street sweeper with self-contained refuse bin; Boom truck - hydro-lift or Swedish type extension or retracting crane; P.B. or similar type self-loading truck; Tire repairperson; Combination bootperson and road oiler; Dry distribution truck (A bootperson when employed on such equipment, shall receive the rate specified for the classification of road oil trucks or bootperson); Ammonia nitrate distributor, driver and mixer; Snow Go and/or plow

pulls - DW 10's, 20's, 21's and other similar equipment when pulling Aqua/pak or water tank trailers; Helicopter pilots (when transporting men and materials); Lowbedk Heavy Duty Transport up to including 7 axles; DW10's, 20's, 21's and other similar Cat type, Terra Cobra, LeTourneau Pulls, Tournorocker, Euclid and similar type equipment when pulling fuel and/or grease tank trailers or other miscellaneous trailers; Vacuum Trucks 7500 gals and over and truck repairman

GROUP 5: Dump trucks, 65 yds. and over; Holland hauler; Low bed Heavy Duty Transport over 7 axles

-----

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

-----

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

---

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

\* Existing published wage determination  
\* Survey underlying a wage determination

- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====  
END OF GENERAL DECISIO"



EXHIBIT C  
Federal Form FHWA 1273

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

**ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

**II. NONDISCRIMINATION** (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

#### **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### **10. Assurances Required:**

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages (29 CFR 5.5)

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics,

including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records (29 CFR 5.5)

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees (29 CFR 5.5)

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State

Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor

set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### **10. Certification of eligibility (29 CFR 5.5)**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### **V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

\* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).



### **3. Withholding for unpaid wages and liquidated damages.**

The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

## **VI. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or

equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on longstanding interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

## **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance

with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

### **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)**

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders

or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

#### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant

who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

\*\*\*\*\*

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

## **3. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is

submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

\*\*\*\*\*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

\*\*\*\*\*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

## **XII. USE OF UNITED STATES-FLAG VESSELS:**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.
2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**SECOND AMENDMENT  
TO THE  
AGREEMENT FOR CONSULTANT SERVICES**

**LOS GATOS CREEK TRAIL TO HIGHWAY 9 TRAILHEAD  
CONNECTOR PROJECT 18-832-4505**

This Second Amendment to the Agreement for Consultant Services for the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project CIP No. 18-832-4505 that is dated for identification this \_\_\_\_\_ day of \_\_\_\_\_ 2023 (“SECOND AMENDMENT”) and amends that certain AGREEMENT FOR CONSULTANT SERVICES LOS GATOS CREEK TRAIL TO HIGHWAY 9 TRAILHEAD CONNECTOR PROJECT 18-832-4505 dated the 1<sup>st</sup> of October, 2019 and the FIRST AMENDMENT executed on September 13, 2021 by and between the Town of Los Gatos (LOCAL AGENCY) and Mott MacDonald Group, Inc. (CONSULTANT).

RECITALS

- A. LOCAL AGENCY and CONSULTANT entered into an Agreement for Consultant Services Agreement on October 1, 2019, (“Agreement”), and executed the First Amendment to the Agreement for Consultant Services on September 13, 2021, copies of which are attached hereto and incorporated by reference as Attachment 1 to this SECOND AMENDMENT.
- B. The LOCAL AGENCY desires to amend the Agreement to increase the scope of services and increase compensation for Task B – Bid Support Services and Task C – Construction Support Services, extend the term of the Agreement, and modify required insurance coverages as described below.

AMENDMENT

1. Article I – INTRODUCTION is hereby modified to identify the Contract Administrator for the LOCAL AGENCY to be Nicolle Burnham, Parks and Public Works Director.
2. Article II – STATEMENT OF WORK is hereby modified to include the attached EXHIBIT A.2 – SCOPE OF SERVICES Amended 07-03-23, EXHIBIT B.2.1 – COST PROPOSAL - Amended 07-03-23 COST PROPOSAL BY TASK, and EXHIBIT B.2.2 – COST PROPOSAL– Caltrans Exhibits 10-H3 for Task C – Construction Support Services.
3. Article IV PERFORMANCE PERIOD - Paragraph A is hereby amended to extend the Agreement end date to 06/20/25.
4. ARTICLE V - ALLOWABLE COSTS AND PAYMENTS TASK B AND TASK C - Paragraph J is revised to read: “The total amount payable by LOCAL AGENCY for Task B and Task C shall not exceed \$234,371.”
5. ARTICLE XIX INSURANCE is hereby replaced with the following:

## **ARTICLE XIX INSURANCE**

Without limiting CONSULTANT's obligation to indemnify and hold harmless LOCAL AGENCY and VTA, CONSULTANT must procure and maintain for the duration of the AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by CONSULTANT, its agents, representatives, employees, or subconsultants. The cost of such insurance must be borne exclusively by CONSULTANT. In the event of any material change in the AGREEMENT Scope of Services, LOCAL AGENCY AND VTA reserve the right to change the insurance requirements set forth herein, upon advance written notice to CONSULTANT. CONSULTANT must furnish evidence of all required insurance policies, within three (3) business days of any request for such by LOCAL AGENCY or VTA.

### **A. Liability and Workers' Compensation Insurance**

#### **1. Minimum Scope of Coverage**

Coverage must be at least as broad as:

- a. General Liability coverage; Insurance Services Office "occurrence" form CG 0001. General Liability insurance written on a "claims made" basis is not acceptable. Completed Operations coverage must be continuously maintained for at least two (2) years after Final Acceptance of the Work.
- b. Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.
- c. Workers' Compensation insurance, as required by the Labor Code of the State of California, and Employer's Liability insurance.
- d. Professional Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of CONSULTANT'S services under this AGREEMENT. This coverage must be continuously maintained for a minimum of two (2) years following completion of this AGREEMENT. This coverage may be written on a "claims made" basis, if so, please see special provisions in Section C.
- e. CONSULTANT'S Pollution/Environmental Impairment Liability: covering liability arising out of the treatment, handling, storage, transportation, or accidental release of any hazardous material, to the extent applicable to CONSULTANT'S scope of services.

#### **2. Minimum Limits of Insurance**

- a. CONSULTANT must maintain limits no less than:
  1. General Liability (including umbrella/excess liability): \$5,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If General Liability Insurance or other form with a general aggregate limit is used, either the



general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit. This requirement may be satisfied by a combination of General Liability with Excess or Umbrella, but in no event may the General Liability primary policy limit per occurrence be less than \$2,000,000, unless Umbrella/Excess policies feature inception and expiration dates concurrent with the underlying General Liability policy, "Follow Form" coverage, and a "Drop Down" provision.

2. Automobile Liability (including umbrella/excess liability): \$4,000,000 limit per accident for bodily injury and property damage. This requirement may be satisfied by a combination of Auto with Excess or Umbrella, but in no event may the Automobile Liability primary policy limit per occurrence be less than \$2,000,000, unless Excess policies feature inception and expiration dates concurrent with the underlying auto liability policy, "Follow Form" coverage, and a "Drop Down" provision.
3. Workers' Compensation and Employer's Liability: Statutory Workers' Compensation limits and Employer's Liability limits of \$1,000,000 per accident.
4. Professional Liability: \$2,000,000 per claim/aggregate minimum limit per claim. This requirement may be satisfied by a combination of Professional Liability insurance with Excess or Umbrella policies, but in no event may the Professional Liability primary policy limit per occurrence be less than \$2,000,000, unless Umbrella/Excess policies feature inception and expiration dates concurrent with the underlying policy, "Follow Form" coverage, and a "Drop Down" provision.
5. If applicable, CONSULTANT'S Pollution/Environmental Impairment Liability: \$3,000,000 per occurrence. This requirement may be satisfied by a combination of Pollution Liability insurance with Excess or Umbrella policies. Umbrella/Excess policies must feature inception and expiration dates concurrent with the underlying policy, "Follow Form" coverage, and a "Drop Down" provision.

### **3. Self-Insured Retention**

The certificate of insurance must disclose the actual amount of any deductible or self-insured retention for all coverages required herein. Any self-insured retention or deductible must be declared to and approved by LOCAL AGENCY and VTA. To apply for approval for a level of retention or deductible CONSULTANT must provide a current financial report including balance sheets and income statements for the past three years, so that LOCAL AGENCY and VTA can assess CONSULTANT's ability to pay claims falling within the self-insured retention or deductible. Upon review of the financial report, if deemed necessary by LOCAL AGENCY and VTA in their sole discretion, LOCAL AGENCY and VTA may elect one of the following options: to accept the existing self-insured retention or deductible; require the insurer to reduce or eliminate the self-insured retention or deductible as respects LOCAL AGENCY and VTA, its directors, officers, officials, employees and volunteers; or to require CONSULTANT to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Applicable costs resulting therefrom will be borne solely by CONSULTANT. CONSULTANT may request execution of a nondisclosure

agreement prior to submission of financial reports.

**B. Reserved.**

**C. Claims Made Provisions**

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber. For coverage written on a claims-made basis, it must be clearly stated on the Certificate of Insurance. In addition to all other coverage requirements, such policy must provide that:

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

**D. Other Provisions**

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

**1. General Liability and Automobile Liability**

- a. The LOCAL AGENCY and VTA, its directors, officers, officials, and employees are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of CONSULTANT, including LOCAL AGENCY'S general supervision of CONSULTANT; products and completed operations of CONSULTANT and its subconsultants; premises owned, occupied or used by CONSULTANT; or automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage must contain no special limitations on the scope of protection afforded to LOCAL AGENCY and VTA, its directors, officers, officials, employees. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.
- b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to LOCAL AGENCY and VTA, its directors, officers, officials, employees, or volunteers.
- c. CONSULTANT's required insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. The General Liability General Aggregate limit must apply per project, not per policy.

## 2. All Coverages

- a. Excluding Professional Liability, The insurer must agree to waive all rights of subrogation against LOCAL AGENCY and VTA, its directors, officers, officials, and employees for losses arising from work performed by CONSULTANT and its subconsultants for LOCAL AGENCY and VTA.
- b. CONSULTANT's insurance coverage must be primary insurance as respects LOCAL AGENCY AND VTA, its directors, officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by LOCAL AGENCY AND VTA, its directors, officers, officials, employees, or volunteers may apply only as excess to CONSULTANT's insurance. CONSULTANT's insurance must not seek contribution from LOCAL AGENCY or VTA's insurance programs.
- c. Each insurance policy required shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after a thirty (30) calendar days prior written notice by certified mail, return receipt required, has been given to LOCAL AGENCY.
- d. LOCAL AGENCY will not be responsible for any premiums or assessments on the CONSULTANT'S policies.
- e. In the event CONSULTANT employs subconsultants as part of the work covered by this AGREEMENT, it shall be the responsibility of CONSULTANT to ensure that all subconsultants are included as additional insured under the CONSULTANTS policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein and shall comply with the same insurance requirements that are stated in this AGREEMENT.

## 3. Other Insurance Provisions

- a. If any coverage forms or endorsements required by this AGREEMENT are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services Office, or the American Association of Insurance Services, during the duration of this AGREEMENT, LOCAL AGENCY AND VTA reserves the rights to require CONSULTANT to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.
- b. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this AGREEMENT. In the event that said insurance coverage expires at any time or times during the term of this AGREEMENT, CONSULTANT agrees to provide at least thirty (30) calendar days prior notice to said expiration date; and a new Certificate of Insurance evidencing the insurance coverage as provided for herein, for not less than either the remainder of the term of the AGREEMENT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of the LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in

addition to any other remedies it may have, terminate the AGREEMENT upon occurrence of such event.

- c. Approval of the insurance by LOCAL AGENCY or acceptance of the Certificate of Insurance by LOCAL AGENCY shall not relieve or decrease the extent to which CONSULTANT may be held responsible for payment of damages resulting from CONSULTANT'S services or operation pursuant to this AGREEMENT, nor shall it be deemed a waiver of LOCAL AGENCY'S rights to insurance coverage hereunder.

**E. Acceptability of Insurers**

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

**F. Certificates of Insurance**

CONSULTANT must furnish LOCAL AGENCY with Certificates of Insurance and with original endorsements effecting coverage required. The certificates and endorsements for each insurance policy must be signed by an authorized representative of that insurer. The certificates must be issued on a standard ACORD Form. CONSULTANT must instruct their insurance broker/agent to submit all insurance certificates and endorsements and required notices electronically in PDF format to the LOCAL AGENCY. All endorsements must be attached to the ACORD certificate in a single PDF document. All insurance must be in effect for the duration of the AGREEMENT. The absence of insurance or a reduction of the stated limits shall cause all work on the project to cease. Any delays shall not increase costs to LOCAL AGENCY or increase the duration of the project. The LOCAL AGENCY reserves the right to require additional evidence of all required insurance policies, at any time.

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

Town of Los Gatos  
41 Miles Avenue  
Los Gatos, CA 95030

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

In the Description of Operations/Locations/Vehicles/Special Items Box, the LOCAL AGENCY and VTA for any relevant property leased must appear, the list of policies scheduled as underlying on the Umbrella/Excess policy must be listed, excluding Professional Liability. Certificate Holder must be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the AGREEMENT documents., excluding Professional Liability.

It is a condition precedent to granting of this AGREEMENT that all insurance certificates and endorsements be received and approved by LOCAL AGENCY and VTA before AGREEMENT execution. No occupancy may be taken until required insurance is in full compliance.

**G. Maintenance of Insurance**

If CONSULTANT fails to maintain insurance as required herein, LOCAL AGENCY, at its option, may suspend the AGREEMENT until a new policy of insurance is in effect.

**H. Hold Harmless**

Subject to California Civil Code Section 2782.8, CONSULTANT hereby agrees to and shall hold LOCAL AGENCY and VTA, its elective and appointive boards, commissions, officers, and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage and any other claims of any sort what so ever, including, but not limited to, any liabilities, claims, losses, or expenses to the extent caused by the negligent acts, errors, or omissions or willful misconduct of CONSULTANT or CONSULTANT's SUBCONSULTANTS, agents, or employee operations in the performance of services under this AGREEMENT, whether such operations by CONSULTANT or by any of CONSULTANT's SUBCONSULTANTS, or by any one or more persons directly or indirectly employed by, or acting as agent for CONSULTANT or any of CONSULTANT's SUBCONSULTANTS during the progress of the work or at any time before its completion and final acceptance, excepting suits and actions brought by the CONSULTANT for default of this AGREEMENT or arising from the negligence or willful misconduct of the LOCAL AGENCY or VTA. To the extent applicable to CONSULTANT'S indemnity obligations hereunder, the Local Agency Council may retain as much of the money due to the CONSULTANT as shall be reasonably necessary to protect the LOCAL AGENCY, until disposition has been made of any such suits or claims for damages as aforesaid.

To the extent applicable to CONSULTANT'S indemnity obligations hereunder, CONSULTANT agrees to and shall reimburse LOCAL AGENCY's reasonable cost of defense (or, at the sole option of the LOCAL AGENCY, CONSULTANT shall defend with counsel reasonably approved by the LOCAL AGENCY Attorney) and indemnify LOCAL AGENCY and its elective and appointive boards, commissions, officers, and employees from any suits or actions at law or in equity (exclusive of any such actions brought by CONSULTANT), such indemnification to include all reasonable costs of defense, judgments, and any awards of reasonable attorneys' fees.

Should any accident or incident causing death, personal injury or property damage occur between the date CONSULTANT is notified that its General Liability and/or Workers Compensation Insurance is canceled and the effective date of such cancellation, CONSULTANT's obligation to indemnify, defend and save harmless the LOCAL AGENCY, as provided for hereinabove, shall in no manner be affected by the fact that the LOCAL AGENCY had not received the notice of cancellation prior to the date of such accident or incident.

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

IN WITNESS WHEREOF, the LOCAL AGENCY and CONSULTANT have executed this SECOND AMENDMENT, effective as of the date first set forth above.

**TOWN OF LOS GATOS** by:

**CONSULTANT** by:

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

\_\_\_\_\_  
Mohamed Basma, Senior Vice President –  
Division Manager

Approved as to Form:

Departmental Approval:

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

\_\_\_\_\_  
Nicolle Burnham, Parks & Public Works Director

Attest:

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

## EXHIBIT A.2 – SCOPE OF SERVICES

### *Amended 07-03-23*

Task C – Construction Support Services is hereby amended to include the following:

Task C.1.1 – Construction Support Services Project Management and Administration – Mott MacDonald will provide construction support project management related tasks on a cost per unit of work payment basis for the duration of the construction contract. The current construction contract includes 270 working days. Project management services are based on exercising prudent control of project scope, schedule, and quality of services and deliverables to be provided. This includes coordinating the work of the Mott MacDonald team, sub consultants and communications with the Town of Los Gatos and Caltrans.

Task C.2 – Preparing Responses to Requests for Information, Submittal Reviews and As-Built plans:

C2.1 Attend in person meetings as requested. (Approximately 50 team hours).

C2.2 Prepare responses to contractor's Request for Information (RFI) and Request for Solution (RFS) as requested. (Approximately 283 team hours)

C2.3 Review and provide responses to Contractor's submittals as requested. (Approximately 230 team hours).

C2.4 Site Observations including on-site visits by the engineering team to observe construction operations at critical milestones to determine whether the design intent is met during construction. (Approximately 30 team hours).

C2.5 Maintain Records including logs of RFIs, Submittals, Shop Drawings and Requests for Solutions (RFS). Logs will be included in monthly progress reports. (Approximately 22 team hours).

C2.6 Complete final walkthrough as requested to determine whether the intent of construction plans has been met. (Approximately 9 team hours)

C2.7 Assist in resolution/inspection of construction issues as requested. (Approximately 30 team hours)

C2.8 Upon completion of the construction work, Mott MacDonald will prepare record drawings based on red lines provided by the Resident Engineer. (Approximately 270 team hours).

# EXHIBIT B.2.1 – COST PROPOSAL

*Amended 07-03-23*

## COST PROPOSAL BY TASK

SUB TASK	DESCRIPTION	NOT TO EXCEED COST
<b>TASK A – BASIC SERVICES</b>		
Task A.1	Project Management and Coordination	\$26,960
Task A.2	Data Collection, Review and Site Visit	\$9,212
Task A.3	Surveys and Mapping	\$27,154
Task A.4	Utility Coordination	\$11,336
Task A.5	Preliminary Engineering	\$27,231
Task A.6	Environmental Studies and Documentation	\$42,991
Task A.7	Geotechnical Investigations and Reports	\$54,489
Task A.8	Right of Way Certification	\$4,400
Task A.9	Final Design	\$198,438
Task A.10	Coordination with Adjacent Agencies	\$6,601
SUBTOTAL BASIC SERVICES		\$408,812
Task A.11	Supplemental Reports and Services	\$ 49,935
Amendment No. 1		\$ 90,000
AMENDED TOTAL TASK A.11		\$139,935
TOTAL NOT TO EXCEED TASK A		\$548,747
<b>TASK B – BID SUPPORT SERVICES</b>		
TOTAL NOT TO EXCEED TASK B		\$ 28,000
<b>TASK C – CONSTRUCTION SUPPORT SERVICES</b>		
<b>AMENDMENT No. 2 - TOTAL NOT TO EXCEED TASK C</b>		<b>\$206,371</b>
<b>TOTAL AMENDED CONTRACT AMOUNT NOT TO EXCEED</b>		<b>\$783,118</b>



EXHIBIT B.2.2 – COST PROPOSAL  
Caltrans Exhibits 10-H3  
For Task C – Construction Support Services  
*Amended 07-03-23*

**ATTACHMENT 1**

AGREEMENT FOR CONSULTANT SERVICES LOS GATOS CREEK TRAIL TO HIGHWAY 9 TRAILHEAD  
CONNECTOR PROJECT 18-832-4505 dated the 1<sup>st</sup> of October, 2019  
and the  
FIRST AMENDMENT executed on September 13, 2021

Amendment No. 2 to Consultant Services Agreement  
LOS GATOS CREEK TRAIL TO HIGHWAY 9 TRAILHEAD CONNECTOR  
PROJECT 18-832-4505

**FIRST AMENDMENT TO AGREEMENT  
TO THE  
AGREEMENT FOR CONSULTANT SERVICES**

**LOS GATOS CREEK TRAIL TO HIGHWAY 9 TRAILHEAD CONNECTOR  
PROJECT 18-832-4505**

This First Amendment to Agreement for Consultant Services for the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project CIP No. 18-832-4505 amends that certain Agreement for Consultant Services dated October 1, 2019, made by and between the Town of Los Gatos, ("LOCAL AGENCY") and Mott MacDonald Group, Inc. ("CONSULTANT").

RECITALS

- A. The LOCAL AGENCY and CONSULTANT entered into an Agreement for Consultant Services on October 1, 2019, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. The LOCAL AGENCY desires to amend the agreement to increase the scope of work, increase compensation, and extend the term of the agreement.

AMENDMENT

- 1. ARTICLE I – Introduction is amended to read:  
The Contract Administrator for LOCAL AGENCY will be WooJae Kim, Town Engineer.
- 2. ARTICLE IV Performance Period (A.) is amended to read:  
The AGREEMENT shall end on 12/31/23, unless extended by AGREEMENT amendment.
- 3. ARTICLE V – Allowable Costs and Payments Task A Item E is amended to read:  
The total amount payable by Local Agency for Task A shall not exceed \$576,747.
- 4. Exhibit B – Cost Proposal is revised per the attached Exhibit B dated 06-30-21.  
The amount for Task A.11 Supplemental Reports and Services is hereby increased from \$49,935 to \$139,935 for additional reports and services to be performed as outlined in the Scope of Services.

Compensation shall be payable as outlined in the terms of the original Agreement.

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

IN WITNESS WHEREOF, the LOCAL AGENCY and CONSULTANT have executed this Amendment.

LOCAL AGENCY

Town of Los Gatos by:

DocuSigned by:  
Laurel Prevetti 9/13/2021  
853FEFA8EB30470  
Laurel Prevetti, Town Manager

CONSULTANT by:

DocuSigned by:  
Mohamed Basma 9/3/2021  
43F4205A006D4C2...  
Name

Senior Vice President - Division Manager

Title

Department Recommendation:

DocuSigned by:  
Matt Morley 9/3/2021  
BBA0B3B0D8F4484...  
Matt Morley  
Director of Parks and Public Works

Approved as to Form:

DocuSigned by:  
Robert W. Schultz 9/12/2021  
2FE0938555B744C...  
Robert Schultz, Town Attorney

Attest:

DocuSigned by:  
Shelley Neis 9/13/2021  
B0666F65B1F34F6...  
Shelley Neis, MMC, CPMC, Town Clerk

**REVISED EXHIBIT B – COST PROPOSAL****COST PROPOSAL BY TASK  
(for progress payment purposes)**

<b>SUB TASK</b>	<b>DESCRIPTION</b>	<b>NOT TO EXCEED COST</b>
<b>TASK A – BASIC SERVICES</b>		
Task A.1	Project Management and Coordination	\$26,960
Task A.2	Data Collection, Review and Site Visit	\$9,212
Task A.3	Surveys and Mapping	\$27,154
Task A.4	Utility Coordination	\$11,336
Task A.5	Preliminary Engineering	\$27,231
Task A.6	Environmental Studies and Documentation	\$42,991
Task A.7	Geotechnical Investigations and Reports	\$54,489
Task A.8	Right of Way Certification	\$4,400
Task A.9	Final Design	\$198,438
Task A.10	Coordination with Adjacent Agencies	\$6,601
<b>SUBTOTAL BASIC SERVICES</b>		<b>\$408,812</b>
Task A.11	Supplemental Reports and Services	\$49,935
	Addendum No. 1	\$90,000
<b>AMENDED TOTAL TASK A.11</b>		<b>\$139,935</b>
<b>TOTAL NOT TO EXCEED TASK A</b>		<b>\$548,747</b>
<b>TOTAL NOT TO EXCEED TASK B AND TASK C</b>		<b>\$28,000</b>
<b>TOTAL AMENDED CONTRACT AMOUNT NOT TO EXCEED</b>		<b>\$576,747</b>

AGR 19.183

IHH \_\_\_\_\_

**AGREEMENT FOR CONSULTANT SERVICES**

**LOS GATOS CREEK TRAIL TO HIGHWAY 9 TRAILHEAD CONNECTOR PROJECT 18-832-4505**

**TABLE OF CONTENTS**

<u>Subject</u>	<u>Page</u>
Article I Introduction .....	2
Article II Statement of Work .....	3
Article III Consultant's Reports or Meetings .....	4
Article IV Performance Period.....	4
Article V Allowable Costs and Payments .....	4
Article VI Termination.....	7
Article VII Cost Principles and Administrative Requirements.....	7
Article VIII Retention of Records/Audit .....	8
Article IX Audit Review Procedures.....	8
Article X Subcontracting .....	10
Article XI Equipment Purchase.....	10
Article XII State Prevailing Wage Rates.....	11
Article XIII Conflict of Interest .....	15
Article XIV Rebates, Kickbacks or other Unlawful Consideration .....	15
Article XV Prohibition of Expending Local Agency State or Federal Funds for Lobbying.....	16
Article XVI Non-Discrimination Clause and Statement of Compliance .....	16
Article XVII Debarment and Suspension Certification .....	18
Article XVIII Disadvantaged Business Enterprises (DBE) Participation .....	18
Article XIX Insurance .....	20
Article XX Funding Requirements .....	22
Article XXI Change in Terms .....	23
Article XXII Contingent Fee .....	23
Article XXIII Disputes .....	23
Article XXIV Inspection of Work.....	24
Article XXV Safety.....	24
Article XXVI Ownership of Data .....	25
Article XXVII Claims Filed by LOCAL AGENCY'S Construction Contractor .....	25
Article XXVIII Confidentiality of Data.....	26
Article XXIX National Labor Relations Board Certification .....	26
Article XXX Evaluation of Consultant.....	26
Article XXXI Retention of Funds .....	27
Article XXXII Notification .....	27
Article XXXIII AGREEMENT .....	28
Article XXXIV Signatures .....	28

**ATTACHMENTS:**

- |           |                   |
|-----------|-------------------|
| Exhibit A | Scope of Services |
| Exhibit B | Cost Proposals    |
| Exhibit C | Caltrans Forms    |
- Exhibit 10-O2 – Consultant Contract DBE Commitment
  - Exhibit 17-F – Final Report- Utilization of DBE and First Tier Subcontractors

**ARTICLE I – INTRODUCTION**

This AGREEMENT is made and entered into on October 1, 2019 (*DATE*) by and between the TOWN OF LOS GATOS, a California municipal corporation, hereinafter referred to as, LOCAL AGENCY and Mott MacDonald Group, Inc., hereinafter referred to as, CONSULTANT, whose address is 2077 Gateway Place, Suite 550, San Jose, CA 95110. The CONSULTANT is incorporated in the State of Delaware.

The Project Manager for the CONSULTANT will be Teferi Abere, Principal Project Manager.

The Contract Administrator for LOCAL AGENCY will be Lisa Petersen, Assistant Public Works Director/Town Engineer.

This AGREEMENT is made with reference to the following facts.

The LOCAL AGENCY desires to engage CONSULTANT to provide professional engineering design services for the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project.

The CONSULTANT represents and affirms that it is willing to perform the desired work pursuant to this AGREEMENT.

The CONSULTANT represents to LOCAL AGENCY that it possesses the professional skills, qualifications, experience, and resources necessary and has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for CONSULTANT to practice its profession and to timely perform the services described in this AGREEMENT. The services performed by CONSULTANT will be in a manner consistent with that level of care and skill ordinarily exercised by other professional consulting firms providing similar services under similar circumstances at the time, and in the general vicinity where, the services are performed. CONSULTANT acknowledges LOCAL AGENCY has relied upon these representations to retain the CONSULTANT.

CONSULTANT shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws.

CONSULTANT shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.

- A. The work to be performed under this AGREEMENT is described in Article II entitled Statement of Work and the approved CONSULTANT's Cost Proposal dated August 29, 2019. The approved CONSULTANT's Scope of Services (Exhibit A) and Cost Proposal (Exhibit B) is attached hereto and incorporated by reference. If there is any conflict between the approved Scope of Services or Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- B. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless LOCAL AGENCY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, penalties, costs, losses and expenses, in law or equity, including without limitation, court costs and

reasonable attorneys' and expert witness fees, to the extent caused by the negligent acts, errors, or omissions, recklessness or willful misconduct on the part of CONSULTANT, or any of the CONSULTANT'S officers, employees, or agents or any sub-consultants. The provisions of this section shall survive termination or suspension of this AGREEMENT.

- C. CONSULTANT and the agents and employees of CONSULTANT, in the performance of this AGREEMENT, shall act in an independent capacity and not as officers or employees or agents of LOCAL AGENCY. As an independent contractor it or its employees or agents shall not obtain any rights to retirement benefits or other benefits which accrue to LOCAL AGENCY employee(s).
- D. LOCAL AGENCY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of this AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished.
- E. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds LOCAL AGENCY harmless from any and all claims that may be made against LOCAL AGENCY based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.
- F. 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 LOCAL AGENCY. 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 reasonably cooperate with LOCAL AGENCY regarding litigation brought regarding the subject of CONSULTANT's work to be performed under this AGREEMENT. CONSULTANT shall be compensated for its time, and any costs and expenses 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.
- G. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors or Subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- H. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- I. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

## **ARTICLE II STATEMENT OF WORK**

CONSULTANT agrees to perform the services as outlined in "Exhibit A-Scope of Services" within the time frames specified therein, and "Exhibit B - Consultant's Cost Proposal" which are hereby incorporated by reference and attached.



**ARTICLE III CONSULTANT'S REPORTS OR MEETINGS**

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the Contract Administrator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator, as needed, to discuss progress on the AGREEMENT.

**ARTICLE IV PERFORMANCE PERIOD**

- A. This AGREEMENT shall go into effect on **October 1, 2019** ~~insert award date~~, contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end on 06/20/21, unless extended by AGREEMENT amendment.
- B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed and approved by LOCAL AGENCY.

**ARTICLE V ALLOWABLE COSTS AND PAYMENTS TASK A-**

- A. The method of payment for TASK A of this AGREEMENT will be based on lump sum. The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article II Statement of Work of this AGREEMENT. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between CONSULTANT and LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by AGREEMENT amendment and approved by LOCAL AGENCY.
- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article VI Termination.
- C. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this AGREEMENT.
- D. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Invoices shall

be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase of this AGREEMENT. The final invoice must be submitted within sixty (60) calendar days after completion of CONSULTANT's work, unless a later date is approved by the LOCAL AGENCY. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

Town of Los Gatos Parks and Public Works Department  
ATTN: Lisa Petersen, Assistant  
Public Works Director/Town Engineer Los  
Gatos Creek Trail to Highway 9 Trailhead  
Connector Project  
41 Miles Avenue Los Gatos, CA 95030

- E. The total amount payable by LOCAL AGENCY for TASK A shall not exceed \$458,747

**TASK B and TASK C**

- A. The method of payment for TASK B and TASK C shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to CONSULTANT for the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.
- B. The specified rate to be paid for vehicle expense for CONSULTANT's field personnel shall be \$0.00 per approved Cost Proposal. This rate shall be for a fully equipped vehicle(s) specified in Article II Statement of Work, as applicable. The specified rate to be paid for equipment shall be, as listed in Exhibit B- Consultant's Cost Proposal.
- C. The method of payment for TASK B and TASK C of this AGREEMENT, except those items to be paid for on a specified rate basis, will be based on cost per unit of work. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment-rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for, by AGREEMENT amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY approved overhead rate set forth in the approved Cost Proposal. In the event, LOCAL AGENCY determines that changed work from that specified in the approved Cost Proposal and AGREEMENT is required; the actual costs reimbursable by LOCAL AGENCY may be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as

specified in Paragraph "J," of this Article shall not be exceeded unless authorized by AGREEMENT amendment.

- D. In addition to the allowable incurred costs, LOCAL AGENCY will pay CONSULTANT a fixed fee of \$0. The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the scope of work and such adjustment is made by AGREEMENT amendment.
- E. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- F. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- G. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article II Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT.
- H. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this AGREEMENT.
- I. CONSULTANT will be reimbursed within thirty (30) days of receipt by LOCAL AGENCY's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY including any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY'S Contract Administrator at the following address:
  - Town of Los Gatos Parks and Public Works
  - Department ATTN: Lisa Petersen, Assistant
  - Public Works Director/Town Engineer
  - Los Gatos Creek Trail to Highway 9 Trailhead
  - Connector Project 41 Miles Avenue
  - Los Gatos, CA 95030
- J. The total amount payable by LOCAL AGENCY including the fixed fee for TASK B and TASK C shall not exceed \$ 28,000.
- K. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by LOCAL AGENCY's Contract Administrator.
- L. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the

prevailing wage rates are reimbursable.

#### **ARTICLE VI TERMINATION**

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. In the event of such termination, LOCAL AGENCY may proceed with the work in any manner deemed proper by LOCAL AGENCY.
- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination provided for in subsection A of this Section.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by LOCAL AGENCY by virtue of any breach of this AGREEMENT by CONSULTANT, and LOCAL AGENCY may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due LOCAL AGENCY from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT, except as provided in Article XI C. Upon termination, and upon receipt of payment by CONSULTANT, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

#### **ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

- A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

#### **ARTICLE VIII RETENTION OF RECORDS/AUDIT**

For the purpose of determining compliance with California Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the CONSULTANT's work and services for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

#### **ARTICLE IX AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by agreement of LOCAL AGENCY and CONSULTANT, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than thirty (30) days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and Subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and

disallowance of prior reimbursed costs.

- E. **CONSULTANT'S Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by California's Department of Transportation (Caltrans) Audit and Investigation (A&I). Caltrans A&I, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.**

1. **During a Caltrans A&I review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans A&I will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans A&I identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR, part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by A&I.**

**Accepted rates will be as follows:**

- a. **If the proposed rate is less than 150% - the accepted rate reimbursed will be 90% of the proposed rate.**
  - b. **If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be 85% of the proposed rate.**
  - c. **If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be 75% of the proposed rate.**
2. **If Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans A&I will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.**
  3. **If the CONSULTANT fails to comply with the provisions of this paragraph E, or if Caltrans A&I is still unable to issue a cognizant approval letter after the revised independent CPA-audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this provisional ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.**
  4. **CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the**

following items have occurred: (1) Caltrans A&I accepts or adjusts the original or revised independent CPA- audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) Caltrans A&I has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other AGREEMENTS executed between LOCAL AGENCY and the CONSULTANT, either as a prime or Subconsultant, with the same fiscal period ICR. The ICR period shall extend beyond the one-year period and shall be fixed for the life of the contract.

#### **ARTICLE X SUBCONTRACTING**

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between LOCAL AGENCY and any Subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to LOCAL AGENCY for the acts and omissions of its Subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its Subconsultant(s) is an independent obligation from LOCAL AGENCY'S obligation to make payments to the CONSULTANT.
- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this AGREEMENT shall be subcontracted without written authorization by LOCAL AGENCY's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- C. All subcontracts entered into as a result of this AGREEMENT shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its Subconsultants within fifteen (15) calendar days from receipt of each payment made to CONSULTANT by LOCAL AGENCY for the work performed by such Subconsultants.
- E. Any substitution of Subconsultant(s) must be approved in writing by LOCAL AGENCY's Contract Administrator in advance of assigning work to a substituted Subconsultant(s).

#### **ARTICLE XI EQUIPMENT PURCHASE**

- A. Prior authorization in writing, by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by LOCAL AGENCY's Contract Administrator;

three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
  - 1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
  - 2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

**ARTICLE XII STATE PREVAILING WAGE RATES**

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer ([http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/DistrictRegion\\_Map\\_Construction\\_7-8-15.pdf](http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/DistrictRegion_Map_Construction_7-8-15.pdf))

These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.



- C. **General Prevailing Wage Rate Determinations** applicable to this project may also be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov>.
- D. **Payroll Records**
  - 1. Each **CONSULTANT** and **Subconsultant** shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the **CONSULTANT** or **Subconsultant** in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
    - a. The information contained in the payroll record is true and correct.
    - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
  - 2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the **CONSULTANT** under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by **LOCAL AGENCY** representative's at all reasonable hours at the principal office of the **CONSULTANT**. The **CONSULTANT** shall provide copies of certified payrolls or permit inspection of its records as follows:
    - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
    - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of **LOCAL AGENCY**, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to **LOCAL AGENCY**, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the **CONSULTANT**.
    - c. The public shall not be given access to certified payroll records by the **CONSULTANT**. The **CONSULTANT** is required to forward any requests for certified payrolls to the **LOCAL AGENCY** Contract Administrator by both email and regular mail on the business day following receipt of the request.
  - 3. Each **CONSULTANT** shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
  - 4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by **LOCAL AGENCY** shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the **CONSULTANT** or **Subconsultant** performing the work shall not be

- marked or obliterated.
5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
  6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.
- F. Penalty
1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the LOCAL AGENCY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
    2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
    3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
    4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the

prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:

- a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
  - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
  - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
  - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
  6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.
- G. Hours of Labor
- Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

**H. Employment of Apprentices**

1. Where either the prime AGREEMENT or the sub agreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any Subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTS and Subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and Subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all Subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

**ARTICLE XIII CONFLICT OF INTEREST**

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT, or any ensuing LOCAL AGENCY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT, or any ensuing LOCAL AGENCY construction project, which will follow.
- B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise LOCAL AGENCY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.
- C. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- D. The CONSULTANT hereby certifies that the CONSULTANT or Subconsultant and any firm affiliated with the CONSULTANT or Subconsultant that bids on any construction contract or on any AGREEMENT to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

**ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY

shall have the right in its discretion; to terminate this AGREEMENT without liability; to pay only for the value of the work actually performed; or to deduct from this AGREEMENT price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

**ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING**

- A. CONSULTANT certifies to the best of his or her knowledge and belief that:
1. No state, federal or LOCAL AGENCY appropriated funds have been paid, or will be paid by- or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any local, State or Federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.
  2. If any funds other than Federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed one hundred thousand dollars (\$100,000) and that all such sub recipients shall certify and disclose accordingly.

**ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

- A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California

that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code § 12990 and Title 2 CCR § 8103.

- B. During the performance of this AGREEMENT, CONSULTANT and its Subconsultants shall not discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.
- C. CONSULTANT and Subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONSULTANT and Subconsultants shall comply with the provisions of the Fair Employment and Housing Act (California Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of California Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing California Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT, with regard to its work performed under this Agreement and to the extent the California Fair Employment and Housing Commission regulations are applicable to such work, shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its Subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49

CFR Part 21- Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.

**ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION**

- A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
  - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
  - 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
  - 3. Does not have a proposed debarment pending; and
  - 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the FHWA.

**ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

- A. This AGREEMENT is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California's statewide overall DBE goal.
- B. The goal for DBE participation for this AGREEMENT is 15%. Participation by DBE Consultant or Subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-01), or in the Consultant Contract DBE Information (Exhibit 10-02) attached hereto and incorporated as part of the AGREEMENT. If a DBE Subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE Subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal,

complete and submit Exhibit 15-H: DBE Information - Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

- D. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. The LOCAL AGENCY, CONSULTANT or Subconsultants shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted contracts. Failure by CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as LOCAL AGENCY deems appropriate which may include:
- 1) Withholding monthly progress payments;
  - 2) Disqualifying the CONSULTANT from future bidding as non-responsive.
- E. A DBE firm may be terminated only with prior written approval from LOCAL AGENCY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting LOCAL AGENCY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f). If a DBE Subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE Subconsultant, if the goal is not otherwise met.
- F. Consultant shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of Consultant) pursuant to prior written authorization of the LOCAL AGENCY's Contract Administrator.
- G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.
- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar



- transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
  - J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
  - K. Upon completion of the AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
  - L. If a DBE Subconsultant is decertified during the life of the AGREEMENT, the decertified Subconsultant shall notify CONSULTANT in writing with the date of decertification. If a Subconsultant becomes a certified DBE during the life of the AGREEMENT, the Subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within 30 days.
  - M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

#### **ARTICLE XIX INSURANCE**

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance in compliance with the following:
  - Minimum Scope of Insurance:
    - i. CONSULTANT agrees to have and maintain, for the duration of the AGREEMENT, General Liability insurance policies insuring it to an amount not less

than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.

- ii. CONSULTANT agrees to have and maintain for the duration of the AGREEMENT, an Automobile Liability insurance policy ensuring it to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iii. CONSULTANT shall provide to the LOCAL AGENCY all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by the LOCAL AGENCY before work commences.
- iv. CONSULTANT agrees to have and maintain, for the duration of the AGREEMENT, professional liability insurance in amounts not less than \$1,000,000 which is sufficient to insure CONSULTANT for professional errors or omissions in the performance of the particular scope of work under this AGREEMENT.

**General Liability:**

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

**All Coverages.** Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after

thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the LOCAL AGENCY. Current certification of such insurance shall be kept on file at all times during the term of this AGREEMENT with the Town Clerk.

**Workers' Compensation.** In addition to these policies, CONSULTANT shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the LOCAL AGENCY before beginning services under this AGREEMENT. Further, CONSULTANT shall ensure that all subcontractors employed by CONSULTANT provide the required Workers' Compensation insurance for their respective employees.

**Indemnification.** CONSULTANT shall save, keep, hold harmless and indemnify and defend the LOCAL AGENCY its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of the negligent act or omissions of the CONSULTANT, or any of the CONSULTANT's officers, employees, or agents or any Subconsultant.

- B. CONSULTANT agrees that the insurance herein provided for, shall be in effect at all times during the term of this AGREEMENT. In the event said insurance coverage expires at any time or times during the term of this AGREEMENT, CONSULTANT agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the AGREEMENT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this AGREEMENT upon occurrence of such event.

#### **ARTICLE XX FUNDING REQUIREMENTS**

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only, if sufficient funds are made available to LOCAL AGENCY for the purpose of this AGREEMENT. In addition,

this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.

- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to void the AGREEMENT under the 30-day termination clause pursuant to Article VI, or by mutual agreement of the parties to amend the AGREEMENT to reflect any reduction of funds.

#### **ARTICLE XXI CHANGE IN TERMS**

- A. No modification, waiver, mutual termination, or amendment of this AGREEMENT is effective unless made in writing and signed by the LOCAL AGENCY and the CONSULTANT.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY'S Contract Administrator.
- C. There shall be no change in CONSULTANT'S Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by LOCAL AGENCY'S Contract Administrator.

#### **ARTICLE XXII CONTINGENT FEE**

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

#### **ARTICLE XXIII DISPUTES**

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after thirty (30) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this

**AGREEMENT that is not disposed of by AGREEMENT shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and Public Works Director, who may consider written or verbal information submitted by CONSULTANT.**

- B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.**
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.**
- D. In any dispute over any aspect of the AGREEMENT, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.**

#### **ARTICLE XXIV INSPECTION OF WORK**

**CONSULTANT and any Subconsultant shall permit LOCAL AGENCY, the state, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT including review and inspection on a daily basis.**

#### **ARTICLE XXV SAFETY**

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.**
- B. Pursuant to the authority contained in Division 1, Section 591 of the California Vehicle Code, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all applicable requirements set forth in Divisions 11, 12, 13, 14, and 15 of the California Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.**
- C. Any subcontract entered into as a result of this AGREEMENT, shall contain all of the provisions of this Article.**
- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.**

**ARTICLE XXVI OWNERSHIP OF DATA**

- A. It is mutually agreed that subject to CONSULTANT's receipt of payment for its services under this AGREEMENT all materials prepared by CONSULTANT under this AGREEMENT shall become the property of LOCAL AGENCY, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, LOCAL AGENCY shall be entitled to, and CONSULTANT shall deliver to LOCAL AGENCY, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to LOCAL AGENCY which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by LOCAL AGENCY.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of LOCAL AGENCY without restriction or limitation upon its use or dissemination by LOCAL AGENCY.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this AGREEMENT. Any reuse by LOCAL AGENCY for another project or project location shall be at LOCAL AGENCY's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the AGREEMENTS as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other AGREEMENT products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

**ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY'S CONSTRUCTION CONTRACTOR**

- A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to reasonably cooperate with LOCAL AGENCY.
- B. CONSULTANT's consultation or testimony will be reimbursed at CONSULTANT's then current hourly rates of compensation plus any costs and expenses.

**ARTICLE XXVIII CONFIDENTIALITY OF DATA**

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.
- E. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity other than LOCAL AGENCY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this AGREEMENT are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of LOCAL AGENCY or except as may be required by any law, regulation or government or court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this AGREEMENT, LOCAL AGENCY has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, LOCAL AGENCY's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

**ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

In accordance with Public Contract Code Section 10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

**ARTICLE XXX EVALUATION OF CONSULTANT**

CONSULTANT's performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

**ARTICLE XXXI RETENTION OF FUNDS**

- A. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.
  
- B. No retainage will be held by the LOCAL AGENCY from progress payments due the CONSULTANT. Any retainage held by the CONSULTANT or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within thirty (30) calendar days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR §26.29) requires that any delay or postponement of payment over thirty (30) calendar days may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of this provision shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified in Business and Professions Code §7108.5. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE CONSULTANT and subconsultants.

**ARTICLE XXXII NOTIFICATION**

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

**CONSULTANT:**

MOTT MACDONALD GROUP, INC.  
ATTN: Chris Metzger, Senior Vice President  
2077 GATEWAY PLACE, SUITE 550  
SAN JOSE, CA 95110

**LOCAL AGENCY:**

Town of Los Gatos - Parks and Public Works Department  
ATTN: Lisa Petersen, Assistant Public Works Director/Town Engineer  
41 Miles Avenue  
Los Gatos, CA 95030



**ARTICLE XXXIII AGREEMENT**

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

**ARTICLE XXXIV SIGNATURES**

Recommended by Department Head:



WHEREOF, THE LOCAL AGENCY AND CONSULTANT HAVE EXECUTED THIS AGREEMENT.

**TOWN OF LOS GATOS by:**

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

**CONSULTANT by:**

  
\_\_\_\_\_  
Signature

Chris Metzger, Senior Vice President  
Printed Name and Title

**Approved as to Form:**

  
\_\_\_\_\_  
Robert Schultz, Town Attorney

**Attest:**

 10/17/19  
\_\_\_\_\_  
Shelley Neis, CMC, Town Clerk

# EXHIBIT A SCOPE OF SERVICES

## **EXHIBIT A – SCOPE OF SERVICES**

We have prepared the following scope of services to address the Town’s requested scope in the RFP and additional requirements we anticipate from Caltrans for the successful completion of the project. The design services scope of work is divided into 11 major tasks as follows:

### **TASK A – Design Services**

**Mott MacDonald will provide all design services, including but not limited to:**

- Project management
- Preliminary engineering
- Environmental studies and documentation
- Utility coordination and right-of-way
- Permits and coordination with other agencies
- Surveys and mapping
- Geotechnical investigations and reports
- Structural and final design and development of all contract documents
- Obtaining the authorization to proceed to construction from Caltrans for the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project as described below.

All work for Task A is to be completed within 18 months from the execution of this agreement. Monthly progress payments shall be made based on the percent complete of each task and shall be based on the not to exceed cost per task as shown in Exhibit B – Cost Proposals by Task.

### **BASIC SERVICES (Tasks A.1 – A.10)**

#### **Task A.1 Project Management and Coordination**

The Town will serve as the contract manager and direct liaison between Mott MacDonald and Caltrans District 4 Division of Local Assistance; however, Mott MacDonald will provide support to the Town regarding the project steps necessary to deliver the federally funded project consistent with Caltrans and federal reimbursement requirements.

Mott MacDonald will provide project management for each task for the entire duration of the project. Management activities will consist of planning and supervision of all project development tasks, project administration, project meetings, project coordination, and maintaining quality control as stated below.

#### **Supervision**

- Oversee technical work by Mott MacDonald Team members, including subconsultants
- Ensure compliance with Town of Los Gatos, Caltrans, Santa Clara Valley Water District processes, codes and standards
- Interface with Caltrans staff to maintain format consistency of all deliverables
- Establish and maintain project files
- Create, monitor, and update the project schedule, including reporting monthly on progress and recommending and implementing adjustments as required

- **Develop a work plan so that the project remains on budget and schedule**
- **Create and implement a Risk Management Plan in accordance with Caltrans requirements**

#### **Administration**

- **Prepare and submit monthly progress reports that identify work performed on each task from the preceding month**
- **Engage subconsultants contractually to ensure all contractual obligations are met by all team members**
- **Provide monthly invoices by task that identify percentage complete of each task, expense charges, and subconsultant charges, with support documentation for direct expenses and other charges**

#### **Project Meetings**

The Mott MacDonald Team will be responsible for planning, leading, and preparing documentation for project meetings, including preparing and submitting agendas, meeting materials, and meeting minutes for each meeting. The team will attend the following meetings:

- **One (1) kick-off meeting with the Project Team to review and refine the scope of work, work plan, and schedule**
- **In-person PDT meetings with Caltrans and SCVWD staff and subconsultant team members, as required, to review deliverables and resolve comments**
- **Monthly in-person or teleconference meetings with Town staff, key stakeholders, or other agencies**
- **Conducting field reviews/meetings as needed**

A total of ten (10) meetings are budgeted for this project.

#### **Coordination**

- **Develop a list of project stakeholders for coordination during project design**
- **Provide and distribute contact information for all project team members**
- **Track action items for the Town**
- **Prepare all submissions for the Town to submit to Caltrans Local Assistance**

#### **Quality Control**

- **Perform a thorough review and verification of correction by an independent reviewer**
- **Take corrective actions to rectify findings of non-compliance by a QA/QC review**
- **Document quality reviews, and make findings and corrective actions available for Town's review**

#### **Deliverables:**

- **Meeting agenda and minutes**
- **Field review logs**
- **Submittal, Action and Decision documentation logs**
- **Tracking spreadsheets**
- **Caltrans submissions**
- **Project Schedule**
- **Project Work Plan**
- **Risk Management Plan**
- **Progress Reports**

- Invoices

### **Task A.2 Data Collection, Review, and Site Visit**

The Mott MacDonald Team will review all available information provided by Town of Los Gatos, Caltrans, Santa Clara Valley Water District, and other agencies, which will include the following items:

- Previous studies, reports, and documents
- As-built plans
- Utility information
- Aerial photos and mapping
- Survey control data
- Existing right-of-way information
- Geotechnical reports
- Town's adopted Bicycle and Pedestrian Master Plan and other documents related to the project
- Funding parameters and obligations
- Review Town of Los Gatos Standard Specifications and Details for Construction, 2018 Caltrans Standard Specifications and Standard Plans, California Manual of Uniform Traffic Control Devices (CA MUTCD 2014 Revision 3) and other controlling design standards as appropriate

Although the team has already visited the project site multiple times and is very familiar with the project area, we will conduct a field review with the Project Manager and key project staff, to envision the project issues, identify and document concerns, and photograph key aspects that will affect the overall project development effort. The team will produce field notes, photos, and field measurements for use in the project development.

#### **Deliverables:**

- Field notes
- Photos
- Video of existing site conditions
- Location of utilities within project area
- Summary or diagram of existing conditions highlighting any special/potential conditions that may affect the final design
- Summary of ADA standards and trail guidelines applicable to the project

### **Task A.3 Surveys and Mapping**

The Mott MacDonald Team, with R.E.Y Engineers leading the surveying effort, will perform design topographic surveys and right-of-way mapping for the project. The topographic information will be compiled to create an existing conditions base map in AutoCAD.

#### **Right-of-way Mapping**

R.E.Y. will provide record right-of-way mapping of the project area. Right of way will be based upon preliminary title reports, record maps, deeds, Caltrans right-of-way maps, SCVWD right-of-way maps, and assessor maps. The Town will provide preliminary title reports, if required.

#### **Topographic Mapping**

R.E.Y. will perform a topographic survey for design purposes of the project site. R.E.Y. will conduct a detailed field survey to review and record existing conditions in the project area to identify any unusual or special conditions that may affect the design or construction of the project. The field survey for the project area shall include at a minimum, the location of existing facilities, including but not limited to:

- Los Gatos Creek
- The Los Gatos Creek Trail and adjacent land area
- Roadways
- Sidewalks
- Curbs
- Gutters
- Ramps
- Highway 9 overcrossing including the embankments and structural components
- Utilities (above, below, and attached to bridge structure if any).
- Flood control facilities
- Waterways
- Outfalls
- Trees greater than 6" DBH with tree species identified
- Any existing irrigation facilities
- Fences and Gates

Survey shall extend sufficiently beyond the project area to demonstrate proper post project drainage. R.E.Y. will prepare topographic and aerial mapping at a scale of 1"=20' for use in the project design.

**Deliverables:**

- Base map(s) in AutoCAD format and survey data sheets
- Right of Way Mapping

**Task A.4 Utility Coordination**

The complete effort related to utilities for this project includes accurately identifying and mapping existing utilities, identifying and defining any relocations or modifications required by the project, and documenting utilities (those affected and those not affected) in accordance with Caltrans policies.

Mott MacDonald will coordinate early with utility companies to confirm any potential conflicts with existing overhead and underground utilities within the project area. This effort will include the following tasks:

- Develop utility contacts lists and relocation tracking database
- Prepare Utility "A" letters for the Town's signature requesting existing utility information from utility owners within the project vicinity during the preliminary design phase
- Schedule and conduct utility coordination meetings with utility owners. Prepare/distribute meetings agendas in advance of each meeting and prepare/distribute meeting minutes within three working days
- Prepare Utility "B" letters (Notice to Utility Owners of Conflict) for the Town's Signature at the 65% submittal milestone
- Prepare Utility Conflict Maps clearly delineating existing and proposed utilities in current and final locations. Location of proposed utilities in final locations will be based upon design information provided by the affected utility companies

- Prepare Utility “C” letters (Notice to Utility Owners to Relocate Conflicting Facilities) for the Town Signature at the 95% submittal milestone
- Provide support to the Town to determine liability for utility relocation costs and certify that all utility conflicts are addressed so that Utility Certification (part of ROW Certification) is obtained
- Prepare Utility Agreements to be executed with affected utility companies

**Deliverables:**

- ‘A’+‘B’+‘C’ Letters for Town signature requesting utility information
- AutoCAD basemap of existing utilities
- Encroachment Permit Applications for site access

### **Task A.5 Preliminary Engineering**

Upon completion of the above and preparation of the base map, Mott MacDonald will develop a preliminary design for up to three alternatives of the project consistent with the project’s goals and budget. The preliminary plans will be to roughly a 15% design level and will include plan and profile exhibits over the project base mapping and aerials. The exhibits will allow the Town, stakeholders, and permitting agencies to understand the relative spatial impacts and design elements of the layout. We anticipate up to two (2) iterations of the preliminary design addressing the Town staff comments. The preliminary geometry will be developed considering cost, accessibility and connectivity, safety, design exceptions, environmental impacts, required permits, grading/drainage, right of way, utility relocation, geotechnical/retaining wall, ADA, extent of required demolition activities, construction phasing/staging, and future maintenance considerations.

The Mott MacDonald team will present final preliminary design at two (2) public meetings.

**Deliverables:**

- Preferred preliminary design and order of magnitude cost estimate for review with Town staff
- Up to three preliminary design alternatives developed to approximately 15% complete
- Presentation of preliminary design at two public meetings – Town to arrange meetings (assume three hours each)

### **Task A.6 Environmental Studies and Documentation**

The Mott MacDonald Team expects that the suitable environmental clearance documents will be a NEPA Categorical Exclusion (CE) and a CEQA Categorical Exemption (CE). It is assumed that Caltrans will serve as the NEPA lead agency and approve the NEPA CE and that the Town will serve as the CEQA lead agency and adopt the CE.

#### **NEPA Environmental Technical Memos and Studies**

To support the environmental analysis of the project, the Mott MacDonald team, led by David J. Powers & Associates (DJP&A), will prepare the following technical memos:

- Traffic Technical Memo
- Air Quality (MTC PM2.5 exemption email)
- Water Quality Technical Memo (BMPs during construction)
- Biological Technical Memo:
  - Natural Environmental Study (Minimal Impacts)

- Section 4(f) Enhancement Concurrence Letter
- Cultural Resources Technical Memo
  - Archaeological/Historical Consultants (subconsultant):
    - Area of Potential Effects (APE) Map
    - Historic Property Survey Report (HPSR)
    - Archaeological Survey Report (ASR)
    - Equipment Staging Technical Memo

DJP&A will prepare the traffic, equipment staging, and water quality memo based on information provided by the Project Team. The memos will be prepared based on Caltrans' Standard Environmental Reference (SER) and submitted to the Town for review. DJP&A will revise the memos once and submit them back to the Town for submittal to Caltrans.

Based on review comments by Caltrans, DJP&A, with concurrence from the Town, will revise the memos once for resubmittal to Caltrans. Once the memos are deemed complete by Caltrans, they will issue the NEPA Categorical Exclusion (CE) for use by the City in obtaining federal funding. We believe that the project will qualify as a Categorical Exclusion under NEPA (23 CFR 771.117; (c) (3): Construction of bicycle and pedestrian lanes, paths, and facilities).

#### **CEQA Environmental Clearance**

Given the nature of the improvements proposed, we believe the project falls under a Class I Categorical Exemption under CEQA. The Class I exemption as identified in CEQA Section 15301, Existing Facilities (c), "Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety), and other alterations such as the addition of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities and bicycle lanes, transit improvements such as bus lanes, pedestrian crossings, street trees, and other similar alterations that do not create additional automobile lanes)." DJP&A will prepare a Categorical Exemption (CE) for the project and submit to Town staff for one round of review. Once approved, DJP&A will file the CE at the Santa Clara County Clerk's office and pay the \$50 filing fee on behalf of the Town.

#### **Deliverables:**

- Environmental studies and reports for Categorical Exclusion under NEPA
- Environmental studies and reports for Categorical Exemption under CEQA
- Documentation of activities required by the State Water Resources Control Board
- Incorporation of mitigation measures, if any, into final contract documents
- Location Hydraulic Study Form
- Summary Floodplain Encroachment Report Form

#### **Task A.7 Geotechnical Investigations Reports**

Mott MacDonald includes in this scope of services a geotechnical investigation and analysis, geotechnical analyses and preparation of Structures Preliminary Geotechnical Report (SPGR), Preliminary Foundation Report (PFR), and Foundation Report (FR) to support the preparation of the design and construction documents. The scope of geotechnical work includes coordination of an on-site geotechnical investigation, laboratory testing of retrieved soil samples, analysis and reporting of geologic and geotechnical conditions, and providing preliminary and final foundation and construction recommendations. The SPGR will be completed to support Caltrans type selection



process, prior to completion of the geotechnical investigation. The results of the geotechnical investigation will be incorporated in the PFR and FR documents as appropriate for Caltrans procedures.

The geotechnical investigation aims to collect data and soil samples enabling development of geotechnical design parameters for the proposed bridge and retaining wall structures. Mott MacDonald has reviewed previous geotechnical information available for the site by others. Those studies indicate that the subsurface soil comprises dense to very dense silty sand mixed with gravel. The existing highway bridge is founded on shallow spread footings near the creek and the abutments are supported on driven H-pile foundations approximately 40 feet deep. The geotechnical field investigation will comprise a program of near-surface utility clearance activity and drilling of two geotechnical boreholes shown at the proposed locations in Figure 16.

**Figure 1: Proposed Borehole Locations (Imagery from GoogleEarth Pro)**



Mott MacDonald will coordinate and provide subcontractors to complete the following services:

- Utility Clearance:** In compliance with California law, Mott MacDonald will file a utility clearance ticket with Underground Service Alert (USA). This will require a site visit to identify proposed excavation and drilling locations. A utility locating subcontractor will complete utility clearance activities (electromagnetic detection) at the proposed locations for geotechnical investigation.
- Geotechnical Drilling:** Mott MacDonald will procure the services of Pitcher Drilling, a union drilling contractor. Pitcher Drilling will complete one borehole to a maximum depth of 75 feet below site grades at the southerly abutment location of the proposed bridge. The intent of this borehole is to confirm that conditions are similar to those encountered and described in the contract documents for the construction of the adjacent Highway 9 bridge. Because of poor access, a similar borehole will not be completed at the northerly abutment. A second borehole will be completed on the shoulder of southbound Highway 9 at the location of the start of the existing wooded trail. This borehole will extend to a maximum depth of 50 feet (likely shallower) to characterize the subsurface stratigraphy for support of retaining structures and earthwork fills for construction of the proposed bicycle trail. Soil samples will be retrieved from the boreholes, visually characterized and logged in the field, and stored for transportation to a geotechnical laboratory. The soil boring data collected are used to identify stratigraphic details, soil strength parameters, and soil behavior. Mott MacDonald will obtain drilling permits as required by Santa Clara Valley Water District (SCVWD) and Caltrans requirements, and the explorations will be backfilled with neat cement grout in accordance with SCVWD requirements. To complete the geotechnical investigation, Mott MacDonald will rely on the Town to provide and coordinate access to the existing bicycle trail; Mott MacDonald will provide traffic control and safe working areas to minimize impacts to bicycle traffic.

- **Laboratory Testing:** Mott MacDonald will transport the soil samples obtained to the facility of Inspection Services, Incorporated (ISI), our geotechnical laboratory subcontractor. The soil samples will be tested for corrosivity (using a secondary corrosion specialist laboratory consultant), strength, and physical classification.
- **Analysis and Reporting:** Mott MacDonald will complete geotechnical analyses to develop design parameters and recommendations for deep foundations supporting the proposed bridge and retaining wall structures. The results of the geotechnical investigation, analysis, and recommendations will be documented within PFR, and FR in accordance with Caltrans geotechnical report guidance. An additional Geotechnical Design Report will be prepared in the form of a design memorandum documenting the analyses completed to prepare the PFR and FR. The recommendations in these reports will be directed to the design team for their preparation of plans and specifications for the project and include recommendations for foundation types, seismic information, and construction considerations. It will also include preliminary scour and corrosion evaluations, lateral earth pressure parameters, and seismic design parameters developed from simplified code procedures in AASHTO 2014 with Caltrans Amendments. No site-specific seismic hazard, site response analyses, or numerical pile-soil interaction analyses are anticipated as part of this work.

The preparation of this scope of services above relies on several assumptions documented below. Should the conditions encountered or project requirements vary from our assumptions, we would not embark on additional services without written authorization of the Town.

#### **Deliverables:**

- Geotechnical site investigation comprising two boreholes
- Structure Preliminary Geotechnical Report (for structural type selection)
- Preliminary Foundation Report
- Foundation Report
- Geotechnical Design Report (in technical memorandum format)

#### **Task A.8 Right of Way Certification**

We do not anticipate that right of way will be required for the project. Mott MacDonald will verify and prepare the appropriate right-of-way certification documents, in accordance with forms and guidelines in Chapter 14 of Caltrans Right of Way Manual. We will evaluate the right of way requirements for the Project. All project improvements including those necessary to accommodate stage construction and temporary access will be included in the evaluation. We will identify staging areas and temporary construction easements for use by the general contractor during construction.

#### **Deliverables:**

- Right-of-Way Certification, Utility Certification

#### **Task A.9 Final Design**

The Mott MacDonald team will develop and prepare the final design of the project improvements that include but are not limited to trail alignment and profiles, pre-fabricated pedestrian bridge, retaining wall, ramp structure, signing and striping, drainage improvements and stormwater treatment.

Improvements will be designed in accordance with the latest editions of the following Town of Los Gatos, Caltrans, and federal policies, procedures, practices, regulations, manuals and standards:

- Town of Los Gatos Standard Specifications and Details
- Caltrans Highway Design Manual
- Caltrans Standard Plans and Specifications (2018)
- California Manual of Uniform Traffic Control Devices (MUTCD)
- AASHTO “Green Book” – A Policy on Geometric Design of Highways and Street
- AASHTO – Roadside Design Guide
- Accessibility Guidelines for Outdoor Recreation and Trails
- Americans with Disabilities Act Accessibility Guidelines
- California Access Compliance Reference Manual
- Santa Clara Valley Urban Runoff Pollution Prevention Program

Mott MacDonald will prepare Plans, Specifications, and Estimates for final design of the preferred alternative at 35%, 65%, 95% and bid set milestone submittals. Comments received at each submittal will be incorporated into subsequent submittals. At each milestone level, we will monitor the cost estimate to ensure the project stays within the design completion budget and schedules. The following tasks will be performed.

- **35% Submittal:** Mott MacDonald will prepare 20-scale preliminary plans intended to allow the Town to review and comment upon the basic design concepts early in the process. At a minimum, plans include the Town’s Standard Cover Sheet and Title Sheet and all plan sheets that will be included in the final plan set at a 35% completion stage. A listing of all required details will also be provided. Existing conditions and base maps will be developed fully at this stage. The Standard Specifications and Special Provisions will be prepared at a 35% completion level, and the construction cost estimate will include all anticipated cost items with a 20% estimating contingency.
- Biggs Cardosa will prepare Structure Type Selection documents for the proposed bridge including a brief description of key design issues. Bridge General Plan, and Engineer’s Estimate of Probable Construction Costs.
- **65% submittal:** The Mott MacDonald Team will incorporate comments received from the preliminary plan review and prepare 65% PS&E which include all plan sheets developed to a 65% completion stage. It is anticipated that the 65% plan set will include the following plans:
  - Title sheet
  - General Notes
  - Survey Control Data
  - Typical Sections
  - Demolition Plan
  - Layout and Profile
  - Construction Details
  - Structures Plan
  - Structures Details
  - Retaining Walls
  - Drainage & Utility
  - Signing and Pavement Delineation
  - Water Pollution Control Plan

- Construction Staging and Traffic Handling Plan
- Log of Test Borings
- Specifications and Special Provisions at the 65% level will include a complete table of contents with all special provisions necessary for the construction of the project identified. The construction cost estimate will be prepared and will include a 15% estimating contingency.
- **95% submittal:** The Mott MacDonald team will incorporate comments received from the 65% submittal. The 95% PS&E will be the fully developed set of contract documents including all plans sheets, Specifications and Special Provisions, details, and other contract documents necessary for the construction of the project. The construction cost estimate will be finalized and will include a 10% estimating contingency. Mott MacDonald will conduct an internal quality control review of the plans, Specifications, Special Provisions, and construction cost estimate prior to submitting the 95% complete set to coordinate contract documents and make information consistent between all documents.
- Following submission and review of the 95% submittal, Mott MacDonald will prepare and provide the Town with the final contract documents for use in the construction bid process. All contract documents (plans, Specifications, Special Provisions, and estimates) will be signed by the licensed professional engineer in charge of the design.

#### **Deliverables:**

- Five hard copy sets of D-size (24"x36") plans and three hard copy sets of B-size (11"x17") Plans
- Five hard copies of the Specifications, Special Provisions
- Five hard copies of Cost Estimates
- MS Word copy of Technical Specifications
- Excel spreadsheet copy of construction cost estimates
- Electronic copies (PDF format) of plans, Technical Specifications and cost estimates
- Plans AutoCAD files
- A signed and stamped mylar copy of the final approved plans
- Final contract documents

#### **Task A.10 Coordination with Stakeholder Agencies**

Mott MacDonald will coordinate with Caltrans and Santa Clara Valley Water District to determine the need for and obtain the necessary permits to allow for the construction of the project, including access and staging areas for the anticipated construction stages.

Mott MacDonald will prepare a Standard Encroachment Permit Application form TR-0100 and a Permit Engineering Evaluation Report form TR-0112. The Town will be responsible for Caltrans fees. This task includes budget for two rounds of revisions (Town and Caltrans comments) between application submittal and encroachment permit issuance. Note that supplemental forms and reports that will be submitted with the encroachment permit may change as a result of meetings with Caltrans staff throughout the permit approval process.

#### **Utility and ADA Certification**

Caltrans is likely to require several forms, signed by an agent of the Town, to show the project doesn't require major utility relocations, and meets the current ADA design standards. These forms would be prepared by and signed by the Town. However, Mott MacDonald would provide guidance and support in filling out these forms.

**Lane Closure Report (LCR)** – A LCR will be prepared to determine the duration of Highway 9 lane closures during construction of the Project. Lane closure calculations per Caltrans standard methodology will be performed and submitted to Caltrans for review and approval. This will also include Late Lane Closure Pickup calculations. It is assumed that 7 day 24 hour traffic counts will be provided, and no counts will be performed by the Mott MacDonald Team.

**Deliverables:**

- Standard Encroachment Permit Application Package and PEER
- ADA Certification
- Lane Closure Report
- Valley Water Encroachment Permit Application

**SUPPLEMENTAL REPORTS AND SERVICES - Task A.11**

These services or subtasks listed may or may not be required by Caltrans during the design phase process. Should any of the following sub tasks be required, the Consultant will provide the required cost proposal for the work and upon agreement, the Town will provide a written authorization to proceed with the subtask, with deliverables and lump sum payment identified.

There is no guarantee, either expressed or implied, that the services and costs shown for Task A.11 will be authorized in full.

**A.11-1 Construction Phase Authorization**

Mott MacDonald will support the Town in the preparation of the Request for Authorization to proceed (E-76) forms and exhibits for construction funding applications using procedures outlined in the Caltrans Local Assistance Procedures Manual. Forms include:

- Exhibit 3-D: Request for Authorization to Proceed with Construction
- Exhibit 3-E: Request for Authorization to Proceed Data Sheet
- Exhibit 3-O: Sample Federal-aid Project Finance Letter
- Exhibit 9-D: DBE Contract Goal Methodology
- Exhibit 12D: PS&E Checklist
- Exhibit 13A: Right of Way Certification for Local Assistance Project
- Exhibit 15A: Local Agency Construction Contract Administration Checklist
- Copy of FTIP/FSTIP Reference
- Completed Field Review Form 7B
- Approved NEPA document

**Deliverables:**

- Authorization from Caltrans to proceed with construction (E-76)

### A.11-2 Wetland Technical Assessment

**Field Surveys.** Impacts will occur to potentially regulated habitats on-site, thus H. T. Harvey & Associates will conduct the field work necessary to prepare a full report representing a delineation of Waters of the U.S./State on the site, which would serve as the Wetland Delineation/Wetland Technical Assessment for the NES. Data on the soils, vegetation, and hydrology within potential wetlands on the site are necessary in order to complete the assessment. H. T. Harvey & Associates propose to delineate the boundaries of Los Gatos Creek and the tributary that runs parallel and adjacent to the proposed trail ramp from eastbound Highway 9 according to methodologies outlined in the USACE Wetland Delineation Manual and other USACE guidance. To that end, a routine, on-site delineation of wetlands that occur in the project area will be conducted. In addition to wetlands, any other potentially jurisdictional features, including "other waters" of the U.S./State, will be delineated and described per USACE and RWQCB requirements. The extent and distribution of "riparian" habitats as defined by CDFW will also be mapped and described within the report and presented on accompanying figures.

**Wetland Technical Assessment.** H. T. Harvey & Associates will prepare a technical report summarizing the methods and results of the field survey of regulated habitats. This report will be prepared to report specifications developed by the Caltrans, USACE, RWQCB and CDFW and thus will be of sufficient detail for agency review and a jurisdictional determination (in the case of the USACE). It will include a brief description of existing conditions, description of field techniques employed in the delineation, wetland data sheets, and copies of aerial photographs and maps which show the extent of regulated habitats on the project site. This task includes time for HTH senior staff to attend a field site visit with the USACE to verify the delineation.

### A.11-3 Extended Phase I Archaeological Survey Report

**XPI Fieldwork.** Because the project area is sensitive for prehistoric archaeological sites, it is possible that Caltrans will require an Extended Phase I (XPI) Archaeological Survey Report for this project. XPI reports are used in situations where ordinary surface survey is insufficient to determine the presence or absence of cultural resources in a project area. An XPI proposal detailing the aims and methodology of the study is first prepared for Caltrans approval. After approval of the proposal, XPI fieldwork may begin. This proposal assumes that XPI fieldwork, if necessary, will be limited to hand excavation due to access constraints for heavy equipment in the project area. Hand excavation will include 50x50cm surface transect units and hand augering to identify the presence or absence of archaeological deposits. After completion of fieldwork, the XPI Report will be prepared and submitted to Caltrans PQS for review and approval.

**Extended Phase I Archaeological Survey Reports.** Draft and Final Extended Phase I Archaeological Survey Reports for submission by the City of Los Gatos to Caltrans will be prepared, following the guidelines in the Caltrans Standard Environmental Reference, Volume 2, Exhibit 5.2.

#### Deliverables:

- Wetland Technical Assessment Report
- Extended Phase I Archaeological Survey Report

### A.11-4 Phase I ISA

PARIKH will prepare Phase I Initial Site Assessment study report for the proposed project. ASTM recommends a 1.0-mile radius for the data search. Environmental Data Research Inc. (EDR Inc.) report study will be ordered using an approximate center of the project. The ISA study will be prepared to identify potential hazardous waste sites and evaluate environmental factors that may have impacted the soil groundwater quality within the project limits. The study will include data collection and documents research including historical land use based on study of aerial

photographs and other relevant documents. No field exploration and/or testing are included in this phase of the work.

**Deliverables:**

- Phase I ISA Report

**A.11-5 Additional Studies, Reports, Activities**

**Design Exception Fact Sheets**

Caltrans may require supplemental reports to seek approval of improvements that don't meet all of Caltrans design requirements. These studies include:

- Fact Sheet Exception for Mandatory Design Standards - Includes design standards that require Caltrans headquarters to approve
- Fact Sheet Exception for Advisory Design Standards - These are standards that the local district (District 4) can approve

During the meeting with Caltrans, Mott MacDonald will discuss potential elements that will require design exceptions and prepare a design exception fact sheet if needed. Mott MacDonald will work with Caltrans to minimize the amount of additional work needed for these fact sheets.

**Storm Water Data Report (SWDR)**

Caltrans may require a supplemental report to document the project's measures to mitigate the project's construction-related impacts to the regional water system. Depending on the project impact to Caltrans right of way, a SWDR will be prepared if required by Caltrans.

**A.11-6 Additional Plan Reviews or Design Services**

Additional budget request will be submitted in the instance that Caltrans or the Town provide more than one round of review comments to the different reports submitted for Caltrans review or request additional design services.

**TASK B – Bid Support Services**

**Task B.1 Bid Services**

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

A separate Notice to Proceed shall be issued by the Town prior to any work proceeding on Task B. All work on Task B shall be completed based on the project bid and award schedule in effect at the time of the Notice to Proceed.

## **TASK C – Construction Support Services**

### **Task C.1 Construction Support Services**

Mott MacDonald will provide the following construction support services as requested:

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

A separate Notice to Proceed shall be issued by the Town prior to any work proceeding on Task C. All work on Task C shall be completed based on the project construction schedule in effect at the time of the Notice to Proceed.

### **General Assumptions**

- The Town will furnish any available documents, as-builts, electronic files or information that may be required to complete the design aspect of this scope, including survey monument data and preliminary title reports.
- Town to provide Town's standard CAD border drawing to use for the project.
- Inspection and construction management services are not included in the scope of services.
- Scope does not include right-of-way engineering and right-of-way acquisitions.
- Drilling spoils must be off-hauled but are assumed to be nonhazardous for the purposes of disposal.
- Scour analysis is not required for the bridge supports as the channel is concrete-lined.
- Access to the proposed sites (particularly the bicycle trail) can be provided by the Town between the hours of 7am and 7pm, Monday-Friday (see Figure 6 for proposed locations).
- No point of investigation has been included on the north side of Highway 9 and conditions will be extrapolated from those represented in historical documents for the construction of the highway bridge.
- The Mott MacDonald Team will consider a variety of superstructure types and shapes in the preliminary phase but for the final design, a standard type prefabricated truss is assumed. The Mott MacDonald Team assumes that the superstructure will be designed by the manufacturer and the Construction Documents will include a prefabricated bridge option.
- Mott MacDonald also assumes that Caltrans will accept a prefabricated bridge option in their ROW and will approve the use of a prefabricated steel pedestrian bridge option that will be designed by the manufacturer.
- Mott MacDonald will prepare the design and calculations for the supports of the bridge and the walls.
- The scope of work and fees include a retaining wall at two locations as well as slab on grade ramps.
- Independent check of structural plans will be a red, yellow, and green check of the construction documents and structural calculations that will be performed after the 65% PS&E submittal.



- **PS&E Submittals will be provided at 35%, 65%, 95% and 100% completion levels. Agency reviews are limited to one round of comments consolidated to one set of redline plans, specifications and estimate redline comments per agency. Project Reports will be limited to one draft and one final version of each report. Additional PS&E submittal, agency reviews, and report submittals will be considered Extra Work unless submittals are deemed incomplete.**
- **Plans and specifications shall be prepared following standard Caltrans format as outlined in "Ready-to-List and Construction Contract Award Guide" published by Caltrans.**
- **The Consultant will prepare technical specifications (Caltrans Division 2 through 10) using the 2018 Caltrans Standard Special Provisions (SSPs). The 2018 Caltrans Standard Specifications and the 2018 Caltrans Standard Plans will be referenced in the design documents as applicable. The Town will provide all necessary boilerplate specifications.**
- **Construction Cost Estimates will be prepared based on readily available industry standards and past project experience. Construction Cost Estimates are the Consultant's estimate of the probable construction costs. Actual construction costs may vary based on varying industry trends and competitive Contractor bids and understanding of the project.**
- **Town reviews will be provided concurrently with other Agency reviews.**
- **The Construction Support Services scope of work and fee is assumed based on anticipated project development.**
- **In the event the project design changes and impacts jurisdictional or regulated habitats, a Wetland Technical Assessment (WTA) will be included as an optional task.**
- **In the event Caltrans requires an Extended Phase I (XPI) Archaeological Survey Report, this service will be included as an optional task. Note that if an XPI is needed, an additional 12-16 weeks would be added to the project schedule.**
- **Design scope and fee are based on an assumed maximum design duration of 18 months.**

# **EXHIBIT B COST PROPOSALS**

## COST PROPOSAL BY TASK (for progress payment purposes)

SUB TASK	DESCRIPTION	NOT TO EXCEED COST
<b>TASK A - BASIC SERVICES:</b>		
Task A.1	Project Management and Coordination	\$26,960
Task A.2	Data Collection, Review and Site Visit	\$9,212
Task A.3	Surveys and Mapping	\$27,154
Task A.4	Utility Coordination	\$11,336
Task A.5	Preliminary Engineering	\$27,231
Task A.6	Environmental Studies and Documentation	\$42,991
Task A.7	Geotechnical Investigations and Reports	\$54,489
Task A.8	Right of Way Certification	\$4,400
Task A.9	Final Design	\$198,438
Task A.10	Coordination with Adjacent Agencies	\$6,601
<b>SUBTOTAL BASIC SERVICES</b>		<b>\$408,812</b>
Task A.11	Supplemental Reports and Services	\$49,935
<b>TOTAL NOT TO EXCEED TASK A</b>		<b>\$458,747</b>
<b>TOTAL NOT TO EXCEED TASK B AND TASK C</b>		<b>\$28,000</b>
<b>TOTAL CONTRACT AMOUNT NOT TO EXCEED</b>		<b>\$486,747</b>

## TASK A – BASIC SERVICES

### EXHIBITS 10-H1 COST PROPOSALS

## EXHIBIT 10-H1 COST PROPOSAL Page 1 of 3

ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS  
(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

 Prime Consultant     SubconsultantConsultant Mott MacDonald, LLCProject No. TLG 18-832-4505, SCL 170028, CML-5067 (021)    Contract No. \_\_\_\_\_    Date 8/29/2019

## DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
<u>(Project Manager)</u>	<u>Teferi Abere</u>	<u>174</u>	<u>\$ 82.97</u>	<u>\$ 14,436.78</u>
<u>(QA/QC)</u>	<u>Mohammed Basma</u>	<u>16</u>	<u>\$ 115.4</u>	<u>\$ 1,846.40</u>
<u>(Sr. Project Engineer)</u>	<u>Tommy Cho</u>	<u>277</u>	<u>\$ 69.72</u>	<u>\$ 19,312.44</u>
<u>(Project Engineer)</u>	<u>Damtew Ayele</u>	<u>60</u>	<u>\$ 68.0</u>	<u>\$ 4,080.00</u>
<u>(Geotech Lead)</u>	<u>Martin Walker</u>	<u>25</u>	<u>\$ 78.13</u>	<u>\$ 1,953.25</u>
<u>(Geotech Engineer)</u>	<u>Faustas Buskevicius</u>	<u>56</u>	<u>\$ 52.0</u>	<u>\$ 2,912.00</u>
<u>(Geotech Engineer)</u>	<u>Morteza Khorshidi</u>	<u>153</u>	<u>\$ 42.3</u>	<u>\$ 6,471.90</u>
<u>(Engineer IV)</u>	<u>Jared Murphy</u>	<u>40</u>	<u>\$ 58.0</u>	<u>\$ 2,320.00</u>
<u>(Engineer III)</u>	<u>Lauren Sotir</u>	<u>202</u>	<u>\$ 40.87</u>	<u>\$ 8,255.74</u>
<u>(CAD Specialist)</u>	<u>Paola Burk</u>	<u>178</u>	<u>\$ 48.00</u>	<u>\$ 8,544.00</u>

## LABOR COSTS

a) Subtotal Direct Labor Costs	<u>\$ 70,132.51</u>
b) Anticipated Salary Increases (see page 2 for calculation)	<u>\$ 1,257.29</u>
c) TOTAL DIRECT LABOR COSTS [(a) + (b)]	<u>\$ 71,389.80</u>

## INDIRECT COSTS

d) Fringe Benefits (Rate: <u>57.6%</u> )	e) Total Fringe Benefits [(c) x (d)]	<u>\$ 41,120.52</u>
f) Overhead (Rate: <u>95.5%</u> )	g) Overhead [(c) x (f)]	<u>\$ 68,177.26</u>
h) General and Administrative (Rate: <u>0%</u> )	i) Gen & Admin [(c) x (h)]	<u>\$ 0</u>
j) TOTAL INDIRECT COSTS [(e) + (g) + (i)]		<u>\$ 109,297.78</u>

## FIXED FEES

k) TOTAL FIXED FEE [(c) + (j)] x fixed fee 10%    \$ 18,068.76

## l) CONSULTANT'S OTHER DIRECT COSTS (ODC) – ITEMIZE (Add additional pages if necessary)

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs			\$	\$352
Geotechnical Drilling			\$	\$16,675
Permit Fees			\$	\$1,850
Plan Sheets			\$	\$250
Laboratory Test			\$	\$4,400

l) TOTAL OTHER DIRECT COSTS    \$ 23,527

## m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)

<u>Subconsultant 1: Biggs Cardosa Associates</u>	<u>\$105,020.00</u>
<u>Subconsultant 2: ActiveWavz Engineering</u>	<u>\$ 41,000.18</u>
<u>Subconsultant 3: David J. Powers &amp; Associates</u>	<u>\$ 64,065.68</u>
<u>Subconsultant 4: R.E.Y Engineers</u>	<u>\$ 26,378.03</u>

n) TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l)+(m)] \$ 259990.71TOTAL COST [(c) + (j) + (k) + (n)] \$ 458747.05

## NOTES:

1. All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended. Indirect cost rates should be based on consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
3. Anticipated salary increases calculation (page 2) must accompany.

## EXHIBIT 10-H1 COST PROPOSAL Page 2 of 3

**ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS**  
(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)**1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	=	Avg Hourly Rate	5 Year Contract Duration
\$70,132.51	1181	=	\$59.38	Year 1 Avg Hourly Rate

**2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)**

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$59.38	+	3%	=	\$61.16	Year 2 Avg Hourly Rate
Year 2	\$61.16	+	3%	=	\$63.00	Year 3 Avg Hourly Rate
Year 3	\$63.00	+	3%	=	\$64.89	Year 4 Avg Hourly Rate
Year 4	\$64.89	+	3%	=	\$66.84	Year 5 Avg Hourly Rate

**3. Calculate estimated hours per year (Multiply estimate % each year by total hours)**

	Estimated % Completed Each Year	*	Total Hours per Cost Proposal	=	Total Hours per Year	
Year 1	20.0%	*	1181	=	472	Estimated Hours Year 1
Year 2	60.0%	*	1181	=	709	Estimated Hours Year 2
Year 3	0%	*	0	=	0	Estimated Hours Year 3
Year 4	0%	*	0	=	0	Estimated Hours Year 4
Year 5	0%	*	0	=	0	Estimated Hours Year 5
Total	100%		Total	=	1181	

**4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)**

	Avg Hourly Rate (calculated above)	*	Estimated hours (calculated above)	=	Cost per Year	
Year 1	\$59.38	*	472	=	\$28,027.36	Estimated Hours Year 1
Year 2	\$61.16	*	709	=	\$43,362.44	Estimated Hours Year 2
Year 3	\$63.00	*	0	=	\$0.00	Estimated Hours Year 3
Year 4	\$64.89	*	0	=	\$0.00	Estimated Hours Year 4
Year 5	\$66.84	*	0	=	\$0.00	Estimated Hours Year 5
	Total Direct Labor Cost with Escalation			=	\$71,389.80	
	Direct Labor Subtotal before Escalation			=	\$70,132.51	
	Estimated total of Direct Labor Salary Increase			=	\$1257.29	Transfer to Page 1

## NOTES:

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

EXHIBIT 10-H1 COST PROPOSAL Page 3 of 3

**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904](#) - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement. Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

**Prime Consultant or Subconsultant Certifying:**

Name: Chris Metzger Title \*: Sr. Vice President

Signature:  Date of Certification (mm/dd/yyyy): 08/29/2019

Email: Chris.Metzger@mottmac.com Phone Number: 408-876-6039

Address: 2077 Gateway Place, Suite 550 San Jose CA 95110

**\*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.**

List services the consultant is providing under the proposed contract:

Prepare Plans, Specification & Estimates for Los Gatos Creek Trail to Highway 9 Trailhead Connector Proje



EXHIBIT 10-H1 COST PROPOSAL Page 1 of 3

ACTUAL, COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

Prime Consultant  Subconsultant  2<sup>nd</sup> Tier Subconsultant

Consultant Biggs Cardosa Associates, Inc.

Project No. LOS GATOS CREEK TRAIL TO HIGHWAY 9 TRAILHEAD CONNECTOR PROJECT

Contract No. \_\_\_\_\_

Date 8/20/2019

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Struct. Project Manager*	M. Harms	38	\$101.54	\$3,858.52
Associate	Varies	0	\$69.52	\$0.00
Engineering Manager	Varies	44	\$65.19	\$2,868.36
Senior Structures Engineer	Varies	216	\$61.16	\$13,210.56
Structures Project Engineer	Varies	140	\$53.08	\$7,431.20
Structures Staff Engineer	Varies	101	\$43.56	\$4,399.56
Structures Assistant Engineer	Varies	0	\$39.23	\$0.00
Senior Computer Drafter	Varies	72	\$51.35	\$3,697.20
Admin Services	Varies	0	\$46.15	\$0.00

LABOR COSTS

611

a) Subtotal Direct Labor Costs	\$35,465.40
b) Anticipated Salary Increases (see page 2 for sample)	\$2,145.66
<b>c) TOTAL DIRECT LABOR COSTS [(a) + (b)]</b>	<b>\$37,611.06</b>

INDIRECT COSTS

d) Fringe Benefits (Rate: <u>0.00%</u> )	e) Total Fringe Benefit [(c) x (d)]	\$0.00
f) Overhead (Rate: <u>152.03%</u> )	g) Overhead [(c) x (f)]	\$57,180.09
h) General and Administrative (Rate: <u>0.00%</u> )	i) Gen & Admin [(c) x (h)]	\$0.00
j) Total Indirect Costs [(e) + (g) + (i)]		\$57,180

FIXED FEE

k) TOTAL FIXED FEE [(c) + (j)] x fixed fee 10% \$9,479

l) CONSULTANT'S OTHER DIRECT COSTS (ODC) – ITEMIZE (Add additional pages if necessary)

Description of Item	Quantity	Unit(s)	Unit Cost	Total
Plotting & Reproduction (22x34)	40	EA	\$10.00	\$400.00
Plotting & Reproduction (11x17)	80	EA	\$2.00	\$160.00
Overnight Mail Service (Submittals)	5	EA	\$30.00	\$150.00
Overnight Mail Service (Documents)	5	EA	\$8.00	\$40.00

m) TOTAL OTHER DIRECT COSTS \$750

n) SUBCONSULTANTS' COSTS (Add additional pages if necessary)

Subconsultant 1:	_____
Subconsultant 2:	_____
<b>m) TOTAL SUBCONSULTANTS' COSTS</b>	<b>\$0</b>

o) TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l)+(m)] \$750

TOTAL COST [(c) + (j) + (k) + (n)] \$105,020

NOTES:

- Key personnel must be marked with an asterisk (\*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (\*\*). All cost must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
- The cost proposal format shall not be amended. Indirect cost rates should be based on consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
- Anticipated salary increases calculation (page 2) must accompany.

EXHIBIT 10-H1 COST PROPOSAL Page 2 of 3

**ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS**  
(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	=	Avg Hourly Rate	5 Year Contract Duration
\$35,465.40	611	=	\$58.04	Year 1 Avg Hourly Rate

2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)

	Avg Hourly Rate	+	Proposed Escalation	=		
Year 1	\$58.04	+	5.0%	=	\$60.95	Year 2 Avg Hourly Rate
Year 2	\$60.95	+	5.0%	=	\$63.99	Year 3 Avg Hourly Rate
Year 3	\$63.99	+	5.0%	=	\$67.19	Year 4 Avg Hourly Rate
Year 4	\$67.19	+	5.0%	=	\$70.55	Year 5 Avg Hourly Rate

3. Calculate estimated hours per year (Multiply estimate % each year by total hours)

	Estimated % Completed Each Year	*	Total Hours per Cost Proposal	=	Total Hours per Year	
Year 1	0.00%	*	611.0	=	0.0	Estimated Hours Year 1
Year 2	80.00%	*	611.0	=	488.8	Estimated Hours Year 2
Year 3	20.00%	*	611.0	=	122.2	Estimated Hours Year 3
Year 4	0.00%	*	611.0	=	0.0	Estimated Hours Year 4
Year 5	0.00%	*	611.0	=	0.0	Estimated Hours Year 5
Total	100%		Total	=	611.0	

4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)

	Avg Hourly Rate (calculated above)	*	Estimated hours (calculated above)	=	Cost per Year	
Year 1	\$58.04	*	0	=	\$0.00	Estimated Hours Year 1
Year 2	\$60.95	*	489	=	\$29,790.94	Estimated Hours Year 2
Year 3	\$63.99	*	122	=	\$7,820.12	Estimated Hours Year 3
Year 4	\$67.19	*	0	=	\$0.00	Estimated Hours Year 4
Year 5	\$70.55	*	0	=	\$0.00	Estimated Hours Year 5
	Total Direct Labor Cost with Escalation			=	\$37,611.06	
	Direct Labor Subtotal before Escalation			=	\$35,465.40	
	Estimated total of Direct Labor Salary Increase			=	\$2,145.66	Transfer to Page 1

NOTES:

- This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
- An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
- This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
- Calculations for anticipated salary escalation must be provided.

EXHIBIT 10-H1 COST PROPOSAL Page 3 of 3

**Certification of Direct Costs:**

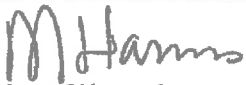
I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement. Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

**Prime Consultant or Subconsultant Certifying:**

Name: Malvash Harms Title \*: Principal / Vice President

Signature:  Date of Certification (mm/dd/yyyy): 8/20/2019

Email: mharms@biggscardosa.com Phone Number: 408-296-5515

Address: 865 The Alameda San Jose CA 95126

\*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Project Management Structural Engineering-design and bid support
---

## Local Assistance Procedures Manual

EXHIBIT 10-H1  
Cost Proposal

## EXHIBIT 10-H1 COST PROPOSAL Page 1 of 3

## ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

 Prime Consultant  Subconsultant  2<sup>nd</sup> Tier SubconsultantConsultant ActiveWayz Engineering, Inc.Project No. \_\_\_\_\_ Contract No. \_\_\_\_\_ Date 05/29/2019

## DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
(Project Manager)*	Admas Zewdie	92	\$ 75	\$ 6,900.00
(Sr. Civil Engineer)	Project Engineer	70	\$ 60	\$ 4,200.00
(Envir. Scientist)	Ermias Gebremedhin	152	\$ 40	\$ 6,080.00
(Inspector)**			\$	\$

## LABOR COSTS

a) Subtotal Direct Labor Costs \$ 17,180.00  
 b) Anticipated Salary Increases (see page 2 for calculation) \$ 518.78  
 c) TOTAL DIRECT LABOR COSTS [(a) + (b)] \$ 17,698.78

## INDIRECT COSTS

d) Fringe Benefits (Rate: \_\_\_\_\_ %) e) Total Fringe Benefits [(c) x (d)] \$ \_\_\_\_\_  
 Overhead (Rate: 110 %) g) Overhead [(c) x (f)] \$ 19,468.66  
 h) General and Administrative (Rate: \_\_\_\_\_ %) i) Gen & Admin [(c) x (h)] \$ \_\_\_\_\_  
 j) TOTAL INDIRECT COSTS [(e) + (g) + (i)] \$ 19,468.66

## FIXED FEE

k) TOTAL FIXED FEE [(c) + (j)] x fixed fee 10 % \$ 3,716.74

## l) CONSULTANT'S OTHER DIRECT COSTS (ODC) – ITEMIZE (Add additional pages if necessary)

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs	200	mile	\$0.58	\$ 116.00
Equipment Rental and Supplies			\$	\$
Permit Fees			\$	\$
Plan Sheets			\$	\$
Test			\$	\$

l) TOTAL OTHER DIRECT COSTS \$ 116.00

## m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)

Subconsultant 1: \$ \_\_\_\_\_  
 Subconsultant 2: \$ \_\_\_\_\_  
 Subconsultant 3: \$ \_\_\_\_\_  
 Subconsultant 4: \$ \_\_\_\_\_

m) TOTAL SUBCONSULTANTS' COSTS \$ \_\_\_\_\_

n) TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l)+(m)] \$ 116.00TOTAL COST [(c) + (j) + (k) + (n)] \$ 41,000.18

## NOTES:

- Key personnel must be marked with an asterisk (\*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (\*\*). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
- The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
- Anticipated salary increases calculation (page 2) must accompany.

**EXHIBIT 10-H1 COST PROPOSAL PAGE 2 OF 3**  
**ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS**  
**(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)**

Consultant ActiveWyrz Engineering Contract No. \_\_\_\_\_ Date: 5/29/2019

**1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	Avg Hourly Rate	3 Year Contract Duration Year 1 Avg Hourly Rate
\$17,180.00	314	\$ 54.71	

**2. Calculate hourly rate for all years (increase the Average Hourly Rate for a year by proposed escalation %)**

Year	Avg Hourly Rate	Proposed Escalation	Year Avg Hourly Rate
Year 1	\$54.71	3.0%	\$56.35
Year 2	\$56.35	3.0%	\$58.05
Year 3	\$58.05	3.0%	\$59.79
Year 4	\$59.79	3.0%	\$61.58
			0

**3. Calculate estimated hours per year (multiply estimate % each year by total hours)**

Year	Estimated % Completed Each Year	Total Hours per Cost Proposal	Total Hours per Year
2019	33.33%	314.0	104.7
2020	33.33%	314.0	104.7
2021	33.33%	314.0	104.7
Year 4	0.00%	314.0	0.0
Year 5	0.00%	314.0	0.0
<b>Total</b>	<b>100%</b>	<b>Total</b>	<b>314.0</b>

**4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)**

Year	Avg Hourly Rate (calculated above)	Estimated hours (calculated above)	Cost per Year
Year 1	\$54.71	105	\$5,726.09
Year 2	\$56.35	105	\$5,897.88
Year 3	\$58.05	105	\$6,074.81
Year 4	\$59.79	0	\$0.00
Year 5	\$61.58	0	\$0.00
<b>Total Direct Labor Cost with Escalation</b>			<b>\$17,698.78</b>
Direct Labor Subtotal before Escalation			<b>\$17,180.00</b>
Estimated total of Direct Labor Salary Increase			<b>\$518.78</b>

**NOTES:**

- 1 This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
- 2 An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
- 3 This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
- 4 Calculations for anticipated salary escalation must be provided.

EXHIBIT 10-H1 COST PROPOSAL Page 3 of 3

**Certification of Direct Costs:**


I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904](#) - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement. Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

**Prime Consultant or Subconsultant Certifying:**

Name: Admas Zewdie, P.E. Title \*: President

Signature :  Date of Certification (mm/dd/yyyy): 03/25/2019

Email: admas@activewayz.engineering Phone Number: 408-219-5678

Address: 114 Woodhams Road, Santa Clara, CA 95051

\*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

- |   |
|---|
| Utility coordination<br>Right of Way certification<br>Quality control review<br>Construction staging and traffic handling plans<br>Water pollution control plans<br>Design exception fact sheet<br>Storm water data report; lane closure report |
|---|



**Exhibit 10-H1 Cost Proposal Page 2 of 3**

**Actual Cost-Plus-Fixed Fee or Lump Sum (Firm Fixed Price) Contracts**  
**( Calculations for Anticipated Salary Increases)**

**1. Calculate average hourly rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

<u>Direct Labor Subtotal</u> per Cost Proposal	/	<u>Total</u> Hours per Cost Proposal	=	Avg Hourly Rate	10 Year Contract Duration
\$ 6,959.76		142		\$49.01	Year 1 Avg Hourly Rate

**2. Calculate hourly rate for all years (Increase the Average hourly rate for a year by proposed escalation %)**

	<u>Avg Hourly Rate</u>	+	<u>Proposed</u> Escalation	=		
Year 2	\$49.01		3%		\$50.48	Year 2 Avg Hourly Rate
Year 3	\$50.48		3%		\$52.00	Year 3 Avg Hourly Rate
Year 4	\$52.00		3%		\$53.56	Year 4 Avg Hourly Rate
Year 5	\$53.56		3%		\$55.16	Year 5 Avg Hourly Rate

**3. Calculate estimated hours per year (Multiply estimate % each year by total hours)**

	<u>Estimated %</u> Completed Each Year	*	<u>Total</u> Hours per Cost Proposal	=	Total Hours per Year	
Year 1	100.00%		142		142	Estimated Hours Year 1
Year 2	0.00%		142		0	Estimated Hours Year 2
Year 3	0.00%		142		0	Estimated Hours Year 3
Year 4	0.00%		142		0	Estimated Hours Year 4
Year 5	0.00%		142		0	Estimated Hours Year 5
<b>Total</b>	<b>100%</b>		<b>Total</b>		<b>142</b>	

**4. Calculate Total Costs including Escalation (multiply average hourly rate by the number of hours)**

	<u>Avg Hourly Rate</u> (calculated above)	*	<u>Estimated</u> hours (calculated above)	=	Cost per Year	
Year 1	\$49.01		142		\$6,959.76	Estimated Hours Year 1
Year 2	\$50.48		0		\$0.00	Estimated Hours Year 2
Year 3	\$52.00		0		\$0.00	Estimated Hours Year 3
Year 4	\$53.56		0		\$0.00	Estimated Hours Year 4
Year 5	\$55.16		0		\$0.00	Estimated Hours Year 5
	<b>Total Direct Labor Cost with Escalation</b>			=	<b>\$6,959.76</b>	
	<b>Direct Labor Subtotal before escalation</b>			=	<b>\$ 6,959.76</b>	
	<b>Estimated total of Direct Labor Salary Increase</b>			=	<b>\$0.00</b>	Transfer to Page 1

**NOTES:**

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.



Exhibit 10-H1 Cost Proposal Page 2 of 3

**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

**Prime Consultant or Subconsultant Certifying:**

Name: Judy W. Shanley

Title\*: President

Signature:



Date of Certification (mm/dd/yyyy): 8/29/2019

Email: [jshanley@davidjpowers.com](mailto:jshanley@davidjpowers.com)

Phone Number: 408-454-3431

Address:

**\*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.**

**List services the consultant is providing under the proposed contract:**

Complete NEPA (CE) and CEQA (CE) environmental review process.



**Exhibit 10-H1 Cost Proposal Page 2 of 3****Actual Cost-Plus-Fixed Fee or Lump Sum (Firm Fixed Price) Contracts  
( Calculations for Anticipated Salary Increases)****1. Calculate average hourly rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	Avg Hourly Rate	10 Year Contract Duration
\$ 5,875.00 /	113 =	\$51.99	Year 1 Avg Hourly Rate

**2. Calculate hourly rate for all years (Increase the Average hourly rate for a year by proposed escalation %)**

Avg Hourly Rate	Proposed Escalation			
Year 2 \$51.99 +	5%	=	\$54.59	Year 2 Avg Hourly Rate
Year 3 \$54.59 +	5%	=	\$57.32	Year 3 Avg Hourly Rate
Year 4 \$57.32 +	5%	=	\$60.19	Year 4 Avg Hourly Rate
Year 5 \$60.19 +	5%	=	\$63.20	Year 5 Avg Hourly Rate

**3. Calculate estimated hours per year (Multiply estimate % each year by total hours)**

Estimated % Completed Each Year	Total Hours per Cost Proposal	Total Hours per Year	
Year 1 75.00% *	113 =	84.75	Estimated Hours Year 1
Year 2 25.00% *	113 =	28.25	Estimated Hours Year 2
Year 3 0.00% *	113 =	0	Estimated Hours Year 3
Year 4 0.00% *	113 =	0	Estimated Hours Year 4
Year 5 0.00% *	113 =	0	Estimated Hours Year 5
Total 100%	Total =	113	

**4. Calculate Total Costs including Escalation (multiply average hourly rate by the number of hours)**

Avg Hourly Rate (calculated above)	Estimated hours (calculated above)	Cost per Year	
Year 1 \$51.99 *	84.75 =	\$4,406.25	Estimated Hours Year 1
Year 2 \$54.59 *	28.25 =	\$1,542.19	Estimated Hours Year 2
Year 3 \$57.32 *	0 =	\$0.00	Estimated Hours Year 3
Year 4 \$60.19 *	0 =	\$0.00	Estimated Hours Year 4
Year 5 \$63.20 *	0 =	\$0.00	Estimated Hours Year 5
Total Direct Labor Cost with Escalation	=	\$5,948.44	
Direct Labor Subtotal before escalation	=	\$ 5,875.00	
Estimated total of Direct Labor Salary Increase	=	\$73.44	Transfer to Page 1

**NOTES:**

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

**Exhibit 10-H1 Cost Proposal Page 3 of 3**

**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

**Prime Consultant or Subconsultant Certifying:**

Name: Daniel Shoup

Title \*: Principal



Signature:

Date of Certification (mm/dd/yyyy): 5/20/2019

Email: [daniel.shoup@ahc-heritage.com](mailto:daniel.shoup@ahc-heritage.com)

Phone Number: 510-654-8635

Address: 609 Aileen Street, Oakland CA 94609

**\*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.**

**List services the consultant is providing under the proposed contract:**

Cultural Resources documents for Caltrans environmental review.

Exhibit 10-H1 Cost Proposal Page 1 of 3

Actual Cost-Plus-Fixed Fee or ~~Fixed Fee~~ (Firm Fixed Price) contracts  
(Design, Engineering and Environmental Studies)

Note: Mark-ups are Not Allowed  Prime Consultant  Subconsultant  2nd Tier Subconsultant

Consultant **H. T. Harvey & Associates** Contract No. \_\_\_\_\_ Date: **May 28, 2019**  
Project No. \_\_\_\_\_

**DIRECT LABOR**

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Principal	Steve Rottenborn	5	\$ 87.50	437.50
Principal	Kelly Hardwicke	11	\$ 62.98	692.79
Senior Associate Ecologist			\$ 57.45	0.00
Associate Ecologist			\$ 50.72	0.00
Senior Ecologist 2	Mark Bibbo	29.25	\$ 45.19	1321.88
Senior Ecologist 1			\$ 40.99	0.00
Ecologist 2	Craig Fosdick	37	\$ 36.54	1351.92
Ecologist 1	Matthew Mosher	81	\$ 32.45	2628.61
Field Biologist 2			\$ 28.73	0.00
Field Biologist 1			\$ 25.48	0.00
Senior GIS Analyst	Mark Lagarde	1.25	\$ 50.00	62.50
GIS Analyst	Michele Childs	18.75	\$ 36.06	676.08
Technical Editor	Jessica Hughes	6	\$ 36.30	217.79
Senior Technical Support	Liesl Brass	1	\$ 38.70	38.70
Technical Support	Liza Bodistow	5	\$ 22.50	112.50

**LABOR COSTS**

a) Subtotal Direct Labor Costs \$ 7,540.26  
 b) Anticipated Salary Increases (see page 2 for calculation) \$ -  
**c) TOTAL DIRECT LABOR COSTS [(a) + (b)] \$ 7,540.26**

**FRINGE BENEFITS**

d) Fringe Benefits (Rate: 100.70%) c) Total Fringe Benefits [(c) x (d)] \$ 7,592.79  
 f) Overhead (Rate: 104.40%) g) Overhead [(c) x (f)] \$ 7,871.71  
 h) General and Administrative (Rate: [Included in Overhead Rate]) i) Gen & Admin [(c) x (h)] \$ NA  
**j) TOTAL INDIRECT COSTS [(c) + (g) + (i)] \$ 15,464.50**

**FIXED FEE**

**k) TOTAL FIXED FEE [(c) + (j)] x fixed fee 10.00% \$ 2,308.48**

**l) CONSULTANT'S OTHER DIRECT COSTS (ODC) - ITEMIZE (Add additional pages if necessary)**

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs		mile	0.58	\$ -
Motion-Sending Cameras		units	10	\$ -
Per Diem Lodging, Meals and Incidentals		night		\$ -
GIS Charges	20	hour	10	\$ 200.00
				\$ -
<b>l) TOTAL OTHER DIRECT COSTS</b>				<b>\$ 200.00</b>

**m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)**

Subconsultant 1: \$ -  
 Subconsultant 2: \$ -  
 Subconsultant 3: \$ -  
 Subconsultant 4: \$ -  
**n) TOTAL SUBCONSULTANTS' COSTS \$ -**

**o) TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l) + (m)] \$ 200.00**  
**TOTAL COST [(c) + (j) + (k) + (n)] \$ 25,505.24**

**NOTES:**

1. Key personnel must be marked with an asterisk (\*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (\*\*). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
3. Anticipated salary increases calculation (page 2) must accompany.

**Exhibit 10-H1 Cost Proposal Page 2 of 3****Actual Cost-Plus-Fixed Fee or Lump Sum (Firm Fixed Price) Contracts**  
**( Calculations for Anticipated Salary Increases)****1. Calculate average hourly rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	Avg Hourly Rate	10 Year Contract Duration
\$ 7,540.26 /	195.25	= \$38.62	Year 1 Avg Hourly Rate

**2. Calculate hourly rate for all years (Increase the Average hourly rate for a year by proposed escalation %)**

	Avg Hourly Rate		Proposed Escalation			
Year 2	\$38.62	+	3%	=	\$39.78	Year 2 Avg Hourly Rate
Year 3	\$39.78	+	3%	=	\$40.97	Year 3 Avg Hourly Rate
Year 4	\$40.97	+	3%	=	\$42.20	Year 4 Avg Hourly Rate
Year 5	\$42.20	+	3%	=	\$43.47	Year 5 Avg Hourly Rate

**3. Calculate estimated hours per year (Multiply estimate % each year by total hours)**

	Estimated % Completed Each Year		Total Hours per Cost Proposal		Total Hours per Year	
Year 1	100.00%	*	195.25	=	195.25	Estimated Hours Year 1
Year 2	0.00%	*	195.25	=	0	Estimated Hours Year 2
Year 3	0.00%	*	195.25	=	0	Estimated Hours Year 3
Year 4	0.00%	*	195.25	=	0	Estimated Hours Year 4
Year 5	0.00%	*	195.25	=	0	Estimated Hours Year 5
Total	100%		Total	=	195.25	

**4. Calculate Total Costs including Escalation (multiply average hourly rate by the number of hours)**

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)		Cost per Year	
Year 1	\$38.62	*	195.25	=	\$7,540.26	Estimated Hours Year 1
Year 2	\$39.78	*	0	=	\$0.00	Estimated Hours Year 2
Year 3	\$40.97	*	0	=	\$0.00	Estimated Hours Year 3
Year 4	\$42.20	*	0	=	\$0.00	Estimated Hours Year 4
Year 5	\$43.47	*	0	=	\$0.00	Estimated Hours Year 5
	Total Direct Labor Cost with Escalation	=			\$7,540.26	
	Direct Labor Subtotal before escalation	=			\$ 7,540.26	
	Estimated total of Direct Labor Salary Increase	=			\$0.00	Transfer to Page 1

**NOTES:**

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (I.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

**Exhibit 10-H1 Cost Proposal Page 2 of 3**

**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

**Prime Consultant or Subconsultant Certifying:**

Name: Karin Hunsicker

Title \*: CEO

Signature: 

Date of Certification (mm/dd/yyyy): 8/12/2019

Email: [kshunsicker@harveyecology.com](mailto:kshunsicker@harveyecology.com)

Phone Number: 408.458.3206

Address: 983 University Ave, Bldg D, Los Gatos, CA 95032

\*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

**List services the consultant is providing under the proposed contract:**

Preparing a Natural Environment Study -- Minimal Impacts (NES-MI), including a site and tree survey. Performing a wetland delineation.





**EXHIBIT 10-H1 COST PROPOSAL (Page 2 of 3)****ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS**  
**(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)****1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	Avg Hourly Rate	5 Year Contract Duration
\$7,564.94	/ 161.0	= \$46.99	Year 1 Avg Hourly Rate

**2. Calculate hourly rate for all years (Increase the Average hourly rate for a year by proposed escalation %)**

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$46.99	+	5.0%	=	\$49.34	Year 2 Avg Hourly Rate
Year 2	\$49.34	+	5.0%	=	\$51.80	Year 3 Avg Hourly Rate
Year 3	\$51.80	+	5.0%	=	\$54.39	Year 4 Avg Hourly Rate
Year 4	\$54.39	+	5.0%	=	\$57.11	Year 5 Avg Hourly Rate

**3. Calculate estimated hours per year (Multiply estimate % each year by total hours)**

	Estimated % Completed Each Year		Total Hours per Cost Proposal		Total Hours per Year	
Year 1	100%	*	161.0	=	161.0	Estimated Hours Year 1
Year 2		*	161.0	=	0.0	Estimated Hours Year 2
Year 3		*	161.0	=	0.0	Estimated Hours Year 3
Year 4		*	161.0	=	0.0	Estimated Hours Year 4
Year 5		*	161.0	=	0.0	Estimated Hours Year 5
Total	100%		Total	=	161.0	

**4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)**

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)		Cost per Year	
Year 1 \$	46.99	*	161.0	=	\$7,564.94	Estimated Hours Year 1
Year 2 \$	49.34	*	0.0	=	\$0.00	Estimated Hours Year 2
Year 3 \$	51.80	*	0.0	=	\$0.00	Estimated Hours Year 3
Year 4 \$	54.39	*	0.0	=	\$0.00	Estimated Hours Year 4
Year 5 \$	57.11	*	0.0	=	\$0.00	Estimated Hours Year 5
	Total Direct Labor Cost with Escalation			=	\$7,564.94	
	Direct Labor Subtotal before escalation			=	\$7,564.94	
	Estimated total of Direct Labor Salary Increase			=	\$0.00	Transfer to Page 1

**NOTES:**

- This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
- An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
- This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
- Calculations for anticipated salary escalation must be provided.

**EXHIBIT 10-H1 COST PROPOSAL (Page 3 of 3)**

**Certification of Direct Costs**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

- 1 Generally Accepted Accounting Principles (GAAP)
- 2 Terms and conditions of the contract
- 3 Title 23 United States Code Section 112 - Letting of Contracts
- 4 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
- 5 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Services
- 6 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement. Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

**Prime Consultant or Suconsultant Certifying:**

Name: Mike Shoup, PLS Title\*: Bay Area Regional Manager, Survey Principal

Signature:  Date of Certification (mm/dd/yyyy): 8/20/2019

Email: [mshoup@revengineers.com](mailto:mshoup@revengineers.com) Phone Number: 408-219-3236

Address: 505 14th Street, Suite 900, Oakland, CA 94612

\*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under this proposed contract:

Land Surveying



**TASKS B & C**

**EXHIBITS 10-H3  
COST PROPOSALS**

## EXHIBIT 10-H3 COST PROPOSAL Page 1 of 2

COST PER UNIT OF WORK CONTRACTS  
(GEOTECHNICAL AND MATERIAL TESTING)

Note: Mark-ups are Not Allowed

 Prime Consultant       SubconsultantConsultant Mott MacDonaldProject No. TLG 18-832-4505, SCL  
170028, CML - 5067 (021)Contract No. \_\_\_\_\_ Date 8/13/2019**Unit/Item of Work:**(Example: Log of Test Boring for Soils Report, or ADL Testing for Hazardous Waste Material Study)  
Include as many Items as necessary.

DIRECT LABOR	Hours	Billing Hourly Rate (\$)	Total (\$)
Professional (Classification)*	126	\$150.79	\$19,000
Sub-professional/Technical**	_____	_____	_____
EQUIPMENT 1 (with Operator)	_____	_____	_____
EQUIPMENT 2 (with Operator)	_____	_____	_____

**Consultant's Other Direct Costs (ODC) – Itemize:**

Description of Item	Quantity	Unit	Unit Cost	Total
ODC Example: Travel/Mileage Costs			\$	\$
ODC Example: Mobilization/De-mobilization			\$	\$
ODC Example: Supplies/Consumables			\$	\$
ODC Example: Report			\$	\$
ODC (List more ODCs as applicable)			\$	\$
Subconsultant 1: Biggs Cardosa Associates				\$ 9,000
Subconsultant 2:				\$
Subconsultant 3:				\$
Subconsultant 4:				\$
Subconsultant 5:				\$

Note: Attach additional pages if necessary.

**TOTAL COST PER UNIT OF WORK****\$ 28,000****NOTES:**

- All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals. The cost proposal format shall not be amended.
- Hourly billing rates should be consistent with publicly advertised rates charged to all clients (Commercial, Private or Public).
- Mobilization/De-mobilization is based on site location and number and frequency of tests/items.
- ODC items shall be based on actual costs and supported by historical data and other documentation.
- ODC items that would be considered "tools of the trade" are not reimbursable.
- Billing Hourly Rates must be actual, allowable, and reasonable.

EXHIBIT 10-H3 COST PROPOSAL Page 2 of 2

**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

- 13. Generally Accepted Accounting Principles (GAAP)
- 14. Terms and conditions of the contract
- 15. [Title 23 United States Code Section 112](#) - Letting of Contracts
- 16. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
- 17. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
- 18. [48 Code of Federal Regulation Part 9904](#) - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

**Prime Consultant or Subconsultant Certifying:**

Name: Chris Metzger

Title\*: Sr. Vice President

Signature: 

Date of Certification (mm/dd/yyyy): 08/13/2019

Email: Chris.Metzger@mottmac.com

Phone Number: 408-876-6039

Address: 2077 Gateway Place, Suite 550 San Jose CA 95110

**\* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.**

List services the consultant is providing under the proposed contract:

Provide bid and construction support services for Los Gatos Creek Trail to Highway 9 Trailhead Connector Project

EXHIBIT 10-H3 COST PROPOSAL Page 1 of 2  
COST PER UNIT OF WORK CONTRACTS  
(GEOTECHNICAL AND MATERIAL TESTING)

Note: Mark-ups are Not Allowed

Prime Consultant     Subconsultant     2<sup>nd</sup> Tier Subconsultant

Consultant Biggs Cardosa Associates

Project No. TLG 18-832-4505 Contract No. \_\_\_\_\_ Date May 20, 2019

Unit/Item of Work:

(Example: Log of Test Boring for Soils Report, or ADL Testing for Hazardous Waste Material Study)  
Include as many Items as necessary.

DIRECT LABOR	Hours	Billing Hourly Rate (\$)	Total (\$)
Professional (Classification)*	50 max.	180	\$9,000
Sub-professional/Technical**	_____	_____	_____
EQUIPMENT 1 (with Operator)	_____	_____	_____
EQUIPMENT 2 (with Operator)	_____	_____	_____

Consultant's Other Direct Costs (ODC) - Itemize:

Description of Item	Quantity	Unit	Unit Cost	Total
ODC Example: Travel/Mileage Costs			\$	\$
ODC Example: Mobilization/De-mobilization			\$	\$
ODC Example: Supplies/Consumables			\$	\$
ODC Example: Report			\$	\$
ODC (List more ODCs as applicable)			\$	\$
Subconsultant 1:				\$
Subconsultant 2:				\$
Subconsultant 3:				\$
Subconsultant 4:				\$
Subconsultant 5:				\$

Note: Attach additional pages if necessary.

TOTAL COST PER UNIT OF WORK \$9,000

NOTES:

1. Key personnel must be marked with an asterisk (\*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (\*\*). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals. The cost proposal format shall not be amended.
2. Hourly billing rates should include prevailing wage rates and be consistent with publicly advertised rates charged to all clients (Commercial, Private or Public).
3. Mobilization/De-mobilization is based on site location and number and frequency of tests/items.
4. ODC items shall be based on actual costs and supported by historical data and other documentation.
5. ODC items that would be considered "tools of the trade" are not reimbursable.
6. Billing Hourly Rates must be actual, allowable, and reasonable.

EXHIBIT 10-H3 COST PROPOSAL Page 2 of 2

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

- 13. Generally Accepted Accounting Principles (GAAP)
- 14. Terms and conditions of the contract
- 15. [Title 23 United States Code Section 112](#) - Letting of Contracts
- 16. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
- 17. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
- 18. [48 Code of Federal Regulation Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Prime Consultant or Subconsultant Certifying:

Name: Mahvash Harms Title\*: Vice President

Signature : Digitally signed by Mahvash Harms  
DN: cn=Mahvash Harms, o=Biggs Cardosa Associates, ou, email=mharms@biggscardosa.com, c=US  
Date: 2018.05.20 14:45:40 -0700 Date of Certification (mm/dd/yyyy): May 20, 2019

Email: mharms@biggscardosa.com Phone Number: 408-839-8878

Address: 865 The Alameda San Jose CA

\* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Respond to questions that arise during the bid phase, prepare addendums, Review of submittals and shop drawings, Structural reviews, Review and response to Requests for Information.



**EXHIBIT C**

**ADDITIONAL  
CALTRANS FORMS**

EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: Town of Los Gatos Parks and Public Works De 2. Contract DBE Goal: 15%  
 3. Project Description: Design and construction documents for the Los Gatos Creek Trail to Hwy 9 Trailhead Connector  
 4. Project Location: Los Gatos Creek Trail at Highway 9  
 5. Consultant's Name: Mott MacDonald, LLC 6. Prime Certified DBE:  7. Total Contract Award Amount: \$486,747  
 8. Total Dollar Amount for ALL Subconsultants: \$245,464 9. Total Number of ALL Subconsultants: 6

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Utility coordination, right of way certification, plan review and coordination	043754	ActiveWayz Engineerin (510)989-2420, admas@activewayz.engineering.com	\$41,000
Environmental documentation	38205	David J Powers, (408) 454-3422, dloukas@davidjpowers.com	\$20,716
Cultural Resources Consulting	6JN00016	AHC (510) 654-8635, info@ahc-heritage.com	\$17,845
<b>Local Agency to Complete this Section</b>			
20. Local Agency Contract Number _____		<b>14. TOTAL CLAIMED DBE PARTICIPATION</b>	\$ 79,561
21. Federal-Aid Project Number: _____			16.3 %
22. Contract Execution Date: _____		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.	
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			
23. Local Agency Representative's Signature _____	24. Date _____	15. Preparer's Signature _____	16. Date <u>9/19/2019</u>
25. Local Agency Representative's Name _____	26. Phone _____	Chris Metzger	(408) 876-6039
27. Local Agency Representative's Title _____		17. Preparer's Name _____	18. Phone _____
		Senior Vice President	
		19. Preparer's Title _____	

DISTRIBUTION: 1. Original – Local Agency  
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

**INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT****CONSULTANT SECTION**

1. **Local Agency** - Enter the name of the local or regional agency that is funding the contract.
2. **Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
4. **Project Location** - Enter the project location as it appears on the project advertisement.
5. **Consultant's Name** - Enter the consultant's firm name.
6. **Prime Certified DBE** - Check box if prime contractor is a certified DBE.
7. **Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
8. **Total Dollar Amount for ALL Subconsultants** – Enter the total dollar amount for all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
9. **Total number of ALL subconsultants** – Enter the total number of all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
10. **Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
11. **DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
12. **DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
13. **DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
14. **Total Claimed DBE Participation - \$:** Enter the total dollar amounts entered in the "DBE Dollar Amount" column. **%:** Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
15. **Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
16. **Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
17. **Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
18. **Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
19. **Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

**LOCAL AGENCY SECTION**

20. **Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
21. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
22. **Contract Execution Date** - Enter the date the contract was executed.
23. **Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
24. **Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
25. **Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
26. **Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
27. **Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.



**INSTRUCTIONS – FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND FIRST-TIER SUBCONTRACTORS**

- 1. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 2. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 3. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 4. Contract Completion Date** - Enter the date the contract was completed.
- 5. Contractor/Consultant** - Enter the contractor/consultant's firm name.
- 6. Business Address** - Enter the contractor/consultant's business address.
- 7. Final Contract Amount** - Enter the total final amount for the contract.
- 8. Contract Item Number** - Enter contract item for work, services, or materials supplied provided. Not applicable for consultant contracts.
- 9. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials provided. Indicate all work to be performed by DBEs including work performed by the prime contractor/consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 10. Company Name and Business Address** - Enter the name, address, and phone number of all subcontracted contractors/consultants. Also, enter the prime contractor/consultant's name and phone number, if the prime is a DBE.
- 11. DBE Certification Number** - Enter the DBE's Certification Identification Number. Leave blank if subcontractor is not a DBE.
- 12. Contract Payments** - Enter the subcontracted dollar amount of the work performed or service provided. Include the prime contractor/consultant if the prime is a DBE. The Non-DBE column is used to enter the dollar value of work performed by firms that are not certified DBE or for work after a DBE becomes decertified.
- 13. Date Work Completed** - Enter the date the subcontractor/subconsultant's item work was completed.
- 14. Date of Final Payment** - Enter the date when the prime contractor/consultant made the final payment to the subcontractor/subconsultant for the portion of work listed as being completed.
- 15. Original DBE Commitment Amount** - Enter the "Total Claimed DBE Participation Dollars" from Exhibits 15-G or 10-O2 for the contract.
- 16. Total** - Enter the sum of the "Contract Payments" Non-DBE and DBE columns.
- 17. Contractor/Consultant Representative's Signature** - The person completing the form on behalf of the contractor/consultant's firm must sign their name.
- 18. Contractor/Consultant Representative's Name** - Enter the name of the person preparing and signing the form.
- 19. Phone** - Enter the area code and telephone number of the person signing the form.
- 20. Date** - Enter the date the form is signed by the contractor's preparer.
- 21. Local Agency Representative's Signature** - A Local Agency Representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.
- 22. Local Agency Representative's Name** - Enter the name of the Local Agency Representative signing the form.
- 23. Phone** - Enter the area code and telephone number of the person signing the form.
- 24. Date** - Enter the date the form is signed by the Local Agency Representative.



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 08/17/21

ITEM NO: 9

**DATE:** August 12, 2021  
**TO:** Mayor and Town Council  
**FROM:** Laurel Prevetti, Town Manager  
**SUBJECT:** Authorize the Town Manager to Execute the First Amendment to the Consultant Services Agreement with Mott MacDonald Group, Inc. for the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505) in an Amount Not to Exceed \$90,000 for a Total Contract Amount of \$576,747

**RECOMMENDATION:**

Authorize the Town Manager to execute the First Amendment to the Consultant Services Agreement with Mott MacDonald Group, Inc. for the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505) in an amount not to exceed \$90,000 for a total contract amount of \$576,747.

**BACKGROUND:**

The adopted Fiscal Year (FY) 2021/22-2025/26 Capital Improvement Program (CIP) Budget designates funding for the design of the Trailhead Connector Project (CIP No. 832-4505).

On October 1, 2019, the Town Council awarded a consultant services agreement in the amount of \$486,747 to Mott MacDonald Group, Inc. for the design and preparation of the final design documents for the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project. The project is partially funded by \$343,000 of federal funds from the One Bay Area Grant, Cycle II. Since this is a federal-aid project on the State Highway System, the contracting and project delivery procedures must strictly follow the Federal Highway Administration (FHWA) and California Department of Transportation (Caltrans) guidelines.

A preliminary design of the project was presented to the Complete Streets and Transportation Commission (CSTC) and to the community in February 2020. The design included a switchback

**PREPARED BY:** WooJae Kim  
Town Engineer

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

PAGE 2 OF 4

SUBJECT: Authorize the Town Manager to Execute the First Amendment to the Consultant Services Agreement with Mott MacDonald Group, Inc. for the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505) in an Amount Not to Exceed \$90,000 for a Total Contract Amount of \$576,747

DATE: August 12, 2021

BACKGROUND (continued):

ramp structure for pedestrians on the northern side of Highway 9 just west of the southbound Highway 17 offramp and a ramped path with a creek overcrossing on the southern side of Highway 9. Both the CSTC and the public provided valuable input and support for the project. On March 3, 2020, the Town Council approved the preliminary design and authorized staff to proceed with the final design. The project team developed the 35% completed design plans soon after, which were submitted to Caltrans for their review on April 6, 2020.

DISCUSSION:

As required for the Right of Way Certification process, the Town planned on obtaining an encroachment permit from Caltrans for the construction of the trail connectors as required for working on Caltrans right of way. During the review of the 35% design plans, Caltrans informed the Town that much of the land where the Los Gatos Creek Trail and the concrete lined channel for the creek are located (between Miles Avenue and just north of Highway 9) had been designated as "excess parcels" certified for sale.

Caltrans staff stated that an encroachment permit cannot be issued on excess parcels certified for sale. These excess parcels are remnants from the construction of Highway 17 and the concrete lined channel in the 1950's. Caltrans provided maps from 1997 and 2010 that indicated the excess parcel designations, which were not readily available or relayed to the Town during the earlier phases of the project design. Caltrans was not clear why the property rights or easements for the Town were not established when the Los Gatos Creek Trail was constructed in this area in 1994.

Staff has been working extensively with Caltrans towards a resolution of this complicated land rights issue, which must be resolved before the project can receive the Right of Way Certification and the final project approvals from Caltrans. Following further discussions with Caltrans, staff will return to Council with a proposal regarding the land rights issue for Council's consideration.

This property land rights issue, in addition to numerous additional research and studies required by Caltrans for the environmental clearance process, has impacted the project schedule and the initial design budget. An amendment to the consultant services agreement in the amount of \$90,000 is needed to complete the project design. Following is a list of additional services currently required:

- Additional project management services for the extended project duration

PAGE 3 OF 4

SUBJECT: Authorize the Town Manager to Execute the First Amendment to the Consultant Services Agreement with Mott MacDonald Group, Inc. for the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505) in an Amount Not to Exceed \$90,000 for a Total Contract Amount of \$576,747

DATE: August 12, 2021

DISCUSSION (continued):

- Additional meetings with Caltrans and the Town
- Additional topographic survey data as requested by Caltrans
- Additional soil sampling and testing required by Caltrans
- Additional structural calculations required by Caltrans
- Potential landscaping design needs

Currently, 65% design plans have been completed and submitted to Caltrans. Final design documents are now anticipated to be completed by early 2022. The current scope of services for Mott MacDonald Group includes support services during the bid, award and construction phases of the project, which will be delayed since the construction funding has not been secured. Staff will continue to actively pursue grant opportunities, but the earliest anticipated timeframe for construction funding is now early 2023. The proposed contract amendment will extend the contract term period for Mott MacDonald Group to December 31, 2023.

As the project progresses, staff will continue to update the Town Council, CSTC, and the public. Updates will also be posted on the project webpage on the Town's Connect Los Gatos website at <https://www.losgatosca.gov/ConnectLG>.

CONCLUSION:

Approval of the first amendment to the consultant services agreement with Mott MacDonald Group would allow the project to move forward with the final design.

FISCAL IMPACT:

There is sufficient funding in the FY 2021/22 CIP Budget to cover the amendment to the consultant services agreement for the Trailhead Connector Project.

Staff costs are tracked for all projects. Tracking of staff costs allows for accountability in the costs of the project, recovery of costs for grant funded projects, and identification of future staffing needs. This project will utilize both full-time budgeted and part-time staff. The costs for full-time staff are accounted for in the Department's Operating Budget. Only part-time staff costs incurred will be charged to the project as necessary.



PAGE 4 OF 4

SUBJECT: Authorize the Town Manager to Execute the First Amendment to the Consultant Services Agreement with Mott MacDonald Group, Inc. for the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505) in an Amount Not to Exceed \$90,000 for a Total Contract Amount of \$576,747

DATE: August 12, 2021

FISCAL IMPACT (continued):

<b>Trailhead Connector Project Project 832-4505</b>		
	<b>Budget</b>	<b>Costs</b>
OBAG Cycle II Grant	\$ 343,000	
GFAR	\$ 333,044	
<b>Total Budget</b>	<b>\$ 673,440</b>	
Design Contract with Mott MacDonald		\$ 486,747
First Amendment to Design Contract		\$ 90,000
Part-Time Staff Cost (Design Phase)		\$ 90,000
Prior Year Expenditures (Advertising)		\$ 490
<b>Total Costs</b>		<b>\$ 667,237</b>
<b>Remaining Balance</b>		<b>\$ 6,203</b>

ENVIRONMENTAL ASSESSMENT:

The Town's consultant has completed and submitted the required environmental studies and reports to Caltrans. The California Environmental Quality Act (CEQA) categorical exemption and National Environmental Protection Act (NEPA) categorical exclusion have been signed by Caltrans and submitted by Caltrans to the State Clearing House and the Notice of Exemption for the project has been posted.

Attachments:

1. First Amendment to Agreement for Consultant Services with Mott MacDonald Group
2. Original Agreement for Consultant Services

**EXHIBIT 10-H3 COST PROPOSAL** Page 1 of 2

COST PER UNIT OF WORK CONTRACTS  
 (GEOTECHNICAL AND MATERIAL TESTING)

Note: Mark-ups are Not Allowed

Prime Consultant       Subconsultant

Consultant Biggs Cardosa Associates

Project No. TLG 18-832-4505, SCL 170028, CML – 5067 (021)      Contract No. \_\_\_\_\_      Date 2/5/2023

**Unit/Item of Work:**

**(Example: Log of Test Boring for Soils Report, or ADL Testing for Hazardous Waste Material Study)**

**Include as many Items as necessary.**

DIRECT LABOR	Hours	Billing Hourly Rate (\$)	Total (\$)
Professional (Associate)	<u>16</u>	<u>\$234.27</u>	<u>\$3,748</u>
Professional (Senior Engineer)	<u>16</u>	<u>\$206.10</u>	<u>\$3,298</u>
Professional (Project Engineer)	<u>11</u>	<u>\$177.66</u>	<u>\$1,954</u>
EQUIPMENT 1 (with Operator)	_____	_____	_____
EQUIPMENT 2 (with Operator)	_____	_____	_____

**Consultant's Other Direct Costs (ODC) – Itemize:**

Description of Item	Quantity	Unit	Unit Cost	Total
ODC Example: Travel/Mileage Costs			\$	\$
ODC Example: Mobilization/De-mobilization			\$	\$
ODC Example: Supplies/Consumables			\$	\$
ODC Example: Report			\$	\$
ODC (List more ODCs as applicable)			\$	\$
Subconsultant 1:				\$
Subconsultant 2:				\$
Subconsultant 3:				\$
Subconsultant 4:				\$
Subconsultant 5:				\$

Note: Attach additional pages if necessary.

**TOTAL COST PER UNIT OF WORK** **\$ 9,000**

NOTES:

- All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals. The cost proposal format shall not be amended.
- Hourly billing rates should be consistent with publicly advertised rates charged to all clients (Commercial, Private or Public).
- Mobilization/De-mobilization is based on site location and number and frequency of tests/items.
- ODC items shall be based on actual costs and supported by historical data and other documentation.
- ODC items that would be considered "tools of the trade" are not reimbursable.
- Billing Hourly Rates must be actual, allowable, and reasonable.

EXHIBIT 10-H3 COST PROPOSAL Page 2 of 2

**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

- 13. Generally Accepted Accounting Principles (GAAP)
- 14. Terms and conditions of the contract
- 15. [Title 23 United States Code Section 112](#) - Letting of Contracts
- 16. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
- 17. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
- 18. [48 Code of Federal Regulation Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

**Prime Consultant or Subconsultant Certifying:**

Name: Mahvash Harms

Title\*: Principal/Vice President

Signature : 

Date of Certification (mm/dd/yyyy): 02/16/2023

Email: mharms@biggscardosa.com

Phone Number: 408-550-8528

Address: 1111 Broadway, Suite 1510, Oakland CA 94607-4036

\* An individual executive or financial officer of the consultant’s or subconsultant’s organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

The following services will be provided during bid

- Assist in responding to questions from bidders and preparing addendums
- Attend preconstruction meeting
- Assist in responding to RFI's

## EXHIBIT 10-H3 COST PROPOSAL Page 1 of 2

COST PER UNIT OF WORK CONTRACTS  
(GEOTECHNICAL AND MATERIAL TESTING)

Note: Mark-ups are Not Allowed

 Prime Consultant       SubconsultantConsultant Mott MacDonaldProject No. TLG 18-832-4505, SCL      Contract No. \_\_\_\_\_ Date 2/5/2023  
170028, CML – 5067 (021)**Unit/Item of Work:****(Example: Log of Test Boring for Soils Report, or ADL Testing for Hazardous Waste Material Study)****Include as many Items as necessary.**

DIRECT LABOR	Hours	Billing Hourly Rate (\$)	Total (\$)
Professional (Project Manager)*	<u>20</u>	<u>\$283.82</u>	<u>\$5,676</u>
Sub-professional/(Engineer IV)	<u>25</u>	<u>\$197.36</u>	<u>\$4,934</u>
Sub-professional/(Engineer III)	<u>60</u>	<u>\$139.84</u>	<u>\$8,390</u>
EQUIPMENT 1 (with Operator)	_____	_____	_____
EQUIPMENT 2 (with Operator)	_____	_____	_____

**Consultant's Other Direct Costs (ODC) – Itemize:**

Description of Item	Quantity	Unit	Unit Cost	Total
ODC Example: Travel/Mileage Costs			\$	\$
ODC Example: Mobilization/De-mobilization			\$	\$
ODC Example: Supplies/Consumables			\$	\$
ODC Example: Report			\$	\$
ODC (List more ODCs as applicable)			\$	\$
Subconsultant 1: Biggs Cardosa Associates				\$ 9,000
Subconsultant 2:				\$
Subconsultant 3:				\$
Subconsultant 4:				\$
Subconsultant 5:				\$

Note: Attach additional pages if necessary.

**TOTAL COST PER UNIT OF WORK****\$ 28,000**

## NOTES:

- All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals. The cost proposal format shall not be amended.
- Hourly billing rates should be consistent with publicly advertised rates charged to all clients (Commercial, Private or Public).
- Mobilization/De-mobilization is based on site location and number and frequency of tests/items.
- ODC items shall be based on actual costs and supported by historical data and other documentation.
- ODC items that would be considered "tools of the trade" are not reimbursable.
- Billing Hourly Rates must be actual, allowable, and reasonable.

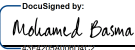
## EXHIBIT 10-H3 COST PROPOSAL Page 2 of 2

**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

13. Generally Accepted Accounting Principles (GAAP)
14. Terms and conditions of the contract
15. [Title 23 United States Code Section 112](#) - Letting of Contracts
16. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
17. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
18. [48 Code of Federal Regulation Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

**Prime Consultant or Subconsultant Certifying:**Name: Mohamed BasmaTitle\*: Sr. Vice PresidentSignature :  Mohamed BasmaDate of Certification (mm/dd/yyyy): 02/16/2023Email: Mohamed.basma@mottmac.comPhone Number: 408-807-0481Address: 2077 Gateway Place, Suite 550 San Jose CA 95110

\* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

The following services will be provided during bid and construction phases:

- Responding to questions from bidders, preparing addendums, preparing conformed plans
- Attending preconstruction meeting
- Responding to RFI's

**AGREEMENT FOR CONSULTANT SERVICES**

<u>TABLE OF CONTENTS</u>	<u>PAGE</u>
ARTICLE I INTRODUCTION.....	A2-3
ARTICLE II CONSULTANT’S REPORTS OR MEETINGS.....	A2-4
ARTICLE III STATEMENT OF WORK .....	A2-4
ARTICLE IV PERFORMANCE PERIOD.....	A2-5
ARTICLE V ALLOWABLE COSTS AND PAYMENTS.....	A2-5
ARTICLE VI TERMINATION .....	A2-7
ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS.....	A2-7
ARTICLE VIII RETENTION OF RECORD/AUDITS .....	A2-7
ARTICLE IX AUDIT REVIEW PROCEDURES .....	A2-8
ARTICLE X SUBCONTRACTING .....	A2-9
ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES .....	A2-10
ARTICLE XII STATE PREVAILING WAGE RATES.....	A2-11
ARTICLE XIII CONFLICT OF INTEREST.....	A2-13
ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION .....	A2-14
ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING .....	A2-14
ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE.....	A2-14
ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION.....	A2-15
ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION.....	A2-16
ARTICLE XIX INSURANCE .....	A2-19
ARTICLE XX FUNDING REQUIREMENTS .....	A2-24

ATTACHMENT 4 WITH EXHIBIT A

**ARTICLE XXI CHANGE IN TERMS .....A2-24**

**ARTICLE XXII CONTINGENT FEE .....A2-24**

**ARTICLE XXIII DISPUTES..... A2-24**

**ARTICLE XXIV INSPECTION OF WORK ..... A2-25**

**ARTICLE XXV SAFETY..... A2-25**

**ARTICLE XXVI OWNERSHIP OF DATA..... A2-25**

**ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY’S CONSTRUCTION CONTRACTOR..... A2-26**

**ARTICLE XXVIII CONFIDENTIALITY OF DATA..... A2-26**

**ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION.....A2-26**

**ARTICLE XXX EVALUATION OF CONSULTANT.....A2-27**

**ARTICLE XXXI PROMPT PAYMENT FROM THE LOCAL AGENCY TO CONSULTANT.....A2-27**

**ARTICLE XXXII TITLE VI ASSURANCES .....A2-27**

**ARTICLE XXXIII NOTIFICATION.....A2-31**

**ARTICLE XXXIV CONTRACT.....A2-31**

**ARTICLE XXXV SIGNATURES .....A2-31**

**ATTACHMENTS :**

**EXHIBIT A – SCOPE OF SERVICES**

**EXHIBIT B – COST PROPOSALS**

**EXHIBIT C – CONSULTANT CONTRACT DBE COMMITMENT – EXHIBITS 10-O1 and 10-O2**

## ARTICLE I INTRODUCTION

This AGREEMENT is made and entered into on \_\_\_\_\_ by and between the TOWN OF LOS GATOS, a California municipal corporation, hereinafter referred to as LOCAL AGENCY and ZOOM ENGINEERING, INC, hereinafter referred to as, CONSULTANT, whose address is 3960 Adeline Street, Suite 3, Emeryville, CA 94608

- A. The CONSULTANT is incorporated in the State of CALIFORNIA.

The Project Manager for the "CONSULTANT" will be NABIL HISSEN.

The Contract Administrator for the LOCAL AGENCY will be the Town Engineer.

- B. The work to be performed under this AGREEMENT is described in Article III Statement of Work and "Exhibit A – Scope of Services" attached hereto and incorporated by reference and the approved CONSULTANT's Cost Proposals dated July 3 2023. The approved CONSULTANT's Cost Proposal is attached hereto as "Exhibit B" and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- C. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless LOCAL AGENCY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of LOCAL AGENCY, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.
- D. CONSULTANT in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent Contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of City.
- E. LOCAL AGENCY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished.
- F. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds LOCAL AGENCY harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.
- G. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the LOCAL AGENCY. However, claims for money due or which become due to CONSULTANT from City under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the LOCAL AGENCY.
- H. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its Contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.



- I. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- J. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

**ARTICLE II CONSULTANT'S REPORTS OR MEETINGS**

- A. CONSULTANT shall meet weekly with project team and submit progress reports following each meeting. The reports should be sufficiently detailed for the LOCAL AGENCY's Contract Administrator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Construction Manager/Resident Engineer shall meet with LOCAL AGENCY's Project Manager, as needed, to discuss progress on the AGREEMENT.
- C. This AGREEMENT requires conferences, meetings, daily site inspection of the construction project as the LOCAL AGENCY'S representative, to ensure compliance with local, State and Federal requirements. These costs are to be included in the Consultant's Cost Proposal for the AGREEMENT Scope of Services.

**ARTICLE III STATEMENT OF WORK**

- A. CONSULTANT agrees to perform the services as outlined in "Exhibit A – Scope of Services" within the time frames specified therein, and accept payment as outlined in "Exhibit B – CONSULTANT'S Cost Proposal" which are hereby incorporated by reference and attached. In the performance of the Scope of Services for this AGREEMENT, the responsible CONSULTANT Construction Manager/Resident Professional Engineer shall sign and stamp with registration number, any plans, certifications, and other engineering reports as required.
- B. Right of Way – Not applicable to this AGREEMENT. All construction work shall be performed by the construction contractor within the existing Caltrans right of way per the construction contract documents under the supervision of the CONSULTANT per Exhibit A – Scope of Services.
- C. Surveys – Not applicable to this AGREEMENT. Survey work for the construction contract shall be performed by the construction contractor per the construction contract documents, under the supervision of CONSULTANT per Exhibit A – Scope of Services.
- D. Subsurface Investigations, where needed, are to be performed by the construction contractor per the construction documents, under the supervision of the CONSULTANT per Exhibit A – Scope of Services.
- E. Local Agency Obligations - All data applicable to the project and in possession of LOCAL AGENCY, another agency, or government agency that are to be made available to CONSULTANT are referred to in the AGREEMENT, Exhibit A – Scope of Services. Any other assistance or services to be furnished to CONSULTANT are to be stated clearly.
- F. Conferences, Site Visits, Inspection of Work. This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the LOCAL AGENCY, State, and/or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee per the AGREEMENT.
- G. Checking Shop Drawings. CONSULTANT shall provide shop drawing review per this AGREEMENT, Exhibit A -Scope of Services.

- H. CONSULTANT Services During Construction - CONSULTANT's services during the course of construction, including construction management, resident engineering, inspection, and material testing, are to be specified in the AGREEMENT – Exhibit A Scope of Services together with Exhibit B – Cost Proposals for the method of payment for such services.
- I. Documentation and Schedules – This AGREEMENT provides that CONSULTANT document the results of the work to the satisfaction of LOCAL AGENCY, and if applicable, the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the AGREEMENT objectives
- J. Deliverables and Number of Copies - The number of copies or documents to be furnished, such as reports, brochures, sets of plans, specifications, or Right of Way parcel maps shall be as specified in this AGREEMENT Exhibit A – Scope of Services.

#### ARTICLE IV PERFORMANCE PERIOD

- A. This AGREEMENT shall go into effect on August 01, 2023 contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end at the earlier of the final project construction and Close out activities, or on 12/31/2025 unless extended by an amendment to the AGREEMENT.
- B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed by the LOCAL AGENCY.

#### ARTICLE V ALLOWABLE COSTS AND PAYMENTS

##### Task 3 – Materials Testing

- A. The method of payment for the following items shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to CONSULTANT for the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.
- B. The specified rate to be paid for vehicle expense for CONSULTANT's field personnel shall be \$(0) per approved Cost Proposal. This rate shall be for fully equipped vehicle(s) specified in Article III Statement of Work, as applicable. The specified rate to be paid for equipment shall be, as listed in the approved Cost Proposal.
- C. The method of payment for **Task 3 –Materials Testing** of this AGREEMENT, except those items to be paid for on a specified rate basis, will be based on cost per unit of work. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment-rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for, by AGREEMENT amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY approved overhead rate set forth in the approved Cost Proposal. In the event, LOCAL AGENCY determines that changed work from that specified in the approved Cost Proposal and AGREEMENT is required; the actual costs reimbursable by LOCAL AGENCY may be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I," of this article shall not be exceeded unless authorized by AGREEMENT amendment
- D. In addition to the allowable incurred costs, LOCAL AGENCY will pay CONSULTANT a fixed fee of \$(0) zero dollars. The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the scope of work and such adjustment is made by AGREEMENT amendment.
- E. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- F. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall

obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.

- G. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT.
- H. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this AGREEMENT.
- I. CONSULTANT will be reimbursed promptly according to California Regulations upon receipt by LOCAL AGENCY's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Any changes to the progress payment process must be pre-approved in writing by the Town and Consultant. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Progress payments shall be made in accordance with Exhibit B – Cost Proposal by Task for Progress Payment Purposes. Final invoice must contain the final cost and all credits due LOCAL AGENCY including any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:
  - Town of Los Gatos – Parks and Public Works Department
  - ATTN: Nicolle Burnham, Parks and Public Works Director
  - 41 Miles Avenue
  - Los Gatos, CA 95030
- J. The total amount payable by LOCAL AGENCY including the fixed fee for TASK 3 shall not exceed \$(265,115.64).
- K. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

**Task 1 – Construction Management; Task 2 – Construction Inspection; Task 4- Labor, DBE, Federal Trainee Compliance; Task 5 - Supplemental Reports and Services**

- A. The method of payment for **Tasks 1, 2, 4, and 5** of this AGREEMENT will be based on lump sum. The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article III Statement of Work. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between CONSULTANT and LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by AGREEMENT amendment and approved by LOCAL AGENCY.
- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to complete the work or submit the required deliverable items according to the schedule set forth in Article III Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article VI Termination. Progress payments shall be made in accordance with Exhibit B – Cost Proposal by Task for Progress Payment Purposes. Any changes to the progress payment process must be pre-approved in writing by the Town and Consultant.
- C. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this AGREEMENT.
- D. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the

A-2 Pg6.

work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice must be submitted within sixty (60) calendar days after completion of CONSULTANT's work unless a later date is approved by the LOCAL AGENCY. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

Town of Los Gatos – Parks and Public Works Department  
ATTN: Parks and Public Works Director  
Los Gatos Creek Trail to Highway 9 Trailhead Connector Project  
41 Miles Avenue  
Los Gatos, CA 95030

- E. The total amount payable by LOCAL AGENCY for TASKS 1, 2, 4 and 5 shall not exceed \$(955,706.43).

#### **ARTICLE VI TERMINATION**

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.
- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

#### **ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

- A. The CONSULTANT agrees that 48 CFR 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR 31 or 2 CFR 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.
- D. When a CONSULTANT or subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

#### **ARTICLE VIII RETENTION OF RECORD/AUDITS**

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all

reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT and records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

#### **ARTICLE IX AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, LOCAL AGENCY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. Consultant's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
  1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) -the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
  - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) -the accepted rate will be eighty-five percent (85%) of the proposed rate.
  - c. If the proposed rate is greater than two hundred percent (200%) -the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
  3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
  4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.
  5. The ICR period shall extend beyond the one-year period and shall be fixed for the life of the contract.

#### **ARTICLE X SUBCONTRACTING**

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY for the acts and omissions of its subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its subconsultants is an independent obligation from the LOCAL AGENCY's obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.
- E. Any substitution of subconsultants must be approved in writing by the LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute subconsultant.
- F. Prompt Progress Payment

CONSULTANT or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONSULTANT or subconsultant to a subconsultant, CONSULTANT or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate

from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

G. Prompt Payment of Withheld Funds to subconsultants

The LOCAL AGENCY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The LOCAL AGENCY shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant.

No retainage will be held by the LOCAL AGENCY from progress payments due to CONSULTANT. CONSULTANTS and subconsultants are prohibited from holding retainage from subconsultants. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subcontract performance, or noncompliance by a subconsultant.

## ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

- A. Prior authorization in writing by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by LOCAL AGENCY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
  1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
  2. Regulation 2 CFR 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project

## ARTICLE XII STATE PREVAILING WAGE RATES

- A. No CONSULTANT or subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction Contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>
- D. Payroll Records
  - 1. Each CONSULTANT and subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
    - a. The information contained in the payroll record is true and correct.
    - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
  - 2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
    - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
    - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
    - c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.
  - 3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.



4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or subconsultant performing the work shall not be marked or obliterated.
  5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
  6. The CONSULTANT or subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator
- F. Penalty
1. The CONSULTANT and any of its subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any subconsultant shall forfeit to the LOCAL AGENCY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
  2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
  3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or subconsultant.
  4. If a worker employed by a subconsultant on a public works project is not paid the general prevailing per diem wages by the subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
    - a. The AGREEMENT executed between the CONSULTANT and the subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
    - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the subconsultant to the employees by periodic review of the

- certified payroll records of the subconsultant.
- c. Upon becoming aware of the subconsultant's failure to pay the specified prevailing rate of wages to the's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the subconsultant for work performed on the public works project
  - d. Prior to making final payment to the subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the subconsultant that the subconsultant had paid the specified general prevailing rate of per diem wages to the subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a subconsultant has failed to pay workers the general prevailing rate of per diem wages.
  6. If LOCAL AGENCY determines that employees of a subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY
- G. Hours of Labor: Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.
- H. Employment of Apprentices
1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
  2. CONSULTANTs and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7

### ARTICLE XIII CONFLICT OF INTEREST

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project which will follow.
- B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise LOCAL AGENCY of any actual, apparent or potential conflicts of interest

that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.

- C. The CONSULTANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

#### **ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

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

#### **ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING**

- A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:
  - 1. No State, Federal, or LOCAL AGENCY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.
  - 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

#### **ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they

unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR 21 -Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of subconsultants.
- I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the LOCAL AGENCY components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

## **ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION**

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
  - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
  - 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
  - 3. Does not have a proposed debarment pending; and
  - 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government excluded parties (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by FHWA.

#### **ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

- A. CONSULTANT, subrecipient (LOCAL AGENCY), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, the LOCAL AGENCY shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is CONSULTANT's responsibility to verify at date of proposal opening that the DBE firm is certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes or work code applicable to the type of work the firm will perform on the contract. Additionally, the CONSULTANT is responsible to document the verification record by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies CONSULTANT purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

This AGREEMENT is subject to 49 CFR 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTS who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California's statewide overall DBE goal.

- B. The goal for DBE participation for this AGREEMENT is 22%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Exhibit 1002: Consultant Contract DBE Commitment attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

#### **D. Contract Assurance**

Under 49 CFR 26.13(b):

CONSULTANT, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying CONSULTANT from future proposing as non-responsible

#### E. Termination and Substitution of DBE subconsultants

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONSULTANT or DBE subconsultant obtains the LOCAL AGENCY's written consent. CONSULTANT shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the LOCAL AGENCY. Unless the LOCAL AGENCY's consent is provided, the CONSULTANT shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02: Consultant Contract DBE Commitment form, included in the Bid.

The LOCAL AGENCY authorizes a request to use other forces or sources of materials if CONSULTANT shows any of the following justifications

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The LOCAL AGENCY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the LOCAL AGENCY's bond requirements.
3. Work requires a Consultant's license and listed DBE does not have a valid license under Contractors License Law
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination)
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The LOCAL AGENCY determines other documented good cause.

CONSULTANT shall notify the original DBE of the intent to use other forces or material sources and provide the reasons and provide the DBE with 5 days to respond to the notice and to advise CONSULTANT and the LOCAL AGENCY of the reasons why the use of other forces or sources of materials should not occur.

CONSULTANT's request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from CONSULTANT to the DBE regarding the request.
3. Notices from the DBEs to CONSULTANT regarding the request.

If a listed DBE is terminated or substituted, CONSULTANT must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

## F. Commitment and Utilization

The LOCAL AGENCY's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The LOCAL AGENCY shall request CONSULTANT to:

1. Notify the LOCAL AGENCY's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
  - Name and business address of each 1<sup>st</sup>-tier subconsultant
  - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
  - Date of payment and total amount paid to each business (see Exhibit 9-F: Monthly Disadvantaged Business Enterprise Payment)

If CONSULTANT is a DBE CONSULTANT, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify CONSULTANT in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify CONSULTANT in writing of the certification date. CONSULTANT shall submit the notifications to the LOCAL AGENCY. On work completion, CONSULTANT shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to the LOCAL AGENCY within 30 days of contract acceptance.

Upon work completion, CONSULTANT shall complete Exhibit 17-F: Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the LOCAL AGENCY within 90 days of contract acceptance. The LOCAL AGENCY will withhold \$10,000 until the form is submitted. The LOCAL AGENCY will release the withheld funds upon submission of the completed form.

In the LOCAL AGENCY's reports of DBE participation to Caltrans, the LOCAL AGENCY must display both commitments and attainments.

- G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a CUF when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.
- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into

with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

- K. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within thirty (30) calendar days.
- L. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10<sup>th</sup> of the following month, the prime Contractor/Consultant shall complete and email the Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to the Agency.
- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

## **ARTICLE XIX INSURANCE**

Without limiting CONSULTANT's obligation to indemnify and hold harmless TOWN of LOS GATOS (TOWN) and VTA, CONSULTANT must procure and maintain for the duration of the AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by CONSULTANT, its agents, representatives, employees, or subconsultants. The cost of such insurance must be borne exclusively by CONSULTANT. In the event of any material change in the AGREEMENT Scope of Services, TOWN AND VTA reserve the right to change the insurance requirements set forth herein. CONSULTANT must furnish complete copies of all insurance policies, within three (3) business days of any request for such by TOWN or VTA.

### **A. Liability and Workers' Compensation Insurance**

#### **1. Minimum Scope of Coverage**

Coverage must be at least as broad as:

- a. General Liability coverage; Insurance Services Office "occurrence" form CG 0001. General Liability insurance written on a "claims made" basis is not acceptable. Completed Operations coverage must be continuously maintained for at least two (2) years after Final Acceptance of the Work.
- b. Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.
- c. Workers' Compensation insurance, as required by the Labor Code of the State of California, and Employer's Liability insurance.
- d. Professional Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of CONSULTANT'S services under this AGREEMENT. This coverage must be continuously maintained for a minimum of two (2) years following completion of this AGREEMENT. This coverage may be written on a "claims made" basis, if so, please see special provisions in Section B.
- e. CONSULTANT'S Pollution/Environmental Impairment Liability: covering liability arising out of the treatment, handling, storage, transportation, or accidental release of any hazardous material.



## 2. Minimum Limits of Insurance

- a. CONSULTANT must maintain limits no less than:
1. General Liability (including umbrella/excess liability): \$5,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit. This requirement may be satisfied by a combination of General Liability with Excess or Umbrella, but in no event may the General Liability primary policy limit per occurrence be less than \$2,000,000, unless Umbrella/Excess policies feature inception and expiration dates concurrent with the underlying General Liability policy, "Follow Form" coverage, and a "Drop Down" provision.
  2. Automobile Liability (including umbrella/excess liability): \$4,000,000 limit per accident for bodily injury and property damage. This requirement may be satisfied by a combination of Auto with Excess or Umbrella, but in no event may the Automobile Liability primary policy limit per occurrence be less than \$2,000,000, unless Excess policies feature inception and expiration dates concurrent with the underlying auto liability policy, "Follow Form" coverage, and a "Drop Down" provision.
  3. Workers' Compensation and Employer's Liability: Statutory Workers' Compensation limits and Employer's Liability limits of \$1,000,000 per accident.

CONSULTANT is familiar with the Workers' Compensation laws of California (generally contained in Section 3700 of the Labor Code), including those provisions which provide for specific exemptions from the requirement that all employers must carry Workers' Compensation insurance, and CONSULTANT maintains they are exempted under the law from the requirement to maintain Workers' Compensation insurance coverage.

In addition, during the term of any work for TOWN under said agreement:

(1) CONSULTANT will not employ any person in any manner so as to become subject to the Workers' Compensation laws of California, or (2) should CONSULTANT become subject to the Workers' Compensation provisions of Section 3700 of the Labor Code for any reason, CONSULTANT shall forthwith comply with those provisions and send evidence of financial compliance to TOWN.

4. Professional Liability: \$2,000,000 each occurrence/aggregate minimum limit per claim. This requirement may be satisfied by a combination of Professional Liability insurance with Excess or Umbrella policies, but in no event may the Professional Liability primary policy limit per occurrence be less than \$2,000,000, unless Umbrella/Excess policies feature inception and expiration dates concurrent with the underlying policy, "Follow Form" coverage, and a "Drop Down" provision.
  5. CONSULTANT'S Pollution/Environmental Impairment Liability: \$3,000,000 per occurrence. This requirement may be satisfied by a combination of Pollution Liability insurance with Excess or Umbrella policies. Umbrella/Excess policies must feature inception and expiration dates concurrent with the underlying policy, "Follow Form" coverage, and a "Drop Down" provision.
- b. Notwithstanding any language in this AGREEMENT to the contrary, if CONSULTANT carries insurance limits exceeding the minima stated in Section 2(a)(1)-(5) immediately above, such greater limits will apply to this AGREEMENT.

## 3. Self-Insured Retention

The certificate of insurance must disclose the actual amount of any deductible or self-insured retention for all coverages required herein. Any self-insured retention or deductible must be declared to and approved by TOWN and VTA. To apply for approval for a level of retention or deductible CONSULTANT must provide a current financial report including balance sheets and income

A-2 Pg20.

statements for the past three years, so that TOWN and VTA can assess CONSULTANT's ability to pay claims falling within the self-insured retention or deductible. Upon review of the financial report, if deemed necessary by TOWN and VTA in their sole discretion, TOWN and VTA may elect one of the following options: to accept the existing self-insured retention or deductible; require the insurer to reduce or eliminate the self-insured retention or deductible as respects TOWN and VTA, its directors, officers, officials, employees and volunteers; or to require CONSULTANT to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Applicable costs resulting therefrom will be borne solely by CONSULTANT. CONSULTANT may request execution of a nondisclosure agreement prior to submission of financial reports.

**B. Reserved.**

**C. Claims Made Provisions**

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber. For coverage written on a claims-made basis, it must be clearly stated on the Certificate of Insurance. In addition to all other coverage requirements, such policy must provide that:

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

**D. Other Provisions**

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

**1. General Liability and Automobile Liability**

- a. The TOWN and VTA, its directors, officers, officials, employees and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of CONSULTANT, including TOWN'S general supervision of CONSULTANT; products and completed operations of CONSULTANT and its SUBCONSULTANTS; premises owned, occupied or used by CONSULTANT; or automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage must contain no special limitations on the scope of protection afforded to TOWN and VTA, its directors, officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.
- b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to TOWN and VTA, its directors, officers, officials, employees, or volunteers.
- c. CONSULTANT's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. The General Liability General Aggregate limit must apply per project, not per policy.

**2. All Coverages**

- a. The insurer must agree to waive all rights of subrogation against TOWN and VTA, its directors, officers, officials, employees, and volunteers for losses arising from work performed by CONSULTANT and its subconsultants for TOWN and VTA.
- b. CONSULTANT's insurance coverage must be primary insurance as respects TOWN AND VTA, its directors, officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by TOWN AND VTA, its directors, officers, officials, employees, or volunteers may

A-2 Pg21.

apply only as excess to CONSULTANT's insurance. CONSULTANT's insurance must not seek contribution from TOWN or VTA's insurance programs.

- c. Each insurance policy required shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced coverage or in limits except after a thirty (30) calendar days prior written notice by certified mail, return receipt required, has been given to TOWN.
- d. TOWN will not be responsible for any premiums or assessments on the CONSULTANT'S policies.
- e. In the event CONSULTANT employs subconsultants as part of the work covered by this AGREEMENT, it shall be the responsibility of CONSULTANT to ensure that all subconsultants are included as additional insured under the CONSULTANTS policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein and shall comply with the same insurance requirements that are stated in this AGREEMENT.

### **3. Other Insurance Provisions**

- a. For all lines of coverage, the Certificate must disclose the actual amount of the Deductible or Self-Insured Retention and shall be subject to TOWN'S approval.
- b. If any coverage forms or endorsements required by this AGREEMENT are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services Office, or the American Association of Insurance Services, during the duration of this AGREEMENT, TOWN AND VTA reserves the rights to require CONSULTANT to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.
- c. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this AGREEMENT. In the event that said insurance coverage expires at any time or times during the term of this AGREEMENT, CONSULTANT agrees to provide at least thirty (30) calendar days prior notice to said expiration date; and a new Certificate of Insurance evidencing the insurance coverage as provided for herein, for not less than either the remainder of the term of the AGREEMENT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of the TOWN. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, TOWN may, in addition to any other remedies it may have, terminate the AGREEMENT upon occurrence of such event.
- d. Approval of the insurance by TOWN or acceptance of the Certificate of Insurance by TOWN shall not relieve or decrease the extent to which CONSULTANT may be held responsible for payment of damages resulting from CONSULTANT'S services or operation pursuant to this AGREEMENT, nor shall it be deemed a waiver of TOWN'S rights to insurance coverage hereunder.
- e. If, for any reason, CONSULTANT fails to maintain insurance coverage that is required pursuant to this AGREEMENT, the same shall be deemed a material breach of contract. TOWN, at its sole option, may terminate this AGREEMENT and obtain damages from CONSULTANT resulting from said breach.

### **E. Acceptability of Insurers**

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

### **F. Certificates of Insurance**

CONSULTANT must furnish TOWN with Certificates of Insurance and with original endorsements effecting coverage required. The certificates and endorsements for each insurance policy must be signed by an authorized representative of that insurer. The certificates must be issued on a standard ACORD Form. CONSULTANT must instruct their insurance broker/agent to submit all insurance certificates and

endorsements and required notices electronically in PDF format to the TOWN. All endorsements must be attached to the ACORD certificate in a single PDF document. All insurance must be in effect for the duration of the AGREEMENT. The absence of insurance or a reduction of the stated limits shall cause all work on the project to cease. Any delays shall not increase costs to TOWN or increase the duration of the project. The TOWN reserves the right to require complete, certified copies of all required insurance policies, at any time.

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

Town of Los Gatos  
41 Miles Avenue  
Los Gatos, CA 95030

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

In the Description of Operations/Locations/Vehicles/Special Items Box, the TOWN and VTA property leased must appear, the list of policies scheduled as underlying on the Umbrella/Excess policy must be listed, Certificate Holder must be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the AGREEMENT documents.

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

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

#### **G. Maintenance of Insurance**

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

#### **H. Hold Harmless**

CONSULTANT hereby agrees to and shall hold TOWN and VTA, its elective and appointive boards, commissions, officers, agents, registered volunteers, and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage and any other claims of any sort what so ever, including, but not limited to, any liabilities, claims, losses, or expenses in any manner caused by, arising out of, or in connection with, either directly or indirectly, the construction or installation of the work, the guarding of the work, the use of improper materials in construction of the work, or the negligent, willful, or intentional acts or omissions by CONSULTANT or CONSULTANT's subconsultants, agents, or employee operations under this AGREEMENT, whether such operations by CONSULTANT or by any of CONSULTANT's subconsultants, or by any one or more persons directly or indirectly employed by, or acting as agent for CONSULTANT or any of CONSULTANT's subconsultants during the progress of the work or at any time before its completion and final acceptance, excepting suits and actions brought by the CONSULTANT for default of this AGREEMENT or arising from the sole active negligence or willful misconduct of the TOWN. The Town Council may retain as much of the money due to the CONSULTANT as shall be reasonably necessary to protect the TOWN, until disposition has been made of such suits or claims for damages as aforesaid.

CONSULTANT agrees to and shall pay TOWN's cost of defense (or, at the sole option of the TOWN, CONSULTANT shall defend with counsel approved by the TOWN Attorney) and indemnify TOWN and its

A-2 Pg23.

elective and appointive boards, commissions, officers, agents, and employees from any suits or actions at law or in equity arising out of the execution, adoption or implementation of this AGREEMENT (exclusive of any such actions brought by CONSULTANT), such indemnification to include all costs of defense, judgments, and any awards of attorneys' fees.

Should any accident or incident causing death, personal injury or property damage occur between the date CONSULTANT is notified that its General Liability and/or Workers Compensation Insurance is canceled and the effective date of such cancellation, CONSULTANT's obligation to indemnify, defend and save harmless the TOWN, as provided for hereinabove, shall in no manner be affected by the fact that the TOWN had not received the notice of cancellation prior to the date of such accident or incident.

#### **ARTICLE XX FUNDING REQUIREMENTS**

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only if sufficient funds are made available to LOCAL AGENCY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

#### **ARTICLE XXI CHANGE IN TERMS**

- A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY's Contract Administrator.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by LOCAL AGENCY's Contract Administrator.

#### **ARTICLE XXII CONTINGENT FEE**

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

#### **ARTICLE XXIII DISPUTES**

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and Park and Public Works Director who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) calendar days after completion of all work under the AGREEMENT, CONSULTANT

may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

#### **ARTICLE XXIV INSPECTION OF WORK**

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

#### **ARTICLE XXV SAFETY**

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.
- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in Labor Code §6500 and §6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.

#### **ARTICLE XXVI OWNERSHIP OF DATA**

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.

- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 -Patent Rights under Government Contracts for federal-aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

**ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY'S CONSTRUCTION CONTRACTOR**

- A. If claims are filed by LOCAL AGENCY's construction Contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction Contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.
- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction Contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

**ARTICLE XXVIII CONFIDENTIALITY OF DATA**

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.
- E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

**ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against

CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

#### **ARTICLE XXX EVALUATION OF CONSULTANT**

CONSULTANT's performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

#### **ARTICLE XXXI PROMPT PAYMENT FROM THE LOCAL AGENCY TO CONSULTANT**

The LOCAL AGENCY shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the LOCAL AGENCY fails to pay promptly, the LOCAL AGENCY shall pay interest to the Contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the LOCAL AGENCY shall act in accordance with both of the following:

- (1) Each payment request shall be reviewed by the LOCAL AGENCY as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to CONSULTANT as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

#### **ARTICLE XXXII TITLE VI ASSURANCES**

##### **APPENDICES A - E of the TITLE VI ASSURANCES**

##### **APPENDIX A**

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

- a. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- b. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.



- e. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
- i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - ii. cancellation, termination or suspension of the Agreement, in whole or in part.
- f. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

## **APPENDIX B CLAUSES FOR DEEDS TRANSFERRING UNITED STATES**

### **PROPERTY**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

**NOW THEREFORE**, the U.S. Department of Transportation as authorized by law and upon the condition that the recipient will accept title to the lands and maintain the project constructed thereon in accordance with Title 23 U.S.C., the regulations for the administration of the preceding statute, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

### **(HABENDUM CLAUSE)**

**TO HAVE AND TO HOLD** said lands and interests therein unto the recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the recipient, its successors and assigns. The recipient, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the recipient will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

## APPENDIX C

### CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the recipient pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
  - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations(as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## APPENDIX D

### CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THEACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the recipient pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest ,and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above

Non-discrimination covenants, the recipient will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

## APPENDIX E

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to comply with the following nondiscrimination statutes and authorities, including, but not limited to:

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**ARTICLE XXXIII NOTIFICATION**

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

**CONSULTANT:**

Zoon Engineering, Inc  
ATTN: Nabil Hissen, P.E., Principal In Charge  
3960 Adeline Street #3, Emeryville, CA 94608

**LOCAL AGENCY:**

Town of Los Gatos – Parks and Public Works Department  
ATTN: Nicolle Burnham, Parks and Public Works Director  
41 Miles Avenue, Los Gatos, CA 95030

**ARTICLE XXXIV CONTRACT**

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

**ARTICLE XXXV SIGNATURES**

Recommended by Department Head:

\_\_\_\_\_

IN WITNESS WHEREOF, THE LOCAL AGENCY AND CONSULTANT HAVE EXECUTED THIS AGREEMENT.

**TOWN OF LOS GATOS** by:

**CONSULTANT** by :

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

\_\_\_\_\_  
Nabil Hissen, P.E., Principal In Charge

**Approved as to Form:**

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

**Attest:**

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

Town of Los Gatos - CONSULTANT SERVICES AGREEMENT (Continued)  
**EXHIBIT A – SCOPE OF SERVICES**

The scope of services consist of the professional construction management, inspection, and materials testing services necessary for the construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project.

The intent of this scope of work is to set forth the requirements and responsibilities of the Consultant to assure the quality and satisfactory completion of the construction project improvements in accordance with the approved construction documents and funding agreements. The scope of services requested is broad and as such not every required individual work item or deliverable has been specifically identified, however, the delivered scope of services is to be inclusive of all items of work necessary to successfully manage, guide, inspect, test, coordinate, and document the project through construction completion and project close out within the framework required for the Town to obtain reimbursement of federal and other grant funds allocated to the project. The Consultant is expected to furnish all manpower, equipment, and incidentals as required to complete the requested scope of services as generally described below for the project. The Consultant CM/RE will work closely with and report to the Town's Project Manager. A construction contract time of 270 working days has been allocated for the project construction. The scope of services herein is to be delivered in coordination with the construction contract activities as necessary to allow for the construction completion and all follow up reporting requirements.

**TASK 1. CONSTRUCTION MANAGEMENT AND COORDINATION**

The Consultant shall provide all the necessary project management, administration, and coordination with the Town, Caltrans, and other internal/external stakeholders to achieve the project's objectives and successful project construction completion. The Consultant shall proactively provide direction to the Town regarding the project tasks necessary to deliver the federally and locally grant funded project consistent with Caltrans permitting requirements, federal reimbursement requirements, and funding agreement requirements. The Consultant shall be responsible for project management activities throughout the life of the contract.

The Consultant will serve as the Town's full time Construction Manager/Resident Engineer (CM/RE) and on-site representative and will be responsible for providing and managing a complete construction management team to complete tasks and activities as outlined in these Requested Scope of Services.

Consultant shall provide a CM/RE who is dedicated to the project through project close out to serve as the Town's resident engineer and project team leader. The CM/RE shall be a licensed Professional Civil Engineer Registered in the State of California. Consultant shall also provide the services of a Professional Structural Engineer Registered in the State of California for assistance on the submittal reviews and inspections of retaining walls and bridge structures, and as otherwise needed.

In general, CM/RE shall have the following duties:

- 1.1. **CONSTRUCTION MANAGEMENT PLAN** - The Consultant CM/RE shall develop a project specific Construction Management Plan (CMP) for the Town's approval. The plan shall identify the project team members and indicate the standards and level of effort anticipated to be adhered to during all phases of the project by the CM/RE, additional inspector(s), and materials testing personnel and laboratories, and other

project team members, including the Contractor's Project Manager, Superintendent and the Town's Project Manager. The plan shall describe important project milestone deliverables and timing and shall be based on the activities presented in Chapters 16 Administer Construction Contracts and 17 Project Completion of the LAPM and other documents listed below. At a minimum, the plan shall include the sections listed below:

- i. Project Team Organization
- ii. Meetings
- iii. Communications Management
- iv. Documentation Control/Filing
- v. Preparation of Management Reports
- vi. Clarifications and Contract Interpretations of Specifications
- vii. Materials Submittals/Shop Drawings
- viii. Design Modifications
- ix. Change Orders
- x. Schedule Management
- xi. Budget Management
- xii. Claims Management
- xiii. Progress Pay Estimate Preparation
- xiv. Inspection and Inspection Reporting
- xv. Materials Testing and Testing Documentation
- xvi. Defective Work Correction
- xvii. Special Inspections/Testing
- xviii. Special Certifications
- xix. Traffic Control
- xx. Record Drawings
- xxi. Permit and Regulatory Agency Compliance
- xxii. Handling of Hazardous Soil/Substances
- xxiii. Environmental Commitments Record Compliance
- xxiv. Complaint and Community Relations Procedures
- xxv. Job Site Safety
- xxvi. Photo/Video Documentation
- xxvii. Certified Payroll Review
- xxviii. DBE Monitoring
- xxix. Federal Trainee Program
- xxx. Labor Compliance Monitoring
- xxxi. Training - Contractor, Town Staff, Others
- xxxii. Other Tasks

All activities in the CPM shall be performed in accordance with the following documents:

- Approved Project Documents and Plans
- Regulatory Agency Permits
- Caltrans Local Assistance Procedures Manual (LAPM) for RE expectations
- Caltrans Standard Plans 2018
- Caltrans Standard Specifications 2018
- Caltrans Construction Manual
- Caltrans Construction Records and Procedures Manual
- Caltrans Standard Test Methods
- Caltrans Surveying Manual

- Caltrans Manual of Traffic Control for Construction and Maintenance Work Zones
  - Caltrans Independent Assurance Manual
  - Town of Los Gatos Quality Assurance Program
- 1.2. PROJECT BACKGROUND AND PRE-PROJECT ACTIVITIES – Complete a full review of the contract documents and project area. Review and understand the Mitigation Monitoring & Reporting Program (MMRP) and the Environmental Commitments Record (ECR) and mitigation measures. Raise any questions or inconsistencies to the Town prior to construction. Conduct constructability review of plans and specifications. Identify potential construction challenges and identify and implement proactive mitigation measures. Document preconstruction conditions via videotaping and photo documentation and maintain photographic records during the project construction. Prepare LAPM Chapter 16 forms for use during construction.
- 1.3. PROJECT DOCUMENTATION AND FILING SYSTEM - Set up and use a project filing system and information tracking system consistent with the LAPM Chapter 16 - Organization of Project Records, or the Caltrans Construction Manual Section 5-102: Organization of Project Documents. Provide continual Town access to project files. Record keeping and project documentation shall be consistent with the Caltrans Construction Manual and LAPM. Prepare and maintain all files in an audit-ready state. At the end of construction, all project files in project filing system to be submitted to the Town in hardcopy and electronic format.
- 1.4. MATERIALS TESTING, QUALITY CONTROL, QUALITY ASSURANCE and INDEPENDENT ASSURANCE PROGRAMS - Review and approve the Contractor's Quality Control (QC) Program for compliance with project specifications. Implement the Quality Assurance Program (QAP) and Independent Assurance Program (IAP). Coordinate, manage, schedule, and assure performance of all required materials testing and quality assurance testing per the Contractor's QC program, Caltrans requirements and Town's QAP. The Consultant shall use the Town's QAP and the Caltrans Construction Manual to identify and prepare a listing of the required project specific materials testing and inspections. The listing shall be provided to the Town prior at the beginning of the project and shall be updated as necessary during construction. CM/RE shall ensure that all field personnel who perform tests are certified to conduct the required test and all materials testing meets Caltrans and permitting requirements. Identify, schedule and coordinate any required source inspections for the project. Verify and document the IAP is being executed appropriately, obtain certifications of all sampling and testing personnel, qualifications of all laboratories, and verify all equipment calibrations.
- 1.5. MATERIALS SUBMITTALS - Review the materials submittals list contained in the contract documents and the Notice of Materials to be Used from the Contractor. Determine if additional submittals will be required. Prepare a comprehensive listing of any additional submittals to be required from the Contractor, including but not limited to, shop drawings, traffic control plans, product data, and product samples. Receive, track, review, process, and document all submittals and provide responses as outlined in the CMP. Ensure materials to be used on the project are in compliance with the construction contract documents and Caltrans requirements. Provide timely responses to the Contractor's submittals. Identify and track acquisition of long-lead time materials and equipment, and work with contractor for early purchasing where necessary. Ensure the "Buy America" provisions of the Construction Contract are being met. Consultant shall also provide the services of a Professional Structural Engineer Registered in the State of California for assistance on the submittal reviews and inspections of retaining walls and bridge structures, and as otherwise needed.

- 1.6. PROJECT TEAM MANAGEMENT - Provide day-to-day ongoing management and administration of the project team, including inspection and testing services to assure compliance with items of work required by the contract documents and grant funding agreements. Provide technical oversight, instruct, and advise Town staff and project team regarding construction guidelines, standards, policies, and procedures. Manage coordination between Town, Contractor, Stakeholders, and Caltrans' representatives.
- 1.7. UTILITY RELOCATION - Assist in the coordination between utility company and the Contractor for required utility relocation. Coordinate with resource agencies, as needed, to obtain and demonstrate compliance with regulatory permits and regulations.
- 1.8. MEETINGS - Conduct and coordinate all project team meetings.
  - i. In coordination with the Town's Project Manager, schedule and lead the pre-construction meeting with the Contractor, Subcontractors, regulatory agencies, grant agencies, and utility company representatives.
  - ii. Periodic meetings shall include daily discussions between the construction manager or designated representative and the contractor; weekly contractor meetings; weekly meetings between the construction manager and the Town; and meetings scheduled as needed with regulatory agencies, utilities, design Consultant, other groups, or agencies.
  - iii. Schedule, organize, lead, and provide follow up for regularly weekly scheduled construction progress meetings with Town staff, Contractor and Subcontractor and representatives as necessary.
  - iv. Prepare and distribute agendas, detailed meeting minutes, and action logs for all weekly meetings. Include summaries of work that is currently being performed, work that is behind schedule, unresolved deficiencies and defective work, outstanding change orders and status of any claims.
- 1.9. SCHEDULE - Review and monitor the Contractor's construction schedule throughout the construction process. Identify and monitor milestones, dates for decisions required from the Town, deliverables to be furnished, and testing to be scheduled/completed. Review schedule weekly with the Contractor and project team. Discuss two-week look ahead schedules at each weekly meeting.
  - i. Work with the contractor to maintain the original project schedule.
  - ii. Show current conditions and suggest revisions that may be required.
  - iii. Evaluate schedule modifications, necessary schedule revisions, and monitor progress.
  - iv. Enforce project requirements for Contractor's submittal of formal schedule updates.
  - v. Track delays or accelerations based on actual contractor operations as defined in the CMP.
- 1.10. PROJECT BUDGET/COST CONTROL/MONTHLY PROGRESS PAYMENTS - Review, monitor and manage the construction contract budget and Consultant services budget. Implement necessary procedures for an effective system of cost control to track progress payments, contract change orders, claims, and extra work requests. Prepare quantities and estimates for monthly progress payments, for both the Contractor and Consultant services, and recommend approval to the Town. Maintain cost accounting records (progress payments, contract change orders status, etc.) in accordance with the Caltrans Construction Manual and LAPM. The calculations of quantities and all other documentation shall be in forms approved by Caltrans and the Town.
  - i. Provide and manage consultant services within contract amounts identified as "not to exceed".



- ii. Provide the Town with monthly updates regarding costs to date, percent complete, and estimated cost at completion for construction contract and consultant services contract.
- iii. Evaluate budget impacts for all proposed contract change orders and make recommendations to Town.
- iv. Provide required reporting regarding project budget.
- v. Monitor budget compliance throughout the contract process.
- vi. Prepare cost estimates to verify change order claims.

1.11. PUBLIC COORDINATION AND OUTREACH

- i. Field public inquiries, correspondence, and complaints regarding the project. Track and follow up on public correspondence and complaints. All project complaints are to be documented, tracked, and discussed at the weekly project meetings until resolution. Summary reports shall be provided to the Town on a monthly basis.
- ii. Monitor and enforce the Contractor's requirements for community notification and outreach.
- iii. Provide the Town with timely project updates for posting on the Town's project web-page and other social media posts.

1.12. PROJECT CLOSE-OUT – Administer and manage the project closeout process. The project completion activities shall follow Caltrans Construction Manual/LAPM and will include, but not be limited to, the following:

- i. Schedule a walk through with the Town and other agency representatives and coordinate preparation of a "punch list" of incomplete or unsatisfactory items and submit the list to the contractor.
- ii. Finalize bid items, claims, change orders, punch list items, and submittal corrections.
- iii. Oversee completion of record drawings.
- iv. Verify all operating and/or regulatory agency permits are obtained, and inspections are complied with and completed. Verify acceptance and approval of the project by all regulatory and permitting agencies having jurisdiction over the project.
- v. Once all work is complete, deliver a statement to the Town indicating that the project has been completed in accordance with the project conditions of approval, project improvement plans, and the construction contract documents and recommend the Town accept the Project.
- vi. Prepare Notice of Completion
- vii. Provide the Town and State Representative with a post construction "Certificate of Compliance with Americans with Disabilities Act (ADA)" (TR-0405) stamped and signed by the Consultant CM/RE California Licensed Professional Engineer per requirements in the Encroachment Permit issued for the project.
- viii. Prepare the required Caltrans project closeout documentation and final reports.
- ix. Finalize all project documentation and turn over all project electronic (and paper if applicable) files, photos, and reports in a neat and organized manner for Town archival purposes. Submit to the Town, the following close out items.
  - 1. All files, records, maps, and plans maintained during construction.
  - 2. All approved shop drawings, submittals, and manufacturer's literature maintained during the construction project.
  - 3. One complete set of annotated project progress photographs, bound chronologically, and videotapes taken before and during construction.
  - 4. One set of red-line drawings of field changes in neat red pencil

- maintained by the Consultant.
- 5. The original set of all permits, inspection reports, summaries, testing documents, meeting minutes, clarifications, schedules, correspondence, and other documents related to the construction work as it was being installed.
- 6. A revised CAD drafted set of plans with all changes and/or substitutions incorporated accurately and completely and a recommendation the Town to accept the plan set as its Record Drawings.
- 7. Prepare final project reporting satisfying requirements of grant funding agencies.
- 8. Final DBE Utilization Report.
- 9. Final Expenditures Report.

#### DELIVERABLES:

- Construction Management Plan,
- Construction Meeting Agendas and Meeting Minutes,
- List of materials to be tested,
- Constructability review,
- One complete set of annotated project progress photographs, bound chronologically, and videotapes taken before and during construction,
- All Project Construction Records – organized in tabulated binders and electronically available in the cloud with download rights for at least 6 months after the contract close out, including:
  - Required project close-out reports and certifications, signed and stamped by the CM/RE, as required,
  - One set of red-line record drawings documenting any changes and/or substitutions that have been reviewed for accuracy and completeness,
  - A revised CAD drafted set of plans with all changes and/or substitutions incorporated accurately and completely and a recommendation the Town to accept the plan set as its Record Drawings,
  - Final project reporting satisfying requirements of grant funding agencies,
  - Certificate of Compliance with Americans with Disabilities Act,
  - Final DBE Utilization Report, and
  - Final Expenditures Report.

#### TASK 2. CONSTRUCTION INSPECTION

Services will include interpretation of and enforcement of Contractor's conformance to the project plans, specifications, contract documents, grant funding agreements, and regulatory permits. CM/RE will assess the acceptability of the Contractor's work by visual observation, photo, and video documentation. When necessary, issue Notices of Non-Compliance and/or take other action to ensure correction of deficiencies. If safety violations are observed, take appropriate action to ensure correction. Manage requests for clarification, coordinate work with the design engineer as required, and manage the project changes (including change order preparation and coordination), evaluate contractor's claims, and prepare progress pay estimates. Perform resident engineering and inspection duties including performing inspections, preparing daily observation reports, reviewing and documenting extra work reports, preparing weekly statement of working days to track project time, measure and track progress of work, coordinate construction quality control sampling and testing, confirm general conformance with project plans, specifications, contract and labor codes, permits and agreements, and all associated documentation and record keeping. Services are anticipated to be required for night/weekend

work and includes night/weekend work construction inspection.

Consultant shall provide sufficient inspectors with appropriate certifications and qualifications to adequately inspect all Contractors' construction work. Provide field inspection of Contractor's construction work on a daily basis. Review all construction activities and provide for inspection of all tests required to be performed by the Contractor or referenced in the Contract Documents. Monitor the Contractor's performance from the perspective of quality, cost, and schedule, and enforce the requirements of applicable specifications. Inspection reports and diaries of Contractor's construction activities shall be completed daily and be available to the Town at any time. Compare notes with the Contractor's representative at the end of each day to confirm work that was accomplished, and quantities placed.

All construction management, inspection, and related activities shall be completed as described in the Construction Management Plan (CMP) prepared by the Consultant and approved by the Town, including, but not limited to the following tasks:

- 2.1 FIELD INSPECTIONS – Shall include, but not be limited to, the following activities:
- i. Perform field inspection of all improvements indicated on the plans and specifications.
  - ii. Report issues requiring City resolution immediately upon discovery. Notify the Town of any errors or omissions that are found on the plans or specifications during construction immediately after such errors are discovered. Properly inform the Town of field issues that may have cost or schedule impacts within a timely manner.
  - iii. Secure the Town's approval prior to authorizing extra work. Prepare time impact analysis for any changes in working days related to changed conditions.
  - iv. Review Traffic Control Plans and coordinate with Town Traffic Engineer and Town Project Manager.
  - v. Respond to questions from the public concerning the project work and schedule.
  - vi. Inspect tree protection, traffic control, and erosion control measures as often as necessary to assure activities meet with the project permits, regulatory requirements, and approved plans and submittals.
  - vii. Monitor and inspect existing structures, landscaping, and other improvements within the adjacent private properties for damage caused by the contractor's operations.
  - viii. Ensure the safety of Consultant's own staff on the project site and collaboratively work with the Town and Contractor to promote site safety. Provide notification to Contractor when contract provisions for the protection of the public and project personnel are not being followed.
  - ix. Process Contractor substitution requests/review substitutions with Town.
  - x. Maintain and ensure that as-built drawings and specifications are updated.
  - xi. Manage project SWPPP program including QSP and/or QSD duties, as outlined in the State of California State Water Resources Control Board Storm Water General Permit.
  - xii. Monitor the Contractor's compliance with storm water pollution control plan documentation requirements and implementation of storm water Best Management Practices (BMPs).
  - xiii. Manage implementation of MMRP.
  - xiv. Perform nighttime inspections as necessary.
  - xv. Monitor and ensure implementation of the Contractor's Quality Control plan, required testing and inspections.

- 2.2 DAILY/WEEKLY REPORTING - Prepare daily inspection reports and weekly statement of working days. Create and maintain daily

construction diaries and weekly statement of working days, document and log of activities of the work progress as required to be kept on file in accordance with practices required for the administration of federally assisted construction contracts and the LAPM, and as required for submittal to Caltrans upon project completion or audit.

Daily inspection reports shall be consistent with the Caltrans Construction Manual and shall include, at a minimum, the following daily information:

- i. Number of employees working, classification of each employee, and hourly summary of employees' activity
- ii. Material deliveries
- iii. Number, type, and hourly summary of contractor's equipment on site - both working and not used
- iv. Weather conditions
- v. Discussions with the contractor
- vi. Problems and issues dealt with
- vii. Changes
- viii. Work completed that day
- ix. Itemization of extra work
- x. Any other information necessary to create a satisfactory record of the day's activities at the project site in accordance with standard inspection practice
- xi. Abnormal occurrences and unforeseen conditions shall be noted in the reports
- xii. Document special situations by photograph, written record, and video

- 2.3 MATERIALS SUBMITTALS / SHOP DRAWINGS –Monitor on-site construction materials and ensure the materials incorporated into the construction of the project are consistent with the approved materials submittals, mix designs, certificates of compliance, Buy America provisions, and shop drawings.
- 2.4 PERMIT COMPLIANCE - Ensure Contractor's compliance with the requirements of the state and local agencies, including encroachment permits, regulatory permits, regulations, etc.
- 2.5 REQUEST FOR INFORMATION (RFI) - Review, coordinate, track, and respond to all contractor requests for information (RFIs) and responses. Issue necessary clarifications and interpretations of the contract project documents in response to requests by the contractor in a manner as described in the CMP.
- 2.6 CONSTRUCTION CONTRACT MODIFICATIONS - Contract Modifications include Extra Work, Contract Change Orders, and Claims. Evaluate, process, and manage all potential contract modifications, change orders, and notice of potential claims. Evaluate cost reduction incentive proposals and provide recommendations to the Town. Track extra work costs in the field. Review cost proposals submitted by Contractor and negotiate and prepare contract change orders. Review all requests for merit, perform an independent estimate, and make recommendations to the Town for consideration. Complete all required documentation to process changes. Weekly reports to the Town shall include the status of any outstanding contract change orders and notices of potential claims. If the CM or field inspector receives a notice of claim from the Contractor, the CM shall immediately notify the Town and work toward a timely resolution of the claim with the Contractor. The Consultant shall support the Town in any post-construction completion dispute with the Contractor, rendering reasonable assistance, providing access to its records, but is not intended to require retention of independent experts.

- 2.7 PROGRESS PAYMENTS – In coordination with the Contractor, Consultant shall agree on monthly Contractor progress payment requests detailing work installed during the specific pay period, including any approved contract modifications, extra work, or change order work. Consultant shall present progress payments to Town with a recommendation for processing with all required backup per the contract documents. Progress payment requests shall be in a form acceptable to the Town.
- 2.8 FINAL CONSTRUCTION PROJECT INSPECTION - Coordinate and consolidate final inspections and punch list for completion.
- i. Organize final project site walk and prepare final punch list. Coordinate with contractor to ensure all outstanding project items are addressed prior to final completion.
  - ii. Assist in any Contractor claim analysis and dispute resolution.
  - iii. Review the final record drawings submitted by the contractor at the completion of construction. Prepare correction memos for the contractor to perform record drawing revisions.
  - iv. Review the Contractor's red-line as-built plans and ensure that the red-line changes are incorporated by the design engineer into the final electronic version of the as-built plans. Coordinate submittal of the as-built plans to Caltrans and the Town.
  - v. Obtain and review any required operating manuals and warranties and submit to Town.
  - vi. Provide final inspection services, including testing and installed facilities.
  - vii. In coordination with the Project Manager, prepare project reports to be submitted and approved by Town Council and attend meetings, as needed.
  - viii. Prepare final progress payment per contract documents and obtain subcontractor's releases as necessary.

## 2.9 DELIVERABLES:

- o Daily project inspection diaries,
- o Weekly statement of working days,
- o Contact progress payment requests,
- o Contract modification documentation, and
- o Punch list and final project close out documents.

## TASK 3. MATERIALS TESTING

Schedule, manage, perform, and document all field and laboratory testing services, including night and weekend work as needed. Material testing shall conform to the requirements and frequencies as defined in the Caltrans Construction Manual, Caltrans Materials Testing Manuals, and the Town Quality Assurance Program.

The Consultant will provide all required QAP and IAP materials testing through a Caltrans certified laboratory and shall schedule, coordinate, monitor, track and document all field and laboratory testing of soils, backfill, structural backfill, aggregate base, asphalt, concrete, and other testing as required by the contract documents and the Town and Caltrans Quality Assurance Programs. The Consultant must be qualified to obtain compliance with Caltrans Independent Assurance Manual and Caltrans Construction Manual. The Consultant shall provide Caltrans certified technicians as required to complete all testing work, and all laboratory facilities shall be Caltrans certified to perform the respective tests. The Consultant CM/RE will review results of tests and take the appropriate action in the field with the Contractor. All testing shall be tracked and documented by the Consultant, and copies of all test results shall be provided to the Town as

a part of the weekly reports. The Consultant shall work with the Contractor to resolve deficiencies or defective work.

Provide specialty material testing and source inspection and testing, if required, for materials and equipment manufactured off-site.

**DELIVERABLES:**

- Materials testing logs and test results

**TASK 4. LABOR, DBE, FEDERAL TRAINEE COMPLIANCE**

Consultant is responsible for reviewing Contractor weekly certified payrolls for compliance with State requirements. Consultant shall interview Contractor and Subcontractor employees and verify the payment of prevailing wage rates. Consultant shall review and update labor documents after each payroll period. Consultant shall assist with enforcing the requirements of the California Labor Code as they pertain to the project and consistent with the Caltrans Construction Manual. Prepare a Labor Compliance Monitoring Report at the conclusion of the project.

Consultant will obtain proof and provide documentation of the Contractor's compliance with the Federal Trainee Program.

Consultant shall work with Contractor to obtain and review the final DBE participation report and other documentation as required of federally funded projects.

**DELIVERABLES:**

- Compliance monitoring reports
- Final DBE Utilization report

**TASK 5. SUPPLEMENTAL REPORTS AND SERVICES**

Supplemental work items, reports, or services may be required for the completion of the project. These services or subtasks may or may not ultimately be required by Caltrans, VTA, or the Town. Should any of the services or subtasks be required, the Consultant will provide the required lump sum cost proposal for the work and upon Town's approval, the Town will provide a written authorization to proceed with the subtask, with deliverables and lump sum payment identified.

There is no guarantee, either expressed or implied, that the services and costs shown for Task 5 will be authorized in full.

Town of Los Gatos - CONSULTANT SERVICES AGREEMENT (Continued)  
**EXHIBIT B – CONSULTANT’S COST PROPOSAL**  
**July 3, 2023**

Town of Los Gatos - CONSULTANT SERVICES AGREEMENT (Continued)  
**EXHIBIT C - CONSULTANT CONTRACT DBE COMMITMENT**  
**(CALTRANS EXHIBITS 10-01 & 10-02)**



EXHIBIT B - CONSULTANT COST PROPOSAL - July 3, 2023

COST PROPOSAL BY TASK - For Progress Payment Purposes


	Total Not to Exceed Per Task	Paid on % Complete Basis*	Paid on Completion of Task	Payment as Specified in Separate Notice to Proceed
<b>Task 1. CONSTRUCTION MANAGEMENT AND COORDINATION</b>				
1.1 Develop Construction Management Plan	\$30,074.73		X	
1.2 Project Background And Pre-Project Activities	\$15,037.37		X	
1.3 Project Documentation and Filing System	\$30,074.73	X		
1.4 Materials Testing, Quality Control, Quality Assurance, Independent Assurance	\$15,037.37	X		
1.5 Materials Submittals	\$37,989.91	X		
1.6 Project Team Management	\$39,579.18	X		
1.7 Utility Relocation	\$73,485.46		X	
1.8 Meetings	\$39,579.18	X		
1.9 Schedule	\$46,970.91	X		
1.10 Project Budget/Cost Control/Monthly Progress Payments	\$38,527.82	X		
1.11 Public Coordination and Outreach	\$38,527.82	X		
1.12 Project Closeout Files	\$30,074.73		X	
<b>TASK 2. CONSTRUCTION INSPECTION</b>				
2.1 Field Inspection	\$717,748.84	X		
2.2 Daily/Weekly Reporting	\$61,976.08	X		
2.3 Materials Submittals/Shop Drawings	\$43,028.44	X		
2.4 Permit Compliance	\$36,777.02	X		
2.5 Request for Information (RFI) Management	\$71,584.32	X		
2.6 Construction Contract Modifications	\$44,725.00	X		
2.7 Progress Payments	\$87,920.31	X		
2.8 Final Construction Project Inspection	\$37,547.97		X	
<b>TASK 3. MATERIALS TESTING</b>				
Materials Testing	\$765,115.64		X	
<b>TASK 4. LABOR, DBE, FEDERAL TRAINEE COMPLIANCE</b>				
Labor Compliance	\$74,580.90	X		
<b>TASK 5. SUPPLEMENTAL REPORTS AND SERVICES</b>				
Supplemental Services	\$15,373.34			X
<b>NOT TO EXCEED GRAND TOTAL</b>		<b>\$1,220,822.07</b>		

\*Percent complete shall be the percent of working days completed at time of billing.

The progress payment must be based on percent of work complete or completion of clearly defined milestones. The contract cost proposal must document the agreed-upon progress payment and include the necessary milestones costs, or the percent work complete schedule.

**EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT**

1. Local Agency: Town Of Los Gatos 2. Contract DBE Goal: 22%  
 3. Project Description: LOS GATOS CREEK TRAIL TO HIGHWAY 9 TRAILHEAD CONNECTOR PROJECT  
 4. Project Location: Los Gatos, CA  
 5. Consultant's Name: Zoon Engineering, Inc. 6. Prime Certified DBE:

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %	
Construction Inspection services	41711	Jaemin Park (925) 818-3756 jpark@park-eng.com	22.08	
<b>Local Agency to Complete this Section</b>			<b>11. TOTAL CLAIMED DBE PARTICIPATION</b> 22.08 %	
17. Local Agency Contract Number: <u>TLG 18-832-4505</u> 18. Federal-Aid Project Number: <u>CML -5067(021)</u> 19. Proposed Contract Execution Date: <u>August 1, 2023</u> 20. Consultant's Ranking after Evaluation: <u>#1</u>				
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.	
<u>Michelle Quinney</u>	07-03-23	12. Preparer's Signature 		03/08/2023 13. Date
21. Local Agency Representative's Signature Michelle Quinney	22. Date 408-827-3552	14. Preparer's Name Nabil Hissen		(925) 451-1585 15. Phone
23. Local Agency Representative's Name Special Project Manager	24. Phone	CEO		
25. Local Agency Representative's Title		16. Preparer's Title		

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

**ADA Notice:** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

**EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT**

1. Local Agency: Town of Los Gatos 2. Contract DBE Goal: 22%  
 3. Project Description: LOS GATOS CREEK TRAIL TO HIGHWAY 9 TRAILHEAD CONNECTOR PROJECT  
 4. Project Location: Los Gatos, California  
 5. Consultant's Name: Zoon Engineering 6. Prime Certified DBE:  7. Total Contract Award Amount: 1220822.07  
 8. Total Dollar Amount for **ALL** Subconsultants: \$ 534,686.03 9. Total Number of **ALL** Subconsultants: 2

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Construction Inspection services to be provided by Park Engineering, Inc.	41711	Jaemin Park (925) 818-3756 jpark@park-eng.com	269,570.3
<b>Local Agency to Complete this Section</b>			\$269570.3
20. Local Agency Contract Number: <u>18-832-4505(CM)</u>	<b>14. TOTAL CLAIMED DBE PARTICIPATION</b>		
21. Federal-Aid Project Number: <u>CML-5067(021)</u>			22.08%
22. Contract Execution Date: <u>08-01-23</u>			
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.
<u>Michelle Quinney</u>	<u>7/12/23</u>	<u>Nabil Hissen</u> <small>Digitally signed by Nabil Hissen Date: 2023.07.11 14:42:31 -07'00'</small>	<u>7/22/20</u>
23. Local Agency Representative's Signature	24. Date	15. Preparer's Signature	16. Date
<u>Michelle Quinney</u>	<u>408-827-3552</u>	<u>Nabil Hissen</u>	<u>(925) 451-1585</u>
25. Local Agency Representative's Name	26. Phone	17. Preparer's Name	18. Phone
<u>Special Projects Manager</u>		<u>CEO</u>	
27. Local Agency Representative's Title		19. Preparer's Title	

DISTRIBUTION: 1. Original – Local Agency  
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

**ADA Notice:** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

**INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT**CONSULTANT SECTION

1. **Local Agency** - Enter the name of the local or regional agency that is funding the contract.
2. **Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
4. **Project Location** - Enter the project location as it appears on the project advertisement.
5. **Consultant's Name** - Enter the consultant's firm name.
6. **Prime Certified DBE** - Check box if prime contractor is a certified DBE.
7. **Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
8. **Total Dollar Amount for ALL Subconsultants** – Enter the total dollar amount for all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
9. **Total number of ALL subconsultants** – Enter the total number of all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
10. **Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
11. **DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
12. **DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
13. **DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
14. **Total Claimed DBE Participation - \$:** Enter the total dollar amounts entered in the "DBE Dollar Amount" column. **%:** Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
15. **Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
16. **Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
17. **Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
18. **Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
19. **Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

20. **Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
21. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
22. **Contract Execution Date** - Enter the date the contract was executed.
23. **Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
24. **Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
25. **Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
26. **Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
27. **Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 08/01/2023

ITEM NO: 10

---

DATE: July 27, 2023  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Adopt an Updated Police Officer Association Salary Schedule, Effective July 9, 2023, to Correct a Mathematical Error to the Police Sergeant Classification

**RECOMMENDATION:**

Adopt an updated Police Officer Association (POA) Salary Schedule, effective July 9, 2023 (Attachment 1), to correct a mathematical error to the Police Sergeant classification.

**REMARKS:**

On June 20, 2023, the Town Council adopted the salary schedules for all Town units, including POA. Subsequently, staff discovered that the intended 3% increase for the Police Sergeant classification was erroneously calculated at 2.57%. To correct this mathematical error, Council needs to adopt the corrected Salary Schedule (Attachment 1).

All affected staff have been notified of the error. If Council adopts the updated Schedule, these staff members will receive retroactive pay to achieve the full 3% as intended.

**COORDINATION:**

The preparation of this report was coordinated between the Human Resources and Finance Department, the Town Attorney, and Town Manager.

**FISCAL IMPACT:**

As the 3% was negotiated with the POA and is included in the approved Memorandum of Understanding, this increase is included in the Fiscal Year 2023/24 Adopted Budget.

---

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

---

PAGE 2 OF 2

SUBJECT: Updated POA Salary Schedule

DATE: July 27, 2023

ENVIRONMENTAL ASSESSMENT:

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

Attachment:

1. Updated POA Salary Schedule, Effective July 9, 2023

**Town of Los Gatos POA Classifications  
Salary Schedule for Fiscal Year 2023/24  
Effective July 9, 2023**

Class Code	Classification Title	Range	Step	Hourly Rate
<b>2520</b>	<b>Police Sergeant</b>	04-0721	1	\$72.02
	<i>Appointment before 03/01/2015</i>		2	\$75.62
			3	\$79.40
			4	\$83.37
			5	\$87.54

Class Code	Classification Title	Range	Step	Hourly Rate
<b>2521</b>	<b>Police Sergeant</b>	05-0721	1	\$72.02
	<i>Appointment after 03/01/2015</i>		2	\$75.62
			3	\$79.40
			4	\$83.37

Class Code	Classification Title	Range	Step	Hourly Rate
<b>7500</b>	<b>Police Corporal</b>	03-0715	1	\$59.75
			2	\$62.74
			3	\$65.88
			4	\$69.17
			5	\$72.63

Class Code	Classification Title	Range	Step	Hourly Rate
<b>7510</b>	<b>Police Officer</b>	02-0711	1	\$56.92
			2	\$59.77
			3	\$62.76
			4	\$65.90
			5	\$69.20

Class Code	Classification Title	Range	Step	Hourly Rate
<b>9519</b>	<b>Police Trainee *</b>	01-0710	1	\$54.07
	<i>* 95% of Step 1 of Police Officer Classification (Provisional Employee with Misc PERS)</i>			

**Reflects General Increase of 3%.**



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 08/01/2023

ITEM NO: 11

---

DATE: July 17, 2023  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Weed Abatement Program Public Hearing to Consider Objections to the 2023 Weed Abatement Program Assessment Report and Adopt a Resolution Confirming the Report and Authorizing Collection of the Assessment Charges

**RECOMMENDATION:**

Conduct a public hearing to consider objections to the 2023 Weed Abatement Program Assessment Report (Attachment 1) and adopt a resolution (Attachment 2) confirming the report and authorizing collection of the assessment charges.

**BACKGROUND:**

The Weed Abatement Program (the Program) is a different, but complementary program to the Brush Abatement Program. Both programs work to protect the Town by preventing fire hazards created by vegetative growth and the accumulation of combustible debris with the goal of voluntary compliance. The Town of Los Gatos Municipal Code Chapter 11, Article II, requires property owners to prevent potential fire hazards to provide protection for the property and any nearby structures by clearing hazards. The Program is administered by the County on behalf of the Town and is funded from fees assessed on the properties included on the assessment list. Every year while in the Program, each of the property owners are charged an annual compliance inspection fee and some incur costs for additional inspections, administrative, and abatement fees.

Typically, a property is placed in the Program after a County inspector identifies a potential fire hazard on the premises. Fire Departments, Code Enforcement, Public Works, and other public agencies can also submit complaints to the County. Once a parcel is placed in the Program, it will remain until it displays compliance for three consecutive years, at which point it will be removed.

**PREPARED BY:** Meredith Johnston  
Administrative Technician

---

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

---



PAGE 2 OF 3

SUBJECT: Weed Abatement Program Public Hearing to Consider Objections to the 2023  
Weed Abatement Program Assessment Report and Adopt a Resolution  
Confirming the Report and Authorizing Collection of the Assessment Charges  
DATE: July 17, 2023

BACKGROUND (continued):

Property owners in the Program are given the opportunity to abate their weeds prior to receiving an annual compliance inspection by County staff to confirm if the property has been cleared of hazards according to the requirements defined in the Santa Clara County Weed Abatement Program

(<https://weedabatement.sccgov.org/sites/g/files/exjcpb431/files/Program-Guidelines-Brochure.pdf>). If the property owner has not complied with the requirements of the Program by the time of the County inspection, then the Town authorizes the County to remove the weeds. The County recovers its costs through a special assessment on each parcel's property tax bill.

On December 6, 2022, the Town Council passed Resolution 2022-074 (Attachment 3) declaring hazardous vegetation (weeds) a public nuisance, providing for their abatement, and setting January 17, 2023 as a public hearing date for the annual program. The County mailed property owners a notice of the January 17, 2023 Public Hearing for the Los Gatos jurisdiction along with guidelines on the Weed Abatement Program.

DISCUSSION:

The 2023 Weed Abatement Assessment Report list includes assessment charges for the annual compliance inspection fee of \$92, and any additional inspection, administrative, and abatement fees as described in (Attachment 4). The attached resolution affirms these costs and acknowledges the costs will be assessed by the County Tax Collector against the respective properties.

In accordance with the Town Code Section 11.20.035, the assessment report was posted in three (3) prominent places in Town, one (1) of which was posted at Town Hall. The Town of Los Gatos mailed property owners a notice of the August 1, 2023 Public Hearing for the Los Gatos jurisdiction, including detailed information on the assessment charges and contact information for potential questions about the assessments (Attachment 5). A similar notice was also published twice in the Los Gatos Weekly, a newspaper of general circulation published in the Town. This public hearing is an opportunity to allow property owners who are on the assessment report to object to the assessment. At this time, no objections have been received.

CONCLUSION:

Staff recommends that the Council conduct a public hearing to consider objections to the 2023 Weed Abatement Program Assessment Report and adopt a resolution confirming the report and authorizing collection of the assessment charges.

PAGE 3 OF 3

SUBJECT: Weed Abatement Program Public Hearing to Consider Objections to the 2023  
Weed Abatement Program Assessment Report and Adopt a Resolution  
Confirming the Report and Authorizing Collection of the Assessment Charges

DATE: July 17, 2023

COORDINATION:

This program has been coordinated with the County's Consumer and Environmental Protection Agency (CEPA) - Weed Abatement Program.

FISCAL IMPACT:

Funds allocated in the adopted Operating Budget cover the cost of publishing the legal notices for the program. The County's cost to administer and carry out the program are recovered through the tax roll assessment charges levied against the properties included in the assessment report.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. 2023 Weed Abatement Program Assessment Report
2. Resolution Confirming the Report and Authorizing Collection of the Assessment Charges
3. Resolution 2022-074 Declaring Hazardous Vegetation (Weeds) a Public Nuisance and Providing for their Abatement
4. County Letter to Property Owners (December)
5. Town Letter to Property Owners (July)

2023 WEED ABATEMENT PROGRAM  
ASSESSMENT REPORT

SITUS	APN	TAXROLL AMT	
831 POLLARD	406-26-011	\$611.00	
0 CALLE MARGUERITA	409-04-049	\$92.00	
0	409-04-052	\$92.00	
0	409-08-001	\$92.00	
17291 WEDGEWOOD	409-14-013	\$92.00	
14330 LA RINCONADA	409-14-020	\$611.00	
14341 BROWNS	409-14-035	\$92.00	
14316 MULBERRY	409-15-005	\$92.00	
17631 WEDGEWOOD	409-17-010	\$92.00	
14821 GOLF LINKS	409-27-005	\$1,647.24	
16245 BURTON	424-06-115	\$611.00	
0 BURTON	424-06-116	\$611.00	
14823 LOS GATOS	424-07-065	\$611.00	
14926 LOS GATOS	424-10-009	\$611.00	
15545 BENEDICT	424-20-008	\$92.00	
15710 WINCHESTER	424-27-013	\$611.00	
0 LAUREL	510-41-068	\$611.00	
72 FAIRVIEW PLAZA	510-43-010	\$92.00	
110 WOOD	510-47-038	\$611.00	
138 WOOD	510-47-044	\$611.00	
15931 BLOSSOM HILL	523-25-028	\$92.00	
263 PINEHURST	523-43-019	\$92.00	
15941 QUAIL HILL	527-02-006	\$92.00	
72 DRYSDALE	527-02-007	\$92.00	
15790 BLOSSOM HILL	527-07-006	\$92.00	
16084 GREENRIDGE	527-15-002	\$611.00	
	LARGA VISTA	527-16-013	\$1,200.65
14960 LARGA VISTA	527-16-016	\$92.00	
14850 BLOSSOM HILL	527-18-014	\$92.00	
401 SURMONT	527-20-002	\$611.00	
175 BELWOOD GATEWAY	527-30-032	\$611.00	
310 SANTA ROSA	527-55-036	\$611.00	
0 ALTA TIERRA	527-55-042	\$92.00	
118 HARWOOD	527-56-020	\$92.00	
112 HARWOOD	527-57-008	\$92.00	
615 BLOSSOM HILL	529-16-026	\$2,537.45	
17045 PINE	529-20-011	\$92.00	
0 BELLA VISTA	529-21-010	\$92.00	
	BELLA VISTA	529-23-015	\$1,289.77
	BELLA VISTA	529-23-016	\$1,289.77
401 ALBERTO	529-23-018	\$611.00	
0 BELLA VISTA	529-23-019	\$92.00	
0 BELLA VISTA	529-23-020	\$92.00	
50 RESERVOIR	529-29-065	\$92.00	
30 RESERVOIR	529-29-066	\$611.00	
140 FOSTER	529-37-015	\$611.00	
	(VACANT)	529-39-047	\$2,471.60
16666 TOPPING	532-09-018	\$611.00	
0 TWIN OAKS	532-16-006	\$92.00	
16510 KENNEDY	532-17-025	\$92.00	
16461 KENNEDY	532-17-027	\$611.00	
16481 KENNEDY	532-17-028	\$611.00	
17511 PHILLIPS	532-39-009	\$92.00	
17435 PHILLIPS	532-39-013	\$611.00	
15220 KENNEDY	537-15-004	\$92.00	
14050 SHANNON	537-17-027	\$92.00	
233 FORRESTER	537-21-010	\$611.00	
229 FORRESTER	537-22-011	\$92.00	
210 WOODDED VIEW	537-23-046	\$92.00	
15876 SHANNON	537-26-009	\$92.00	
15760 SHANNON	537-26-018	\$611.00	
16060 CERRO VISTA	537-30-004	\$92.00	

**DRAFT RESOLUTION**

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
ADOPTING REPORT DESCRIBING PARCELS OF REAL PROPERTY,  
AND SHOWING AMOUNT OF HAZARDOUS VEGETATION (WEEDS)  
ABATEMENT ASSESSMENTS TO BE COLLECTED ON THE  
SECURED PROPERTY TAX ROLL OF THE TOWN OF LOS GATOS IN  
THE COUNTY OF SANTA CLARA, FOR 2023**

**WHEREAS**, the Town Council of the Town of Los Gatos, pursuant to Sections 39501 and 39502 of the Government Code of the State of California, has adopted by ordinance a procedure for the abatement of hazardous vegetation (weeds) and the collection of the charges therefore on the tax roll, as contained in Chapter 11, Article II, Sections 11.20.010 through 11.20.045 of the Los Gatos Town Code; and

**WHEREAS**, pursuant thereto, Resolution No. 2022-074 declaring weeds a public nuisance and providing for their abatement, was adopted by the Town Council on December 6, 2022; and

**WHEREAS**, pursuant to notice duly and regularly given, the public hearing was held with respect thereto on January 17, 2023, considering objections to the proposed abatement of hazardous vegetation (weeds) for properties listed on the 2023 Weed Abatement Commencement Report and ordering abatement of weeds as a public nuisance, was adopted by the Town Council; and

**WHEREAS**, a written report has been filed with the Town Clerk of the Town of Los Gatos, containing a description of each parcel of real property, and showing the amount of the charge to be collected on the secured property tax roll with respect thereto, computed in conformity with the charges prescribed by said ordinance; and

**WHEREAS**, the Town Clerk has set the 1<sup>st</sup> day of August 2023, utilizing teleconferencing, as the time and place when and where said Town Council would hear and consider all objections or protest, if any, to said report.

**RESOLVED**, by the Town Council of the Town of Los Gatos, County of Santa Clara, State of California, that the Town Council does hereby find and declare:

1. That notice of said public hearing was duly and regularly published and given as required by Section 11.20.035 of the Los Gatos Town Code and as otherwise

required by law; and

- 2. All persons desiring to be heard during said hearing were given an opportunity to do so, all matters and things pertaining to said report were fully heard and considered by the Town Council, and all protests and objections, if any, are hereby overruled.

**FURTHER RESOLVED**, that said report, and each charge thereon, with any charges that may be noted on the face of said report pursuant to action taken by this Town Council, is hereby confirmed and approved.

**FURTHER RESOLVED**, that the charges are affirmed and shall be assessed against the real properties listed on the property tax bill if not sooner paid.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 1<sup>st</sup> day of August 2023, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

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

ATTEST:

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

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

**RESOLUTION 2022-074**

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
DECLARING CERTAIN HAZARDOUS VEGETATION GROWING IN  
THE TOWN OF LOS GATOS TO BE A PUBLIC NUISANCE, DESCRIBING PROPERTIES  
WHERE SUCH NUISANCE EXISTS; ORDERING ABATEMENT AND SETTING A PUBLIC  
HEARING DATE OF JANUARY 17, 2023 TO CONSIDER OBJECTIONS FOR PROPOSED  
ABATEMENT**

**WHEREAS**, Section 39501 and Section 39502 of the Government Code of the State of California authorize the Town of Los Gatos to prescribe a procedure for compelling the owner, lessees or occupant of buildings, grounds, or lots to remove hazardous vegetation (weeds) from such buildings or grounds and adjacent sidewalks, and, upon his failure to do so, to remove such hazardous vegetation (weeds) at owner's expense, making the cost thereof a lien upon such property; and

**WHEREAS**, the Town of Los Gatos, by ordinance, has adopted such a procedure, codified in Chapter 11, Article II, Sections 11.20.010 through 11.20.045 of the Los Gatos Town Code.

**NOW, THEREFORE, BE IT RESOLVED:** that the Town Council hereby finds that hazardous vegetation "weeds," as that term is defined in Section 11.20.010, are growing upon and adjacent to private property within the Town of Los Gatos, and declares that all hazardous vegetation (weeds) growing upon any private property or properties, and in any sidewalk street, or alley within the Town of Los Gatos are a public nuisance and should be abated.

**BE IT FURTHER RESOLVED** that unless such nuisance be abated by the destruction or removal of such hazardous vegetation (weeds) within thirty (30) days after the adoption of this resolution, or within the time specified in a written agreement with the Town of Los Gatos Director of Parks and Public Works, or his representative, whichever time shall be later, as provided in Chapter 11, Article II, of the Los Gatos Town Code, the Town of Los Gatos shall cause such nuisance to be abated, and the expense thereof assessed upon the lots and lands from which, or in the front and rear of which, such hazardous vegetation (weeds) shall have been destroyed or removed, such expense constituting a lien upon such lots or lands until paid, and to be collected upon the next tax roll upon which general municipal taxes are collected.

**BE IT FURTHER RESOLVED** that the Director shall execute a "Notice to Destroy Hazardous Vegetation (Weeds)" in the form set forth in Section 11.20.020(b) and shall cause same to be published and posted in the manner prescribed by Section 11.20.020(c).

**BE IT FURTHER RESOLVED** that on the 17<sup>th</sup> day of January 2023 at a meeting of the Town Council beginning at 7:00 p.m. in the Council Chambers of the Civic Center, 110 E. Main Street, Los Gatos, California, and via Teleconference, a public hearing will be held during which all property owners in the Town of Los Gatos having any objections to the proposed destruction or removal of such hazardous vegetation (weeds) will be heard and given due consideration.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 6<sup>th</sup> day of December 2022 by the following vote:

**COUNCIL MEMBERS:**

**AYES:** Mary Badame, Matthew Hudes, Maria Ristow, Marico Sayoc, Mayor Rob Rennie  
**NAYS:** None  
**ABSENT:** None  
**ABSTAIN:** None

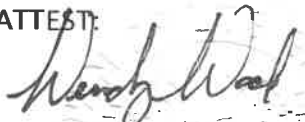
**SIGNED:**



**MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA**

**DATE:** 12/13/22

**ATTEST:**



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

**DATE:** 12/19/22

# County of Santa Clara

Consumer and Environmental Protection Agency  
Weed Abatement Division



1553 Berger Drive  
Building 1  
San Jose, CA 95112  
(408) 282-3145  
Fax (408) 286-2460

## AFFIDAVIT OF MAILING

### Notice of Public Hearing for the Jurisdictions of: Los Gatos

Brenda Petroni, declares as follows: That he is a citizen of the United States, over the age of 18 years, that at all times herein mentioned was an employee/agent of the County of Santa Clara.

Brenda Petroni, deposited in the United States Post Office, California, a Notice of Hearing, a copy of which is attached hereto. That said mailing list has been provided by the applicant and lists the owners of property who are entitled to Notice of Hearing. That on said day, there was a regular communication by United States mail between San Jose, California and the addresses shown on the attached mailing list.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 12/13/22

By: Brenda Petroni

1553 Berger Drive  
Building 1  
San Jose, CA 95112  
(408) 282-3123



# County of Santa Clara

Consumer and Environmental Protection Agency  
Weed Abatement Division



1553 Berger Drive  
Building 1  
San Jose, CA 95112  
(408) 282-3145  
Fax (408) 286-2460

November 23, 2022

## IMPORTANT NOTICE TO ABATE WEEDS

Dear Parcel Owner:

To protect your property and the surrounding area from possible fire, your jurisdictional city (or County if in unincorporated areas) contracts with the County of Santa Clara to operate a Weed Abatement Program. You are receiving this notice and information because our team has determined that your parcel is within the Weed Abatement Program. Please read the information carefully and contact us for clarification or additional information.

The governing body representing this parcel has or will adopt a resolution declaring your parcel as one that may contain fire hazards from weeds or other debris. Following this action, your governing body will conduct a public Commencement Hearing as part of a public meeting to consider an abatement order which would require you to remove any hazardous vegetation or combustible debris prior to the deadline in the included *Weed Abatement Program Schedule*. The public Commencement Hearing will be held on the date and at the place stated in the included *Notice to Destroy* and provides an opportunity for you to raise any objections or concerns with this requirement and with the parcel being on the Weed Abatement Program.

If you believe your parcel includes an environmentally sensitive habitat, please check the box on the blue *Return Reply Form* and provide any additional information on the *Return Reply Form* to assist us in determining the best approach to abating your parcel from fire hazards.

If, after the public Commencement Hearing, the Weed Abatement Program is approved for your parcel, the County is authorized by your city, and the California Health and Safety Code sections §14875-14922 to inspect your parcel to confirm that the parcel has been cleared of hazards and is compliant with *Minimum Fire Safety Standards* (see enclosed brochure). Inspections will begin after the abatement deadline for your jurisdiction. This notice does not relieve you of your responsibility to complete the necessary work before your jurisdiction's deadline. All parcels designated to be part of the Weed Abatement Program will have a \$92 annual inspection fee to cover the cost of the program. This \$92 cost will be included on your property tax bill as a special assessment.

In addition to the annual inspection fee, if the parcel is found to be non-compliant at the time of our inspection, the parcel will be assessed a processing fee of \$519 per parcel and the property will be scheduled for abatement by the County designated contractor. If the abatement work is completed before the County designated contractor arrives, you will not incur additional charges. However, should the abatement work be performed by the County contractor, the parcel will incur the cost associated with the contractor's work plus an additional County administrative fee of \$891 per parcel.

The County will use the least costly method of abatement considering the physical characteristics of your property and any other environmental or related concerns. Fees are detailed on the price list included in the

**Board of Supervisors:** Mike Wasserman, Cindy Chavez, Otto Lee, Susan Ellenberg, S. Joseph Simitian  
**County Executive:** Jeffrey V. Smith

*Notice to Destroy.* The total amount of fees incurred will be included as a special assessment on your property tax bill following confirmation of the charges by your city (or the County if the parcel is in an unincorporated area) at a public Assessment Hearing. This Assessment Hearing will be scheduled in late spring/early summer, with the exact date determined by your governing body. Typically, Assessment Hearing information is posted at the physical location of the governing body (typically at a city hall building or other government center and most also publish this information on their websites) prior to the meeting.

**You can avoid all costs, other than the \$92 annual inspection fee, by completing the abatement work yourself according to Minimum Fire Safety Standards (see enclosed brochure) prior to the abatement deadline for your jurisdiction and maintaining the Minimum Fire Safety Standards for the duration of fire season, which typically runs March through October. Parcels will be removed from the program after three consecutive years of voluntary compliance (work completed by parcel owner prior to the deadline and confirmed by our inspection).**

In preparation for this program, please complete and return the enclosed blue *Return Reply Form* so we are notified of your plans for abating your property.

**If you designate on your *Return Reply Form* that you intend to abate the weeds yourself, you need to complete the abatement before the deadline listed on the attached abatement program schedule and maintain fire safe conditions for the duration of the fire season. Responding that you intend to provide maintenance yourself does not release you from this responsibility to have the maintenance *completed* before your deadline and *repeated* as necessary to maintain Minimum Fire Safe Standards. The County will abate hazardous vegetation as required after the deadline for your jurisdiction at your cost.**

**Enclosed you will find the following information:**

- √ ***Return Reply Form* specific to your parcel. Please complete and return to us.**
- √ ***Notice to Destroy Weeds* informing you of an upcoming public Commencement Hearing (that you may attend if you have any objections to the proposed removal of hazardous vegetation or debris from your parcel). Your jurisdiction may offer the ability for you to participate in this meeting virtually; please confirm directly with your jurisdiction.**
- √ ***Weed Abatement Program Schedule* for your city with current County abatement fees.**
- √ ***County of Santa Clara Weed Abatement Brochure*.**

Please be aware that any abatement performed by the County must comply with all applicable regulations. If your property falls within an area designated as possible habitat for burrowing owls or any other protected species of bird or animal, the methods used to remove vegetation may be regulated by specific laws or local ordinances.

If you are no longer the owner of the parcel identified by this mailing, please notify us immediately at (408) 282-3145. If you sell your parcel after the date of this letter, it is your responsibility to notify the new owner and to include the obligation to pay any abatement costs in your agreement of sale. Without taking this action, you will be responsible for all hazard abatement charges assessed to the parcel.

Our goals are voluntary compliance with the Minimum Fire Safety Standards and that all properties remain safe from fire. If you have any questions or need on-site advice to help you achieve compliance with the Minimum Fire Safety Standards, please call us at (408) 282-3145.

Sincerely,

DocuSigned by:  


9A7E52EB1925473  
Edgar Nolasco, Director

Consumer and Environmental Protection Agency

# Notice to Destroy Weeds

NOTICE IS HEREBY GIVEN that on December 6, 2022, pursuant to the provisions of Section 11.20.020 of the Town Code of the Town of Los Gatos, the Town Council of said Town adopted a Resolution declaring that all weeds growing upon any private property or in any street, sidewalk or alley, as defined in Section 11.20.020 of such code, constitute a public nuisance, which nuisance must be abated by the destruction or removal thereof.

NOTICE IS FURTHER GIVEN that property owners shall within thirty days after the adoption of such resolution, or within the time specified in a written agreement with the Director of Parks and Public Works of the Town of Los Gatos, or the Director of Parks and Public Works' representative, whichever time shall be later, remove all such weeds from their property, the abutting sidewalks, and the abutting half of the street in front, and alleys, if any, behind such property, and between the lot lines thereof as extended, or such weeds will be destroyed or removed and such nuisance abated by the Town of Los Gatos, in which case the cost of such destruction or removal will be assessed upon the lots and lands from which, or from the front or rear of which, such weeds shall have been destroyed or removed; and such cost will constitute a lien upon such lots or lands until paid, and will be collected upon the next tax roll upon which general municipal taxes are collected. All property owners having any objections to the proposed destruction or removal of such weeds are hereby notified to attend a meeting of the Town Council of such Town to be held in the Council Chambers of said Town at 110 East Main Street, Los Gatos, California, on **Tuesday, January 17, 2023 at 7:00 p.m.**, or as soon thereafter as the matter can be heard, when their objections will be heard and given due consideration. *The language and format for this notice is required by California Health and Safety Code Sections 14891 Et. Seq.*

## LOS GATOS WEED ABATEMENT PROGRAM SCHEDULE

- |                          |   |
|--------------------------|---|
| <b>January 17, 2023</b>  | Public hearing to consider objections to Abatement List.  |
| <b>April 15, 2023</b>    | <u>PARCEL ABATEMENT DEADLINE</u><br>Parcel must be free from hazardous vegetation by this date or Inspector will order abatement. |
| <b>July-August, 2023</b> | Assessment Hearing to protest abatement charges<br>(Date subject to change, please confirm with City Clerk)                       |

### 2023 COUNTY WEED ABATEMENT FEES

*Properties in the Weed Abatement Program, you will be responsible for an annual inspection fee of \$92.00 per parcel.*

Please be advised that the property owner of any parcel found to be non-compliant on or after the March 1<sup>st</sup> deadline will be charged a processing fee of \$519.00 and the property will be scheduled for abatement by the County contractor. If you complete the abatement work before the County contractor performs the abatement, you will not incur further charges. Should the abatement work be performed by a County contractor, you will be assessed the contractor's charges plus a County administrative fee of \$891.00 per parcel.

### 2023 COUNTY CONTRACTOR'S WEED ABATEMENT PRICE LIST

**A) Disc Work\*\***

PARCEL SIZE:	1 <sup>st</sup> Disc	+ 2 <sup>nd</sup> Disc	= Total Discs
0-12,500 sq.ft.	<u>\$412.39</u>	<u>\$165.79</u>	<u>\$578.18</u>
12,501sq.ft.- 43,560sq.ft.	<u>\$412.39</u>	<u>\$165.79</u>	<u>\$578.18</u>
Larger than 1 Acre	<u>\$299.56</u>	<u>\$146.30</u>	<u>\$445.86</u> (PER ACRE)

\*\* It is required that parcels be disced twice a year. The cost for the first discing is higher due to additional work normally required during the first discing.

- |                          |   |
|--------------------------|---|
| <b>B) HANDWORK</b>       | <u>\$5.57 PER 100 Square Feet (SF)</u>  |
| <b>C) FLAIL MOWING</b>   | <u>6 Foot Mower \$7.11 PER 1,000 SF</u><br><u>12 Foot Mower \$7.11 PER 1,000 SF</u> |
| <b>D) LOADER WORK</b>    | <u>\$170.40 PER HOUR</u>  |
| <b>E) DUMP TRUCK</b>     | <u>\$157.29 PER HOUR</u>  |
| <b>F) BRUSH WORK</b>     | <u>\$5.32 PER 100 SF</u>  |
| <b>G) DEBRIS REMOVAL</b> | <u>\$58.52 PER HOUR</u>   |
| <b>H) DUMP FEE</b>       | <u>100%</u>   |

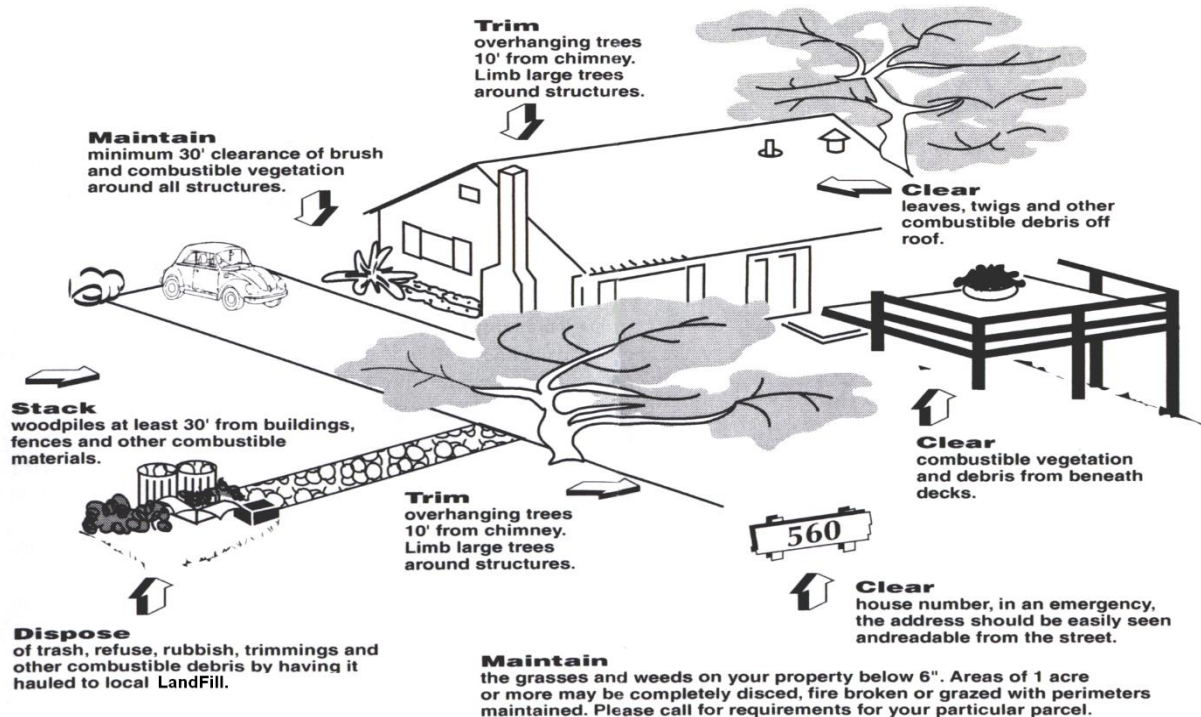
Added to orders with debris removal at 100% of the dump site charge.

**\*Please note this program does not offer herbicide application as a method of abatement.**



## MINIMUM FIRE SAFETY STANDARDS (MFSS)

1. **Vegetation must not exceed 6 inches in height any time after the compliance deadline.**
2. Maintain grasses and weeds below 6 inches for 10 feet horizontally on both sides of all roadways, including driveways and access routes. Roads and driveways must maintain a clearance of 10' W by 13'6" H for all vegetation.
3. Clear flammable vegetation a minimum of 30 feet around any structure, occupied or not. Ornamental vegetation should be kept clear of dead material. Some conditions, such as slopes, may require up to a 100 foot clearance.
4. Parcels one acre or less shall be completely abated. Parcels over one acre up to five acres require 30 foot clearance around structures and perimeter property lines. Additional 30 foot cross fuel breaks may also be required.
5. Parcels larger than five acres require 30 foot clearance around structures and perimeter property lines in addition to 30-foot cross fuel breaks as needed to separate the remaining vegetation into sections no larger than five acres.
6. Keep property clear of accumulation of combustible debris, such as trash, wood, and dead vegetation. Stacked firewood and neatly piled yard waste is not considered to be combustible debris.
7. Keep vegetation cleared from under the eaves of houses.
8. Trim tree branches to at least 10 feet away from chimneys. Trim tree branches up from the ground to provide at least 6 feet of vertical clearance.
9. Clear leaves, pine needles and debris from roof and gutters.



## Fire Resistant Landscaping

The following is a partial list of fire resistant plants that you may choose to use around your home to reduce the risk of fire. Contact your local nursery for selections appropriate to your area. All grasses, including those purportedly fire resistant, must be maintained below 6" in height.

### Trees:

African Sumac  
Pepper

### Shrubs:

Bearberry  
Carmel Creeper  
Carolina Cherry  
Catalina Cherry

### Escallonia

Hopseed Bush  
Lemonade Berry

### Groundcover:

Aaron's Beard  
Australian Daisy  
Candytuft  
Sterile Capeweed

### Freeway Daisy

Rock Rose (except Gum Variety)

# Fire Safety Through Vegetation Management

## Santa Clara County

Consumer and Environmental  
Protection Agency

Weed Abatement Program



1553 Berger Drive #1

San Jose, Ca 95112

Phone (408) 282-3145

Fax: (408) 286-2460

[SCC.WeedAbatement@cep.sccgov.org](mailto:SCC.WeedAbatement@cep.sccgov.org)

## The Santa Clara County Weed Abatement Program

The Santa Clara County Consumer and Environmental Protection Agency and your city are working together to protect your community from fire. We need your help. Please read and follow the directions provided in this brochure regarding fire prevention on your property. The purpose of the Weed Abatement Program is to prevent fire hazards posed by vegetative growth and the accumulation of combustible materials.

The Weed Abatement program is entirely funded from fees charged to residents. Fees will be assessed for any property in the program. This is to cover the cost of the compliance inspection for the property. Properties that fail the compliance inspection will be charged a failed inspection fee, even if the resident completes the weed abatement. If the property requires abatement by the County contractor, the property owner will be responsible for the actual cost of abatement plus an administrative fee. Properties that meet and maintain the minimum fire safety standards will not be charged other than the annual fee.

Program staff annually inspect parcels at the beginning of the fire season, which is typically in March or April depending on your jurisdiction. If the parcel is not in compliance at the time of inspection, the property owner will be charged a failed inspection fee, and the owner will be sent a courtesy notice as a reminder to abate the weeds. If the weeds are not abated by the property owner, the work will be completed by the County contractor. The property owner will pay the contractor's fees plus a County administrative fee. All fees will be included in your property tax bill.

### Our Goal Is Voluntary Compliance

#### Property Owner's Responsibilities

- Do not allow a fire hazard to exist on your property. The Minimum Fire Safety Standards (MFSS) in this brochure give you guidelines to follow in order to maintain your property and protect against a fire hazard. **Please contact our office if you need guidance or have any questions regarding the requirements!**
- Make arrangements to have your property maintained throughout the year. Contractors can be found in the yellow pages. You may choose to have the County contractor maintain your property. A current price list is included in your packet.
- Please complete and return the Reply Form provided in your mailing packet by the date on the form. Indicate your preference regarding performance of weed abatement services.

#### Program Staff Responsibilities

- Weed Abatement Inspectors will perform periodic inspections on all parcels included in the Santa Clara County Weed Abatement Program. Properties that fail the compliance inspection will be charged a failed inspection fee, even if the resident completes the weed abatement.

- Inspectors will order the County contractor to perform all necessary abatement work on any parcel where the MFSS are not met. An attempt will be made to give the owner a courtesy notice prior to releasing the work order.
- The County contractor uses several methods of abatement including discing and handwork. The property owner is free to select whatever method they choose, provided the MFSS of all federal, state and local laws are met.
- The Weed Abatement Program will place inspection costs and the charges for County contractor services plus a County administrative fee on the property owner's tax bill during the next fiscal year.

### Burrowing Owls

These small owls nest in abandoned ground squirrel burrows. Discing collapses the burrows and kills the young. These owls are listed as a state Species of Special Concern and are protected by the federal Migratory Bird Treaty Act. If you suspect burrowing owls on your property you **must** use another form of weed abatement such as mowing or weed-eating. If you request the County perform abatement services, please notify program staff or your City if burrowing owls are known to exist on your property.

### Frequently Asked Questions

#### Q. Why have I received an Abatement Notice?

A. Typically, a property is placed on the program if a Weed Abatement Inspector identified a potential fire hazard on the property. Fire Departments and other agencies also submit complaints to the Weed Abatement Program.

#### Q. What is required of me now that I am in the Program?

A. All property owners are required to maintain their property free of fire hazards throughout the year.

#### Q. The grasses planted on my property are fire resistant. Are they exempt from the Weed Abatement program?

A. No. Even grasses that possess some fire resistant qualities are not fire proof, and they can add fuel to any site that is subject to a fire. Additionally, fire resistant grasses are rarely found in a pure, homogenous stand but rather are usually found to occur mixed with other common introduced annual grasses that are highly flammable and hazardous in a fire event. Finally, many grasses occur in Santa Clara County and species identification is difficult in the field, especially after the spring when the reproductive portions required for identification have dried and dispersed. Weed Abatement Inspectors can only focus on the presence of grasses and weeds on your property and the Minimum Fire Safety Standards, and not on grass species identification. Therefore, all grasses are required to be below 6 inches in height.

#### Q. What is the SC County Weed Abatement Program?

A. This is a monitoring program and our primary objective is voluntary compliance. See the first two paragraphs of this brochure for further specifics.

### More FAQ:

#### Q. How long will I be on the Program?

A. Your property will remain on the Program for three years. If no hazards are found during that time, your property may be removed from the program.

#### Q. How much will this cost me?

A. There will be an annual fee to cover the cost of the compliance inspection. If the parcel does not meet the MFSS when it is first inspected in the spring, or if work is required by the County contractor, you will be charged additional fees. Our goal is to ensure that the MFSS are met at the lowest possible cost to the property owner.

#### Q. How will I be billed?

A. Any charges for the inspection and any abatement work performed will appear as a special assessment on your next property tax bill.

#### Q. Why have you performed work on my property while the vegetation is still green?

A. Grass, weeds or piles of combustible debris have been declared a public nuisance by your jurisdiction. Abating fire hazards in the spring minimizes the volume of combustible material before the hazards increase and dries out completely during the peak fire season.

#### Q. Will you notify me prior to beginning abatement work?

A. Property owners are responsible for preventing fire hazards on their property. If the MFSS have been met, but further work is necessary, you will receive notice prior to the County contractor performing the work. If the MFSS have **not** been met, an attempt will be made to give the owner a courtesy notice prior to initial abatement.

#### Q. Where can I find someone to provide abatement services?

A. Weed Abatement contractors can be found in the Yellow Pages under "Weed Control Services" or "Discing Services". You may have the County contractor perform the necessary work; see your mailing packet for a current price list as administrative costs are charged.

#### Q. How can I get additional information or assistance regarding the specific requirements for my property?

A. Weed Abatement Inspectors are available to assist you and answer your questions. Please call our Customer Service line at (408) 282-3145 to schedule a consultation with program staff or to obtain additional information.

#### Q. I have Grazing Animals do I need to perform abatement?

A. Grazing animals do not absolve you of your responsibilities to provide a fire safe condition on your property. You will need to check with our office to determine if grazing is adequate or if additional work is required.



## TOWN OF LOS GATOS

PARKS AND PUBLIC WORKS DEPARTMENT  
PHONE (408) 399-5770

SERVICE CENTER  
41 MILES AVENUE  
LOS GATOS, CA 95030

July 17, 2023

RE: **NOTICE OF PUBLIC HEARING ON AUGUST 1, 2023, AT 7:00 P.M. TO CONSIDER THE 2023 WEED ABATEMENT PROGRAM ASSESSMENT REPORT AND ADOPT A RESOLUTION CONFIRMING THE REPORT AND AUTHORIZING COLLECTION OF THE ASSESSMENT CHARGES**

You are receiving this letter because you own a parcel that is included in the 2023 Weed Abatement program. On December 6, 2022, the Town Council authorized the initiation of the annual Weed Abatement program.

The Town Council of the Town of Los Gatos has scheduled a public hearing on August 1, 2023 to consider the 2023 Weed Abatement Assessment Report and Adopt a Resolution Confirming the Report and Authorizing the Collection of the Assessment Charges.

The attached Assessment Report reflects the charges that will be assessed on your tax roll. A copy of the letter you received in December 2022 describing the charges is attached for your reference.

If you have questions about the program or proposed charges, we encourage you to contact the Santa Clara County Weed Abatement Department **PRIOR** to the public hearing at 408-282-3145. By contacting the County (who manages the program for the Town), you will be able to discuss any concerns you may have, with the intent of achieving resolution prior to the public hearing procedure.

**IMPORTANT NOTICE:** This is a hybrid meeting and will be held in person at the location listed on the agenda and virtually through the Zoom webinar application. Members of the public may provide public comments during the public hearing in person or virtually through the Zoom webinar, by following the instructions listed on the meeting agenda. The live stream of the meeting may be viewed on television and/or online at [www.LosGatosCA.gov/TownYouTube](http://www.LosGatosCA.gov/TownYouTube).

When the meeting agenda is posted, it will include instructions for the participation in the public process. The live stream of the meeting may be viewed on television and/or online at [www.LosGatosCA.gov/TownYouTube](http://www.LosGatosCA.gov/TownYouTube)

Town Council reports related to the Weed Abatement program may be viewed on the Town's website at [www.LosgatosCA.gov](http://www.LosgatosCA.gov) – under the Agenda & Minutes page. The Council dates that contain these reports are December 6, 2022, January 17, 2023, and August 1, 2023 (8/1 will be available for public review three days prior to the meeting).



Persons wishing to protest the proposed assessment report and/or collection of assessment charges may do so by mailing the protest to the Town Clerk 110 E. Main Street, Los Gatos, CA 95030; emailing to the Town Clerk - [Clerk@LosGatosCA.gov](mailto:Clerk@LosGatosCA.gov), or attending the public hearing by teleconference and speaking. Any written protest must be received by the Town Clerk no later than 11:00 a.m. on August 1, 2023, as described above. Protests must identify the grounds for the protest, the person filing the protest, and the property owned by the person filing the protest.

All INTERESTED PERSONS are encouraged to appear at the Public Hearing and be heard. If anyone wishes to challenge the action on the above application in court, they may be limited to raising only those issues they or anyone else raised at the Public Hearing described in this notice, or in written correspondence delivered to the Town Council at, or prior to, the Public Hearing. **Deadline for all written correspondence is 11:00 a.m. the day of the meeting.**

Sincerely,



**Meredith Johnston**

Administrative Technician, Parks and Public Works



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 08/01/2023

ITEM NO: 11

DESK ITEM

---

DATE: August 1, 2023  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Weed Abatement Program Public Hearing to Consider Objections to the 2023 Weed Abatement Program Assessment Report and Adopt a Resolution Confirming the Report and Authorizing Collection of the Assessment Charges

REMARKS:

Attachment 6 contains a public comment received between Monday, July 31, 2023, 11:01 a.m. and August 1, 2023, 11:00 a.m.

The protest is for parcel number:  
424-10-009

ATTACHMENTS:

Previously received with the Staff Report:

1. 2023 Weed Abatement Program Assessment Report
2. Resolution Confirming the Report and Authorizing Collection of the Assessment Charges
3. Resolution 2022-074 Declaring Hazardous Vegetation (Weeds) a Public Nuisance and Providing for their Abatement
4. County Letter to Property Owners (December)
5. Town Letter to Property Owners (July)

Received with this Desk Item:

6. Public comment received between Monday, July 31, 2023, 11:01 a.m. and August 1, 2023, 11:00 a.m.

PREPARED BY: Meredith Johnston  
Administrative Technician Parks and Public Works

---

From: Undine Tsai <[REDACTED]>  
Sent: Monday, July 31, 2023 1:06 PM  
To: Clerk <[Clerk@losgatosca.gov](mailto:Clerk@losgatosca.gov)>; [scc.weedabatement@cep.sccgov.org](mailto:scc.weedabatement@cep.sccgov.org)  
Cc: Apartment List [REDACTED]  
Subject: Fw: Parcel# 424-10-009 weed been abated photos proofed

[EXTERNAL SENDER]

Hi,

This is Undine Tsai, I want to inform you that I won't be able to attend the Public Hearing on Aug 1, 2023 at 7pm about the authorizing collection of the assessment charges. My parcel # is 424-10-009 at [REDACTED] Los Gatos, CA 95032

I have always complied the weed abatement on time and always have sent photos to show you the proofs that I did.

I have no extra money to pay more taxes as I am already a 68 years old senior. I have already followed the weed abatement regulation so I disagreed county charging me any more money .

sincerely  
Undine Tsai

---

From: Undine Tsai <[REDACTED]>  
Sent: Saturday, July 29, 2023 9:39 PM  
To: [scc.weedabatement@cep.sccgov.org](mailto:scc.weedabatement@cep.sccgov.org) <[scc.weedabatement@cep.sccgov.org](mailto:scc.weedabatement@cep.sccgov.org)>  
Cc: L L [REDACTED]  
Subject: Fw: Parcel# 424-10-009 weed been abated photos proofed





---

**From:** Undine Tsai

**Sent:** Monday, May 15, 2023 10:26 PM

**To:** [scc.weedabatement@cep.sccgov.org](mailto:scc.weedabatement@cep.sccgov.org) <[scc.weedabatement@cep.sccgov.org](mailto:scc.weedabatement@cep.sccgov.org)>

**Cc:** Undine Tsai <[REDACTED]>

**Subject:** Parcel# 424-10-009 weed been abated photos proofed









Sent from my iPhone



**From:** Kumre, Moe <Moe.Kumre@cep.sccgov.org>  
**Sent:** Tuesday, August 1, 2023 10:34 AM  
**To:** Meredith Johnston <MJohnston@losgatosca.gov>  
**Subject:** RE: Parcel# 424-10-009 weed been abated photos proofed

[EXTERNAL SENDER]

This parcel was added in 2021.

It was inspected on May 12, 2022, and found noncompliant at the time of the inspection.

It was inspected on April 27 of this year, and it failed again.

The fees assessed are for the inspection and work order processing and are even if the then brought into compliance.



**Moe Kumre**

**Weed Abatement manager**

County of Santa Clara

Consumer and Environmental Protection Agency

office: (408)282-3123 email: [moe.kumre@cep.sccgov.org](mailto:moe.kumre@cep.sccgov.org)



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 08/01/2023

ITEM NO: 12

---

DATE: July 27, 2023  
TO: Mayor and Town Council  
FROM: Gabrielle Whelan, Town Attorney  
SUBJECT: Introduce an Ordinance Titled “An Ordinance of the Town Council of the Town of Los Gatos Amending Section 18.30.040, ‘Penalties for Violations,’ of Division 1, Article III, of Chapter 18 of the Town Code, ‘Social Host Ordinance’”

**RECOMMENDATION:**

Introduce an ordinance titled “An Ordinance of the Town Council of the Town of Los Gatos amending section 18.30.040, ‘Penalties for Violations,’ of Division 1, Article III, of Chapter 18 of the Town Code, ‘Social Host Ordinance.’”

**BACKGROUND:**

The Town adopted a social host ordinance in early 2022, which is codified in Town Code Sections 18.30.010 and following. The ordinance applies to underage social gatherings where intoxicants are consumed by underage persons. “Underage persons” is defined as those under twenty-one years of age. The ordinance prohibits underage social gatherings, where intoxicants are consumed by underaged persons, on private or public property in the Town. The ordinance renders parents or guardians jointly and severally liable for violations.

**DISCUSSION:**

Town Code Section 18.30.050 sets forth the penalties for violations of the ordinance. The penalties are a criminal citation or an administrative citation. To date, the Town has enforced the ordinance via administrative citations.

The Town’s process is that a Police Officer prepares a case report and forwards the report to the Town Attorney for review. If the report establishes that a violation occurred, the Town Attorney forwards the case report to the Town’s Code Compliance Officer for issuance of an

---

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

---

DISCUSSION (continued):

administrative citation and fine. As written, Section 18.30.040 requires that the administrative citation be issued within ten days of the violation. Over the past year, staff has observed that ten days is sometimes not enough time for the case report to be completed and forwarded to the Town Attorney for review and then forwarded to the Town's Code Compliance Officer. Other than the ten-day requirement in the Town Code, there is no legal requirement that citations be issued within ten days of a violation.

In order to allow sufficient time to process these violations, staff is proposing that the ten-day time limit be removed from the social host ordinance. A redline showing the proposed change to the ordinance is attached as Attachment 1. A clean version of the ordinance is attached as Attachment 2.

CONCLUSION:

Town staff is proposing that the ten-day time limit be removed from the social host ordinance.

COORDINATION:

This report was prepared by the Town Attorney in collaboration with the Police Department, Community Development Department, and Town Manager.

FISCAL IMPACT:

This will not affect the Town's budget.

ENVIRONMENTAL ASSESSMENT:

The proposed ordinance is not a project subject to CEQA, because it can be seen with certainty that it will not have a significant impact on the physical environment.

Attachments:

1. Redline Proposed Ordinance
2. Clean Proposed Ordinance

---

**Sec. 18.30.040. Penalties for violations.**

- (a) The enforcement officer, at his or her discretion, may immediately issue a citation for violation of this Chapter upon evidence of the violation. There is no requirement of a first warning in order for the enforcement officer to issue this citation.
- (b) Administrative Fine: A first violation of this chapter shall result in a citation with a one thousand five hundred dollar (\$1,500.00) fine. A second violation and subsequent violations shall result in a citation with a three thousand dollar (\$3,000.00) fine.
- (c) The enforcement officer shall give notice of a violation of this chapter by issuing a citation to any and all responsible persons identified by the chapter ~~within ten (10) days of the violation~~. The citation shall also give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing.
- (d) The administrative fine prescribed in this section is in addition to any cost recovery fee for public safety responses that may be assessed pursuant to section 18.30.040.

( Ord. No. 2330 , § 1, 5-3-22)

ATTACHMENT 1

**DRAFT ORDINANCE**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
AMENDING SECTION 18.30.040, "PENALTIES FOR VIOLATIONS," OF DIVISION 1,  
ARTICLE III, OF CHAPTER 18 OF THE TOWN CODE, "SOCIAL HOST ORDINANCE"**

**WHEREAS**, the Town’s social host ordinance is codified at Town Code Sections 18.30.040 and following;

**WHEREAS**, Town Code Section 18.30.040 currently addresses penalties for violations for the social host ordinance;

**WHEREAS**, Section 18.30.040 (c) provides that the enforcement officer shall give notice of a violation of this chapter by issuing a citation to any and all responsible persons identified by the chapter within ten (10) days of the violation;

**WHEREAS**, staff has observed that ten days is insufficient time for the case report to be completed and forwarded to the Town Attorney for review and forwarding to the Town’s Code Compliance Officer;

**WHEREAS**, there is no state or local requirement that an administrative citation be issued within ten days of a Town Code violation; and

**WHEREAS**, staff is proposing an ordinance to amend the Town’s social host ordinance to remove the ten-day time limit;

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Los Gatos as follows:

**SECTION I.** Section 18.30.040, “Penalties for Violation” of Division 1, “Social Host Ordinance,” of Chapter 18, of the Town Code is amended to read as follows:

**Sec. 18.30.040. Penalties for violations.**

- (a) The enforcement officer, at their discretion, may immediately issue a citation for violation of this Chapter upon evidence of the violation. There is no requirement of a first warning in order for the enforcement officer to issue this citation.
- (b) Administrative Fine: A first violation of this chapter shall result in a citation with a one thousand five hundred dollar (\$1,500.00) fine. A second violation and subsequent violations shall result in a citation with a three thousand dollar (\$3,000.00) fine.

ATTACHMENT 2

- (c) The enforcement officer shall give notice of a violation of this chapter by issuing a citation to any and all responsible persons identified by the chapter. The citation shall also give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing.
- (d) The administrative fine prescribed in this section is in addition to any cost recovery fee for public safety responses that may be assessed pursuant to section 18.30.040.

**SECTION II. Severability.**

In the event that a court of competent jurisdiction holds any Section, subsection, paragraph, sentence, clause, or phrase in this Ordinance unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this Section and shall not affect the validity of the remaining portions of this Section. The Town hereby declares that it would have adopted each Section, subsection, paragraph, sentence, clause, or phrase in this Section irrespective of the fact that any one or more Sections, subsections, paragraphs, sentences, clauses, or phrases in this Section might be declared unconstitutional, preempted, or otherwise invalid.

**SECTION III. CEQA.**

Adopting this Ordinance is not a project subject to CEQA because it can be seen with certainty that it will not impact the environment (CEQA Guidelines Section 15378).

**SECTION IV. Publication.**

The Town Council hereby directs the Town Clerk to cause this Ordinance or a summary thereof to be published or posted in accordance with Section 36933 of the Government Code of the State of California.

**SECTION V. Effective Date.**

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the \_\_\_\_\_, 2023, and adopted by the following vote as an ordinance of the

Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the \_\_\_\_\_, 2023. This ordinance takes effect 30 days after it is adopted.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

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

ATTEST:

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

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

DRAFT



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 08/01/2023

ITEM NO: 13

---

DATE: July 10, 2023  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Receive the Fiscal Year 2022/23 Parks Commission Accomplishments and Provide Direction on the Fiscal Year 2023/24 Work Plan

**RECOMMENDATION:**

Receive the Fiscal Year 2022/23 Parks Commission accomplishments and provide direction on the Fiscal Year 2023/24 Work Plan.

**BACKGROUND:**

The Town of Los Gatos Parks Commission (Commission) consists of six adult members and one Youth Commission representative. The Commission is advisory to Town Council, receiving public input, evaluating options, and making recommendations on policy issues pertaining to public parks, off-street trails, open space, grounds, and street trees. The Commission meets six times per year on even-numbered months.

In Fiscal Year (FY) 2022/23, the Commission heard reports and provided guidance on the following items:

- Lyndon Bandstand Improvements
- Open Space Vegetation Management
- Volunteer Events
- Park Operations
- Holiday Events in Parks
- Pickleball at La Rinconada Park and Blossom Hill Park
- Capital Improvement Needs for Parks
- Parks Related Use Agreements
- Parks Related Portions of the Senior Services Road Map

**PREPARED BY:** Nicolle Burnham  
Director, Parks and Public Works

---

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

---



SUBJECT: Receive the Fiscal Year 2022/23 Parks Commission Accomplishments and Provide Direction of the Fiscal Year 2023/24 Work Plan.

DATE: July 10, 2023

DISCUSSION:

At its meetings in April and June 2023, the Parks Commission discussed potential work plan items. Among the items discussed were:

1. Inventory of Park Assets – Evaluate existing amenities and potential future needs.
2. Trail Connectivity – Consider ways to connect trails between open space areas.
3. Street Tree Program – Develop an understanding of how this program functions, including the list of approved trees.
4. Meeting Schedule – Consider converting to a monthly meeting cycle to improve communication and outcomes.
5. Park Use Fees and Agreements – Reviewing use agreement terms and associated fees.
6. Pickleball and Tennis Court Usage and Requirements for Play – Evaluate options for reducing the impact on adjacent residents of pickleball play at La Rinconada Park. This may include changing the mode of play, limiting hours of play or identifying potential new court locations.
7. Art in Parks – Connecting with the Arts and Culture Commission to consider the addition of art in public parks to enhance the user experience.

In its discussion on June 5, 2023, the Parks Commission identified the priorities shown in Table 1 and proposes these as work plan items. The Commission did not recommend the “Inventory of Park Assets” and “Meeting Schedule” items for inclusion in the FY 2023/24 Work Plan.

**Table 1. Parks Commission Work Plan for Fiscal Year 2023/24**

<b>Work Item</b>	<b>Proposed Commission Approach</b>	<b>Required Staff Support</b>
Trail Connectivity	Formed Ad Hoc Committee for evaluation and research with reporting in June 2024	Periodic guidance / available mapping
Street Tree Program	Receive a staff report on the program	Prepare a staff report and presentation for Commission consideration
Park Use Fees and Agreements	Receive a staff report and determine next steps	Prepare a staff report and presentation for Commission consideration
Pickleball and Tennis Court Usage	Formed Ad Hoc Committee for evaluation and research with reporting in June 2024	Guide evaluation and discussions with pickleball players and Los Gatos Saratoga Recreation
Art in Parks	Coordinate with Arts and Culture Commission staff liaison	Coordinate / collaborate with staff liaison for Arts and Culture Commission

PAGE 3 OF 3

SUBJECT: Receive the Fiscal Year 2022/23 Parks Commission Accomplishments and  
Provide Direction of the Fiscal Year 2023/24 Work Plan.

DATE: July 10, 2023

CONCLUSION:

The Parks Commission looks forward to Council direction on its recommended work items in Table 1 as their FY 2023/24 Work Plan. Two, two-person Ad Hoc Committees were established to address the most pressing items, trail connectivity and pickleball/tennis court usage. If Council agrees, street trees, park use fees, and art would be brought to the Commission after staff prepares the necessary analysis and coordination with other Town staff.

COORDINATION:

This report was coordinated with the Parks Commission.

FISCAL IMPACT:

There is no fiscal impact associated with this work plan.

ENVIRONMENTAL ASSESSMENT:

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



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 08/01/2023

ITEM NO: 14

DATE: July 27, 2023  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Consider an Appeal of a Planning Commission Decision to Approve a Fence Height Exception Request for Construction of an Automated Vehicular Gate Exceeding the Maximum Height and with Reduced Setbacks on Property Zoned R-1:8. **Located at 380 Blackwell Drive.** APN 424-12-027. Categorically Exempt Pursuant to CEQA Guidelines Section 15303 (e): New Construction or Conversion of Small Structures. Fence Height Exception Application FHE-23-002. PROPERTY OWNER: Larry Cesnik and Martha Johnson. APPELLANT: Larry Cesnik. APPLICANT: Ramin Zohoor. PROJECT PLANNER: Sean Mullin.

RECOMMENDATION:

Deny an appeal of a Planning Commission decision to approve a fence height exception request for construction of an automated vehicular gate exceeding the maximum height and with reduced setbacks on property Zoned R-1:8, located at 380 Blackwell Drive.

PROJECT DATA:

General Plan Designation: Low Density Residential  
Zoning Designation: R-1:8, Single-Family Residential  
Applicable Plans & Standards: Town Code, General Plan, Residential Design Guidelines  
Parcel Size: 8,000 square feet  
Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Residential	Low Density Residential	R-1:8:PD
South	Residential	Low Density Residential	R-1:8
East	Residential	Low Density Residential	R-1:8
West	Residential	Low Density Residential	R-1:8

PREPARED BY: SEAN MULLIN, AICP  
Senior Planner

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

BACKGROUND:

The subject property is located at the corner of Blackwell Drive and National Avenue (Attachment 1, Exhibit 1). The surrounding properties are residential uses. The subject property is developed with a single-family residence and an attached accessory dwelling unit (ADU).

On September 13, 2022, the Town issued an administrative citation for a code violation at the subject property (Attachment 1, Exhibit 4) after the vehicular gate was noted by a Town Building Inspector during a progress inspection for construction of the ADU. This letter requested that the property owners apply for a Building Permit for the vehicular gate by September 27, 2022. Following issuance of the citation, the applicant contacted Town Planning staff who communicated to the applicant that the vehicular gate exceeds the three-foot height limitation for a gate located in the required front yard and the traffic view area. Additionally, staff noted that the gate does not meet the required 18-foot setback from the edge of the street. Staff indicated that the Town Code offers an exception process that allows for deviation from the Town's requirements if the appropriate findings are made by the Community Development Director.

On February 6, 2023, the applicant applied for an exception to the Town's fence regulations for the unpermitted construction of the vehicular gate, which does not comply with the Town Code height or setback regulations. The exception request was based on concerns related to protecting their adult child from stepping off the property. The project plans are provided as Attachment 1, Exhibit 10, and the Letters of Justification for the exception are provided as Attachment 1, Exhibit 5, and Attachment 2, Exhibit 11.

On March 6, 2023, the exception request was denied by the Community Development Director based on the information received at that time as none of the required findings per Town Code Section 29.40.0320 could be made and based upon the conclusion by the Parks and Public Works Department that unsafe conditions are created by the vehicular gate lacking the 18-foot setback required by Town Code Section 29.40.0315(c)(3), and its proximity to the intersection adjacent to the property (Attachment 1, Exhibit 6).

On March 8, 2023, the property owner appealed the decision of the Community Development Director to the Planning Commission (Attachment 1, Exhibit 7).

On June 14, 2023, the Planning Commission considered the appeal and additional information provided by the appellant/property owner supporting the finding that a special security concern exists that cannot be practically addressed through alternatives (Attachments 1 and 2). The Planning Commission granted the appeal with two additional conditions requiring that the vehicular gate be relocated to comply with the 18-foot setback required by the Town Code and that any additional fencing needed between the relocated vehicular gate and the existing property line fencing be no taller than the height of the existing adjacent fencing (Attachment 3, Conditions 5 and 6).

BACKGROUND (continued):

On June 21, 2023, the Planning Commission decision was appealed by the property owner, specifically the condition requiring that the vehicular gate be relocated to comply with the 18-foot setback required by the Town Code (Attachment 5).

DISCUSSION:

A. Project Summary

The applicant applied for an exception to the Town's fence regulations for the unpermitted construction of the vehicular gate, which does not comply with the Town Code fence height regulations for fences located in the required front setback and traffic view area, and for not meeting the required 18-foot setback for vehicular gates as measured from the edge of the street. The exception request was based on concerns related to protecting their adult child from stepping off the property. The project plans are provided as Attachment 1, Exhibit 10, and the Letters of Justification for the exception are provided as Attachment 1, Exhibit 5 and Attachment 2, Exhibit 11.

As detailed in the Planning Commission staff report (Attachment 1), the Town Code limits the height of fences and gates in the required front yard or side yard abutting a street, driveway view area, and traffic view area to no more than three feet to minimize conflicts between pedestrians, cyclists, and cars by allowing for an unobstructed view as a car exits a driveway. Additionally, vehicular gates are required to be setback a minimum of 18 feet as measured from the edge of the street to allow for vehicles to clear the travel lanes while queuing as the gate is opening. Staff has prepared an exhibit showing the locations of these areas and the existing unpermitted vehicular gate (Attachment 1, Exhibit 8). The proposed four-foot, three-inch tall vehicular gate is set at the front property line.

Town Code Section 29.40.0320 allows an exception to any of the fence regulations if specific findings can be made. These findings are:

- A special security concern exists that cannot be practically addressed through alternatives; or
- A special circumstance exists, including lot size or configuration, where strict enforcement of these regulations would result in undue hardship.

The applicant applied for an exception to the fence regulations citing a special safety concern related to protecting their adult child from leaving the property (Attachment 1, Exhibit 5). Based on the information provided with the exception request, staff was unable to support the requested exceptions as neither of the required findings could be made. In consideration of the safety concern cited by the applicant, staff noted that the property is already enclosed by existing fencing and gates except for the driveway area. Additionally,

DISCUSSION (continued):

the requested exceptions would create unsafe conditions caused by a vehicular gate lacking the 18-foot setback required by the Town Code, not allowing for vehicles to clear the travel lanes while queuing. The Community Development Director denied the exception request on March 6, 2023 (Attachment 1, Exhibit 6).

B. Planning Commission

The property owner appealed the decision of the Community Development Director to the Planning Commission who considered the matter on June 14, 2023. With their appeal, the appellant provided additional information on the medical background of their adult child. This information has been provided under separate cover to the Town Council and is not included as an attachment to this report to protect the privacy of the individuals involved.

During their visual and oral presentation to the Planning Commission, the appellant provided additional details of the security concerns related to their adult child (Attachment 4). The Planning Commission granted the appeal, approving the exception to the fence regulations related to height, but did not approve the exception for the required 18-foot setback. Instead, the Planning Commission included additional conditions of approval for the project requiring that the vehicular gate be relocated to comply with the 18-foot setback and that any additional fencing needed between the relocated vehicular gate and the existing property line fencing be no taller than the height of the existing adjacent fencing (Attachment 3, Conditions 5 and 6).

The Planning Commission staff report and Desk Item (Attachments 1 and 2), the Verbatim Minutes (Attachment 4), and the appeal documents (Attachment 5) are provided for review.

C. Appeal to Town Council

The decision of the Planning Commission was appealed on June 21, 2023, by the property owner Lawrence W. Cesnik (Attachment 5). In their appeal, the property owner raises three points where they feel the Planning Commission erred or abused its discretion in its decision to require the vehicular gate be relocated to meet the required 18-foot setback from the edge of the street. These points are provided verbatim from the appellant below, followed by staff's response.

1. The statement made by one of the Commissioners that the vehicle picking up our son for his day program is likely a van/longer vehicle - and therefore would protrude into the street without a gate setback. In fact, the transportation company with which we contract - Union Taxi - picks up our son in a compact/medium size sedan - which fits between the curb and gate without protrusion.

DISCUSSION (continued):

Staff response: The Town Council should consider this clarifying information in their determination of whether the appeal should be upheld or denied.

2. The assumption that there will be a "queuing/backup hazard" when we exit or enter the gate due to the delay in opening it. In fact - as I explained to the commission, our plan is to avoid this problem by a) waiting to back out until the gate is completely open b) before approaching the gate for entering, opening it remotely early enough (it has good range) so that it is fully open when we are in front of the driveway.

Staff response: Requiring that the vehicular gate be operated in a specific way, as the property owner describes, through a condition of approval would create a cumbersome regulation that would be difficult to enforce. Staff does not recommend incorporating such a condition if the Town Council grants the appeal.

3. Not recognizing that pushing the gate back 5 feet will (a) be a major inconvenience and will "squeeze" the very limited space we have to park our vehicles (b) will increase the safety risk to our son by shortening the amount of time for him to reach the gate during any potential "bolt" and (c) disrupt the aesthetics of our property that we have worked hard/invested in to develop and maintain, as well as the surrounding neighborhood.

Staff response: The length of the existing driveway between the front property line and the existing residence is approximately 29.8 feet (Attachment 6). The Planning Commission included a condition with their approval that the vehicular gate be relocated to meet the required 18-foot setback from the edge of the street. Satisfying this condition would require the vehicular gate to be moved approximately 4.3 feet towards the residence resulting in a driveway length of 25.5 feet where a driveway length of 25 feet is required by the Town Code. Regarding the shortened distance to and the potential aesthetic impacts of the relocated vehicular gate, the Town Council could consider this in their determination of whether the appeal should be upheld or denied.

PUBLIC OUTREACH:

Written notice of the Town Council hearing was sent to property owners and tenants within 300 feet of the subject property.

CONCLUSION:

A. Recommendation

For the reasons stated in this report, it is recommended that the Town Council deny the appeal, upholding the Planning Commission's decision to approve the exception to the

CONCLUSION (continued):

fence regulations with additional conditions of approval requiring compliance with the 18-foot setback required by the Town Code and that any additional fencing needed between the relocated vehicular gate and the existing property line fencing be no taller than the height of the existing adjacent fencing (Attachment 7).

B. Alternatives

Alternatively, if the Council finds merit in the appeal it should continue the application to the next meeting and provide direction to staff to prepare a resolution to grant the appeal, grant the exception to the Town's fence regulations for construction of an automated vehicular gate with reduced setbacks, approve the application with Planning Commission Conditions 5 and 6 removed, and identify the facts that support the following required findings.

**Required finding for CEQA:**

- The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303 (e): New Construction or Conversion of Small Structures.

**Required findings for granting an exception to the Town's fence regulations:**

- A special security concern exists that cannot be practically addressed through alternatives; or
- A special circumstance exists, including lot size or configuration, where strict enforcement of these regulations would result in undue hardship.

**Required findings for granting an appeal of a decision by the Planning Commission:**

- There was an error or abuse of discretion by the Planning Commission; or
- The Planning Commission decision is not supported by substantial evidence in the record.

COORDINATION:

The Community Development Department coordinated with the Parks and Public Works Department in the review of the fence height exception.



PAGE 7 OF 8

SUBJECT: 380 Blackwell Drive/FHE-23-002

DATE: July 27, 2023

ENVIRONMENTAL ASSESSMENT:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303 (e): New Construction or Conversion of Small Structures.

ATTACHMENTS:

1. June 14, 2023, Planning Commission Staff Report, with Exhibits 1 through 10
2. June 14, 2023, Planning Commission Desk Item, with Exhibit 11
3. June 14, 2023, Planning Commission Action Letter
4. June 14, 2023, Planning Commission Verbatim Minutes
5. Appeal of the Planning Commission decision, received June 21, 2023
6. Annotated Driveway Exhibit Prepared by Staff
7. Draft Resolution to Deny the Appeal and Uphold the Planning Commission Decision

***This Page  
Intentionally  
Left Blank***



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 6/14/2023

ITEM NO: 2

DATE: June 9, 2023  
TO: Planning Commission  
FROM: Joel Paulson, Community Development Director  
SUBJECT: Consider an Appeal of a Community Development Director Decision to Deny a Fence Height Exception Request for Construction of an Automated Vehicular Gate Exceeding the Maximum Height and with Reduced Setbacks on Property Zoned R-1:8. **Located at 380 Blackwell Drive.** APN 424-12-027. Categorically Exempt Pursuant to CEQA Guidelines Section 15303 (e): New Construction or Conversion of Small Structures. Fence Height Exception Application FHE-23-002. PROPERTY OWNER: Larry Cesnik and Martha Johnson. APPELLANT: Larry Cesnik. APPLICANT: Ramin Zohoor. PROJECT PLANNER: Sean Mullin.

RECOMMENDATION:

Deny the appeal of a Community Development Director decision to deny a fence height exception request for construction of an automated vehicular gate exceeding the maximum height and with reduced setbacks on property zoned R-1:8, located at 380 Blackwell Drive.

PROJECT DATA:

General Plan Designation: Low Density Residential  
Zoning Designation: R-1:8, Single-Family Residential  
Applicable Plans & Standards: Town Code, General Plan, Residential Design Guidelines  
Parcel Size: 8,000 square feet  
Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Residential	Low Density Residential	R-1:8:PD
South	Residential	Low Density Residential	R-1:8
East	Residential	Low Density Residential	R-1:8
West	Residential	Low Density Residential	R-1:8

PREPARED BY: SEAN MULLIN, AICP  
Senior Planner

Reviewed by: Planning Manager and Community Development Director

CEQA:

The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303 (e): New Construction or Conversion of Small Structures.

FINDINGS:

- The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303 (e): New Construction or Conversion of Small Structures.
- As required by Section 29.40.320 of the Town Code for granting a Fence Height Exception.

ACTION:

The decision of the Planning Commission is final unless appealed within ten days.

BACKGROUND:

The subject property is located at the corner of Blackwell Drive and National Avenue (Exhibit 1). The surrounding properties are residential uses. The subject property is developed with a single-family residence and an attached accessory dwelling unit (ADU).

On September 13, 2022, the Town issued an administrative citation for a code violation at the subject property (Exhibit 4) after the vehicular gate was noted by a Town Building Inspector during a progress inspection for construction of the ADU. This letter requested that the property owners apply for a Building Permit for the vehicular gate by September 27, 2022. Following issuance of the citation, the applicant contacted Town Planning staff who communicated to the applicant that the vehicular gate exceeds the three-foot height limitation for a gate located in the required front yard and the traffic view area. Additionally, staff noted that the gate does not meet the required 18-foot setback from the edge of the street. Staff indicated that the Town Code offers an exception process that allows for deviation from the Town's requirements if the appropriate findings are made by the Community Development Director.

On February 6, 2023, the applicant applied for an exception to the Town's fence regulations for the unpermitted construction of the vehicular gate, which does not comply with the Town Code fence height regulations for fences located in the required front setback and traffic view area, and for not meeting the required 18-foot setback for vehicular gates as measured from the street. The exception request was based on concerns related to protecting their child from stepping off the property. The project plans are provided as Exhibit 5, and the Letter of Justification for the exception is provided as Exhibit 5.

BACKGROUND (continued):

On March 6, 2023, the exception request was denied by the Community Development Director as none of the required findings per Town Code Section 29.40.0320 could be made and based upon the conclusion by the Parks and Public Works Department that unsafe conditions are created by the vehicular gate lacking the 18-foot setback required by Town Code Section 29.40.0315(c)(3), and its proximity to the intersection adjacent to the property (Exhibit 6).

On March 8, 2023, the property owner appealed this decision (Exhibit 7).

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject property is located at the corner of Blackwell Drive and National Avenue (Exhibit 1). The surrounding properties are residential uses. The subject property is developed with a single-family residence and an attached ADU.

B. Project Summary and Zoning Compliance

The property owner is appealing the Community Development Director decision to deny an exception to the fencing regulations for unpermitted construction of a vehicular gate that does not comply with the height regulations for fences located in the required front setback and traffic view area, and for not meeting the required 18-foot setback for vehicular gates as measured from the street (Exhibit 7).

DISCUSSION:

A. Fence Height Exception

The property owner requested an exception to the fence regulations for: a vehicular gate exceeding the three-foot height limitation located in a required front setback and traffic view area; and a vehicular gate that does not meet the 18-foot setback requirement as measured from the edge of the street (Exhibit 5).

Exhibit 8, prepared by staff, shows the locations of existing fencing on the property, which includes:

- Six-foot tall solid wood fencing along the rear and interior side property lines. This fencing appears to comply with current regulations.
- Four-foot tall concrete block and picket fencing at the front and street-side property lines. This fencing continues along the east side of the driveway to connect with the

BACKGROUND (continued):

residence. This fencing existed prior to the current fence regulations and is considered existing legal nonconforming.

- Four-foot, three-inch, tall solid wood fencing along the interior property line running from the front property line to the six-foot tall fencing described above. This fencing existed prior to the current fence regulations and is considered existing legal nonconforming.
- Seven-foot tall solid wood fencing running from the interior property line to the left side of the residence. This fencing appears to comply with current regulations.
- A four-foot, three-inch tall unpermitted vehicular gate across the driveway at the front property line, which is the subject of this appeal.

Per Town Code Section 29.40.0315 (a)(3), fences, walls, gates, and hedges may not exceed a height of three feet when located within a required front or side yard abutting a street, driveway view area, or traffic view area unless an exception is granted by the Town Engineer and Community Development Director. This regulation is intended to minimize conflicts between pedestrians, cyclists, and cars by ensuring fences, walls, gates, and hedges do not obstruct the view from a car as it exits a driveway and crosses over a sidewalk to enter the roadway. Limiting the height of fences and gates to no more than three feet in these areas allows drivers and pedestrians a view of each other while continuing to afford property owners the opportunity to define the boundaries of their property. The required front setback in the R-1:8 zone is 25 feet, and a traffic view area is the area that is within 15 feet of a street. Staff has prepared an exhibit showing the locations of these areas and the existing unpermitted vehicular gate (Exhibit 8). The proposed four-foot, three-inch tall vehicular gate is set at the front property line.

Per Town Code Section 29.40.0315 (c)(3), vehicular gates shall be set back from the edge of the adjacent street a minimum of 18 feet. The intent of this regulation is to allow for vehicles to clear the travel lanes while queuing as the gate is opening. The required vehicular setback is shown on Exhibit 8. The vehicular gate is setback approximately 13.4 feet from the edge of the street.

Town Code Section 29.40.0320, provided below, allows an exception to any of the fence regulations if a property owner can demonstrate that one of the following conditions exist.

*Sec. 29.40.0320. - Exceptions.*

*An exception to any of these fence regulations may be granted by the Community Development Director. A fence exception application and fee shall be filed with the Community Development Department and shall provide written justification that demonstrates one (1) of the following conditions exist:*

DISCUSSION (continued):

- (a) *Adjacent to commercial property, perimeter fences or walls may be eight (8) feet if requested or agreed upon by a majority of the adjacent residential property owners.*
- (b) *On interior lots, side yard and rear yard fences, walls, gates, gateways, entry arbors, or hedges, behind the front yard setback, may be a maximum of eight (8) feet high provided the property owner can provide written justification that either:
  - (1) *A special privacy concern exists that cannot be practically addressed by additional landscaping or tree screening; or*
  - (2) *A special wildlife/animal problem affects the property that cannot be practically addressed through alternatives. Documented instances of wildlife grazing on gardens or ornamental landscaping may be an example of such a problem.**
- (c) *At public utility facilities, critical infrastructure, and emergency access locations, exceptions may be granted where strict enforcement of these regulations will result in a security or safety concern.*
- (d) *A special security concern exists that cannot be practically addressed through alternatives.*
- (e) *A special circumstance exists, including lot size or configuration, where strict enforcement of these regulations would result in undue hardship.*

The property owner requested exceptions based on concerns related to protecting their child from stepping off the property (Exhibit 5).

Staff was unable to support the requested exceptions as the required findings could not be made. In consideration of the safety concern cited by the applicant, staff noted that the property is already enclosed by existing fencing and gates except for the driveway area. Additionally, the requested exceptions would create unsafe conditions caused by a vehicular gate lacking the 18-foot setback required by the Town Code. The reduced setback of the gate would not allow for vehicles to clear the travel lanes while queuing, potentially obstructing traffic on Blackwell Drive near the intersection with National Avenue. Parks and Public Works reviewed the proposal and could not support the exception requests noting that the subject driveway is near a busy street (National Avenue) and the added queue time is considered a nuisance and unnecessary risk. The Town denied the exception request on March 6, 2023 (Exhibit 6).

B. Appeal

The decision of the Community Development Director to deny the Fence Height Exception application was appealed by the property owner on March 8, 2023 (Exhibit 7). In their appeal, the property owner reiterates their safety concerns. Additional justification and information were not provided with the appeal.

DISCUSSION (continued):

C. Environmental Review

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303 (e): New Construction or Conversion of Small Structures.

PUBLIC COMMENTS:

Written notice was sent to property owners and tenants within 300 feet of the subject property. Staff has included all public comments received by 11:00 a.m., Friday, June 9, 2023, as Exhibit 9.

CONCLUSION:

A. Summary

The property owner is requesting that the Planning Commission overturn the Community Development Director's decision to deny an exception to the fencing regulations for unpermitted construction of a vehicular gate that does not comply with the Town Code fence height regulations for fences located in the required front setback and traffic view area, and for not meeting the 18-foot setback for vehicular gates as measured from the street and approve the application.

B. Recommendation

Staff recommends that the Planning Commission deny the appeal and uphold the Community Development Director decision to deny an exception to the fencing regulations based on the reasoning provided in this report.

C. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction;
2. Grant the appeal and approve the fence height exception with the findings in Exhibit 2 and the draft conditions provided in Exhibit 3; or
3. Grant the appeal with additional and/or modified conditions.



PAGE 7 OF 7

SUBJECT: 380 Blackwell Drive/FHE-23-002

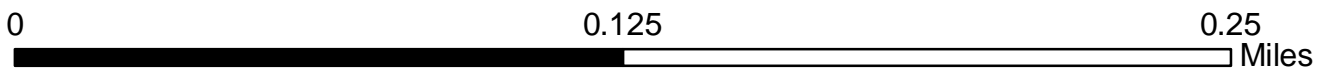
DATE: June 9, 2023

EXHIBITS:

1. Location Map
2. Required Finding
3. Recommended Conditions of Approval if Appeal is Granted
4. Administrative Warning/Citation VL-22-465, dated September 9, 2022
5. Exception Request – Letter of Justification
6. Fence Height Exception Denial Letter, dated March 6, 2023
7. Appeal of the Community Development Director Decision, received March 8, 2023
8. Annotated Site Plan Prepared by Staff
9. Public Comments received before 1100 a.m., Friday June 9, 2023
10. Project Plans

***This Page  
Intentionally  
Left Blank***

# 380 Blackwell Drive



***This Page  
Intentionally  
Left Blank***

**PLANNING COMMISSION – June 14, 2023**  
**REQUIRED FINDINGS FOR:**

**308 Blackwell Drive**  
**Fence Height Exception FHE-23-002**

**Consider an Appeal of a Community Development Director Decision to Deny a Fence Height Exception Request for Construction of an Automated Vehicular Gate Exceeding the Maximum Height and with Reduced Setbacks on Property Zoned R-1:8. Located at 380 Blackwell Drive. APN 424-12-027. Categorically Exempt Pursuant to CEQA Guidelines Section 15303 (e): New Construction or Conversion of Small Structures. Fence Height Exception Application FHE-23-002. PROPERTY OWNER: Larry Cesnik and Martha Johnson. APPELLANT: Larry Cesnik. APPLICANT: Ramin Zohoor. PROJECT PLANNER: Sean Mullin.**

**Required finding for CEQA:**

- The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303 (e): New Construction or Conversion of Small Structures.

**Required findings for granting a Fence Height Exception:**

- A special security concern exists that cannot be practically addressed through alternatives.
- A special circumstance exists, including lot size or configuration, where strict enforcement of these regulations would result in undue hardship.

***This Page  
Intentionally  
Left Blank***

**PLANNING COMMISSION – June 14, 2023**  
**CONDITIONS OF APPROVAL**

**308 Blackwell Drive**  
**Fence Height Exception FHE-23-002**

**Consider an Appeal of a Community Development Director Decision to Deny a Fence Height Exception Request for Construction of an Automated Vehicular Gate Exceeding the Maximum Height and with Reduced Setbacks on Property Zoned R-1:8. Located at 380 Blackwell Drive. APN 424-12-027. Categorically Exempt Pursuant to CEQA Guidelines Section 15303 (e): New Construction or Conversion of Small Structures. Fence Height Exception Application FHE-23-002. PROPERTY OWNER: Larry Cesnik and Martha Johnson. APPELLANT: Larry Cesnik. APPLICANT: Ramin Zohoor. PROJECT PLANNER: Sean Mullin.**

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

*Planning Division*

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below.
2. EXPIRATION: The Fence Height Exception approval will expire two years from the approval date pursuant to Section 29.20.320 of the Town Code, unless the approval has been vested.
3. BUILDING PERMIT: The proposed vehicular gate requires a Building Permit.
4. VEHICULAR GATE: The vehicular gate must open inward, towards the residence or slide parallel to the street.
5. TOWN INDEMNITY: Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement (“the Project”) from the Town shall defend (with counsel approved by Town), indemnify, and hold harmless the Town, its agents, officers, and employees from and against any claim, action, or proceeding (including without limitation any appeal or petition for review thereof) against the Town or its agents, officers or employees related to an approval of the Project, including without limitation any related application, permit, certification, condition, environmental determination, other approval, compliance or failure to comply with applicable laws and regulations, and/or processing methods (“Challenge”). Town may (but is not obligated to) defend such Challenge as Town, in its sole discretion, determines appropriate, all at applicant’s sole cost and expense.

Applicant shall bear any and all losses, damages, injuries, liabilities, costs and expenses (including, without limitation, staff time and in-house attorney’s fees on a fully-loaded basis, attorney’s fees for outside legal counsel, expert witness fees, court costs, and other litigation expenses) arising out of or related to any Challenge (“Costs”), whether incurred by Applicant, Town, or awarded to any third party, and shall pay to the Town upon demand

EXHIBIT 3

any Costs incurred by the Town. No modification of the Project, any application, permit certification, condition, environmental determination, other approval, change in applicable laws and regulations, or change in such Challenge as Town, in its sole discretion, determines appropriate, all the applicant's sole cost and expense. No modification of the Project, any application, permit certification, condition, environmental determination, other approval, change in applicable laws and regulations, or change in processing methods shall alter the applicant's indemnity obligation.

*Building Division*

6. PEDESTRIAN GATE REQUIRED: Identify the location of the required pedestrian gate;
7. PEDESTRIAN GATE: For pedestrian access in the vicinity of an automated gate, a separate pedestrian gate shall be provided. The pedestrian gate shall be installed in a location such that a pedestrian shall not come in contact with a moving vehicular access gate. A pedestrian gate shall not be incorporated into an automated vehicular gate panel.

DRAFT





# Town of Los Gatos

## Administrative Warning/Citation

Code Compliance  
110 E. Main Street  
Los Gatos, CA 95030  
(408) 399-5746  
PLADMCIT

Date Issued: 9/13/22 Time: \_\_\_\_\_

Code Compliance Violation NO. VL- 22-465 Zone: \_\_\_\_\_

Violation Address: 380 Blackwell Drive Town: Los Gatos State: CA Zip: 95032

Name (Responsible person/business): Larry Cesnik and Martha Johnson

Mailing Address: \_\_\_\_\_

Town/City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  Same as Violation Address

Document Issued:  WARNING  CORRECTION NOTICE  ADMINISTRATIVE CITE

Issuing Department: CDD Compliance Date: 9/27/22 Inspection Date: 9/13/22

**The total penalty is now due. Instructions for payment are listed on reverse page.**

In order to comply with the Los Gatos Town Code, you will need to:

Obtain a Building Permit for an automatic vehicular gate by compliance date above. Immediately lock gate in open position until an issued permit has been obtained.

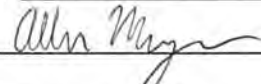
Code Section	Description	Penalty Amount
6.150.010 (R 105.1)	Permit Required	\$100.00

Photos Taken: (Circle one) YES / NO Quantity: 3 photo Total: \$100.00

Appeal of this Administrative Citation may be made by filling out a Hearing Request. Contact the Town of Los Gatos Community Development Department, 110 E. Main Street, Los Gatos, CA 95030 or by e-mail at [CodeCompliance@LosGatosCA.gov](mailto:CodeCompliance@LosGatosCA.gov) for an application. Additional citations may be issued each day the violation exists.

NOTE: PERMIT(S) FROM THE PLANNING, BUILDING AND/OR PARKS AND PARKS AND PUBLIC WORKS DEPARTMENTS MAY ALSO BE REQUIRED FOR VIOLATIONS INVOLVING STRUCTURES, GRADING, ENCROACHMENTS AND TREE REMOVALS. WORK PERFORMED WITHOUT THE REQUIRED PERMIT(S) AND TOWN INSPECTION IS A VIOLATION OF THE TOWN OF LOS GATOS TOWN CODE AND WILL NOT QUALIFY AS COMPLIANCE.

Issuing Official: Allen Meyer Badge/Title NO.: Code Compliance Officer

Signature:  Date: 9/13/22 Phone: 408-399-5746

Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

Proof of Service: regular mail

**Order:** You are ordered to immediately cease the commission of the Town Code violation(s) listed on the front of this Administrative Citation.

**Administrative Citation:** Pursuant to Chapter 1.30.010 through 1.30.070 of the Town of Los Gatos Town Code, if you continue to repeat the commission of the Town Code violation(s) listed on this Administrative Citation, the Town may issue you another Citation or pursue any other legal remedy available to the Town against you.

**Payment of Penalty:** The amounts of the penalties for code violation(s) of the Los Gatos Town Code are listed on the front of this Administrative Citation. The penalty shall be paid to the Town within thirty (30) days from the date of the Administrative Citation.

You may pay and deliver the Administrative fine(s) to the Town by mail or in person at the Town of Los Gatos Finance Department, 110 E. Main Street, Los Gatos, CA 95030. Payment should be in the form of a personal check payable to the Town of Los Gatos or cash. Unless you have requested a hearing to contest the Administrative Citation, you will be subject to the imposition of a 10% late payment penalty, plus interest, if you fail to pay the Administrative fine(s) by the due date. Payment of Administrative fines does not excuse or discharge any continuation or repeated occurrence of the Town Code violation(s) listed on this Administrative Citation.

**Hearing Request:** Any recipient of an Administrative Citation may appeal the Citation by completing a hearing request form and returning it to the Town within thirty (30) days from the date of the Administrative Citation together with an advance deposit of the total penalty amount or advance deposit hardship waiver (explained below) application form as described in Section 1.30.035. The Hearing Request form can be obtained by calling (408) 399-5746 or from the Town of Los Gatos Community Development Department, 110 E. Main Street, Los Gatos, CA 95030. You will be notified of the date and time set for your hearing at least ten (10) days prior to the date of the hearing. If you fail to appear at your hearing, this failure shall constitute a forfeiture of the penalty and no further administrative remedy is available.

**Advance Deposit Hardship Waiver:** Any person who intends to request a hearing to appeal an Administrative Citation, and who is financially unable to make the advance deposit of the penalty as required in Section 1.30.070, may file a request for an advance deposit hardship waiver which shall include a sworn affidavit. The waiver form can be obtained at the Town of Los Gatos Community Development Department, 110 Main Street, CA 95030. The decision to waive this requirement is made by the Town Manager. The request shall be filed, along with the request for hearing form, with the Town Attorney's Office on an advance deposit hardship waiver application form, available from the Town of Los Gatos Community Development Department, within thirty (30) days of the date of the Administrative Citation.

**Late Payment Charges:** Any person who fails to pay to the Town any penalty imposed pursuant to the provision of this Article on or before the date that penalty is due also shall be liable for the payment of any applicable late payment charges set forth in the schedule of penalties.

**Right to Judicial Review:** Any person aggrieved by an administrative decision of the Hearing Officer on an Administrative decision by filing a petition for review with the Supreme Court in Santa Clara County in accordance with the time and provision set forth in California Government Code Section 53069.4.





# Property Detail Report

For Property Located At :  
380 BLACKWELL DR, LOS GATOS, CA 95032-2413



## Owner Information

Owner Name: CESNIK LARRY W/JOHNSON MARTHA C  
Mailing Address: 380 BLACKWELL DR, LOS GATOS CA 95032-2413 C014  
Vesting Codes: //

## Location Information

Legal Description: TRACT 2676 LOS GATOS TOWN MANOR BOOK 128 PAGE 32 PAGE 33 LOT 44  
County: SANTA CLARA, CA APN: 424-12-027  
Census Tract / Block: 5068.01 / 2 Alternate APN:  
Township-Range-Sect: Subdivision: LOS GATOS TOWN MANOR  
Legal Book/Page: Map Reference: 71-B2 /  
Legal Lot: 44 Tract #: 2676  
Legal Block: School District: CAMPBELL UN  
Market Area: 16 School District Name: CAMPBELL UN  
Neighbor Code: Munic/Township: TOWN OF LOS GATOS

## Owner Transfer Information

Recording/Sale Date: / Deed Type:  
Sale Price: 1st Mtg Document #:  
Document #:

## Last Market Sale Information

Recording/Sale Date: 10/05/2020 / 09/29/2020 1st Mtg Amount/Type: \$765,500 / CONV  
Sale Price: \$1,300,000 1st Mtg Int. Rate/Type: /  
Sale Type: FULL 1st Mtg Document #: 24642467  
Document #: 24642466 2nd Mtg Amount/Type: /  
Deed Type: GRANT DEED 2nd Mtg Int. Rate/Type: /  
Transfer Document #: Price Per SqFt: \$1,115.88  
New Construction: Multi/Split Sale:  
Title Company: FIDELITY NATIONAL TITLE CO  
Lender: GUARANTEED RATE AFFINITY LLC  
Seller Name: ARLENE JUDITH

## Prior Sale Information

Prior Rec/Sale Date: / Prior Lender:  
Prior Sale Price: Prior 1st Mtg Amt/Type: /  
Prior Doc Number: Prior 1st Mtg Rate/Type: /  
Prior Deed Type:

## Property Characteristics

Gross Area: 1,165 Parking Type: GARAGE Construction: WOOD  
Living Area: 1,165 Garage Area: 430 Heat Type: HEATED  
Tot Adj Area: Garage Capacity: Exterior wall:  
Above Grade: Parking Spaces: Porch Type: PORCH  
Total Rooms: 6 Basement Area: Patio Type: NONE  
Bedrooms: 3 Finish Bsmnt Area: Pool:  
Bath(F/H): 2 / Basement Type: Air Cond:  
Year Built / Eff: 1961 / 1961 Roof Type: Style: L-SHAPE  
Fireplace: Y / 1 Foundation: Quality: AVERAGE  
# of Stories: 1 Roof Material: Condition: AVERAGE  
Other Improvements: LAUNDRY ROOM Building Permit

## Site Information

Zoning: R18 Acres: 0.18 County Use: RESID SINGLE FAMILY (01)  
Lot Area: 7,900 Lot Width/Depth: 80 x 100 State Use:  
Land Use: SFR Res/Comm Units: / Water Type:  
Site Influence: Sewer Type:

## Tax Information

Total Value: \$1,326,000 Assessed Year: 2022 Property Tax: \$17,099.28  
Land Value: \$1,096,500 Improved %: 17% Tax Area: 03007  
Improvement Value: \$229,500 Tax Year: 2021 Tax Exemption:  
Total Taxable Value: \$1,326,000

***This Page  
Intentionally  
Left Blank***

Project Address: 380-A-380 Blackwell Dr.,

Dear Madam/sir at city of Los Gatos planning department.,

Owners of property 380 Blackwell Drive. Have installed a roll security gate for the safety of their child. The gate has been installed at the edge of the property line in front. The height of the proposed garage is 51 inches. The gate is fully open and operable. The reason for the installation of gate is due to the illness of the child and scare of his safety which might cause him step outside of the property while playing at the front yard.

This gate will provide additional safety needed to make sure the kid stays in without supervision at all hours. All conditions of the existing fences and proposed roll fence have been details on the submitted site plan sheet for review.

Any questions please contact  
Ramin Zohoor

██████████

***This Page  
Intentionally  
Left Blank***





## TOWN OF LOS GATOS

COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION  
(408) 354-6872 Fax (408) 354-7593

CIVIC CENTER  
110 E. MAIN STREET  
LOS GATOS, CA 95030

March 6, 2023

Larry Cesnik  
{Sent via Email}

**RE: AMENDED ACTION LETTER**  
**380 Blackwell Drive**  
Fence Height Exception (FHE-23-002)

Requesting approval for an exception to an existing 4.25-foot-tall automated vehicular gate within the required front yard setback on property zoned R-1:8. APN 424-12-027.  
PROPERTY OWNERS: Larry Cesnik and Martha Johnson  
APPLICANT: Ramin Zohoor

The Los Gatos Community Development Department and Public Works Department have reviewed the referenced application for a fence height exception pursuant to [Town Code Section 29.40.0320](#). Based upon review by the Parks and Public Works Department, staff is unable to approve the application due to the unsafe conditions caused by a vehicular gate lacking the 18-foot setback required by Town Code Section [29.40.0315\(c\)\(3\)](#), and its proximity to the intersection adjacent to the property. Sufficient justification for conditions listed in Section 29.40.0320 was not provided.

Based on the foregoing, the Los Gatos Community Development Department has **denied** the request on February 27, 2023.

PLEASE NOTE: Pursuant to Section 29.20.255 of the Town Code, this decision may be appealed by any interested party to the Planning Commission within 10 days of the denial date. Appeals, with the completed Appeal Form and appeal fee payment, must be submitted **in person** to the Town Clerk's office within 10 days from the date of denial, or **by 4:00 p.m. on March 9, 2023**.

If you have any questions concerning this decision, please contact me at (408) 354-6873 or via email at [PBeeuwsaert@LosGatosCA.gov](mailto:PBeeuwsaert@LosGatosCA.gov).

Sincerely,

Peggy Beeuwsaert  
Assistant Planner

EXHIBIT 6

***This Page  
Intentionally  
Left Blank***



TOWN OF LOS GATOS
COMMUNITY DEVELOPMENT DEPARTMENT

110 E. Main Street
Los Gatos, CA 95030

RECEIVED

MAR 8 2023

TOWN OF LOS GATOS
PLANNING DIVISION

APPEAL OF THE DECISION OF
DIRECTOR OF COMMUNITY DEVELOPMENT

PLEASE TYPE or PRINT NEATLY

I, the undersigned, do hereby appeal a decision of the DIRECTOR OF COMMUNITY DEVELOPMENT as follows:

DATE OF DECISION: February 27, 2023

PROJECT/APPLICATION: Exception to an existing 4.25 foot tall electronic vehicular gate

LOCATION: 380 Blackwell Drive

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 Director.

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:

Main reason (as already indicated in prior communications) is for safety reasons. We have a young adult special needs son for which this gate will provide protection

We will continue to gather additional documentation to submit to the Town of Los Gatos. We are in the process of securing an attorney to represent us in this appeal

It has been difficultly to locate an available attorney on short notice - therefore we are requesting a delay in the appeal hearing date

IMPORTANT:

- 1. Appeal must be filed not more than ten (10) days after the decision is rendered by the Director of Community Development. 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. Appeals are due by 4:00 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 anew 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: Lawrence W Cesnik

SIGNATURE: Lawrence W Cesnik

DATE: March 7, 2023

ADDRESS: 380 Blackwell Drive, Los Gatos, CA 95032

PHONE: [Redacted]

EMAIL: [Redacted]

\*\*\*\*\*

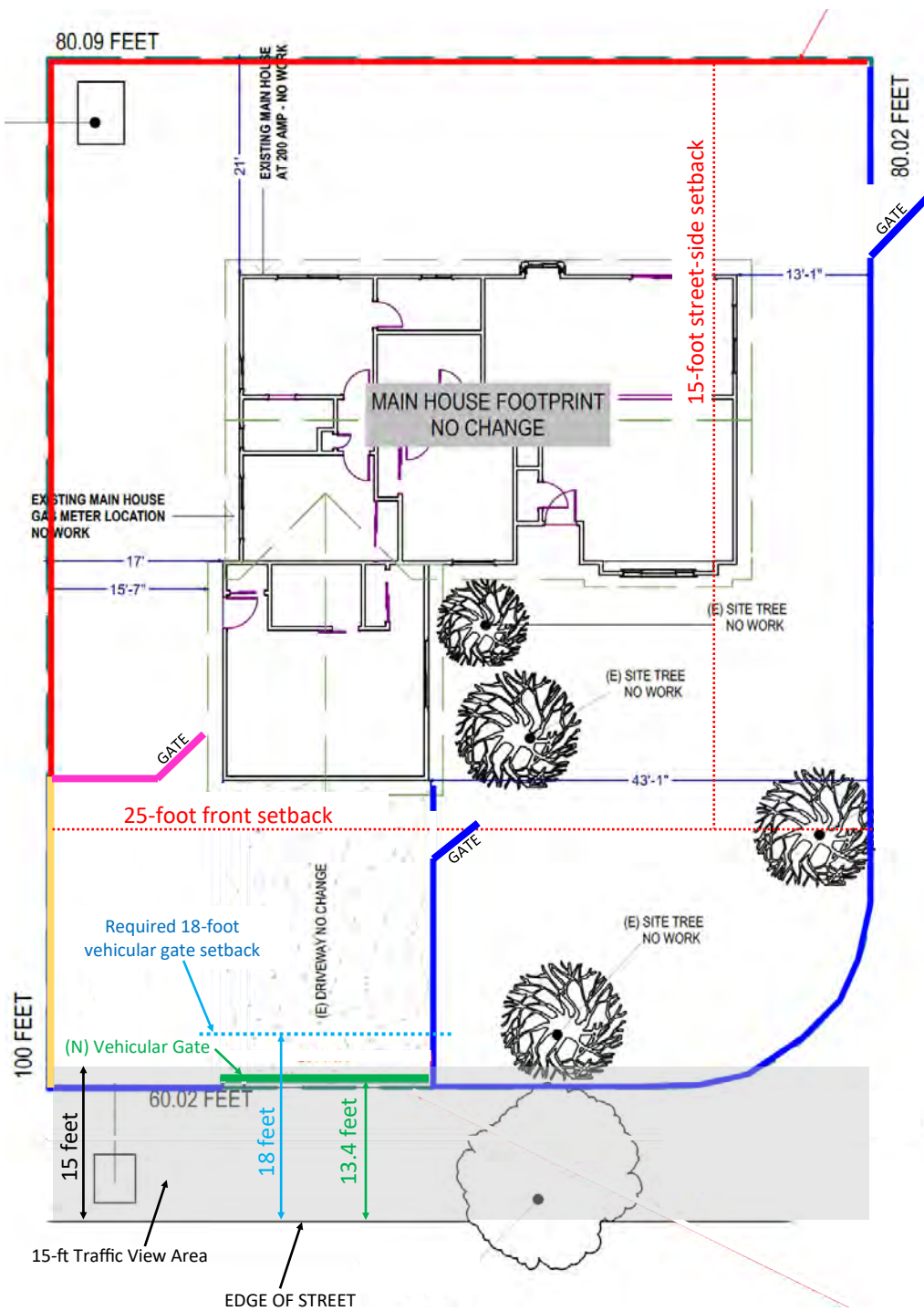
OFFICE USE ONLY

DATE OF PLANNING COMMISSION HEARING:

COMMISSION ACTION: 1. DATE:
2. DATE:
3. DATE:

PLAPPEAL \$ 234.00 Residential
PLAPPEAL \$ 934.00 Commercial
PLAPPEAL \$ 95.00 Tree Appeals

***This Page  
Intentionally  
Left Blank***



- (E) 6-ft solid wood fence
- (E) 7-ft solid wood fence
- (E) 4-ft masonry/picket fence
- (E) 4.25-ft solid wood fence
- (N) 4.25-ft vehicular gate

***This Page  
Intentionally  
Left Blank***

**From:** Lawrence Cesnik [REDACTED]  
**Sent:** Friday, June 9, 2023 10:46 AM  
**To:** Sean Mullin <SMullin@losgatosca.gov>  
**Subject:** Fwd: Regarding 380 Blackwell electronic gate permit request- email #1

Hi Sean,

In the next few minutes ahead of your 11:00am cutoff for regular agenda, I will be submitting several emails to help document my case

Here is #1

Larry Cesnik  
[REDACTED] mobile

Begin forwarded message:

**From:** Ramin Zohoor [REDACTED]  
**Date:** October 28, 2022 at 5:59:02 PM PDT  
**To:** Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)>  
**Cc:** Lawrence Cesnik [REDACTED] Eli [REDACTED]  
**Subject:** Re: Regarding 380 Blackwell electronic gate permit request

Hello Allen.,

Hope you are doing well.

I was in the city on July 14th and I spoke with Savannah Van Akin in person. Situation was \_ The exterior fence which I hope you had a chance to see the location & heights were installed before final inspection. I have reached out to the city for revision and the outcome was we would need to go through an exception. That being said, I stopped by at the city to further discuss the options we would have with the non conforming fence and from what Savannah has mentioned was that the fence is over the allowed height , too close to the property line / street & it is in the corner lot which will limit the visibility and the exception won't most likely be approved. She has suggested for us to work on getting the fence adjusted and pushed back. WHICH brings me to the point why there is no exception / revision number as this discussion was done in person and as you can see in detail.

My question is \_ If you have seen the fence location, height that is being proposed do you agree the exception will be approved regardless of the location & corner lot ? We just went based on what the planner told us and we are hoping you could let us know differently so this can stay and ofcourse we will submit any further revisions required.

Thank you.

On Wed, Oct 26, 2022 at 11:46 AM Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)> wrote:  
Good morning Larry Ramin, and Eli,

What was the permit number for the vehicular gate that was submitted by Just Right Home Remodeling?

The next best step would be to submit a permit application for the vehicular gate.

Respectfully yours,

Allen Meyer • Code Compliance Officer  
Community Development Department • 110 E Main Street, Los Gatos CA 95030  
Ph: 408.399.5746 • [ameyer@losgatosca.gov](mailto:ameyer@losgatosca.gov)  
[www.losgatosca.gov](http://www.losgatosca.gov) • <https://www.facebook.com/losgatosca>

Code Compliance hours:  
7:00 AM – 3:30 PM, Monday – Friday

CONFIDENTIALITY DISCLAIMER

This e-mail is intended only for the use of the individual(s) named in this e-mail. If you receive this e-mail and are not a named recipient, any use, dissemination, distribution or copying of the e-mail is strictly prohibited. If you have received this communication in error, please immediately notify us at the above e-mail address.

-----Original Message-----

From: Lawrence Cesnik [REDACTED]  
Sent: Tuesday, October 25, 2022 9:02 PM  
To: Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)>  
Cc: Eli [REDACTED]; [REDACTED]  
Subject: Regarding 380 Blackwell electronic gate permit request

EXTERNAL SENDER

Hello Allen, Roy

I've been in touch this evening with the team of our contractor- Just Right Home Remodeling (Eli our lead contact & Ramin the architect ccd above)

They report that they did indeed submit the permit application and Ramin visited your office on July 14 to discuss it.

Based on our conversation today, I assume that the best next step is for them to re-submit- but am cc'ing all so that you can discuss in writing or by phone

Thanks again

Larry Cesnik  
[REDACTED] mobile  
**From:** Lawrence Cesnik [REDACTED]  
**Sent:** Friday, June 9, 2023 10:47 AM  
**To:** Sean Mullin <[SMullin@losgatosca.gov](mailto:SMullin@losgatosca.gov)>  
**Subject:** Fwd: Regarding 380 Blackwell electronic gate permit request- email #2

Larry Cesnik  
[REDACTED] mobile

Begin forwarded message:

**From:** Ramin Zohoor [REDACTED]  
**Date:** October 31, 2022 at 10:34:28 AM PDT  
**To:** Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)>  
**Cc:** Lawrence Cesnik [REDACTED], Eli [REDACTED], Roy Alba



<[ralba@losgatosca.gov](mailto:ralba@losgatosca.gov)>

**Subject: Re: Regarding 380 Blackwell electronic gate permit request**

Hi Allen.,

That is exactly what was discussed and brought to the planning department about the vehicle gates not the existing fences.

The discussion was for exception application of the vehicle gate which the planner Savannah Van Akin said the location., heights and what we are applying for does not get approved. She mentioned per what the neighborhood is and location of the fence its unlikely that we pay for full exception application and get it approved.

Question I am hoping to get an answer is if you think it would be a different situation where clients will be getting this approved as you see it location. ?

On Mon, Oct 31, 2022 at 10:30 AM Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)> wrote:

Good morning Ramin,

The citation that was issued on September 13, 2022 had nothing to do with the existing white picket fence, the citation is only about the vehicle gate which was installed without a permit. Please submit a permit application online for the unpermitted vehicular gate.

Thank you,



**Allen Meyer • Code Compliance Officer**

Community Development Department • 110 E Main Street, Los Gatos CA 95030

Ph: 408.399.5746 • [ameyer@losgatosca.gov](mailto:ameyer@losgatosca.gov)

[www.losgatosca.gov](http://www.losgatosca.gov) • <https://www.facebook.com/losgatosca>

Code Compliance hours:

7:00 AM – 3:30 PM, Monday – Friday

CONFIDENTIALITY DISCLAIMER

This e-mail is intended only for the use of the individual(s) named in this e-mail. If you receive this e-mail and are not a named recipient, any use, dissemination, distribution or copying of the e-mail is strictly prohibited. If you have received this communication in error, please immediately notify us at the above e-mail address.

**From:** Ramin Zohoor [REDACTED]

**Sent:** Friday, October 28, 2022 5:59 PM

**To:** Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)>

**Cc:** Lawrence Cesnik [REDACTED]; Eli [REDACTED]

**Subject:** Re: Regarding 380 Blackwell electronic gate permit request

Hello Allen.,

I was in the city on July 14th and I spoke with Savannah Van Akin in person. Situation was \_ The exterior fence which I hope you had a chance to see the location & heights were installed before final inspection. I have reached out to the city for revision and the outcome was we would need to go through an exception. That being said, I stopped by at the city to further discuss the options we would have with the non conforming fence and from what Savannah has mentioned was that the fence is over the allowed height , too close to the property line / street & it is in the corner lot which will limit the visibility and the exception won't most likely be approved. She has suggested for us to work on getting the fence adjusted and pushed back. WHICH brings me to the point why there is no exception / revision number as this discussion was done in person and as you can see in detail.

My question is \_ If you have seen the fence location, height that is being proposed do you agree the exception will be approved regardless of the location & corner lot ? We just went based on what the planner told us and we are hoping you could let us know differently so this can stay and ofcourse we will submit any further revisions required.

Thank you.

On Wed, Oct 26, 2022 at 11:46 AM Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)> wrote:

Good morning Larry Ramin, and Eli,

What was the permit number for the vehicular gate that was submitted by Just Right Home Remodeling?

The next best step would be to submit a permit application for the vehicular gate.

Respectfully yours,

Allen Meyer • Code Compliance Officer  
Community Development Department • 110 E Main Street, Los Gatos CA 95030  
Ph: 408.399.5746 • [ameyer@losgatosca.gov](mailto:ameyer@losgatosca.gov)  
[www.losgatosca.gov](http://www.losgatosca.gov) • <https://www.facebook.com/losgatosca>

Code Compliance hours:  
7:00 AM – 3:30 PM, Monday – Friday

#### CONFIDENTIALITY DISCLAIMER

This e-mail is intended only for the use of the individual(s) named in this e-mail. If you receive this e-mail and are not a named recipient, any use, dissemination, distribution or copying of the e-mail is strictly prohibited. If you have received this communication in error, please immediately notify us at the above e-mail address.

-----Original Message-----

From: Lawrence Cesnik [REDACTED]  
Sent: Tuesday, October 25, 2022 9:02 PM  
To: Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)>  
Cc: Eli [REDACTED]  
Subject: Regarding 380 Blackwell electronic gate permit request

EXTERNAL SENDER

Hello Allen, Roy

Y've been in touch this evening with the team of our contractor- Just Right Home Remodeling (Eli our

lead contact & Ramin the architect ccd above)

They report that they did indeed submit the permit application and Ramin visited your office on July 14 to discuss it.

Based on our conversation today, I assume that the best next step is for them to re-submit- but am cc'ing all so that you can discuss in writing or by phone

Thanks again

Larry Cesnik

██████████ mobile

**From:** Lawrence Cesnik ██████████  
**Sent:** Friday, June 9, 2023 10:48 AM  
**To:** Sean Mullin <SMullin@losgatosca.gov>  
**Subject:** Fwd: Regarding 380 Blackwell electronic gate permit request- email #3

Larry Cesnik

██████████ mobile

Begin forwarded message:

**From:** Ramin Zohoor ██████████  
**Date:** January 11, 2023 at 10:45:50 AM PST  
**To:** Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)>  
**Cc:** Lawrence Cesnik ██████████, Eli ██████████ Roy Alba <[ralba@losgatosca.gov](mailto:ralba@losgatosca.gov)>  
**Subject:** Re: Regarding 380 Blackwell electronic gate permit request

Hi Allen, This was resubmitted back into the original email account with the plans that were requested back in December.

We have sent those for an exception that was required by planning. Who should we send this ? Information might not be getting to you. Do we send to you directly?

On Wed, Jan 11, 2023 at 10:42 AM Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)> wrote:

Good morning Larry,

Where are you, or your contractors, in the process of resolving this issue? I sent the email below in November and did not receive a response or online permit application.

Thank you,



**Allen Meyer • Code Compliance Officer**

Community Development Department • 110 E Main Street, Los Gatos CA 95030  
Ph: 408.399.5746 • [ameyer@losgatosca.gov](mailto:ameyer@losgatosca.gov)

**TOWN CLOSURE NOTICE: Town offices will be closed Monday, January 16, 2023 in observance of the Martin Luther King Jr. Holiday.. Town offices will re-open for regular business hours on Tuesday, January 17, 2023.**

Regular Code Compliance hours:  
7:00 AM – 3:30 PM, Monday – Friday

CONFIDENTIALITY DISCLAIMER

This e-mail is intended only for the use of the individual(s) named in this e-mail. If you receive this e-mail and are not a named recipient, any use, dissemination, distribution or copying of the e-mail is strictly prohibited. If you have received this communication in error, please immediately notify us at the above e-mail address.

**From:** Allen Meyer  
**Sent:** Wednesday, November 9, 2022 2:23 PM  
**To:** Lawrence Cesnik [REDACTED]  
**Cc:** Ramin Zohoor [REDACTED]; Eli [REDACTED]; Roy Alba  
<[ralba@losgatosca.gov](mailto:ralba@losgatosca.gov)>  
**Subject:** RE: Regarding 380 Blackwell electronic gate permit request

Good afternoon Larry,

In order to move forward with your vehicular gate project, please submit a Planning application at: <https://www.losgatosca.gov/897/Planning>. In this application you will submit a letter stating the reasons for the fence height/gate location exemption request. Please apply by November 27, 2022 to avoid any additional citations.

The citation appeal is a completely separate item from your exemption request.

Please let us know if you should have any questions.

Best,



**Allen Meyer • Code Compliance Officer**

Community Development Department • 110 E Main Street, Los Gatos CA 95030

Ph: 408.399.5746 • [ameyer@losgatosca.gov](mailto:ameyer@losgatosca.gov)

[www.losgatosca.gov](http://www.losgatosca.gov) • <https://www.facebook.com/losgatosca>

Code Compliance hours:  
7:00 AM – 3:30 PM, Monday – Friday

CONFIDENTIALITY DISCLAIMER

This e-mail is intended only for the use of the individual(s) named in this e-mail. If you receive this e-mail and are not a named recipient, any use, dissemination, distribution or copying of the e-mail is strictly prohibited. If you have received this communication in error, please immediately notify us at the above e-mail address.

**From:** Lawrence Cesnik <[REDACTED]>  
**Sent:** Tuesday, November 8, 2022 5:17 PM  
**To:** Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)>  
**Cc:** Ramin Zohoor <[REDACTED]>; Eli <[REDACTED]>; Roy Alba <[ralba@losgatosca.gov](mailto:ralba@losgatosca.gov)>  
**Subject:** Re: Regarding 380 Blackwell electronic gate permit request

Hi Allen

I wanted to weigh in here as the property owner and have been in contact with our remodeling firm (Eli, Ramin)

If we need to file for an exception- we certainly will.

We will use points d &/ or e below - special security concern/ circumstance. As I explained in my original appeal, we have a special needs son whose safety is at risk if that height of gate is not in place.

Please advise if it will be sufficient for me to re-send you the appeal paperwork that you had returned- or should Done Right Home Remodeling file the official request for exception on your online portal?

Please advise, thank you!

Larry Cesnik

[REDACTED] mobile

On Oct 31, 2022, at 2:19 PM, Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)> wrote:

Ramin,

Thank you for the clarification. I do not know if an exception would be approved as I'm not involved in that process. The Community Development Director is the person that approves/denies fence exceptions, which can be appealed to the Planning Commission. The two issues that I see with the vehicular gate is the height and distance from the property line. This is what you would be asking for an exception for.

Town Code Section 29.40.0315. - Height, materials and design, and location.

1. Height.

(3) Fences, walls, gates, and hedges may not exceed three (3) feet in height when located within a required front or side yard abutting a street (as required by the zone), driveway view area, traffic view area, or corner sight triangle unless an exception is granted by the Town Engineer and Community Development Director. Trees, hedges, and vegetation within a corner sight triangle shall meet the requirements of section 26.10.065.

(c) Location.

(3) Vehicular gates shall be set back from the edge of the adjacent street a minimum of eighteen (18) feet as measured along the centerline of the driveway. A greater setback may be required when a gated entrance serves more than one (1) house.

An exception to any of these fence regulations may be granted by the Community Development Director. A fence exception application and fee shall be filed with the Community Development Department and shall provide written justification that demonstrates one (1) of the following conditions exist:

1. Adjacent to commercial property, perimeter fences or walls may be eight (8) feet if requested or agreed upon by a majority of the adjacent residential property owners.
2. On interior lots, side yard and rear yard fences, walls, gates, gateways, entry arbors, or hedges, behind the front yard setback, may be a maximum of eight (8) feet high provided the property owner can provide written justification that either:
  1. A special privacy concern exists that cannot be practically addressed by additional landscaping or tree screening; or
  2. A special wildlife/animal problem affects the property that cannot be practically addressed through alternatives. Documented instances of wildlife grazing on gardens or ornamental landscaping may be an example of such a problem.
3. At public utility facilities, critical infrastructure, and emergency access locations, exceptions may be granted where strict enforcement of these regulations will result in a security or safety concern.
4. A special security concern exists that cannot be practically addressed through alternatives.
5. A special circumstance exists, including lot size or configuration, where strict enforcement of these regulations would result in undue hardship.

Please let me know if you intend to apply for an exception, or remove the vehicular gate.

Thank you,

Allen

**From:** Ramin Zohoor [REDACTED]  
**Sent:** Monday, October 31, 2022 10:34 AM  
**To:** Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)>  
**Cc:** Lawrence Cesnik [REDACTED]; Eli [REDACTED]; Roy Alba <[ralba@losgatosca.gov](mailto:ralba@losgatosca.gov)>  
**Subject:** Re: Regarding 380 Blackwell electronic gate permit request

Hi Allen.,

That is exactly what was discussed and brought to the planning department about the vehicle gates not the existing fences.

The discussion was for exception application of the vehicle gate which the planner Savannah Van Akin said the location, heights and what we are applying for does not get approved. She mentioned per what the neighborhood is and location of the fence its unlikely that we pay for full exception application and get it approved.

Question I am hoping to get an answer is if you think it would be a different situation where clients will be getting this approved as you see it location. ?

On Mon, Oct 31, 2022 at 10:30 AM Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)> wrote:

Good morning Ramin,

The citation that was issued on September 13, 2022 had nothing to do with the existing white picket fence, the citation is only about the vehicle gate which was installed without a permit. Please submit a permit application online for the unpermitted vehicular gate.

Thank you,



**Allen Meyer • Code Compliance Officer**

Community Development Department • 110 E Main Street, Los Gatos CA 95030

Ph: 408.399.5746 • [ameyer@losgatosca.gov](mailto:ameyer@losgatosca.gov)

[www.losgatosca.gov](http://www.losgatosca.gov) • <https://www.facebook.com/losgatosca>

Code Compliance hours:

7:00 AM – 3:30 PM, Monday – Friday

**CONFIDENTIALITY DISCLAIMER**

This e-mail is intended only for the use of the individual(s) named in this e-mail. If you receive this e-mail and are not a named recipient, any use, dissemination, distribution or copying of the e-mail is strictly prohibited. If you have received this communication in error, please immediately notify us at the above e-mail address.

**From:** Ramin Zohoor [REDACTED]

**Sent:** Friday, October 28, 2022 5:59 PM

**To:** Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)>

**Cc:** Lawrence Cesnik [REDACTED] Eli <[REDACTED]>

**Subject:** Re: Regarding 380 Blackwell electronic gate permit request

Hello Allen.,

Hope you are doing well.

I was in the city on July 14th and I spoke with Savannah Van Akin in person. Situation was \_ The exterior fence which I hope you had a chance to see the location & heights were installed before final inspection. I have reached out to the city for revision and the outcome was we would need to go through an exception. That being said, I stopped by at the city to further discuss the options we would have with the non conforming fence and from what Savannah has mentioned was that the fence is over the allowed height , too close to the property line / street & it is in the corner lot which will limit the visibility and the exception won't most likely be approved. She has suggested for us to work on getting the fence adjusted and pushed back. Which brings me to the point why there is no exception / revision number as this discussion was done in person and as you can see in detail.

My question is \_ If you have seen the fence location, height that is being proposed do you agree the exception will be approved regardless of the location & corner lot ? We just went based on what the planner told us and we are hoping you could let us know differently so this can stay and ofcourse we will submit any further revisions required.

Thank you.

On Wed, Oct 26, 2022 at 11:46 AM Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)> wrote:

Good morning Larry Ramin, and Eli,

What was the permit number for the vehicular gate that was submitted by Just Right Home Remodeling?

The next best step would be to submit a permit application for the vehicular gate.

Respectfully yours,

Allen Meyer • Code Compliance Officer  
Community Development Department • 110 E Main Street, Los Gatos CA 95030  
Ph: 408.399.5746 • [ameyer@losgatosca.gov](mailto:ameyer@losgatosca.gov)  
[www.losgatosca.gov](http://www.losgatosca.gov) • <https://www.facebook.com/losgatosca>

Code Compliance hours:  
7:00 AM – 3:30 PM, Monday – Friday

#### CONFIDENTIALITY DISCLAIMER

This e-mail is intended only for the use of the individual(s) named in this e-mail. If you receive this e-mail and are not a named recipient, any use, dissemination, distribution or copying of the e-mail is strictly prohibited. If you have received this communication in error, please immediately notify us at the above e-mail address.

-----Original Message-----

From: Lawrence Cesnik [REDACTED]  
Sent: Tuesday, October 25, 2022 9:02 PM  
To: Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)>  
Cc: Eli [REDACTED]; [REDACTED]  
Subject: Regarding 380 Blackwell electronic gate permit request

#### EXTERNAL SENDER

Hello Allen, Roy

I've been in touch this evening with the team of our contractor- Just Right Home Remodeling (Eli our lead contact & Ramin the architect ccd above)

They report that they did indeed submit the permit application and Ramin visited your office on July 14 to discuss it.

Based on our conversation today, I assume that the best next step is for them to re-submit- but am cc'ing all so that you can discuss in writing or by phone

Thanks again



Larry Cesnik  
[REDACTED] mobile

**From:** Lawrence Cesnik [REDACTED]  
**Sent:** Friday, June 9, 2023 10:48 AM  
**To:** Sean Mullin <SMullin@losgatosca.gov>  
**Subject:** Fwd: Regarding 380 Blackwell electronic gate permit request- email #4

Larry Cesnik  
[REDACTED] mobile

Begin forwarded message:

**From:** Ramin Zohoor <[REDACTED]>  
**Date:** January 17, 2023 at 9:50:58 AM PST  
**To:** Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)>  
**Cc:** Lawrence Cesnik <[REDACTED]> Eli [REDACTED], Roy Alba <[ralba@losgatosca.gov](mailto:ralba@losgatosca.gov)>  
**Subject:** Re: Regarding 380 Blackwell electronic gate permit request

Hello Allen,

Hope you are doing well. This should be in under PRE23-00053.

Let me know if anything else please needed.

On Wed, Jan 11, 2023 at 11:01 AM Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)> wrote:

Ramin,

That was finalized last May. Not sure if you can reopen that permit.

You should probably open a new permit as stated in my November 9, 2022 email: In order to move forward with your vehicular gate project, please submit a Planning application at: <https://www.losgatosca.gov/897/Planning>. In this application you will submit a letter stating the reasons for the fence height/gate location exemption request.

Thank you,

Allen

**From:** Ramin Zohoor <[REDACTED]>  
**Sent:** Wednesday, January 11, 2023 10:55 AM  
**To:** Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)>  
**Cc:** Lawrence Cesnik <[REDACTED]>; Eli [REDACTED]; Roy Alba <[ralba@losgatosca.gov](mailto:ralba@losgatosca.gov)>  
**Subject:** Re: Regarding 380 Blackwell electronic gate permit request

Under [B21-1000](#)

Did you want me to resubmit ? Same drawings set with the fencing line shown.

On Wed, Jan 11, 2023 at 10:51 AM Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)> wrote:

Ramin,

What permit number did you resubmit to, I don't see it?

Allen

**From:** Ramin Zohoor [REDACTED] >  
**Sent:** Wednesday, January 11, 2023 10:46 AM  
**To:** Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)>  
**Cc:** Lawrence Cesnik [REDACTED]; Eli <[REDACTED]>; Roy Alba <[ralba@losgatosca.gov](mailto:ralba@losgatosca.gov)>  
**Subject:** Re: Regarding 380 Blackwell electronic gate permit request

Hi Allen, This was resubmitted back into the original email account with the plans that were requested back in December.

We have sent those for an exception that was required by planning. Who should we send this ? Information might not be getting to you. Do we send to you directly?

On Wed, Jan 11, 2023 at 10:42 AM Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)> wrote:

Good morning Larry,

Where are you, or your contractors, in the process of resolving this issue? I sent the email below in November and did not receive a response or online permit application.

Thank you,



**Allen Meyer • Code Compliance Officer**

Community Development Department • 110 E Main Street, Los Gatos CA 95030

Ph: 408.399.5746 • [ameyer@losgatosca.gov](mailto:ameyer@losgatosca.gov)

[www.losgatosca.gov](http://www.losgatosca.gov) • <https://www.facebook.com/losgatosca>

***TOWN CLOSURE NOTICE: Town offices will be closed Monday, January 16, 2023 in observance of the Martin Luther King Jr. Holiday.. Town offices will re-open for regular business hours on Tuesday, January 17, 2023.***

Regular Code Compliance hours:

7:00 AM – 3:30 PM, Monday – Friday

CONFIDENTIALITY DISCLAIMER

This e-mail is intended only for the use of the individual(s) named in this e-mail. If you receive this e-mail and are not a named recipient, any use, dissemination, distribution or copying of the e-mail is strictly prohibited. If you have received this communication in error, please immediately notify us at the above e-mail address.

**From:** Allen Meyer

**Sent:** Wednesday, November 9, 2022 2:23 PM

**To:** Lawrence Cesnik <[REDACTED]>  
**Cc:** Ramin Zohoor <[REDACTED]>; Eli <[REDACTED]>; Roy Alba <[ralba@losgatosca.gov](mailto:ralba@losgatosca.gov)>  
**Subject:** RE: Regarding 380 Blackwell electronic gate permit request

Good afternoon Larry,

In order to move forward with your vehicular gate project, please submit a Planning application at: <https://www.losgatosca.gov/897/Planning>. In this application you will submit a letter stating the reasons for the fence height/gate location exemption request. Please apply by November 27, 2022 to avoid any additional citations.

The citation appeal is a completely separate item from your exemption request.

Please let us know if you should have any questions.

Best,



**Allen Meyer • Code Compliance Officer**

Community Development Department • 110 E Main Street, Los Gatos CA 95030  
Ph: 408.399.5746 • [ameyer@losgatosca.gov](mailto:ameyer@losgatosca.gov)  
[www.losgatosca.gov](http://www.losgatosca.gov) • <https://www.facebook.com/losgatosca>

Code Compliance hours:

7:00 AM – 3:30 PM, Monday – Friday

**CONFIDENTIALITY DISCLAIMER**

This e-mail is intended only for the use of the individual(s) named in this e-mail. If you receive this e-mail and are not a named recipient, any use, dissemination, distribution or copying of the e-mail is strictly prohibited. If you have received this communication in error, please immediately notify us at the above e-mail address.

**From:** Lawrence Cesnik <[REDACTED]>  
**Sent:** Tuesday, November 8, 2022 5:17 PM  
**To:** Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)>  
**Cc:** Ramin Zohoor <[REDACTED]>; Eli <[REDACTED]>; Roy Alba <[ralba@losgatosca.gov](mailto:ralba@losgatosca.gov)>  
**Subject:** Re: Regarding 380 Blackwell electronic gate permit request

Hi Allen

I wanted to weigh in here as the property owner and have been in contact with our remodeling firm( Eli, Ramin)

If we need to file for an exception- we certainly will.

We will use points d &/ or e below - special security concern/ circumstance. As I explained in my original appeal, we have a special needs son whose safety is at risk if that height of gate is not in place.

Please advise if it will be sufficient for me to re-send you the appeal paperwork that you had returned- or should Done Right Home Remodeling file the official request for exception on your online portal?

Please advise, thank you!

Larry Cesnik

██████████ mobile

On Oct 31, 2022, at 2:19 PM, Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)> wrote:

Ramin,

Thank you for the clarification. I do not know if an exception would be approved as I'm not involved in that process. The Community Development Director is the person that approves/denies fence exceptions, which can be appealed to the Planning Commission. The two issues that I see with the vehicular gate is the height and distance from the property line. This is what you would be asking for an exception for.

Town Code Section 29.40.0315. - Height, materials and design, and location.

1. Height.

(3) Fences, walls, gates, and hedges may not exceed three (3) feet in height when located within a required front or side yard abutting a street (as required by the zone), driveway view area, traffic view area, or corner sight triangle unless an exception is granted by the Town Engineer and Community Development Director. Trees, hedges, and vegetation within a corner sight triangle shall meet the requirements of section 26.10.065.

(c) Location.

(3) Vehicular gates shall be set back from the edge of the adjacent street a minimum of eighteen (18) feet as measured along the centerline of the driveway. A greater setback may be required when a gated entrance serves more than one (1) house.

Town Code Section 29.40.0320. - Exceptions.

An exception to any of these fence regulations may be granted by the Community Development Director. A fence exception application and fee shall be filed with the Community Development Department and shall provide written justification that demonstrates one (1) of the following conditions exist:

1. Adjacent to commercial property, perimeter fences or walls may be eight (8) feet if requested or agreed upon by a majority of the adjacent residential property owners.
2. On interior lots, side yard and rear yard fences, walls, gates, gateways, entry arbors, or hedges, behind the front yard setback, may be a maximum of eight (8) feet high provided the property owner can provide written justification that either:

1. A special privacy concern exists that cannot be practically addressed by additional landscaping or tree screening; or

2. A special wildlife/animal problem affects the property that cannot be practically addressed through alternatives. Documented instances of wildlife grazing on gardens or ornamental landscaping may be an example of such a problem.
3. At public utility facilities, critical infrastructure, and emergency access locations, exceptions may be granted where strict enforcement of these regulations will result in a security or safety concern.
4. A special security concern exists that cannot be practically addressed through alternatives.
5. A special circumstance exists, including lot size or configuration, where strict enforcement of these regulations would result in undue hardship.

Please let me know if you intend to apply for an exception, or remove the vehicular gate.

Thank you,

Allen

**From:** Ramin Zohoor <[REDACTED]>  
**Sent:** Monday, October 31, 2022 10:34 AM  
**To:** Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)>  
**Cc:** Lawrence Cesnik <[REDACTED]>; Eli [REDACTED]; Roy Alba <[ralba@losgatosca.gov](mailto:ralba@losgatosca.gov)>  
**Subject:** Re: Regarding 380 Blackwell electronic gate permit request

Hi Allen.,

That is exactly what was discussed and brought to the planning department about the vehicle gates not the existing fences.

The discussion was for exception application of the vehicle gate which the planner Savannah Van Akin said the location., heights and what we are applying for does not get approved. She mentioned per what the neighborhood is and location of the fence its unlikely that we pay for full exception application and get it approved.

Question I am hoping to get an answer is if you think it would be a different situation where clients will be getting this approved as you see it location. ?

On Mon, Oct 31, 2022 at 10:30 AM Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)> wrote:

Good morning Ramin,

The citation that was issued on September 13, 2022 had nothing to do with the existing white picket fence, the citation is only about the vehicle gate which was installed without a permit. Please submit a permit application online for the unpermitted vehicular gate.

Thank you,

<image001.jpg>

**Allen Meyer • Code Compliance Officer**

Community Development Department • 110 E Main Street, Los Gatos CA 95030

Code Compliance hours:  
7:00 AM – 3:30 PM, Monday – Friday  
CONFIDENTIALITY DISCLAIMER

This e-mail is intended only for the use of the individual(s) named in this e-mail. If you receive this e-mail and are not a named recipient, any use, dissemination, distribution or copying of the e-mail is strictly prohibited. If you have received this communication in error, please immediately notify us at the above e-mail address.

**From:** Ramin Zohoor <[REDACTED]>  
**Sent:** Friday, October 28, 2022 5:59 PM  
**To:** Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)>  
**Cc:** Lawrence Cesnik <[REDACTED]>; Eli [REDACTED]  
**Subject:** Re: Regarding 380 Blackwell electronic gate permit request

Hello Allen.,

Hope you are doing well.

I was in the city on July 14th and I spoke with Savannah Van Akin in person. Situation was \_ The exterior fence which I hope you had a chance to see the location & heights were installed before final inspection. I have reached out to the city for revision and the outcome was we would need to go through an exception. That being said, I stopped by at the city to further discuss the options we would have with the non conforming fence and from what Savannah has mentioned was that the fence is over the allowed height , too close to the property line / street & it is in the corner lot which will limit the visibility and the exception won't most likely be approved. She has suggested for us to work on getting the fence adjusted and pushed back. WHICH brings me to the point why there is no exception / revision number as this discussion was done in person and as you can see in detail.

My question is \_ If you have seen the fence location, height that is being proposed do you agree the exception will be approved regardless of the location & corner lot ? We just went based on what the planner told us and we are hoping you could let us know differently so this can stay and ofcourse we will submit any further revisions required.

Thank you.

On Wed, Oct 26, 2022 at 11:46 AM Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)> wrote:

Good morning Larry Ramin, and Eli,

What was the permit number for the vehicular gate that was submitted by Just Right Home Remodeling?

The next best step would be to submit a permit application for the vehicular gate.

Respectfully yours,

Allen Meyer • Code Compliance Officer  
Community Development Department • 110 E Main Street, Los Gatos CA 95030

Ph: 408.399.5746 • [ameyer@losgatosca.gov](mailto:ameyer@losgatosca.gov)  
[www.losgatosca.gov](http://www.losgatosca.gov) • <https://www.facebook.com/losgatosca>

Code Compliance hours:  
7:00 AM – 3:30 PM, Monday – Friday

CONFIDENTIALITY DISCLAIMER

This e-mail is intended only for the use of the individual(s) named in this e-mail. If you receive this e-mail and are not a named recipient, any use, dissemination, distribution or copying of the e-mail is strictly prohibited. If you have received this communication in error, please immediately notify us at the above e-mail address.

-----Original Message-----

From: Lawrence Cesnik <[REDACTED]>  
Sent: Tuesday, October 25, 2022 9:02 PM  
To: Allen Meyer <[AMeyer@losgatosca.gov](mailto:AMeyer@losgatosca.gov)>  
Cc: Eli <[REDACTED]>; [REDACTED]  
Subject: Regarding 380 Blackwell electronic gate permit request

Hello Allen, Roy

I've been in touch this evening with the team of our contractor- Just Right Home Remodeling (Eli our lead contact & Ramin the architect ccd above)

They report that they did indeed submit the permit application and Ramin visited your office on July 14 to discuss it.

Based on our conversation today, I assume that the best next step is for them to re-submit- but am cc'ing all so that you can discuss in writing or by phone

Thanks again

Larry Cesnik  
[REDACTED] mobile

From: Lawrence Cesnik <[REDACTED]>  
Sent: Friday, June 9, 2023 10:50 AM  
To: Sean Mullin <[SMullin@losgatosca.gov](mailto:SMullin@losgatosca.gov)>  
Subject: 380 Blackwell fence/gate exception- email #6

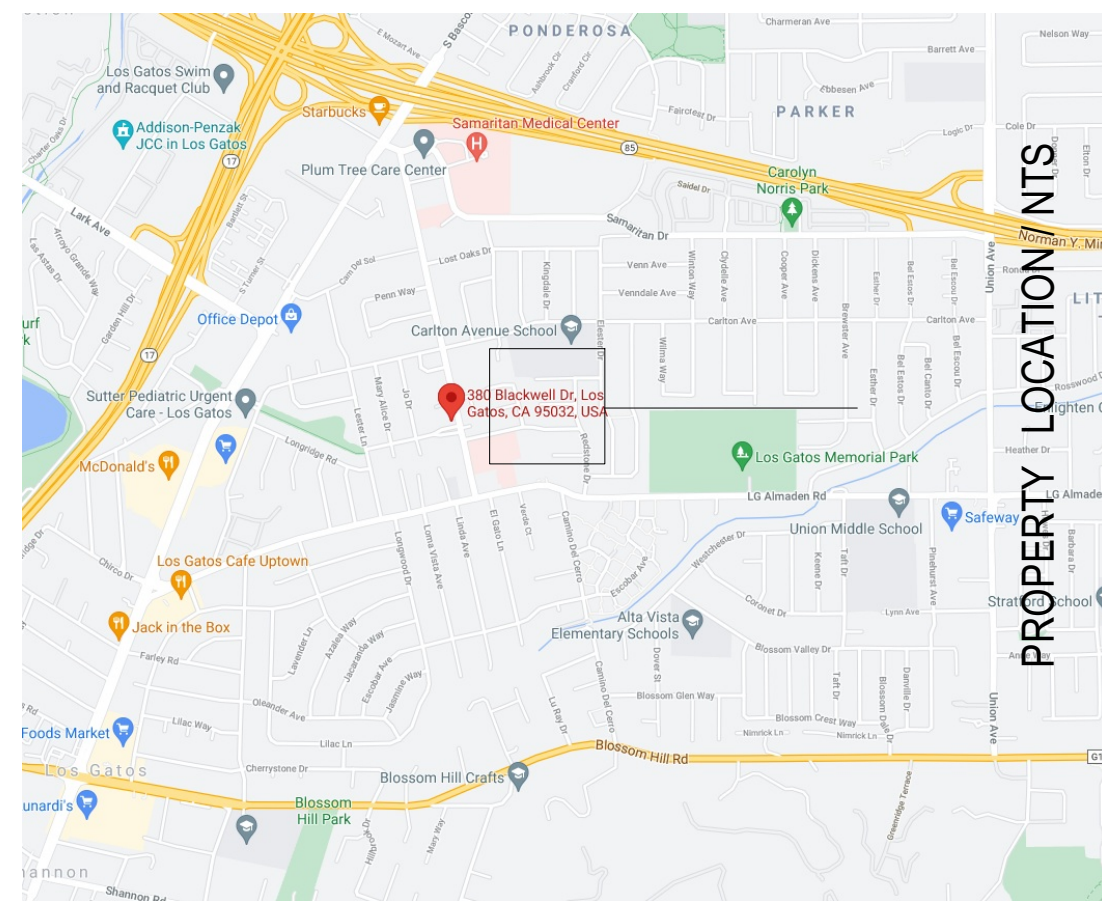
[EXTERNAL SENDER]

Larry Cesnik  
[REDACTED] mobile

# BLACKWELL DR., RESIDENCE

## LOS GATOS, CA

### VICINITY MAP:



### PROJECT CONTACT:

**OWNER:** CESNIK LARRY W AND JOHNSON MARTHA C  
380BLACKWELL DR.,  
LOS GATOS, CA 95032  
TELL : ---  
EMAIL: ---

**DESIGNER:** RAMIN ZOHOOR  
DONE RIGHT HOME REMODELING  
1825 DE LA CRUZ BLVD, #206  
SANTA CLARA, CA 95050  
TEL: 408.497.5071  
EMAIL: ZOHOOR.RAMIN@GMAIL.COM  
LIC. 1002689

**BUILDER:** DONE RIGHT HOME REMODELING  
1825 DE LA CRUZ BLVD, #203  
SANTA CLARA, CA 95050  
TEL: 800-816-0000  
LIC. 1002689  
EMAIL: Donerightremodeling1@gmail.com

### PROJECT DATA:

**ASSESSOR'S PARCEL NUMBER:** 424-12-027  
**PROJECT TYPE:** GARAGE CONVERSION  
**PROJECT LOCATION:** 380 BLACKWELL DR.,  
LOS GATOS, CA

**ZONING:** R-1.8  
**OCCUPANCY GROUP:** R - 3  
**CONSTRUCTION TYPE:** V - B  
**NUMBER OF FLOORS:** MAIN HOUSE: 1 / ADU : 1  
**FIRE PROTECTION:** NON SPRINKLERED  
**BEDROOM NUMBER:** MAIN HOUSE: 3 / ADU: 1 (STUDIO)  
**BATHROOM NUMBER:** MAIN HOUSE: 2 / ADU: 1

### DRAWING INDEX:

A-00.01: COVER SHEET  
BMP SHEET  
A-01: ARCH. SITE PLAN

### CODE EDITIONS:

A. CALIFORNIA RESIDENTIAL	2019 EDITION
B. CALIFORNIA BUILDING	2019 EDITION
C. CALIFORNIA GREEN BUILDING	2019 EDITION
D. CALIFORNIA MECHANICAL	2019 EDITION
E. CALIFORNIA PLUMBING	2019 EDITION
F. CALIFORNIA ELECTRICAL	2019 EDITION
G. CALIFORNIA ENERGY:	2019 EDITION
H. CALIFORNIA FIRE:	2019 EDITION
ANY OTHER APPLICABLE LOCAL AND STATE LAWS AND REGULATIONS.	2019 EDITION

### BUILDER NOTES

1) TO BE VERIFIED A BACKWATER VALVE IS INSTALLED DUE TO PLUMBING WORK. TOWN CODE SECTION 6.40.020 REQUIRED AN APPROVED BACKWATER VALVE ON DRAINAGE PIPING SERVING FIXTURES THAT HAVE FLOOD LEVEL RIMS LESS THAN 12-INCHES ABOVE THE ELEVATION OF THE NEXT UPSTREAM MANHOLE. CPC 710.0

2) BUILDER MUST PROVIDE THE HOMEOWNER WITH A LUMINARIES SCHEDULE (AS REQUIRED IN TITLE 24 CALIFORNIA CODE OF REGULATIONS, PART 1, 10-103(b)) THAT INCLUDES A LIST OF LAMPS INSTALLED IN THE LUMINARIES.

### GENERAL NOTES:

ALL WORK DESCRIBED IN THE DRAWINGS SHALL BE VERIFIED FOR DIMENSION, GRADE, EXTENT AND COMPATIBILITY TO THE EXISTING SITE. ANY DISCREPANCIES AND UNEXPECTED CONDITIONS THAT AFFECT OR CHANGE THE WORK DESCRIBED IN THE CONTRACT DOCUMENTS SHALL BE BROUGHT TO THE DESIGNER ATTENTION IMMEDIATELY. DO NOT PROCEED WITH THE WORK IN THE AREA OF DISCREPANCIES UNTIL ALL SUCH DISCREPANCIES ARE RESOLVED. IF THE CONTRACTOR CHOOSES TO DO SO HE SHALL BE PRECEDING AT HIS OWN RISK.

OMISSIONS FROM THE DRAWINGS AND SPECIFICATIONS OR THE MIS-DESCRIPTION OF THE WORK WHICH IS MANIFESTLY NECESSARY TO CARRY OUT THE INTENT OF THE DRAWINGS AND SPECIFICATIONS, OR WHICH IS CUSTOMARILY REFORMED, SHALL NOT RELIEVE THE CONTRACTOR FROM PERFORMING SUCH OMITTED OR MIS-DESCRIBED DETAILS OF THE WORK AS IF FULLY AND COMPLETELY SET FORTH AND DESCRIBED IN THE DRAWINGS AND SPECIFICATIONS.

SITE CONDITIONS: ALL CONTRACTORS AND SUB-CONTRACTORS SHALL VERIFY DIMENSIONS AND CONDITIONS AT THE SITE PRIOR TO COMMENCEMENT OF THEIR WORK. FAILURE TO DO SO SHALL NOT RELEASE THEM FROM THE RESPONSIBILITY OF ESTIMATING THE WORK. IF ANY VARIATION, DISCREPANCY OR OMISSION (BETWEEN THE INTENT OF THESE CONTRACT DOCUMENTS AND THE EXISTING CONDITIONS ARE FOUND, THE CONTRACTOR OR SUB-CONTRACTOR SHALL NOTIFY DESIGNER IN WRITING AND OBTAIN WRITTEN RESOLUTION FROM DESIGNER PRIOR TO PROCEEDING WITH ANY RELATED WORK.

### AREA CALCULATION:

EXISTING CONDITION: (NO WORK)		
*"E" LIVING SPACE:	1350	SQF (MAIN HOUSE)
*"E" ATTACHED ADU:	418	SQF (ATTACHED)
LOT AREA:	7895	SQF

### SCOPE OF WORK:

- LEGALIZING INSTALLATION OF UN-PERMITTED AUTOMATED SAFETY GATE AT THE FRONT OF THE PROPERTY.  
- GATE AT HEIGHT OF 51 INCHES IN FRONT OF PROPERTY TO BE INSTALLED.

### ABBREVIATIONS:

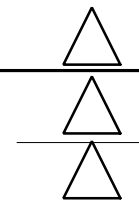
ABV.	Above	FDN.	Foundation	PLT.	Plate
A/C	Air Conditioner	FLR.	Floor	P.L.	Property line
A.D.	Access Door	FURN.	Furnace	PLYWD.	Plywood
ADD.	Addition	G.C.	General Contractor	PWR.	Power
A.F.F.	Above Finished Floor	G.F.C.I.	Ground Fault Circuit Interrupt	R.O.	Rough Opening
A.F.G.	Above Finished Grade	GYP.	Gypsum	R.O.W.	Right of way
B.L.	Building Line	H.B.	Hose bib	REFG.	Refrigerator
BLDG.	Building	HGT.	Height	REF.	Reference
B.O.	Bottom of	HR.	Hour	REV.	Revision
BTM.	Bottom	H.R.	Handrail	RMV.	Remove
CABT.	Cabinet	HTR.	Heater	S.C.	Self-Closing
C.D.	Construction document	H.V.A.C.	Heating, Venting and Air Conditioning	SCHED.	Schedule
C.L.	Center Line	INSUL.	Insulation	S.D.	Smoke detector
CL.	Closet	INT.	Interior	SECT.	Section
CLG.	Ceiling	LAM.	Laminate	SHT.	Sheet
C.O.	Clean Out	LAV.	Lavatory	T.O.C.	Top of curb
CONC.	Concrete	MAX.	Maximum	T.O.F.	Top of footing
D.S.	Down spout	MED.	Medium	TH.	Threshold
D/W	Dishwasher	MIN.	Minimum	TYP.	Typical
DBL.	Double	MTL.	Metal (steel)	UNF.	Unfinished
DEMO.	Demolition	MUL.	Mullion	W.C.	Toilet (water closet)
DIA.	Diameter	N.T.S.	Not to scale	W.C.T.	Wainscot
DR.	Door	N.F.C.	Not for construction	W.H.	Water Heater
ELEV.	Elevation	O.C.	On center	W.I.	Wrought Iron
EXIST.	Existing	O.H.	Overhead	W.I.C.	Walk In Closet
EXT.	Exterior	OPNG.	Opening	YD.	Yard

ADDITION and REMODELING FOR:

### BLACKWELL DR., RESIDENCE

380 BLACKWELL DR.,  
LOS GATOS, CA 95032

REVISION TABLE:



SHEET TITLE:

### COVER SHEET

PROJECT ID :  
DATE : NOV 2022  
SCALE :  
DRAWN BY : RZ

SHEET NUMBER:

## A-00.01

OWNERSHIP:

*Ramin Zohoor*

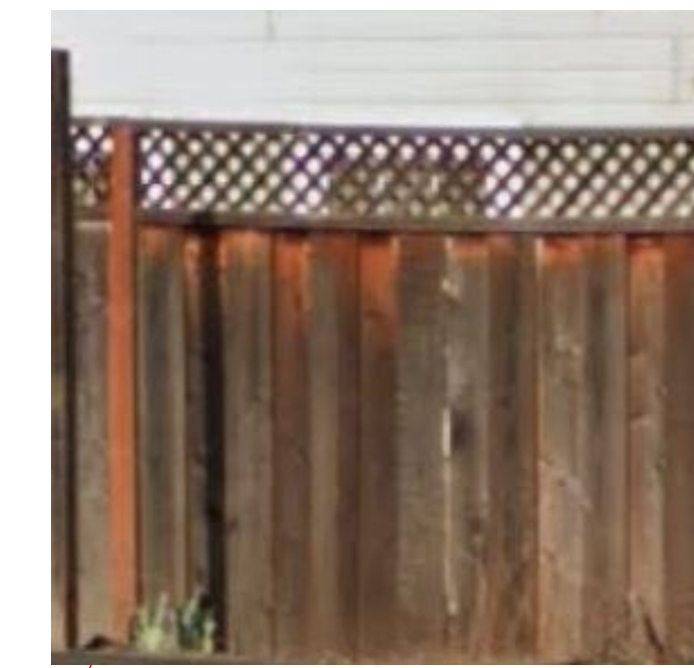


**GRADING and DEMO NOTES:**

- CONTACT PUBLIC WORKS, FOR DRAINAGE AND FINAL GRADE INSPECTION, WHICH INCLUDES DRAIN LINES AND ROOF DRAINS/DOWN SPOUTS.
- ALL PUBLIC IMPROVEMENTS MUST BE COMPLETED PRIOR TO OCCUPANCY.
- CONTRACTOR IS RESPONSIBLE FOR DUST CONTROL AND INSURING THE AREA ADJACENT TO THE WORK IS LEFT IN A CLEAN CONDITION.
- THE CONTRACTOR SHALL REVIEW STD. DETAIL 6-4 ON TREE PROTECTION PRIOR TO ACCOMPLISHING ANY WORK OR REMOVING ANY TREES.
- UTILIZE BEST MANAGEMENT PRACTICES (BMP'S), AS REQUIRED BY THE STATE WATER RESOURCES CONTROL BOARD, FOR ANY ACTIVITY, WHICH DISTURBS SOIL.
- ALL NEW ELECTRICAL SERVICE (POWER, PHONE, AND OR CABLE) SHALL BE UNDER GROUND.
- TO INITIATE RELEASE OF BONDS, CONTACT THE PUBLIC WORKS INSPECTOR FOR FINAL INSPECTION.
- ALL DOWNSPOUTS TO BE RELEASED TO THE GROUND SURFACE, DIRECTED AWAY FROM BUILDING FOUNDATIONS AND DIRECTED TO LANDSCAPE AREAS.
- PRIOR TO BEGINNING ANY WORK WITHIN THE PUBLIC RIGHT OF WAY, THE CONTRACTOR WILL BE RESPONSIBLE FOR PULLING AN ENCROACHMENT PERMIT FROM THE PUBLIC WORKS DEPARTMENT.
- PROVIDE MIN. 5% GRADE SLOPE AWAY FROM FOUNDATION FOR A MIN. DISTANCE OF 10 FEET MEASURE PERPENDICULAR TO THE FACE OF THE WALL. WITH EXCEPTION:
  - IF BUILDING SITE DOES NOT ALLOW 10 FEET OF SLOPE, INDICATE THE INSTALLATION OF DRAINS OR SWALES TO ENSURE DRAINAGE AWAY FROM THE STRUCTURE.
  - IMPERVIOUS SURFACES WITHIN 10 FEET OF THE BUILDING FOUNDATION SHALL BE SLOPED A MIN 2% AWAY FROM THE BUILDING.
- (E) DRAINAGE SHALL REMAIN THROUGHOUT CONSTRUCTION.

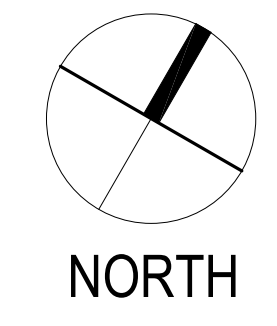
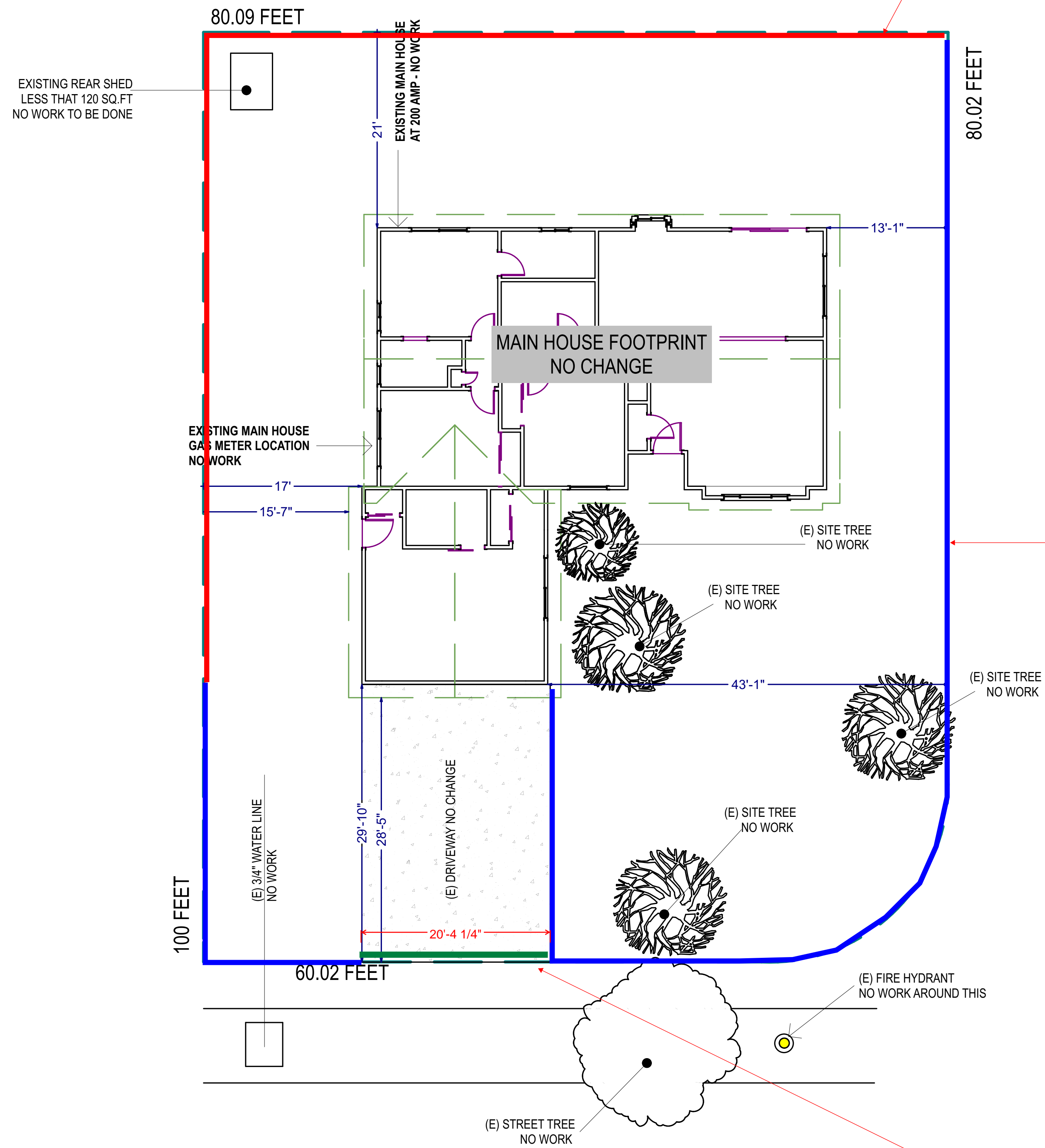
**TREE PROTECTION NOTES:**

- A PLOT PLAN SHALL BE PREPARED DESCRIBING THE RELATIONSHIP OF PROPOSED GRADING AND UTILITY TRENCHING TO THE TREES DESIGNATED FOR PRESERVATION. CONSTRUCTION AND GRADING SHOULD NOT SIGNIFICANTLY RAISE OR LOWER THE GROUND LEVEL BENEATH TREE DRIP LINES. IF THE GROUND LEVEL IS PROPOSED FOR MODIFICATION BENEATH THE DRIP LINE, THE ARCHITECT/ARBORIST SHALL ADDRESS AND MITIGATE THE IMPACT TO THE TREE(S).
- ALL TREES TO BE PRESERVED ON THE PROPERTY AND ALL TREES ADJACENT TO THE PROPERTY SHALL BE PROTECTED AGAINST DAMAGE DURING CONSTRUCTION OPERATIONS BY CONSTRUCTING A FOUR-FOOT-HIGH FENCE AROUND THE DRIP LINE, AND ARMOR AS NEEDED. THE EXTENT OF FENCING AND ARMORING SHALL BE DETERMINED BY THE LANDSCAPE ARCHITECT. THE TREE PROTECTION SHALL BE PLACED BEFORE ANY EXCAVATION OR GRADING IS BEGUN AND SHALL BE MAINTAINED IN REPAIR FOR THE DURATION OF THE CONSTRUCTION WORK.
- NO CONSTRUCTION OPERATIONS SHALL BE CARRIED ON WITHIN THE DRIP LINE AREA OF ANY TREE DESIGNATED TO BE SAVED EXCEPT AS IS AUTHORIZED BY THE DIRECTOR OF COMMUNITY DEVELOPMENT.
- IF THE TRENCHING IS REQUIRED TO PENETRATE THE PROTECTION BARRIER FOR THE TREE, THE SECTION OF TRENCH IN THE DRIP LINE SHALL BE HAND DUG SO AS TO PRECLUDE THE CUTTING OF ROOTS. PRIOR TO INITIATING ANY TRENCHING WITHIN THE BARRIER APPROVAL BY STAFF WITH CONSULTATION OF AN ARBORIST SHALL BE COMPLETED.
- TREES WHICH REQUIRE ANY DEGREE OF FILL AROUND THE NATURAL GRADE SHALL BE GUARDED BY RECOGNIZED STANDARDS OF TREE PROTECTION AND DESIGN OF TREE WELLS.
- THE AREA UNDER THE DRIP LINE OF THE TREE SHALL BE KEPT CLEAN. NO CONSTRUCTION MATERIALS NOR CHEMICAL SOLVENTS SHALL BE STORED OR DUMPED UNDER A TREE.
- FIRES FOR ANY REASON SHALL NOT BE MADE WITHIN FIFTY FEET OF ANY TREE SELECTED TO REMAIN AND SHALL BE LIMITED IN SIZE AND KEPT UNDER CONSTANT SURVEILLANCE.
- THE GENERAL CONTRACTOR SHALL USE A TREE SERVICE LICENSEE, AS DEFINED BY CALIFORNIA BUSINESS AND PROFESSIONAL CODE, TO PRUNE AND CUT OFF THE BRANCHES THAT MUST BE REMOVED DURING THE LANDSCAPE ARCHITECT/ARBORIST WITH APPROVAL OF STAFF.
- ANY DAMAGE TO EXISTING TREE CROWNS OR ROOT SYSTEMS SHALL BE REPAIRED IMMEDIATELY BY AN APPROVED TREE SURGEON.
- NO STORAGE OF CONSTRUCTION MATERIALS OR PARKING SHALL BE PERMITTED WITHIN THE DRIP LINE AREA OF ANY TREE DESIGNATED TO BE SAVED.
- TREE PROTECTION REGULATIONS SHALL BE POSTED ON PROTECTIVE FENCING AROUND TREES TO BE PROTECTED.



**LEGEND:**

- PROPERTY LINE
  - \_\_\_\_\_ BLDG FOOT PRINT
  - \_\_\_\_\_ EXISTING 6 FT WOOD FENCE
  - \_\_\_\_\_ EXISTING 4 FT MASONARY & WOOD FENCE - NO WORK
  - \_\_\_\_\_ PROPOSED ROLL METAL GATE FOR SAFETY
- GRAPHIC SCALE: 1/8" INCH = 1' FEET  
0 2 4 6 8 10 20 30



1 EXISTING SITE PLAN (AREA OF WORK)  
SC: 1/8" = 1'-0"

ADDITION and REMODELING FOR:  
**BLACKWELL DR., RESIDENCE**  
380 BLACKWELL DR.,  
LOS GATOS, CA 95032

REVISION TABLE:


SHEET TITLE:  
**SITE PLAN**

PROJECT ID :  
DATE : NOV 2022  
SCALE : 1/8" = 1'  
DRAWN BY : RZ

SHEET NUMBER:  
**A-01**

OWNERSHIP:  
*R. Zahoor*

From: Lawrence Cesnik [REDACTED]  
Sent: Friday, June 9, 2023 10:50 AM  
To: Sean Mullin <SMullin@losgatosca.gov>  
Subject: 380 Blackwell fence/gate exception- email #6

[EXTERNAL SENDER]

Larry Cesnik  
[REDACTED] mobile



TOWN OF LOS GATOS
COMMUNITY DEVELOPMENT DEPARTMENT

110 E. Main Street
Los Gatos, CA 95030

APPEAL OF THE DECISION OF
DIRECTOR OF COMMUNITY DEVELOPMENT

PLEASE TYPE or PRINT NEATLY

I, the undersigned, do hereby appeal a decision of the DIRECTOR OF COMMUNITY DEVELOPMENT as follows:

DATE OF DECISION: February 27, 2023

PROJECT/APPLICATION: Exception to an existing 4.25 foot tall electronic vehicular gate

LOCATION: 380 Blackwell Drive

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 Director.

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:

Main reason (as already indicated in prior communications) is for safety reasons. We have a young adult special needs son for which this gate will provide protection

We will continue to gather additional documentation to submit to the Town of Los Gatos. We are in the process of securing an attorney to represent us in this appeal

It has been difficult to locate an available attorney on short notice - therefore we are requesting a delay in the appeal hearing date

IMPORTANT:

- 1. Appeal must be filed not more than ten (10) days after the decision is rendered by the Director of Community Development. 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. Appeals are due by 4:00 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 anew 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: Lawrence W Cesnik

SIGNATURE:

DATE: March 7, 2023

ADDRESS: 380 Blackwell Drive, Los Gatos, CA 95032

PHONE:

EMAIL:

\*\*\*\*\*

OFFICE USE ONLY

DATE OF PLANNING COMMISSION HEARING:

COMMISSION ACTION: 1. DATE: 2. DATE: 3. DATE:

PLAPPEAL \$ 234.00 Residential
PLAPPEAL \$ 934.00 Commercial
PLAPPEAL \$ 95.00 Tree Appeals

From: Lawrence Cesnik <[REDACTED]>  
Sent: Friday, June 9, 2023 10:59 AM  
To: Sean Mullin <SMullin@losgatosca.gov>  
Subject: 380 Blackwell gate exception - email #8



## TOWN OF LOS GATOS

COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION  
(408) 354-6872 Fax (408) 354-7593

CIVIC CENTER  
110 E. MAIN STREET  
LOS GATOS, CA 95030

March 6, 2023

Larry Cesnik  
{Sent via Email}

**RE: AMENDED ACTION LETTER**  
**380 Blackwell Drive**  
Fence Height Exception (FHE-23-002)

Requesting approval for an exception to an existing 4.25-foot-tall automated vehicular gate within the required front yard setback on property zoned R-1:8. APN 424-12-027.  
PROPERTY OWNERS: Larry Cesnik and Martha Johnson  
APPLICANT: Ramin Zohoor

The Los Gatos Community Development Department and Public Works Department have reviewed the referenced application for a fence height exception pursuant to [Town Code Section 29.40.0320](#). Based upon review by the Parks and Public Works Department, staff is unable to approve the application due to the unsafe conditions caused by a vehicular gate lacking the 18-foot setback required by Town Code Section [29.40.0315\(c\)\(3\)](#), and its proximity to the intersection adjacent to the property. Sufficient justification for conditions listed in Section 29.40.0320 was not provided.

Based on the foregoing, the Los Gatos Community Development Department has **denied** the request on February 27, 2023.

PLEASE NOTE: Pursuant to Section 29.20.255 of the Town Code, this decision may be appealed by any interested party to the Planning Commission within 10 days of the denial date. Appeals, with the completed Appeal Form and appeal fee payment, must be submitted **in person** to the Town Clerk's office within 10 days from the date of denial, or **by 4:00 p.m. on March 9, 2023**.

If you have any questions concerning this decision, please contact me at (408) 354-6873 or via email at [PBeeuwsaert@LosGatosCA.gov](mailto:PBeeuwsaert@LosGatosCA.gov).

Sincerely,

Peggy Beeuwsaert  
Assistant Planner

**From:** Lawrence Cesnik <[REDACTED]>  
**Sent:** Friday, June 9, 2023 11:01 AM  
**To:** Sean Mullin <SMullin@losgatosca.gov>  
**Subject:** 380 Blackwell Dr follow up - June 14 hearing

[EXTERNAL SENDER]

Hello Sean

You should have received 8 emails with various communications & documents on this case

I will very likely email you 1 or 2 more next week to be included in the addendum

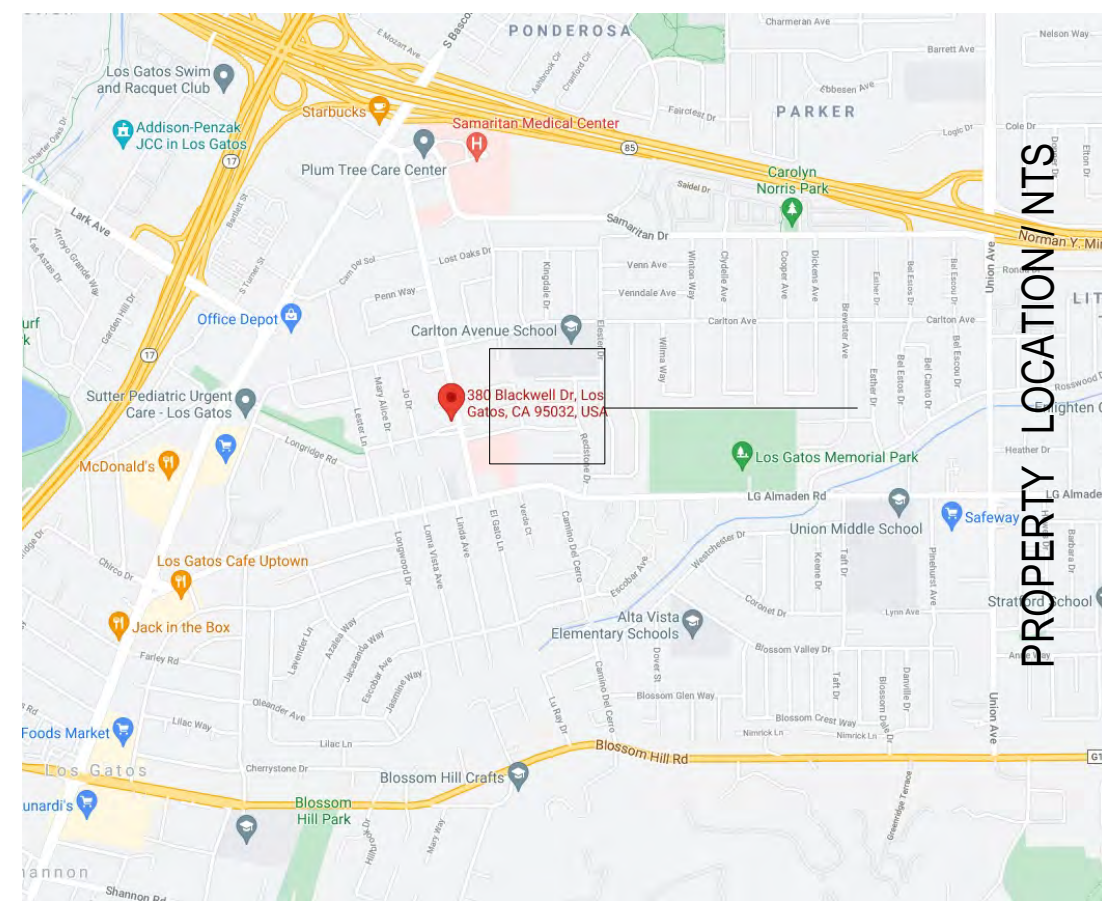
Thank you

Larry Cesnik  
1 [REDACTED] mobile

# BLACKWELL DR., RESIDENCE

## LOS GATOS, CA

### VICINITY MAP:



### PROJECT CONTACT:

**OWNER:** CESNIK LARRY W AND JOHNSON MARTHA C  
380BLACKWELL DR.,  
LOS GATOS, CA 95032  
TELL : ---  
EMAIL: ---

**DESIGNER:** RAMIN ZOHOOR  
DONE RIGHT HOME REMODELING  
1825 DE LA CRUZ BLVD, #206  
SANTA CLARA, CA 95050  
TEL: 408.497.5071  
EMAIL: ZOHOOR.RAMIN@GMAIL.COM  
LIC. 1002689

**BUILDER:** DONE RIGHT HOME REMODELING  
1825 DE LA CRUZ BLVD, #203  
SANTA CLARA, CA 95050  
TEL: 800-816-0000  
LIC. 1002689  
EMAIL: Donerightremodeling1@gmail.com

### PROJECT DATA:

ASSESSOR'S PARCEL NUMBER: 424-12-027  
PROJECT TYPE: GARAGE CONVERSION  
PROJECT LOCATION: 380 BLACKWELL DR.,  
LOS GATOS, CA

ZONING: R-1.8  
OCCUPANCY GROUP: R - 3  
CONSTRUCTION TYPE: V - B  
NUMBER OF FLOORS: MAIN HOUSE: 1 / ADU : 1  
FIRE PROTECTION: NON SPRINKLERED  
BEDROOM NUMBER: MAIN HOUSE: 3 / ADU: 1 (STUDIO)  
BATHROOM NUMBER: MAIN HOUSE: 2 / ADU: 1

### DRAWING INDEX:

A-00.01: COVER SHEET  
BMP SHEET  
A-01: ARCH. SITE PLAN

### CODE EDITIONS:

A. CALIFORNIA RESIDENTIAL	2019 EDITION
B. CALIFORNIA BUILDING	2019 EDITION
C. CALIFORNIA GREEN BUILDING	2019 EDITION
D. CALIFORNIA MECHANICAL	2019 EDITION
E. CALIFORNIA PLUMBING	2019 EDITION
F. CALIFORNIA ELECTRICAL	2019 EDITION
G. CALIFORNIA ENERGY:	2019 EDITION
H. CALIFORNIA FIRE:	2019 EDITION
ANY OTHER APPLICABLE LOCAL AND STATE LAWS AND REGULATIONS.	2019 EDITION

### BUILDER NOTES

1) TO BE VERIFIED A BACKWATER VALVE IS INSTALLED DUE TO PLUMBING WORK. TOWN CODE SECTION 6.40.020 REQUIRED AN APPROVED BACKWATER VALVE ON DRAINAGE PIPING SERVING FIXTURES THAT HAVE FLOOD LEVEL RIMS LESS THAN 12-INCHES ABOVE THE ELEVATION OF THE NEXT UPSTREAM MANHOLE. CPC 710.0

2) BUILDER MUST PROVIDE THE HOMEOWNER WITH A LUMINARIES SCHEDULE (AS REQUIRED IN TITLE 24 CALIFORNIA CODE OF REGULATIONS, PART 1, 10-103(b)) THAT INCLUDES A LIST OF LAMPS INSTALLED IN THE LUMINARIES.

### GENERAL NOTES:

ALL WORK DESCRIBED IN THE DRAWINGS SHALL BE VERIFIED FOR DIMENSION, GRADE, EXTENT AND COMPATIBILITY TO THE EXISTING SITE. ANY DISCREPANCIES AND UNEXPECTED CONDITIONS THAT AFFECT OR CHANGE THE WORK DESCRIBED IN THE CONTRACT DOCUMENTS SHALL BE BROUGHT TO THE DESIGNER ATTENTION IMMEDIATELY. DO NOT PROCEED WITH THE WORK IN THE AREA OF DISCREPANCIES UNTIL ALL SUCH DISCREPANCIES ARE RESOLVED. IF THE CONTRACTOR CHOOSES TO DO SO HE SHALL BE PRECEDING AT HIS OWN RISK.

OMISSIONS FROM THE DRAWINGS AND SPECIFICATIONS OR THE MIS-DESCRIPTION OF THE WORK WHICH IS MANIFESTLY NECESSARY TO CARRY OUT THE INTENT OF THE DRAWINGS AND SPECIFICATIONS, OR WHICH IS CUSTOMARILY REFORMED, SHALL NOT RELIEVE THE CONTRACTOR FROM PERFORMING SUCH OMITTED OR MIS-DESCRIBED DETAILS OF THE WORK AS IF FULLY AND COMPLETELY SET FORTH AND DESCRIBED IN THE DRAWINGS AND SPECIFICATIONS.

SITE CONDITIONS: ALL CONTRACTORS AND SUB-CONTRACTORS SHALL VERIFY DIMENSIONS AND CONDITIONS AT THE SITE PRIOR TO COMMENCEMENT OF THEIR WORK. FAILURE TO DO SO SHALL NOT RELEASE THEM FROM THE RESPONSIBILITY OF ESTIMATING THE WORK. IF ANY VARIATION, DISCREPANCY OR OMISSION (BETWEEN THE INTENT OF THESE CONTRACT DOCUMENTS AND THE EXISTING CONDITIONS ARE FOUND, THE CONTRACTOR OR SUB-CONTRACTOR SHALL NOTIFY DESIGNER IN WRITING AND OBTAIN WRITTEN RESOLUTION FROM DESIGNER PRIOR TO PROCEEDING WITH ANY RELATED WORK.

### AREA CALCULATION:

EXISTING CONDITION: (NO WORK)		
*"E" LIVING SPACE:	1350	SQF (MAIN HOUSE)
*"E" ATTACHED ADU:	418	SQF (ATTACHED)
LOT AREA:	7895	SQF

### SCOPE OF WORK:

- LEGALIZING INSTALLATION OF UN-PERMITTED AUTOMATED SAFETY GATE AT THE FRONT OF THE PROPERTY.  
- GATE AT HEIGHT OF 51 INCHES IN FRONT OF PROPERTY TO BE INSTALLED.

### ABBREVIATIONS:

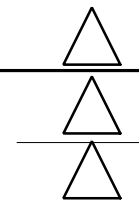
ABV.	Above	FDN.	Foundation	PLT.	Plate
A/C	Air Conditioner	FLR.	Floor	P.L.	Property line
A.D.	Access Door	FURN.	Furnace	PLYWD.	Plywood
ADD.	Addition	G.C.	General Contractor	PWR.	Power
A.F.F.	Above Finished Floor	G.F.C.I.	Ground Fault Circuit Interrupt	R.O.	Rough Opening
A.F.G.	Above Finished Grade	GYP.	Gypsum	R.O.W.	Right of way
B.L.	Building Line	H.B.	Hose bib	REFG.	Refrigerator
BLDG.	Building	HGT.	Height	REF.	Reference
B.O.	Bottom of	HR.	Hour	REV.	Revision
BTM.	Bottom	H.R.	Handrail	RMV.	Remove
CABT.	Cabinet	HTR.	Heater	S.C.	Self-Closing
C.D.	Construction document	H.V.A.C.	Heating, Venting and Air Conditioning	SCHED.	Schedule
C.L.	Center Line	INSUL.	Insulation	S.D.	Smoke detector
CL.	Closet	INT.	Interior	SECT.	Section
CLG.	Ceiling	LAM.	Laminate	SHT.	Sheet
C.O.	Clean Out	LAV.	Lavatory	T.O.C.	Top of curb
CONC.	Concrete	MAX.	Maximum	T.O.F.	Top of footing
D.S.	Down spout	MED.	Medium	TH.	Threshold
D/W	Dishwasher	MIN.	Minimum	TYP.	Typical
DBL.	Double	MTL.	Metal (steel)	UNF.	Unfinished
DEMO.	Demolition	MUL.	Mullion	W.C.	Toilet (water closet)
DIA.	Diameter	N.T.S.	Not to scale	W.C.T.	Wainscot
DR.	Door	N.F.C.	Not for construction	W.H.	Water Heater
ELEV.	Elevation	O.C.	On center	W.I.	Wrought Iron
EXIST.	Existing	O.H.	Overhead	W.I.C.	Walk In Closet
EXT.	Exterior	OPNG.	Opening	YD.	Yard

ADDITION and REMODELING FOR:

### BLACKWELL DR., RESIDENCE

380 BLACKWELL DR.,  
LOS GATOS, CA 95032

REVISION TABLE:



SHEET TITLE:

### COVER SHEET

PROJECT ID :  
DATE : NOV 2022  
SCALE :  
DRAWN BY : RZ

SHEET NUMBER:

## A-00.01

OWNERSHIP:

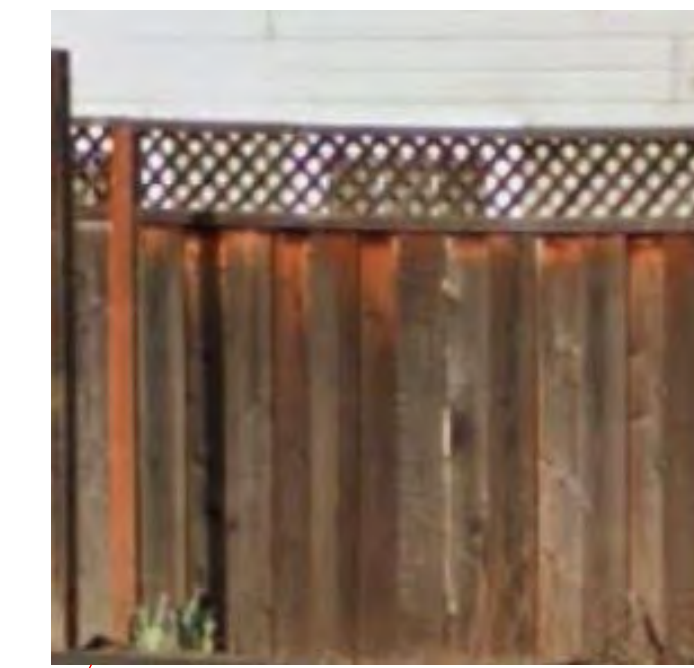
*R. Zohoor*

**GRADING and DEMO NOTES:**

1. CONTACT PUBLIC WORKS, FOR DRAINAGE AND FINAL GRADE INSPECTION, WHICH INCLUDES DRAIN LINES AND ROOF DRAINS/DOWN SPOUTS.
2. ALL PUBLIC IMPROVEMENTS MUST BE COMPLETED PRIOR TO OCCUPANCY.
3. CONTRACTOR IS RESPONSIBLE FOR DUST CONTROL AND INSURING THE AREA ADJACENT TO THE WORK IS LEFT IN A CLEAN CONDITION.
4. THE CONTRACTOR SHALL REVIEW STD. DETAIL 6-4 ON TREE PROTECTION PRIOR TO ACCOMPLISHING ANY WORK OR REMOVING ANY TREES.
5. UTILIZE BEST MANAGEMENT PRACTICES (BMP'S), AS REQUIRED BY THE STATE WATER RESOURCES CONTROL BOARD, FOR ANY ACTIVITY, WHICH DISTURBS SOIL.
6. ALL NEW ELECTRICAL SERVICE (POWER, PHONE, AND OR CABLE) SHALL BE UNDER GROUND.
7. TO INITIATE RELEASE OF BONDS, CONTACT THE PUBLIC WORKS INSPECTOR FOR FINAL INSPECTION.
8. ALL DOWNSPOUTS TO BE RELEASED TO THE GROUND SURFACE, DIRECTED AWAY FROM BUILDING FOUNDATIONS AND DIRECTED TO LANDSCAPE AREAS.
9. PRIOR TO BEGINNING ANY WORK WITHIN THE PUBLIC RIGHT OF WAY, THE CONTRACTOR WILL BE RESPONSIBLE FOR PULLING AN ENCROACHMENT PERMIT FROM THE PUBLIC WORKS DEPARTMENT.
10. PROVIDE MIN. 5% GRADE SLOPE AWAY FROM FOUNDATION FOR A MIN. DISTANCE OF 10 FEET MEASURE PERPENDICULAR TO THE FACE OF THE WALL. WITH EXCEPTION:
  - a. IF BUILDING SITE DOES NOT ALLOW 10 FEET OF SLOPE, INDICATE THE INSTALLATION OF DRAINS OR SWALES TO ENSURE DRAINAGE AWAY FROM THE STRUCTURE.
  - b. IMPERVIOUS SURFACES WITHIN 10 FEET OF THE BUILDING FOUNDATION SHALL BE SLOPED A MIN 2% AWAY FROM THE BUILDING.
11. (E) DRAINAGE SHALL REMAIN THROUGHOUT CONSTRUCTION.

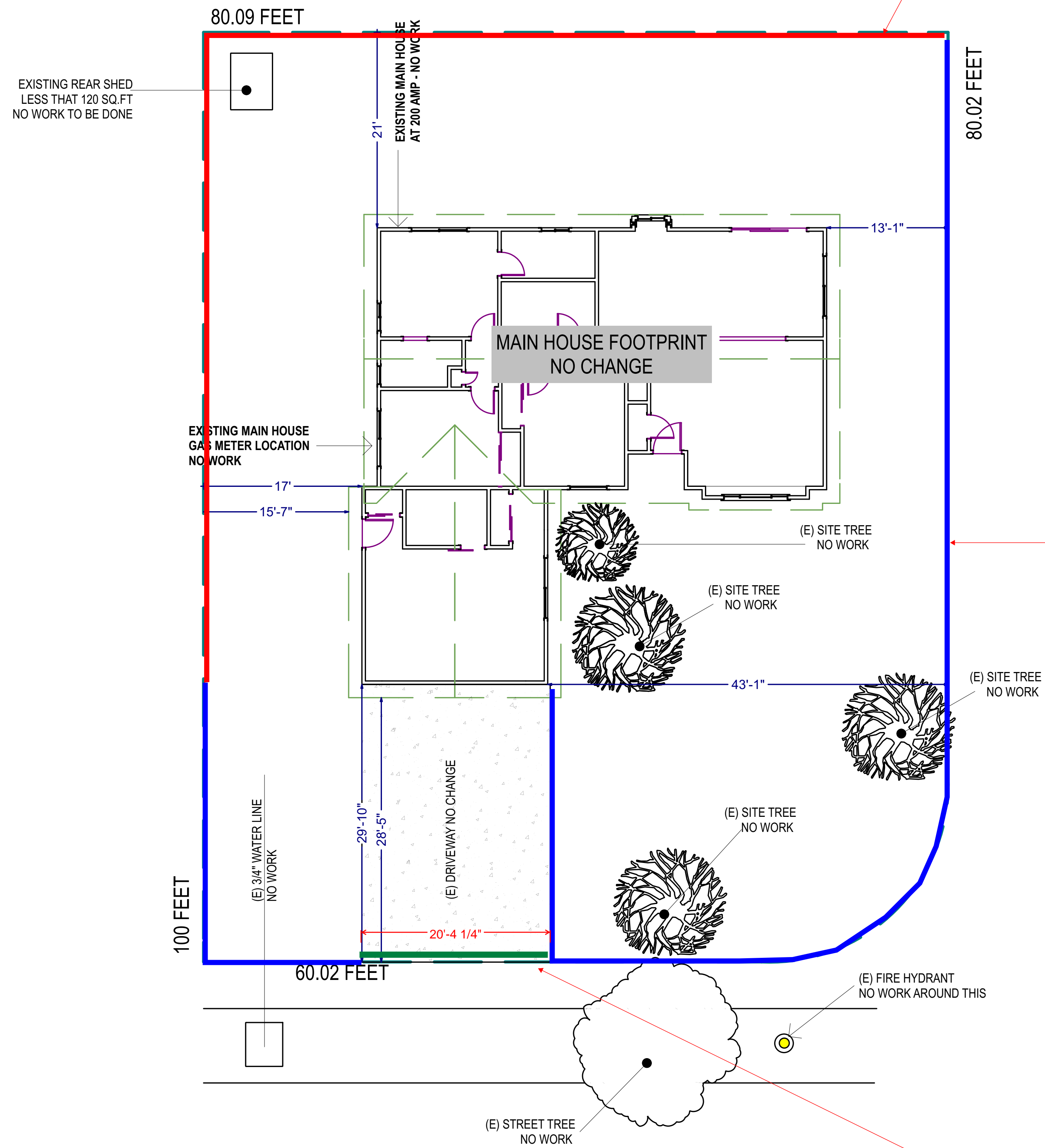
**TREE PROTECTION NOTES:**

1. A PLOT PLAN SHALL BE PREPARED DESCRIBING THE RELATIONSHIP OF PROPOSED GRADING AND UTILITY TRENCHING TO THE TREES DESIGNATED FOR PRESERVATION. CONSTRUCTION AND GRADING SHOULD NOT SIGNIFICANTLY RAISE OR LOWER THE GROUND LEVEL BENEATH TREE DRIP LINES. IF THE GROUND LEVEL IS PROPOSED FOR MODIFICATION BENEATH THE DRIP LINE, THE ARCHITECT/ARBORIST SHALL ADDRESS AND MITIGATE THE IMPACT TO THE TREE(S).
2. ALL TREES TO BE PRESERVED ON THE PROPERTY AND ALL TREES ADJACENT TO THE PROPERTY SHALL BE PROTECTED AGAINST DAMAGE DURING CONSTRUCTION OPERATIONS BY CONSTRUCTING A FOUR-FOOT-HIGH FENCE AROUND THE DRIP LINE, AND ARMOR AS NEEDED. THE EXTENT OF FENCING AND ARMORING SHALL BE DETERMINED BY THE LANDSCAPE ARCHITECT. THE TREE PROTECTION SHALL BE PLACED BEFORE ANY EXCAVATION OR GRADING IS BEGUN AND SHALL BE MAINTAINED IN REPAIR FOR THE DURATION OF THE CONSTRUCTION WORK.
3. NO CONSTRUCTION OPERATIONS SHALL BE CARRIED ON WITHIN THE DRIP LINE AREA OF ANY TREE DESIGNATED TO BE SAVED EXCEPT AS IS AUTHORIZED BY THE DIRECTOR OF COMMUNITY DEVELOPMENT.
4. IF THE TRENCHING IS REQUIRED TO PENETRATE THE PROTECTION BARRIER FOR THE TREE, THE SECTION OF TRENCH IN THE DRIP LINE SHALL BE HAND DUG SO AS TO PRECLUDE THE CUTTING OF ROOTS. PRIOR TO INITIATING ANY TRENCHING WITHIN THE BARRIER APPROVAL BY STAFF WITH CONSULTATION OF AN ARBORIST SHALL BE COMPLETED.
5. TREES WHICH REQUIRE ANY DEGREE OF FILL AROUND THE NATURAL GRADE SHALL BE GUARDED BY RECOGNIZED STANDARDS OF TREE PROTECTION AND DESIGN OF TREE WELLS.
6. THE AREA UNDER THE DRIP LINE OF THE TREE SHALL BE KEPT CLEAN. NO CONSTRUCTION MATERIALS NOR CHEMICAL SOLVENTS SHALL BE STORED OR DUMPED UNDER A TREE.
7. FIRES FOR ANY REASON SHALL NOT BE MADE WITHIN FIFTY FEET OF ANY TREE SELECTED TO REMAIN AND SHALL BE LIMITED IN SIZE AND KEPT UNDER CONSTANT SURVEILLANCE.
8. THE GENERAL CONTRACTOR SHALL USE A TREE SERVICE LICENSEE, AS DEFINED BY CALIFORNIA BUSINESS AND PROFESSIONAL CODE, TO PRUNE AND CUT OFF THE BRANCHES THAT MUST BE REMOVED DURING THE LANDSCAPE ARCHITECT/ARBORIST WITH APPROVAL OF STAFF.
9. ANY DAMAGE TO EXISTING TREE CROWNS OR ROOT SYSTEMS SHALL BE REPAIRED IMMEDIATELY BY AN APPROVED TREE SURGEON.
10. NO STORAGE OF CONSTRUCTION MATERIALS OR PARKING SHALL BE PERMITTED WITHIN THE DRIP LINE AREA OF ANY TREE DESIGNATED TO BE SAVED.
11. TREE PROTECTION REGULATIONS SHALL BE POSTED ON PROTECTIVE FENCING AROUND TREES TO BE PROTECTED.



**LEGEND:**

- PROPERTY LINE
  - \_\_\_\_\_ BLDG FOOT PRINT
  - \_\_\_\_\_ EXISTING 6 FT WOOD FENCE
  - \_\_\_\_\_ EXISTING 4 FT MASONARY & WOOD FENCE - NO WORK
  - \_\_\_\_\_ PROPOSED ROLL METAL GATE FOR SAFETY
- GRAPHIC SCALE: 1/8" INCH = 1' FEET  
0 2 4 6 8 10 20 30



1 EXISTING SITE PLAN (AREA OF WORK)  
SC: 1/8" = 1'-0"

ADDITION and REMODELING FOR:  
**BLACKWELL DR., RESIDENCE**  
380 BLACKWELL DR.,  
LOS GATOS, CA 95032

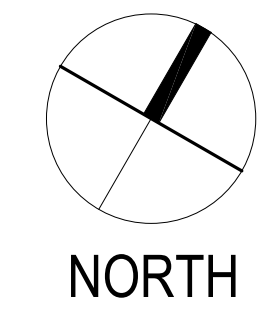
REVISION TABLE:


SHEET TITLE:  
**SITE PLAN**

PROJECT ID :  
DATE : NOV 2022  
SCALE : 1/8" = 1'  
DRAWN BY : RZ

SHEET NUMBER:  
**A-01**

OWNERSHIP:  
*R. Zahoor*





**From:** Lawrence Cesnik <[REDACTED]>  
**Sent:** Tuesday, June 13, 2023 11:37 PM  
**To:** Sean Mullin <SMullin@losgatosca.gov>  
**Subject:** FME-23-002 - Email #9 - 380 Blackwell Dr - Physician Report

[EXTERNAL SENDER]

Dear Sean:

I am submitting a few additional emails as documentation for my case:

The first (attached) is our son [REDACTED] physician report RE safety concerns.

Sincerely

**Larry Cesnik**

[Redacted]

[Redacted]

Martin T Cesnik

[Redacted]

6/13/2023

To Whom It May Concern:

I am writing on behalf of my patient, [Redacted] who is presently in my care.

[Redacted] has [Redacted] He can [Redacted] support his family's request to keep an electronic gate in their driveway to ensure my patient's safety.

If you need additional information, please call my office at [Redacted] to speak with my nurse

Sincerely,

*MTC*

[Redacted]

[Redacted]

[Redacted]

**From:** Lawrence Cesnik <[REDACTED]>

**Sent:** Tuesday, June 13, 2023 11:39 PM

**To:** Sean Mullin <SMullin@losgatosca.gov>

**Subject:** FME-23-002 Email #10: [REDACTED] Individualized Program Plan including references to safety concerns

[EXTERNAL SENDER]

Dear Sean:

Please find attached our son [REDACTED] Individualized Program Plan (from the San Andreas Regional Center) including several references to safety concerns.

Sincerely,

**Larry Cesnik**

[REDACTED]

Date of IPP: 2/20/2020

Next IPP: 2/26/2021

Consumer: [REDACTED]

Birth Date: [REDACTED] AGE: [REDACTED]

Medicaid Waiver: Y

SC: [REDACTED]

Approved: 0/00/0000

DM: [REDACTED]

Approved: 0/00/0000

Address Applies To: Client;Father;Mother;Emergency Contact;Client Mailing;Mailing List

[REDACTED]

Family email: [REDACTED]

Part I - Introductory Statement

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

\*\*\*

INDIVIDUAL PROGRAM PLAN - Continued...

Introduction (cont)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PAGE

[REDACTED]

[REDACTED]

\*\*\*

INDIVIDUAL PROGRAM PLAN - Continued...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

\*\*\*

INDIVIDUAL PROGRAM PLAN - Continued...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

INDIVIDUAL PROGRAM PLAN - Continued...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



INDIVIDUAL PROGRAM PLAN - Continued...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

[REDACTED]

INDIVIDUAL PROGRAM PLAN - Continued...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] :

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

INDIVIDUAL PROGRAM PLAN - Continued...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

\*\*\*

INDIVIDUAL PROGRAM PLAN - Continued...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

INDIVIDUAL PROGRAM PLAN - Continued...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

[REDACTED]

[REDACTED]

INDIVIDUAL PROGRAM PLAN - Continued...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

\*\*\*

INDIVIDUAL PROGRAM PLAN - Continued...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

[REDACTED]

[REDACTED]

INDIVIDUAL PROGRAM PLAN - Continued...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



INDIVIDUAL PROGRAM PLAN - Continued...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

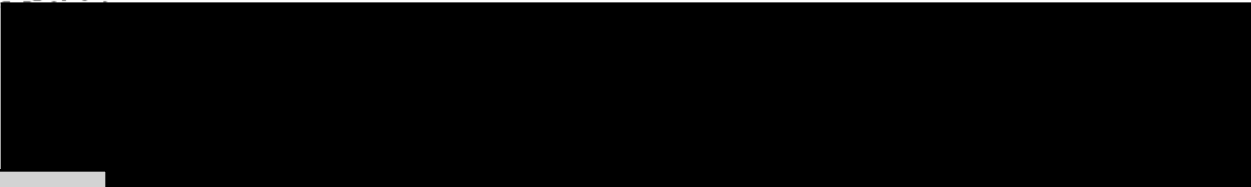
[REDACTED]

[REDACTED]

\*\*\*

**INDIVIDUAL PROGRAM PLAN - Continued...**

---



\*\*\*

INDIVIDUAL PROGRAM PLAN - Continued...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

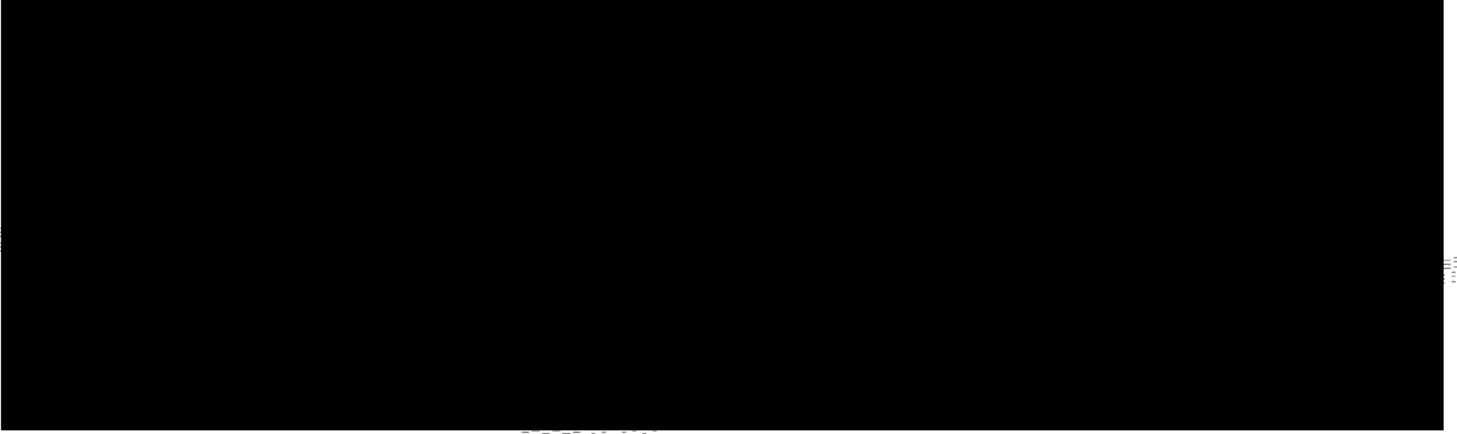
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

INDIVIDUAL PROGRAM PLAN - Continued...



---

[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]

**From:** Lawrence Cesnik <[REDACTED]>

**Sent:** Tuesday, June 13, 2023 11:40 PM

**To:** Sean Mullin <SMullin@losgatosca.gov>

**Subject:** FME-23-002 - EMail #11 - Photos of [REDACTED] (380 Blackwell Dr) vis-a-vis sidewalk and street

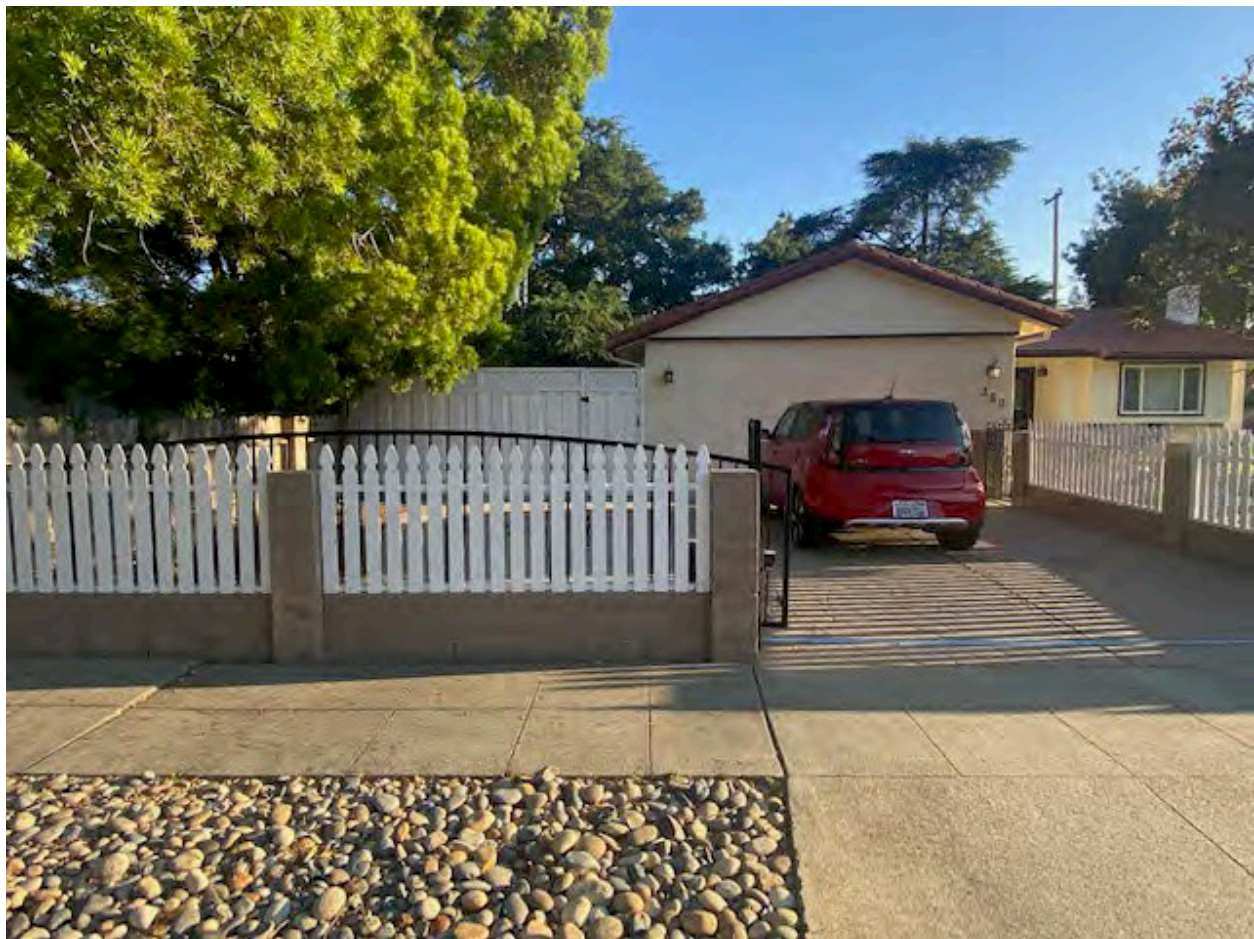
[EXTERNAL SENDER]

Dear Sean,

Please find attached below two photos to help illustrate the safety concerns of our son's ADU placement near the driveway, sidewalk and street - which motivated the need for an electronic gate as a barrier.

Sincerely,

Larry Cesnik





Larry Cesnik



**TOWN OF LOS GATOS**  
COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION  
(408) 354-6872 Fax (408) 354-7593

CIVIC CENTER  
110 E. MAIN STREET  
LOS GATOS, CA 95030

June 20, 2023

Larry Cesnik  
380 Blackwell Drive  
Los Gatos, CA 95032  
Via Email

**RE: 380 Blackwell Drive**  
Fence Height Exception FHE-23-002

Consider an Appeal of a Community Development Director Decision to Deny a Fence Height Exception Request for Construction of an Automated Vehicular Gate Exceeding the Maximum Height and with Reduced Setbacks on Property Zoned R-1:8. Located at 380 Blackwell Drive. APN 424-12-027. Categorically Exempt Pursuant to CEQA Guidelines Section 15303 (e): New Construction or Conversion of Small Structures.

PROPERTY OWNER: Larry Cesnik and Martha Johnson

APPELLANT: Larry Cesnik

APPLICANT: Ramin Zohoor

At its meeting of June 14, 2023, the Town of Los Gatos Planning Commission granted the above appeal.

The attached conditions of approval will not be final until the Planning Commission has approved the June 14, 2023, meeting minutes at their next meeting, confirming any additional or modified conditions of approval for the project in the underlined font. You will be notified in writing once the Planning Commission has approved the minutes.

PLEASE NOTE: Pursuant to Section 29.20.275 of the Town Code, this approval may be appealed to the Town Council within 10 days of the date the approval is granted. Therefore, this action for approval should not be considered final, and no permits by the Town will be issued until the appeal period has passed.

If you have any questions, I can be contacted by email at [smullin@losgatosca.gov](mailto:smullin@losgatosca.gov).

Sincerely,

Sean Mullin, AICP  
Senior Planner

**PLANNING COMMISSION – June 14, 2023**  
**CONDITIONS OF APPROVAL**

**308 Blackwell Drive**  
**Fence Height Exception FHE-23-002**

**Consider an Appeal of a Community Development Director Decision to Deny a Fence Height Exception Request for Construction of an Automated Vehicular Gate Exceeding the Maximum Height and with Reduced Setbacks on Property Zoned R-1:8. Located at 380 Blackwell Drive. APN 424-12-027. Categorically Exempt Pursuant to CEQA Guidelines Section 15303 (e): New Construction or Conversion of Small Structures. Fence Height Exception Application FHE-23-002. PROPERTY OWNER: Larry Cesnik and Martha Johnson. APPELLANT: Larry Cesnik. APPLICANT: Ramin Zohoor. PROJECT PLANNER: Sean Mullin.**

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

*Planning Division*

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below.
2. EXPIRATION: The Fence Height Exception approval will expire two years from the approval date pursuant to Section 29.20.320 of the Town Code, unless the approval has been vested.
3. BUILDING PERMIT: The proposed vehicular gate requires a Building Permit.
4. VEHICULAR GATE: The vehicular gate must open inward, towards the residence or slide parallel to the street.
5. VEHICULAR GATE RELOCATION: The vehicular gate shall be relocated to comply with the 18-foot setback as required by Section 29.40.0315 (c)(3) of the Town Code.
6. ADDITIONAL FENCING: Additional fencing between the existing front property line fencing and the relocated vehicular gate needed to enclose the driveway area is approved to exceed three feet, but shall be no taller than the height of the existing adjacent fencing.
7. TOWN INDEMNITY: Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement (“the Project”) from the Town shall defend (with counsel approved by Town), indemnify, and hold harmless the Town, its agents, officers, and employees from and against any claim, action, or proceeding (including without limitation any appeal or petition for review thereof) against the Town or its agents, officers or employees related to an approval of the Project, including without limitation any related application, permit, certification, condition, environmental determination, other approval, compliance or failure to comply with applicable laws and regulations, and/or processing methods (“Challenge”). Town may (but is not obligated to) defend such Challenge as Town, in its sole discretion, determines appropriate, all at applicant’s sole cost and expense.

Applicant shall bear any and all losses, damages, injuries, liabilities, costs and expenses (including, without limitation, staff time and in-house attorney’s fees on a fully-loaded



basis, attorney's fees for outside legal counsel, expert witness fees, court costs, and other litigation expenses) arising out of or related to any Challenge ("Costs"), whether incurred by Applicant, Town, or awarded to any third party, and shall pay to the Town upon demand any Costs incurred by the Town. No modification of the Project, any application, permit certification, condition, environmental determination, other approval, change in applicable laws and regulations, or change in such Challenge as Town, in its sole discretion, determines appropriate, all the applicant's sole cost and expense. No modification of the Project, any application, permit certification, condition, environmental determination, other approval, change in applicable laws and regulations, or change in processing methods shall alter the applicant's indemnity obligation.

*Building Division*

8. PEDESTRIAN GATE REQUIRED: Identify the location of the required pedestrian gate;
9. PEDESTRIAN GATE: For pedestrian access in the vicinity of an automated gate, a separate pedestrian gate shall be provided. The pedestrian gate shall be installed in a location such that a pedestrian shall not come in contact with a moving vehicular access gate. A pedestrian gate shall not be incorporated into an automated vehicular gate panel.

***This Page  
Intentionally  
Left Blank***

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S:

Los Gatos Planning Commissioners:  
Jeffrey Barnett, Chair  
Steve Raspe, Vice Chair  
Susan Burnett  
Kylie Clark  
Melanie Hanssen  
Kathryn Janoff  
Emily Thomas

Town Manager: Laurel Prevetti

Community Development Director: Joel Paulson

Town Attorney: Gabrielle Whelan

Transcribed by: Vicki L. Blandin  
(619) 541-3405

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S :

CHAIR BARNETT: We will now move into the public hearing portion of our agenda and consider Agenda Item 2, which is the consideration of an appeal of the Community Development Director's decision to deny a Fence Height Exception request for construction of an automated vehicle gate exceeding the maximum height and with reduced setbacks on property zoned R-1:8, located at 380 Blackwell Drive, APN 424-12-027, Fence Height Exception Application FHE-23-002. Property owners are Larry Cesnik and Martha Johnson, and the Appellant is Larry Cesnik. The Applicant is Ramin Zohoor, and the project planner is Sean Mullin.

I note that the Staff indicates that the appeal tonight is categorically exempt from CEQA under Section 15303(e), New Construction or Conversion of Small Structures, and that if the appeal is granted tonight a finding is required to be made regarding the application of an exception to the Town's Fencing Ordinance.

May I have a show of hands by the Commissioners who have visited the property? Thank you. Are there any disclosures? I don't see any. Mr. Mullin, why don't we proceed with your Staff Report, if you will?

1 SEAN MULLIN: Thank you, and good evening. For  
2 your consideration tonight there is an Appeal of a  
3 Director's Decision denying an exception to the fence  
4 regulations for a new vehicular gate at 380 Blackwell  
5 Drive.

6 Located on the corner of Blackwell Drive and  
7 National Avenue, the subject property is with a single-  
8 family residence and an attached ADU. Existing  
9 nonconforming fencing encloses the outdoor spaces on the  
10 property except for the driveway area.

11 The property owner installed a sliding vehicular  
12 gate at the front property line without the benefits of  
13 permits to enclose the driveway area, and the property  
14 owner was contacted by the Town and requested to submit a  
15 Building Permit for this vehicular gate.

16 During review of that permit application Planning  
17 Staff noted that the vehicular gate exceed the 3' height  
18 limitation for gates located in the required front yard  
19 setback area and the traffic view area and does not meet  
20 the required 18' setback as measured from the edge of the  
21 street.

22 On February 6<sup>th</sup> of this year the property owner  
23 applied for a Fence Height Exception for the vehicular  
24 gate. The Letter of Justification cited safety concerns  
25

1 related to the illness of a child residing on the property  
2 and the need to prevent them from stepping off the  
3 property. Staff was unable to make the required findings to  
4 grant the exception and on March 6<sup>th</sup> the Town denied the  
5 request, recognizing that the property is already enclosed  
6 by existing fencing and gates except for the driveway area,  
7 and that the vehicular gate creates unsafe conditions  
8 caused by the gate lacking the 18' setback and its  
9 proximity to the intersection of Blackwell and National. On  
10 March 8<sup>th</sup> the property owner appealed this decision based on  
11 the justification provided with the exception request.  
12

13           Staff's analysis finds that the reduced setback  
14 of the gate would not allow for vehicles to clear the  
15 travel lanes while queuing, potentially obstructing traffic  
16 on Blackwell Drive near the intersection of National  
17 Avenue. The added queue time adjacent to the intersection  
18 is considered a nuisance and an unnecessary risk.

19           Based on the analysis provided in the Staff  
20 Report, Staff recommends denial of the appeal, upholding  
21 the decision of the Director to deny the exception to the  
22 fence regulations.

23           A Desk Item was distributed this afternoon that  
24 includes additional information related to the safety  
25 concerns of the property owner.

1           In addition to Planning Staff, Engineering Staff  
2 is also in attendance tonight to address any questions of  
3 the Commission, and this concludes Staff's presentation.

4           CHAIR BARNETT: Thank you, Mr. Mullin. I'll turn  
5 to the Commissioners and ask if anyone has a question for  
6 Staff? Commissioner Hannson.

7           COMMISSIONER HANSSEN: Thank you; that was very  
8 helpful. I noted in Exhibit 8 that the gate is 13' and a  
9 few inches into the property, so if the gate were moved  
10 back 5', would they be allowed to have that height of a  
11 gate?  
12

13           SEAN MULLIN: Thank you for the question. The  
14 gate, even if moved back 5', would still be located in the  
15 required front yard setback area which has a height  
16 limitation of 3', and it would also be limited in the  
17 traffic view area which is measured from the adjacent  
18 corner of National and Blackwell.

19           COMMISSIONER HANSSEN: Thank you.

20           CHAIR BARNETT: Other questions of Staff at this  
21 time? There will be an opportunity later, of course. We'll  
22 now open the public portion of the public hearing and give  
23 the Applicant an opportunity to address the Commission for  
24 up to five minutes. Who will be speaking for the Appellant  
25 tonight?

1 LARRY CESNIK: That will be me.

2 CHAIR BARNETT: Thank you. If you'll state your  
3 name and address, please.

4 LARRY CESNIK: Thank you, ladies and gentlemen of  
5 the Planning Commission and Chair. My name is Lawrence  
6 Cesnik; you can call me Larry. I am the resident at 380  
7 Blackwell Drive here in Los Gatos, and I really want to  
8 keep this fairly brief, but obviously open to any questions  
9 you've got.  
10

11 I think my major theme here is safety, not only  
12 for our son but also of the citizens of the Town of Los  
13 Gatos. Again, the request for the exception is for safety  
14 reasons: the safety of our young adult son, Martin. There  
15 are a couple of points that are real important to bring up  
16 here.

17 Number one, and you'll see a photo in a minute,  
18 the ADU that's on the property directly faces the driveway  
19 and the street, and actually across the street, as you may  
20 have seen for those who have gone there, is a tower area.  
21 Our son, who has a condition of autism, has very low safety  
22 awareness and he does need to be watched when he's outside.  
23 He is also a very physical guy—he's at summer camp right  
24 now, he's having a great time—but he does move quickly, and  
25 so he can quickly reach the sidewalk, he can reach the



1 street and that electric tower area without a barrier, so  
2 that's actually why we built the gate, because we need that  
3 gate to prevent any kind of unexpected bolting. So that's  
4 safety for him, our son, Martin.

5           Also it's safety of the citizens of Los Gatos,  
6 because if indeed he were to get out into the street area  
7 or the sidewalk area obviously there are motorists there,  
8 there are pedestrians there, and there are cyclists and  
9 pets and so forth, so it's not just for his own safety but  
10 I think the safety of the people and animals that would be  
11 walking or driving by.

12           Just to give you a sense, some of you have been  
13 out to the property already, but you can see where the gate  
14 is. Obviously it's open, it's not closed now, but if closed  
15 it would block that driveway which leads to the sidewalk  
16 and into the street, and then the right side view is out  
17 towards the street and that yard area around the electric  
18 tower near the intersection of Blackwell and National  
19 Avenue. That gives you a visual sense of it.

20           Here we have a letter from Martin's primary care  
21 physician, Doctor Chaudry. It's a little bit small font to  
22 read here, but it's in the record. Essentially what she is  
23 saying here is he does have this condition. A lot of folks  
24 with this particular condition don't necessarily have a  
25

1 high safety awareness. We're really working on it a lot,  
2 but it's something we just cannot fully control, and so  
3 this is our way of saying hey, can we put a barrier there  
4 of some kind that will at least slow him down.

5           The next couple pages are just some excerpts.  
6 He's a client of the San Andreas Regional Center and he,  
7 like other consumers there, has an individualized program  
8 plan. We're not going to show the whole plan, there's a lot  
9 of private information in there, but what we've highlighted  
10 in yellow is the word "safety," because it comes out a lot  
11 of times in terms of that's an issue. So that's an issue  
12 that he has, it's an issue that we're working on; it's an  
13 issue that we're setting goals for him to try to achieve.  
14 Nonetheless, it's a long process; it's a lifelong process  
15 for him to get there. I think the second page has some  
16 additional plans and goals in his individual program plan.

17           We have other documentation. As a student he's  
18 now working in an adult day program in San Jose, but  
19 through his non-public school career at a couple of schools  
20 in Redwood City and in Santa Cruz, that's also been on his  
21 individualized educational plan, his IEP.

22           I think those are really all of my comments. I'm  
23 very happy to answer questions, but again, it's two-fold  
24  
25

1 safety: safety for our son and safety for citizens of the  
2 Town.

3 CHAIR BARNETT: Thank you very much, Mr. Cesnik,  
4 and I'll turn to my fellow commissioners to see if they  
5 have any questions of you. Commissioner Hanssen.

6 COMMISSIONER HANSSEN: I was just curious; the  
7 fence is about 4' or so. What's preventing your son from  
8 going over the fence?

9 LARRY CESNIK: It's a great question. There's no  
10 solution. We can't put up a 20' fence obviously. He is a  
11 physical guy, but it's really not... The assumption here is  
12 that there's going to be someone on the property. He will  
13 never be at home by himself, and so it's actually to  
14 prevent him from doing a bolt when an adult may be right  
15 around the corner there. But if he had a fence that was  
16 taller and he tried to climb it, yes, that might slow him  
17 down a little bit more, but having a fence there of that  
18 size and magnitude will at least have him stop and think,  
19 slow him down enough so that an adult can get there.

20 COMMISSIONER HANSSEN: Have you had any instances  
21 where he was able to climb over the fence?

22 LARRY CESNIK: No, no. As a matter of fact, he  
23 hasn't lived on this property a very long time, one of the  
24 reasons being we have another property that we're  
25

1 transitioning out of as well, so we're residents to Los  
2 Gatos. One of the reasons, frankly, that he hasn't full  
3 time come to there is because we still haven't resolved  
4 this issue, but in other properties that we've had we've  
5 had similar setups. Again, we've been able to use those  
6 kinds of, let's call demotivators, to prevent him from  
7 going too far, whether it's a gate or similar kind of  
8 barrier.

9  
10 COMMISSIONER HANSSEN: Okay, thank you.

11 CHAIR BARNETT: Thank you for that comment.

12 Commissioner Janoff.

13 COMMISSIONER JANOFF: Thank you. I'm curious  
14 about the purpose of the vehicular gate. The ADU doesn't  
15 have any driveway-facing windows or doors or access, so  
16 it's just a plain wall, so effectively the driveway is a  
17 parking area. You have a fence with a gate that tees into  
18 the corner of the ADU that faces National Avenue, and you  
19 have one that comes parallel to the street that the  
20 driveway accesses on, so that's containing your property  
21 along with the perimeter fences, so my question is what's  
22 the purpose of the gate? What's the use of that area, and  
23 what are you trying to achieve?

24  
25 LARRY CESNIK: I think two things. Primarily the  
reason for the gate is, again, for the safety of our son,

1 and what I would say is yes, it doesn't look like there's a  
2 clear path from the ADU right to the street, but in reality  
3 there is. We actually did not put a door or window in that  
4 front for that... We wanted to make it as safe as possible.  
5 There is a door around the side which you can't see in that  
6 photo very well, but it's really quick for him to come down  
7 there, so essentially even though he can't break through  
8 the wall and go right out there, it's just a few feet more  
9 for him to be able for him to access it, so that's the  
10 first reason. It is actually those several feet that the  
11 gate would enclose that is the only open area around our  
12 property now. So, yes, we do have the picket fence and  
13 other features there. So it's the area that actually is  
14 close, it's open; it's actually the closest to the ADU,  
15 even though it's sort of a side entrance.  
16

17           The second reason is the reason we are not asking  
18 for (inaudible), because we are adults that live and work,  
19 and so we actually do need to get our cars. You're right,  
20 we do park our cars there, that was a garage that the ADU  
21 is now, but we need to actually get back and forth, so it  
22 was our practical solution to be able to open it up only  
23 when we need to get in and out and keep it closed the rest  
24 of the time.  
25

COMMISSIONER JANOFF: Thank you.

1 CHAIR BARNETT: Other questions by Commissioners?  
2 Vice Chair Raspe.

3 VICE CHAIR RASPE: Thank you, Chair. Mr. Cesnik,  
4 first of all, thank you for coming this evening and sharing  
5 information. I know it's difficult sharing information, but  
6 thank you, it makes our decision making all that much  
7 better.

8 LARRY CESNIK: Sure.

9 VICE CHAIR RASPE: Really I think we're  
10 considering two things here tonight, both the height of the  
11 fence and the location of the gate as well.

12 As to the location, is there a way you could move  
13 the gate back approximately 5', as Commissioner Hanssen  
14 said, still retain a closed off area, but allow enough room  
15 that cars could queue without sticking out into the street?  
16 Essentially, could you move the gate back 5'?

17 LARRY CESNIK: I think the answer is almost  
18 anything is possible architecturally. We'd have to talk to  
19 our builders, our architects, so I can't answer the  
20 details. Conceptually I think that's possible.

21 May I ask the Commissioners a question to make  
22 sure I understand the idea of the queuing, because that's  
23 not what I'm totally clear on? Is it okay for me to ask  
24  
25

1 that question, or not? I want to follow protocol here, so I  
2 can fully answer your question.

3 CHAIR BARNETT: I think he can clarify the  
4 question.

5 VICE CHAIR RASPE: So my understanding of the  
6 queuing is we need enough room, or the Town wants—and  
7 Staff, please correct me if I'm wrong—while the gate is  
8 opening, the Town is trying to avoid any portion of the car  
9 backing out into the street, because the gate is a slow-  
10 opening gate in most instances, and the concern is that the  
11 remainder of the car stays in traffic while the gate is  
12 opening, and as a result the Town has instituted, I  
13 believe, an 18' setback to avoid that circumstance, and  
14 your gate is currently in violation of the 18' setback. Do  
15 I have that about right? So if you move the gate back to  
16 that 18' mark, it would solve one of your problems.

17 LARRY CESNIK: Thank you; that helps clarify it.  
18 To me one of the other logical solutions would be, if I'm  
19 understanding correctly and not being a person who is  
20 necessarily in a hurry to get out, would be to make sure  
21 the gate is fully open before even trying to back the car  
22 out. To me, that would simulate how I would back the car  
23 out if I didn't have a gate at all. Is that logical?  
24  
25

1                   VICE CHAIR RASPE: I appreciate your answer.  
2 Thanks so much.

3                   CHAIR BARNETT: Commissioner Clark, you have your  
4 hand up.

5                   COMMISSIONER CLARK: Thank you. I'm sorry that  
6 I'm on Zoom; I wish I were there in person.

7                   LARRY CESNIK: No problem.

8                   COMMISSIONER CLARK: I have two questions. First,  
9 I was just wondering, how long have you had the gate?  
10

11                  LARRY CESNIK: The gate has been there for I  
12 think at least a year. I don't know the exact amount of  
13 time but whenever we received the violation, and the  
14 Commission probably has a closer idea, but many months ago,  
15 it's been there but it's obviously been open; it hasn't  
16 been functioning. Maybe the Commission could help, or the  
17 Town can help with the dates. Probably around a year or  
18 more.

19                  COMMISSIONER CLARK: Okay, thank you. Then my  
20 second question is how often is the gate open versus  
21 closed? I know when I did my site visit it was open, and  
22 it's open in those pictures.

23                  LARRY CESNIK: Right now, unless someone has a  
24 magical way to get to our control, 100% of the time,  
25



1 because we're trying to comply with the notice that we  
2 received.

3 COMMISSIONER CLARK: Okay, got it. Thank you.

4 CHAIR BARNETT: Further questions? Commissioner  
5 Burnett.

6 COMMISSIONER BURNETT: Thank you for coming  
7 tonight. I think my biggest concern is National Avenue is a  
8 fairly well traveled road, and if you're turning onto your  
9 street and you are parked there to go into your driveway  
10 and the gate is closed, the average length of a car I think  
11 is like 1.5'-16', so part of the car would be in the  
12 roadway, and I think that's my concern that as cars are  
13 coming around the bend you're wanting to go into your  
14 driveway, the gate is closed, you're waiting, and there's  
15 traffic coming by and you're in the roadway. How would you  
16 answer that?  
17

18 LARRY CESNIK: I understand the question, thank  
19 you. I would answer it using the same approach I mentioned  
20 to the Vice Chair, which is the control does have quite a  
21 bit of distance on it, and we as the homeowner, if we're  
22 granted this exception, could commit to practicing the  
23 following. Like I said a few minutes ago regarding leaving,  
24 waiting until it is fully open, and when we're entering we  
25 could activate the gate at a distance, and it's got a

1 pretty good distance on it, so that it would be fully open  
2 before we arrive there, thus avoiding the backup that  
3 you're expressing.

4 CHAIR BARNETT: You have a further question?

5 COMMISSIONER BURNETT: Yes, thank you, further  
6 question. So if you had a visitor that didn't have an  
7 automatic gate opening or they had to wait there and didn't  
8 have the quick access that you have, how would you handle  
9 that?  
10

11 LARRY CESNIK: At this point, given the  
12 logistics, we do not have a lot of space for guests anyway,  
13 so we would be asking them to park on the street or make  
14 other arrangements, but that would be the normal process  
15 just because it's complicated.

16 COMMISSIONER BURNETT: Thank you.

17 CHAIR BARNETT: Other questions? Commissioner  
18 Thomas.

19 COMMISSIONER THOMAS: Yes, thank you for coming  
20 and sharing all of this information tonight. I really do  
21 appreciate it. I feel like you've been very thorough and it  
22 is well appreciated.

23 My question is just that if a special security  
24 concern does exist, which I think that's part of what  
25 you're presenting tonight, do you feel like you've explored

1 other options for it to be practically addressed in another  
2 way?

3 LARRY CESNIK: I think we are using other options  
4 in conjunction with the one that we're requesting. I think  
5 as parents of a child with special needs, many of the  
6 actual requirements, we simply cannot depend on just this,  
7 a barrier, to help out. There are many things that we need  
8 to do, which kind of gets to the program he's working on,  
9 the encouragement of him doing the kind of behaviors, and  
10 just, frankly, being alert.  
11

12 So the answer is yes, it's been sort of a  
13 lifelong work that we've been doing and this is part of the  
14 package that we're hoping for the safety of him and the  
15 citizens.

16 COMMISSIONER THOMAS: Okay, thank you.

17 CHAIR BARNETT: Commissioner Hanssen.

18 COMMISSIONER HANSSEN: I just wanted to follow up  
19 on Commissioner Thomas' question. I think the spirit of  
20 that exception which would allow us to grant an appeal is  
21 not that you're using other things in conjunction with the  
22 gate, but that there was no other way to secure your son's  
23 safety other than by having this gate.  
24

25 Just to give an example, one thing that crossed  
my mind in looking at this was because there are fences in

1 a lot of places on the property is there no way to lock the  
2 gates to keep him from entering the driveway? That's the  
3 kind of thing that we would need to understand. Is there no  
4 other way to keep him from entering the driveway?

5 LARRY CESNIK: In my opinion, no practical way. I  
6 suppose there are always ways, and obviously we'd be open  
7 to creativity and doing that, but he is our son who has the  
8 right to enjoy the property as well, and so we don't want  
9 to restrain him to the point that his liberty is lost,  
10 because it is the fine balance between being able to have  
11 him safe but at the same time feeling like he's a member of  
12 the family and a member of the community. That's why I'm  
13 saying there could be other ways; they probably wouldn't  
14 feel in the spirit of how we want to be treating our son.

16 COMMISSIONER HANSSEN: I understand that. Can I  
17 ask a follow up question? What is the utility of the  
18 driveway to him or to anyone else other than to have cars  
19 parked there?

20 LARRY CESNIK: More ADU owners like ourselves are  
21 using the driveways more to park cars than typical  
22 families, because we've eliminated the garage as a space  
23 there, so that's the utility of it for our family. One of  
24 the practical examples of how this presents a problem to us  
25

1 is that he has to go to his adult day program every day, he  
2 has go places.

3 We do, by the way, love the park down the street.  
4 One of the reasons we chose the neighborhood is it's an  
5 incredible neighborhood for walking and we can walk to  
6 places, so we definitely will take advantage of that.

7 Obviously, more times than not when we're leaving  
8 the house we're not going for a walk, we're getting into  
9 the car, and so on the way to the cars is actually part of  
10 the concern. We'll be very careful there, but that's  
11 probably a lot of the reasons for that. He doesn't really  
12 have a lot of interest, if I understand your question, of  
13 going to the driveway per se; it's sort of a launching pad  
14 to where he's going next.

16 COMMISSIONER HANSSEN: I understand, thank you.

17 CHAIR BARNETT: Commissioner Janoff.

18 COMMISSIONER JANOFF: Just to clarify. It sounds  
19 like what your need for your son is a secondary form of  
20 containment, especially during the times when you have a  
21 vehicular transfer for your son.

22 LARRY CESNIK: Yes, that's it exactly. Thank you.

23 CHAIR BARNETT: All right, if there are no more  
24 questions, I don't see anyone in the audience, or we still  
25 don't have anyone on Zoom, Mr. Paulson? So this would be

1 the opportunity for members of the public who want to speak  
2 on Item 2 on the agenda, and I don't think we have any such  
3 people, so we'll move on and give the Appellant another  
4 three minutes if you choose to do so.

5 LARRY CESNIK: Thank you for setting the agenda  
6 in advance. I didn't prepare anything necessarily, because  
7 I thought my opening remarks on sort of the safety focus  
8 was clear, and so I just wanted to say that we're actually  
9 fairly new residents of Los Gatos, we're trying to be good  
10 citizens. We've invested, I think, well in the property to  
11 hopefully make it a good place for us and our neighbors,  
12 and getting to know those neighbors. Just being able to  
13 have this ability to have an extra layer of security will  
14 be great for us as we continue to enjoy all the good things  
15 Los Gatos has to offer. That's it.

17 CHAIR BARNETT: Thank you for those comments.  
18 We'll now close the public portion of the public hearing  
19 and ask if any Commissioners have questions of Staff, wish  
20 to comment on the appeal, or introduce a motion for  
21 consideration by the Commission? Commissioner Janoff.

22 COMMISSIONER JANOFF: I'll kick things off. I  
23 think it's clear from the Appellant's statements made  
24 tonight that what he's looking for for his family is that  
25 secondary containment, and it's really clear to me that the

1 gate needs to contain a vehicle in order to make a safety  
2 transfer for the son in particular, so my thinking is that  
3 the gate is necessary.

4           The positioning of the gate poses problems for me  
5 because of the 13' off Blackwell. Even if you're quick to  
6 the handle there still is a possibility that you're going  
7 to be hanging out there while other cars are coming  
8 through, and because of the nature of the intersection  
9 you've got that teardrop parklet that prevents you from  
10 making a left turn into the driveway, which would be  
11 perhaps safer because you wouldn't be potentially  
12 obstructing traffic from National Avenue.

14           My thinking at this time is that I would be in  
15 favor of approving a gate but asking that it be moved to  
16 the 18' mark, even though that creates a setback intrusion  
17 on the front of the house. I think that the height of the  
18 gate, given the size of the individual, is reasonable. So,  
19 again, my thinking is if the same gate and functioning and  
20 all can be moved back to create a safer ingress from  
21 National onto Blackwell into the driveway, that would be a  
22 recommendation I'm thinking is a reasonable one at this  
23 time.

24           CHAIR BARNETT: Thank you for that. I actually  
25 have a question for you. If the gate were moved back toward

1 the face of the ADU, would you envision additional fences  
2 on each side of the driveway as part of that?

3 COMMISSIONER JANOFF: Well, only on the left  
4 side, because there's a continuous fence from the sidewalk  
5 to the corner of the ADU already, so it would just be you'd  
6 need a 5' fence on the left side of the drive.

7 CHAIR BARNETT: Thank you. Other comments? Vice  
8 Chair Raspe.

9 VICE CHAIR RASPE: Thank you, Chair. I join 100%  
10 with Commissioner Janoff's comments. First off, with  
11 respect to fence height, I understand that this fence is  
12 4'-3", which is higher than the 3' allowed, but again, in  
13 this situation there are security concerns that I think are  
14 alleviated with a slightly higher fence, and it seems to me  
15 that the purpose of the fence height is to preserve view  
16 corridors, and the nature of this fencing is such that you  
17 can see clearly through the fence, I don't think it's  
18 obstructive in any way, so I would permit the higher fence  
19 on the gate.  
20

21 Then with respect to the gate, again, I believe  
22 it's a security concern that we should allow a gate, but  
23 the location is problematic. Pushing it back to the 18'  
24 setback I think solves the issue. I think it's achievable  
25 with one change, pushing it back with the fencing on one



1 side, and I think that addresses the safety concerns for  
2 the Applicant and the safety concerns for the drivers of  
3 Los Gatos, so I would join Commissioner Janoff in her  
4 recommendations.

5 CHAIR BARNETT: Thank you for that input.  
6 Commissioner Hanssen.

7 COMMISSIONER HANSSEN: I have a question for  
8 Staff. The exception that we're discussing for the special  
9 security concern, did you in your analysis consider that as  
10 a possible exception? You said you couldn't make the  
11 findings. I'm just trying to understand what was thought.  
12

13 SEAN MULLIN: Thank you for the question. Under  
14 review of the original Fence Height Exception Staff wasn't  
15 provided the level of detail on Mr. Cesnik's son, so we  
16 were just presented with, as you can see in the  
17 application, that the son had an illness and what was  
18 looked at was the majority of the property was fenced and  
19 it was just the driveway area.

20 COMMISSIONER HANSSEN: Very good. Can I also make  
21 a comment then? I actually worked on the Fence Ordinance,  
22 and I believe Commissioner Janoff was on the Commission  
23 with me as well, and to me this seems like a valid  
24 exception for the safety concern, and especially we  
25 appreciate all the information that you shared, and it's

1 not easy to share all that information about your child, so  
2 we totally appreciate that to help understand the  
3 situation.

4           Having said that, I think it's reasonable to make  
5 the exceptions on the grounds of the special secure  
6 concern, and it doesn't appear to me that there is another  
7 alternative without the vehicular gate.

8           Having said that, I also see the concern—and  
9 we've seen this before on some other applications—with the  
10 18', it is a very dangerous area around there. Not maybe  
11 Blackwell, but National Avenue per se is always very busy,  
12 so I would concur with my fellow commissioners that I think  
13 that moving the gate back needs to be looked into, but I  
14 don't think it's problematic to keep a gate that's 4'-3"  
15 high, because the whole reason for the security is to keep  
16 the son safe and there's no reason we can't go an extra  
17 foot.

18  
19           CHAIR BARNETT: Thank you. Other comments,  
20 questions, motion? Commissioner Thomas.

21           COMMISSIONER THOMAS: I agree with my fellow  
22 commissioners about the height, but I did have a question  
23 for Staff about the parking on that street. I know  
24 obviously on the corner there's a red zone to protect the  
25 view area, but then from the red zone in front of this

1 property—on Blackwell, not on National—is there parking?  
2 Right in front of that area is there parking, or is the  
3 street parking farther down?

4 SEAN MULLIN: Thank you for the question. I  
5 believe street parking is allowed past the red zone. The  
6 Town Engineer, Gary Heap, is available. He may be able to  
7 add some clarification.

8 CHAIR BARNETT: Why don't we hear from the  
9 engineer in light of that comment?  
10

11 GARY HEAP: Thank you very much. Gary Heap, Parks  
12 and Public Works. In looking at the aerial of the street  
13 view right now. I do see the red curbing there that is in  
14 existence from the corner to the driveway approach; I  
15 believe that is there to protect the fire hydrant that is  
16 there. If the fire hydrant were not there, parking would be  
17 allowed in that area, both on either side of the driveway,  
18 but right now because the hydrant is there parking is only  
19 allowed on the west side of the driveway.

20 COMMISSIONER THOMAS: Okay, thank you. I do have  
21 some follow up comments then about that.

22 CHAIR BARNETT: Please proceed.

23 COMMISSIONER THOMAS: Okay, thank you. I  
24 understand my fellow commissioners' concerns about the 18'  
25 to allow for the traffic, but when I was at the site and

1 seeing the red area and seeing the ability to pull a car  
2 over to wait for the gate to open I am inclined to feel  
3 like it is kind of an undue hardship to require this to be  
4 set back. I don't know if there's truly an added safety  
5 benefit that is considered practically addressed,  
6 considering I understand that the fence is there, so I am  
7 struggling with that a little bit I guess is what I'm  
8 saying.

9  
10 I understand that maybe that's not how we can  
11 necessarily even approach this, but I do think that I agree  
12 with everyone about the height of the fence. I do think  
13 that the way that it's built and structured you can see  
14 through it. I don't have a ton of safety concerns or  
15 anything like that, and I completely understand how the  
16 additional physical barriers are something that is very  
17 important to the safety, so I think that we're all on the  
18 same page it sounds like with considering for the height  
19 and special security concerns that exists, but I am kind of  
20 curious to hear a little bit more about why we're feeling  
21 like the fence needs to be moved back that 5'.

22 CHAIR BARNETT: I'd like to ask the Public Works  
23 Director to comment on the visibility issue if the gate is  
24 not moved back.  
25

1                   GARY HEAP: Gary Heap, Town Engineer, Parks and  
2 Public Works. It's not really a visibility standpoint; it's  
3 a circulation standpoint. The purpose of the code is so  
4 that we don't have vehicles hanging out into the travel  
5 lane when there's a lane right adjacent to the curb, which  
6 is not the case here. So, yes, it is in violation, and yes,  
7 the vehicle waiting or queuing there would hang out, but  
8 it's within the limits of what the parking area would be.  
9 Does that answer your question?

10  
11                   CHAIR BARNETT: Yes, it does, thank you.

12                   COMMISSIONER THOMAS: Can I just follow up with  
13 that then? That was my assumption that that was the thing,  
14 so the car would hang out into like where a parked car  
15 could be. I guess if my understanding is that, my problem  
16 is if a car can park there, then people whipping around the  
17 corner from National Avenue could run into the back of the  
18 car just as easily as they could run into the back of a car  
19 pulling into the driveway from my perspective, but maybe  
20 I'm wrong.

21                   CHAIR BARNETT: Commissioner Janoff has her hand  
22 up.

23                   COMMISSIONER JANOFF: Just to clarify, the  
24 special security that I would be willing to find for is  
25 related to Mr. Cesnik's son's needs on the other side of

1 the gate, not so much the public's safety requirements. So  
2 in terms of making the finding to allow for the exception,  
3 that's where my thoughts go. So I think we can all agree  
4 that a vehicular gate is necessary.

5           The reason to move it back the 15' is to allow a  
6 vehicle to clear Blackwell fully as it's waiting for the  
7 gate to open, and the circumstance that comes to my mind is  
8 this: it seems likely to me that transport might be in the  
9 form of a van; that's often the type of transport for  
10 individuals. A van is larger than a mini coup or a small  
11 car or small sedan, it's a larger vehicle, and that is  
12 likely to be hanging out into the travel lane on Blackwell,  
13 and that's the issue that I'm seeing that public works is  
14 alerting us to the need for the 18'. So we create the 18'  
15 depth from the sidewalk or the property line, whatever the  
16 measurement point is, inward. We allow for 18' there so a  
17 vehicle can be on property and not in the travel lane. The  
18 gate can open, the vehicle moves in and there's plenty of  
19 space on the other side of the new location of the fence,  
20 should it be moved, for that vehicle to park, they get to  
21 close, and Mr. Cesnik's son would be safely able to board  
22 the vehicle.  
23

24           So the 18' for me is how to keep a vehicle from  
25 hanging out in Blackwell for the length of time that it

1 takes the gate to open, understanding that there may be  
2 occasions when you're expecting the vehicle and you might  
3 have the gate open, but there may be times when you don't  
4 or you forget, and so I think we need to be cognizant of  
5 the reason why we have the 18' foot requirement, and it  
6 does seem to be a requirement that can be satisfied at the  
7 same time the Appellant's needs are being satisfied.

8 CHAIR BARNETT: Thank you. Any further comments?  
9 Commissioner Thomas.

10 COMMISSIONER THOMAS: I agree and understand, but  
11 my understanding from what the Town Engineer just said is  
12 that because there's no bike lane the lane is not clearly  
13 defined on this street, because it's just a wide  
14 residential street where you're able to park on the side of  
15 the street. My understanding is because the sidewalk is so  
16 big and there's the little parklet area, it's like sidewalk  
17 and then planting area, then parking, and then travel lane,  
18 it seems like there is enough space for a car to queue and  
19 not be hanging out, because I agree that is a concern.

20 CHAIR BARNETT: Commissioner Janoff.

21 COMMISSIONER JANOFF: I think the issue is that  
22 there is only 13' available with the present location of  
23 the gate and that's probably not sufficient to accommodate  
24  
25

1 the range of vehicles that might be traveling in this  
2 space.

3           COMMISSIONER THOMAS: I do want to clarify this,  
4 because I think the 13' is from the gate to the actual  
5 street, correct? Because then there was a car parked beyond  
6 that, so if a van is 16' long, that's hanging out  
7 into...which is clearly like very close... I mean how wide is a  
8 typical car?

9           SEAN MULLIN: One thing I can offer that might  
10 help is that the 13' measurement and the 18' measurement is  
11 taken from the edge of the street. That's where the asphalt  
12 would meet the face of the curb, so you're right in that  
13 from there there would be some area that would be  
14 designated for parking and then the actual vehicular travel  
15 lane. And again, the Town Engineer may be able to expand on  
16 that more eloquently than I.

17           CHAIR BARNETT: Commissioner Hanssen.

18           COMMISSIONER HANSSEN: I'm trying to think of the  
19 right way to say this. We've had a number of times in  
20 hearings over time where we bring in Parks and Public Works  
21 or some outside expert, and so my personal philosophy on  
22 this as a Planning Commissioner is that I would never  
23 second guess the judgment of our Town Engineer to determine  
24 what's safe and not safe in terms of the distance, and  
25



1 that's why I would leave it to them to say if 18' is the  
2 number, then 18' is the number that we need to be safe. For  
3 me personally, I wouldn't want to second guess and try to  
4 figure out ways around it. I think it's best to rely on the  
5 expertise of our Parks and Public Works, because they own  
6 the responsibility for making sure things are safe.

7 CHAIR BARNETT: Commissioner Burnett and then  
8 Commissioner Thomas.

9 COMMISSIONER BURNETT: Thank you, Chair. Again,  
10 my concern is National Avenue. This is a rounded corner,  
11 and when cars are coming around they would tend to be  
12 closer to the curb. Because of the configuration of it,  
13 it's not like a square corner that you come at an angle, it  
14 would be more rounded, which I would feel it would be even  
15 more dangerous to have a car that's 3' out into the roadway  
16 waiting to go in, so I would support Commissioner Janoff's  
17 and Vice Chair Raspe's feelings on this.

18 CHAIR BARNETT: Thank you. Commissioner Thomas.

19 COMMISSIONER THOMAS: Thank you, and I do agree  
20 that we need to listen to the Town Engineer, so I would  
21 like to know what he has to say, because you did mention  
22 that the spirit of the best regulation is that we have this  
23 much space, but do you feel like where the fence is right  
24  
25

1 now allows for enough space to maintain safety in the  
2 spirit of the regulation?

3           GARY HEAP: What I had stated earlier is the code  
4 says 18'. My professional judgment is there are a number of  
5 factors that go into it. The parking lane itself is  
6 typically 8' in width. Given the 2' gutter pan, you're  
7 looking at 6' there between basically the lip of the gutter  
8 and where the parked car could park. We've got an  
9 encroachment potentially of a little over 4.5' into that  
10 area. National Avenue has a lot of traffic. I don't know if  
11 the side street necessarily has a lot of traffic.  
12

13           I don't know about the frequency that we have  
14 actually in terms of the use of the gate on a daily basis.  
15 Is it once a day, twice a day, or every couple of days? I  
16 don't know the frequency of that; maybe that's a question  
17 for the Applicant.

18           In terms of some protocols, in terms of opening  
19 and closing that gate, certainly exiting I don't see as an  
20 issue. Entering is the problem. They could queue in another  
21 area, they could queue in the front, they could queue in  
22 the red zone for that matter while the gate is opening and  
23 then swing in. I don't get a sense that there's a huge risk  
24 or safety issue with the vehicle that's hanging out within  
25 the parking lane for a limited amount of time, again based

1 on the speed of that gate and how fast it opens; I'm not  
2 aware of what the foot-per-second rate is on that either  
3 and how long that would actually be, but I don't get the  
4 sense that this is a huge safety issue.

5 COMMISSIONER THOMAS: Thank you.

6 CHAIR BARNETT: Very well. Commissioner Janoff.

7 COMMISSIONER JANOFF: Thank you. I think one of  
8 the things that complicate this particular location is the  
9 teardrop parklet that has the effect of making it a one-way  
10 lane in. Typically when a car is queuing in a normal two  
11 lane road the cars that see the car stopped for the gate  
12 are going to go around it, and in this particular location  
13 there's no opportunity to go around the car; it's  
14 effectively a one lane road. I do think that in this case  
15 the configuration of the street on Blackwell creates a  
16 narrowing point that complicates... And the teardrop, as I  
17 recall, continues past the driveway a little bit, so I  
18 think it just is not close to the corner of National, it's  
19 quite deep and my impression is that you couldn't turn left  
20 into the driveway from Blackwell, so you really just have  
21 that narrow lane, so for me it does create a potential  
22 safety issue.

23  
24 I think the frequency of use, I understand the  
25 reason it's mentioned but I think it's a little unfair,

1 because we just really don't know, and you don't really  
2 want to hamper a property owner to say you said it's only  
3 going to be used once a week and now you're using it every  
4 day and it's creating a safety issue, so I don't think we  
5 need to go down that route.

6 I do think that there are special circumstances  
7 related to the configuration of the street and the red zone  
8 that creates, as I said, a necking, a narrowing of that  
9 particular length of Blackwell that would create an issue.  
10 Think if you had a car parked on the other side of the  
11 driveway. You have nowhere for an oncoming car to go. I  
12 don't think a parked car makes a difference is what I'm  
13 saying. You've got a car that's sticking out effectively  
14 into the travel lane because of the narrow width of this  
15 part of the road. I think it's an issue.

17 CHAIR BARNETT: Vice Chair Raspe.

18 VICE CHAIR RASPE: Thanks, Chair. I actually have  
19 a question for Staff. Procedurally we have two issues  
20 before us and it's one appeal. Could we as a body grant  
21 with respect to a part and deny with respect to a part? It  
22 seems to me that a consensus is building in that regard. I  
23 just want to make sure that what we're talking about is  
24 procedurally proper.  
25

1 SEAN MULLIN: I believe so, and the Town Attorney  
2 will also weigh in, I'm sure, but you could also grant the  
3 appeal with an added condition to relocate the fence.

4 VICE CHAIR RASPE: Is there a preference,  
5 Counsel?

6 ATTORNEY WHELAN: Either way works.

7 VICE CHAIR RASPE: Thank you so much.

8 CHAIR BARNETT: Good question. Are we ready for a  
9 motion? I think we are. Commissioner Janoff.

10 COMMISSIONER JANOFF: I move to approve the  
11 appeal of a Community Development Director decision to deny  
12 a Fence Height Exception and request for construction of an  
13 automated vehicular gate exceeding the maximum height and  
14 with reduced setbacks on property zoned R-1:8 located at  
15 380 Blackwell Drive, APN 424-12-027. I won't go through the  
16 rest of the identifying information; it's included in  
17 Exhibit 2.  
18

19 I can make the finding that this is categorically  
20 exempt for CEQA, and I can make the required finding for  
21 granting a Fence Height Exception that a special security  
22 concern exists that cannot be practically addressed without  
23 adding a vehicular gate.  
24

25 My motion would also request that the gate be  
moved back 5' or 4'-10", whatever the distance is, to be

1 code compliant and provide 18' for a vehicle to park  
2 outside the closed gate and not hang out into Blackwell  
3 Avenue.

4 CHAIR BARNETT: Thank you for that motion.  
5 Commissioner Hanssen.

6 COMMISSIONER HANSSEN: I second the motion.

7 ATTORNEY WHELAN: Before the Commission votes,  
8 just one thing. I would say that it's conditioned on moving  
9 it back 5' as opposed to making it a request.  
10

11 COMMISSIONER JANOFF: The maker of the motion  
12 accepts that change in language that it is conditioned upon  
13 moving the gate back.

14 COMMISSIONER HANSSEN: The seconder accepts that  
15 as well.

16 CHAIR BARNETT: Commissioner Thomas.

17 COMMISSIONER THOMAS: You said a vehicular gate,  
18 but I also think that we should add that the height needs  
19 to exceed the 3' maximum also.

20 COMMISSIONER JANOFF: Yes, the maker of the  
21 motion accepts that change that we also approve the  
22 existing height of the existing gate.

23 COMMISSIONER HANSSEN: I agree, but I think you  
24 already said that in your motion.  
25

1 CHAIR BARNETT: All right, so we do have a motion  
2 and a second. Discussion? Commissioner Burnett.

3 COMMISSIONER BURNETT: Yes, thank you. Do you  
4 need to add to the motion the side fence added on to the  
5 left of the gate if the gate is moved back?

6 COMMISSIONER JANOFF: I would personally say no,  
7 that's at the discretion of the homeowner. Clearly they're  
8 going to want to add that side. But I do have a question  
9 whether we need to talk about the Variance of the setback.  
10

11 ATTORNEY WHELAN: I would probably amend the  
12 motion to say it's conditioned on moving the fence back 5'  
13 and a Variance from the 25' requirement is approved.

14 JENNIFER ARMER: And I would add that it would be  
15 granting a Fence Height Exception for the fence within that  
16 front setback to be greater than the 3' limitation, and  
17 that that includes additional connecting fencing because of  
18 the relocation of the gate.

19 COMMISSIONER JANOFF: The maker of the motion  
20 accepts that language.

21 COMMISSIONER HANSSEN: I do as well.

22 CHAIR BARNETT: Commissioner Clark.

23 COMMISSIONER CLARK: Thank you. I just wanted to  
24 say I personally am torn as to whether I think it's  
25 necessary to move the gate back, but it looks to me like

1 the general consensus from the Commission is that it does  
2 and so I'm comfortable voting that way, but I don't  
3 necessarily think that it's completely warranted.

4 CHAIR BARNETT: Thank you for that comment. If  
5 there is no further discussion, I'll call the question, and  
6 we'll have to do the roll call this time because  
7 Commissioner Clark is not present. We'll begin with Vice  
8 Chair Raspe.

9 VICE CHAIR RASPE: Yes.

10 CHAIR BARNETT: Commissioner Hanssen.

11 COMMISSIONER HANSEN: Yes.

12 CHAIR BARNETT: Commissioner Thomas.

13 COMMISSIONER THOMAS: No.

14 CHAIR BARNETT: Commissioner Burnett.

15 COMMISSIONER BURNETT: Yes.

16 CHAIR BARNETT: Commissioner Janoff.

17 COMMISSIONER JANOFF: Yes.

18 CHAIR BARNETT: And Commissioner Clark.

19 COMMISSIONER CLARK: Yes.

20 CHAIR BARNETT: Thank you, and the Chair also  
21 votes for the motion, so that passes with one dissent. Are  
22 there appeal rights? Thank you.

23 JENNIFER ARMER: Thank you, Chair. Yes, the  
24 decision of the Commission can be appealed to Town Council  
25



1 by any interested person as defined by Town Code Section  
2 29.10.020 within ten days on forms available online with  
3 fees paid. Final deadline is 4:00p.m. on the tenth day.

4 CHAIR BARNETT: Thank you for that.

5 (END)  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

***This Page  
Intentionally  
Left Blank***

Town of Los Gatos  
Office of the Town Clerk  
110 E. Main St., Los Gatos CA 95030

APPEAL OF PLANNING COMMISSION DECISION

**FILING FEES**  
**\$464.00 (PLAPPEAL) Residential**  
**\$1,867.00 (PLAPPEAL), per**  
**Commercial, Multi-family, or**  
**Tentative Map Appeal**  
**TRANSCRIPTION \$500 (PLTRANS)**

I, the undersigned, do hereby appeal a decision of the Planning Commission as follows: (PLEASE TYPE OR PRINT NEATLY)  
DATE OF PLANNING COMMISSION DECISION 6/14/23

PAID  
JUN 21 2023  
TOWN OF LOS GATOS

BP39187

PROJECT / APPLICATION NO:

ADDRESS LOCATION:

380 Blackwell Drive

Pursuant to the Town Code, any interested person as defined in Section 29.10.020 may appeal to the Council any decision of the Planning Commission.

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.

Section 29.20.275 The notice of appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by substantial evidence in the record.

1. There was an error or abuse of discretion by the Planning Commission:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

; OR

2. The Planning Commission's decision is not supported by substantial evidence in the record: The Planning Commission allowed the exception request for a higher-than-standard electronic gate for safety reasons - but added the condition that the gate would need to be set back an additional 25 feet in order to prevent traffic back up they believed would occur as a safety issue for passing mo

IF MORE SPACE IS NEEDED, PLEASE ATTACH ADDITIONAL SHEETS. (continued on next page)

IMPORTANT:

1. Appellant is responsible for fees for transcription of minutes. A \$500.00 deposit is required at the time of filing.
2. Appeal must be filed within ten (10) calendar days of Planning Commission Decision accompanied by the required filing fee. Deadline is 4:00 p.m. on the 10<sup>th</sup> day following the decision. If the 10<sup>th</sup> day is a Saturday, Sunday, or Town holiday, then it may be filed on the workday immediately following the 10<sup>th</sup> day, usually a Monday.
3. The Town Clerk will set the hearing within 56 days of the date of the Planning Commission Decision (Town Ordinance No. 1967).
4. Once filed, the appeal will be heard by the Town Council.
5. If the basis for granting the appeal is, in whole or in part, information not presented to or considered by the Planning Commission, the matter shall be returned to the Planning Commission for review.

PRINT NAME: Lawrence W Cesnik

SIGNATURE: Lawrence W Cesnik

DATE: June 20, 2023

ADDRESS: 380 Blackwell Drive

PHONE: 408-836-8183

EMAIL: Larry.cesnik@gmail.com

\*\*\* OFFICIAL USE ONLY \*\*\*

DATE OF PUBLIC HEARING: \_\_\_\_\_

Pending Planning Department Confirmation

Page 547 AND PUBLICATION: \_\_\_\_\_

DATE OF PUBLICATION: \_\_\_\_\_

ATTACHMENT 5

Th

Lawrence Cesnik

380 Blackwell Drive, Los Gatos, CA 95032

Page 2

2. CONTINUED

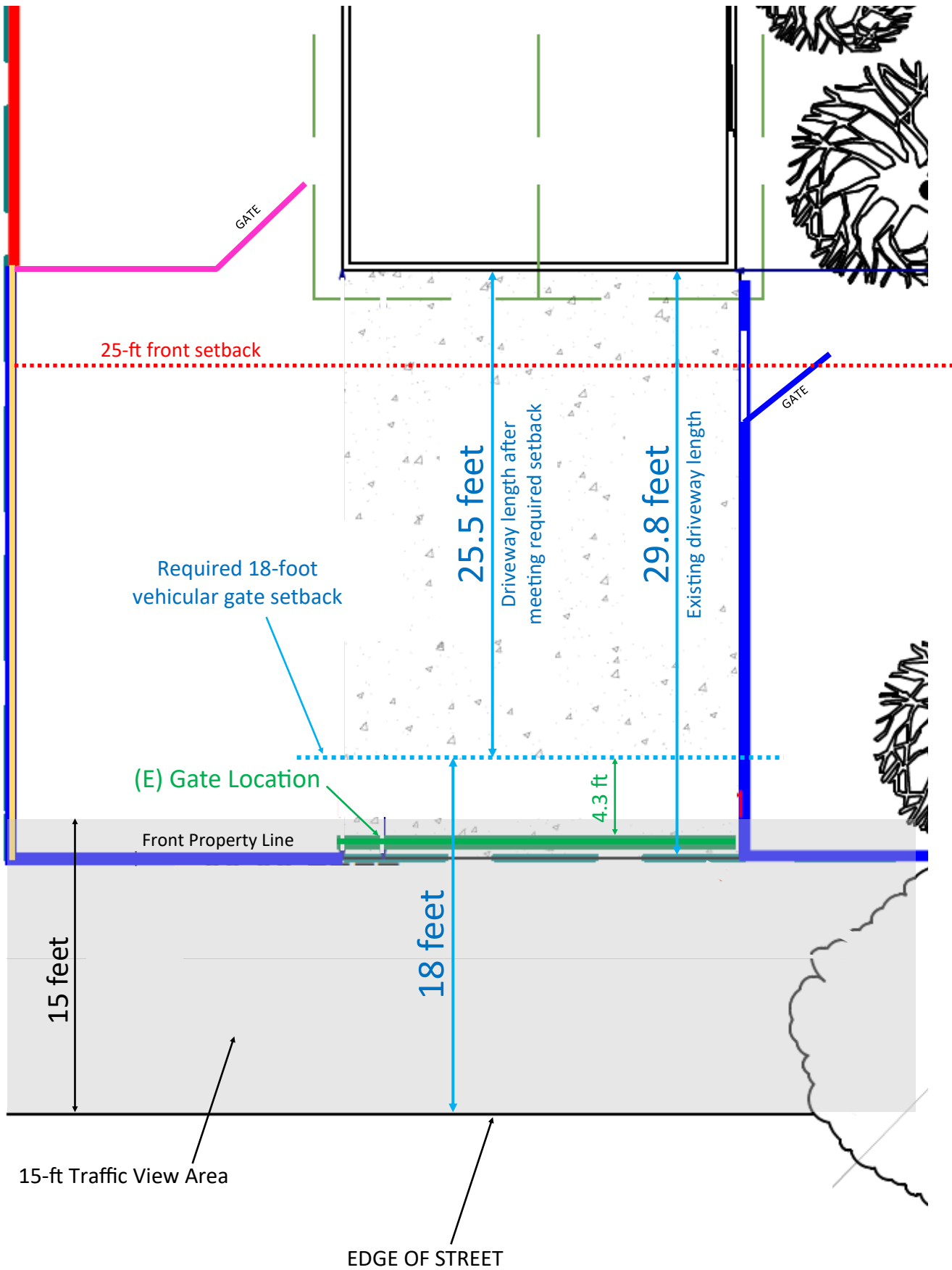
However, as I will present in more detailed descriptions and photographs still to come, there are at least 3 issues that I have with the commission's decision:

1. The statement made by one of the commissioners that the vehicle picking up our son for his day program is likely a van/longer vehicle – and therefore would protrude into the street without a gate setback. In fact, the transportation company with which we contract – Union Taxi – picks up our son in a compact/medium size sedan – which fits between the curb and gate without protrusion.
2. The assumption that there will be a “queuing/backup hazard” when we exit or enter the gate due to the delay in opening it. In fact – as I explained to the commission, our plan is to avoid this problem by a) waiting to back out until the gate is completely open b) before approaching the gate for entering, opening it remotely early enough (it has good range) so that it is fully open when we are in front of the driveway.
3. Not recognizing that pushing the gate back 5 feet will (a) be a major inconvenience and will “squeeze” the very limited space we have to park our vehicles (b) will increase the safety risk to our son by shortening the amount of time for him to reach the gate during any potential “bolt” and (c) disrupt the aesthetics of our property that we have worked hard/invested in to develop and maintain -as well as the surrounding neighborhood

RECEIVED  
TOWN OF LOS GATOS

JUN 20 2023

CLERK DEPARTMENT



***This Page  
Intentionally  
Left Blank***

Draft Resolution to be modified by Town Council deliberations and direction.

**RESOLUTION**

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
DENYING AN APPEAL OF THE PLANNING COMMISSION DECISION TO APPROVE A  
FENCE HEIGHT EXCEPTION REQUEST FOR CONSTRUCTION OF AN AUTOMATED  
VEHICULAR GATE EXCEEDING THE MAXIMUM HEIGHT AND  
WITH REDUCED SETBACKS ON PROPERTY ZONED R-1:8.**

**APN 424-12-027  
FENCE HEIGHT EXCEPTION APPLICATION: FHE-23-002  
PROPERTY LOCATION: 380 BLACKWELL DRIVE  
PROPERTY OWNERS: LARRY CESNIK AND MARTHA JOHNSON  
APPELLANT: LARRY CESNIK  
APPLICANT: RAMIN ZOHOOR**

**WHEREAS**, on September 13, 2022, the Town issued an administrative warning for a code violation at 380 Blackwell Drive for the unpermitted construction of a vehicular gate that exceeds the three-foot height limitation for a gate located in the required front yard and the traffic view area; and does not meet the required 18-foot setback from the edge of the street. The Town requested that the property owner apply for a Building Permit and indicated that the Town Code offers an exception process that allows for deviations from the Town’s fence regulations if appropriate findings can be made; and

**WHEREAS**, on February 6, 2023, the property owner applied for an exception to the Town’s fence regulations for the unpermitted construction of a vehicular gate on the subject property that does not comply with the Town Code fence regulations for height and setbacks; and

**WHEREAS**, on March 6, 2023, the Town denied the exception request because the findings listed in Town Code Section 29.40.0320 could not be made; and

**WHEREAS**, on March 8, 2023, the decision of the Community Development Director to deny the exception request was appealed to the Planning Commission; and

**WHEREAS**, on June 14, 2023, the Planning Commission held a duly-noticed public hearing and considered an appeal of the Community Development Director denial of an exception to the Town’s fence regulations for unpermitted construction of a vehicular gate that exceeds the three-foot height limitation for a gate located in the required front yard and the traffic view area; and

does not meet the required 18-foot setback from the edge of the street; and

**WHEREAS**, on June 14, 2023, the Planning Commission granted the appeal, approving an exception to the Town’s fence regulations by making the required findings that a special security concern exists that cannot be practically addressed through alternatives and that a special circumstance exists where strict enforcement of the fence regulations would result in an undue hardship; and

**WHEREAS**, the facts in the record that support the findings include the information provided by the appellant at the Planning Commission hearing, detailing the security concerns; and

**WHEREAS**, the Planning Commission’s approval included additional conditions requiring that the vehicular gate be relocated to comply with the 18-foot setback required by the Town Code and that any additional fencing needed between the relocated vehicular gate and the existing property line fencing be no taller than the height of the existing adjacent fencing; and

**WHEREAS**, on June 21, 2023, the appellant, an interested person, filed a timely appeal of the decision of the Planning Commission approving the exception the Town’s fence regulations with additional conditions; and

**WHEREAS**, this matter came before the Town Council for public hearing on August 1, 2023, and was regularly noticed in conformance with State and Town law; and

**WHEREAS**, the Town Council received testimony and documentary evidence from the appellant and all interested persons who wished to testify or submit documents. The Town Council considered all testimony and materials submitted, including the record of the Planning Commission proceedings and the packet of material contained in the Council Agenda Report for their meeting on August 1, 2023, along with any and all subsequent reports and materials prepared concerning this application.

**WHEREAS**, the Town Council was unable to make the findings required to grant an appeal of a decision of the Planning Commission, in accordance with Town Code section 29.20.275, with the Town Council finding the following:

1. There was not an error or abuse of discretion by the Planning Commission; and
2. The Planning Commission decision is supported by substantial evidence in the record.



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

1. The appeal of the decision of the Planning Commission decision to approve an exception the Town's fence regulations with additional conditions is denied. The conditions added in the Planning Commission's decision requiring that the vehicular gate be relocated to comply with the 18-foot setback required by the Town Code and that any additional fencing needed between the relocated vehicular gate and the existing property line fencing be no taller than the height of the existing adjacent fencing are upheld.

2. The decision constitutes a final administrative decision pursuant to Code of Civil Procedure section 1094.6 as adopted by section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by Code of Civil Procedure section 1094.6, or such shorter time as required by state and federal Law.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 1<sup>st</sup> day of August 2023, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

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

ATTEST:

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

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

***This Page  
Intentionally  
Left Blank***



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 08/01/2023

ITEM NO: 14

ADDENDUM

---

DATE: July 31, 2023  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Consider an Appeal of a Planning Commission Decision to Approve a Fence Height Exception Request for Construction of an Automated Vehicular Gate Exceeding the Maximum Height and with Reduced Setbacks on Property Zoned R-1:8. **Located at 380 Blackwell Drive.** APN 424-12-027. Categorically Exempt Pursuant to CEQA Guidelines Section 15303 (e): New Construction or Conversion of Small Structures. Fence Height Exception Application FHE-23-002. PROPERTY OWNER: Larry Cesnik and Martha Johnson. APPELLANT: Larry Cesnik. APPLICANT: Ramin Zohoor. PROJECT PLANNER: Sean Mullin.

REMARKS:

The Staff Report included a statement that with their appeal, the appellant provided additional information on the medical background of their adult child, and that this information would be provided under separate cover to the Town Council to protect the privacy of the individuals involved. After further review, the information in the Staff Report and Attachments has been deemed sufficient for Town Council consideration.

ATTACHMENTS:

Attachments previously received with the August 1, 2023 Staff Report:

1. June 14, 2023, Planning Commission Staff Report, with Exhibits 1 through 10
2. June 14, 2023, Planning Commission Desk Item, with Exhibit 11
3. June 14, 2023, Planning Commission Action Letter
4. June 14, 2023, Planning Commission Verbatim Minutes
5. Appeal of the Planning Commission decision, received June 21, 2023
6. Annotated Driveway Exhibit Prepared by Staff
7. Draft Resolution to Deny the Appeal and Uphold the Planning Commission Decision

PREPARED BY: SEAN MULLIN, AICP  
Senior Planner

---

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

---

***This Page  
Intentionally  
Left Blank***



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 08/01/2023

ITEM NO: 15

---

DATE: July 27, 2023  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Consider Adoption of a Resolution Modifying the Height Pole and Netting Policy for Additions and New Construction. The Proposed Modifications to Town Policy are Not Considered a Project Under the California Environmental Quality Act. Project Location: Town Wide. Applicant: Town of Los Gatos.

**RECOMMENDATION:**

Consider adoption of a resolution modifying the Height Pole and Netting Policy for Additions and New Construction.

**BACKGROUND:**

The Town's Height Pole and Netting Policy for Additions and New Construction ("Story Pole Policy") was adopted by the Planning Commission in July of 1998. This policy requires two-foot wide orange netting for all new buildings and second story additions. A requirement for posting of a small sign (2 feet by 2 feet) indicating the public hearing date and approving body was added in September 2002. At that time, exception requests were reviewed by the Community Development Director.

A comprehensive review of the policy was conducted in 2012. On August 5, 2013, Town Council approved an updated policy. Minor additions relating to tree protection were made in 2017 to create the current policy (Attachment 3, Exhibit 1).

As part of recent Town Council considerations of story pole exception requests, staff was asked to bring the Story Pole Policy to Planning Commission for consideration of, and a recommendation to Town Council on, possible modifications.

**PREPARED BY:** Jennifer Armer, AICP  
Planning Manager

---

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

---

BACKGROUND (continued):

On April 26, 2023, Planning Commission considered potential modifications to the Story Pole Policy (Attachments 3 and 4). The discussion was continued to May 24, 2023, with a request for additional information (Attachment 5).

On May 24, 2023, Planning Commission considered the additional information (Attachments 5, 6, and 7), and forwarded a recommendation to Town Council to modify the existing Story Pole Policy (Attachment 8), as described below.

DISCUSSION:

On May 24, 2023, Planning Commission provided a series of recommendations to Town Council to modify the Story Pole Policy. The recommendations are described below under the following topics: Types of Development Projects; Physical Requirements; Allowances from the Requirements; Public Notice; Exception Process; and Story Pole Plan Requirement. The overall intent of the Planning Commission recommendations was to keep the story pole requirement because of the recognized benefit that it provides within the Town's development review process, and reduce the burden of the story pole process and installation, particularly for certain types of projects. A draft revised Story Pole Policy with changes red-lined (Attachment 1) reflects the Planning Commission recommendations. The discussion below also includes additional changes identified by staff that the Town Council could choose to add, modify, or incorporate.

A. Types of Development Projects

The current Story Pole Policy applies to the following types of applications:

- New residential (excluding single-story accessory structures) and non-residential buildings.
- Residential second story additions.
- Nonresidential additions exceeding 100 square feet.

The Planning Commission recommendation is to require story poles to be installed for the following project types:

1. Residential projects, if the project includes:
  - A new two-story house or second story addition where both of the adjacent neighbors on the same side of the street are single-story homes; or
  - A request for a variance or exception to physical characteristics of the building(s).

DISCUSSION (continued):

2. Properties on the Historic Resource Inventory, if the project includes:
  - New buildings (excluding single-story accessory structures);
  - Residential second story additions; or
  - Non-residential additions exceeding 100 square feet.
3. Properties in the Hillside Area as defined in the Hillside Development Standards & Guidelines, if the project includes:
  - New buildings; or
  - New second story additions.
4. Non-residential projects, if the project includes:
  - A request for a variance or exception to physical characteristics of the building(s).
  - Non-residential additions exceeding 100 square feet; or
  - New buildings over 50,000 square feet.

In addition to these recommendations, staff recommends consideration of the following:

1. To avoid an unintentional requirement for story poles where not currently required, staff recommends the policy clearly state that they only be required for primary structures.
2. For non-residential projects, staff notes that there is an inconsistency that new structures under 50,000 square feet would not require story poles, but an addition as small as 101 square feet to an existing structure would require story poles. Staff recommends that the 100 square foot addition trigger be revised to apply to additions greater than 50 percent of the existing floor area.
3. A statement specifying how these requirements apply to mixed-use projects. For example, the “residential projects” criteria above could be reworded to applied to single-family, duplex, and triplex projects, and the “non-residential projects” could apply to all others (multi-family, commercial, and mixed-use).

The Planning Commission recommendation provides for the following exemptions:

1. Projects containing a high level of affordable housing.
2. Homes not visible from viewing platforms or the public right-of-way.

The Planning Commission was not specific on the percentage of affordable housing that would need to be included to trigger the recommended exemption. This exemption could be provided to projects proposing 100 percent affordable housing or exceeding the Town’s below market price (BMP) program requirements (Town Code Section 29.10.3025).

DISCUSSION (continued):

For example, if the exception were allowed for projects that were double the standard BMP requirements, then it would apply for projects that:

- Contain five (5) or more but less than twenty (20) market rate units and provide 20 percent BMP units;
- Contain from twenty (20) to one hundred (100) market rate units and provide double the number of BMP units calculated through the following formula:  $0.225$  multiplied by the total number of market rate units minus 2.5; or
- Contain more than one hundred (100) market rate units and provide 40 percent BMP units.

For the second recommended exemption, staff notes that story poles are already used to determine visibility of a proposed residential project from viewing platforms. Staff recommends that the reference to visibility from public right-of-way be modified to be “public right-of-way adjacent to the subject property.”

B. Physical Requirements

The current Story Pole Policy requires that roof lines be represented by at least two-foot wide orange woven plastic snow fencing. Planning Commission recommends that flag rope be allowed instead of netting when buildings are over 35-feet tall.

C. Allowances from the Requirements

The Planning Commission recommends the following reductions in the standard story pole requirements:

1. Reduce the number of poles required for multi-building developments to only include the tallest structure and those along the perimeters of the site.
2. Limit the length of installation to no more than 30 days after the first public hearing.
3. Allow relocation of story poles when close to property lines, and allow guy wires to attach to existing site features like fences, but not trees.

The Planning Commission did not give specific guidance on the implementation of item 3 above. If Council agrees with this recommendation, staff recommends not allowing guy wires in the public right-of-way or on adjacent private property.



DISCUSSION (continued):

D. Public Notice

The Planning Commission recommends the following requirements to ensure that public notice is provided on all projects:

1. Require on-site signage for all publicly noticed projects.
2. Require QR codes and email contact information on signage.
3. Recommend signage earlier in the process.
4. Provide signage standards to ensure visually striking signs.

The Town Council may want to define visually striking signage, the timing of signage installation, and any other parameters. In addition, staff recommends that Town Council consider whether the Story Pole Policy should also include allowance for visual simulations in certain circumstances.

E. Exception Process

The Planning Commission recommendation is that exceptions to the story pole policy be reviewed by the Community Development Director, in place of the existing process which requires Town Council review. Staff recommends that Town Council consider whether to include any specific guidance on when exceptions should be considered/allowed and based on what criteria.

F. Story Pole Plan Requirement

The Planning Commission recommendation is that story pole plans be optional.

PUBLIC OUTREACH:

Staff conducted outreach through the following media and social media resources, as well as direct email communication to the Chamber of Commerce, architects, developers, and story pole installers, as summarized below:

- The Town's website home page, What's New;
- The Town's Facebook page;
- The Town's Twitter account;
- The Town's Instagram account;
- The Town's NextDoor page; and
- Direct email communication to the Chamber of Commerce, architects, developers, and story pole installers.

ENVIRONMENTAL ASSESSMENT:

In accordance with CEQA Guidelines Section 15378, the proposed ordinance amendments are not a “project” subject to CEQA because the proposed amendments will not impact the physical environment.

CONCLUSION:

Staff recommends that the Town Council adopt a resolution to adopt the revised Story Pole Policy document based on the Planning Commission’s recommendations (Attachment 2 with Exhibit 1), with findings that the project is not subject to the California Environmental Quality Act [Section 15061(b)(3)] and is consistent with the General Plan; and includes any specific changes agreed upon by the majority of the Town Council.

ALTERNATIVES:

Alternatively, the Town Council may:

1. Continue this item to a date certain with specific direction to staff;
2. Refer this item back to the Planning Commission with specific direction; or
3. Take no action, leaving the policy unchanged.

ATTACHMENTS:

1. Draft Revised Story Pole Policy with Changes Red-Lined
2. Draft Resolution with Exhibit 1
3. April 26, 2023 Planning Commission Staff Report with Exhibits 1-2
4. April 26, 2023 Planning Commission Addendum Report with Exhibit 3
5. April 26, 2023 Planning Commission Verbatim Minutes
6. May 24, 2023 Planning Commission Staff Report with Exhibit 4
7. May 24, 2023 Planning Commission Addendum Report with Exhibit 5
8. May 24, 2023 Planning Commission Desk Item Report with Exhibits 6
9. May 24, 2023 Planning Commission Verbatim Minutes

## **Height Pole, ~~and~~ Netting, and Signage Policy For Additions and New Construction**

### **I. Purpose:**

It is a policy of the Town of Los Gatos Town Council to have story poles and project identification signs installed on the sites of an active development application. The placement of story poles is extremely helpful and important during the course of Town's review of applications for new development. Proper and accurate placement of story poles demonstrates the planned rooflines and heights and provides some indication of the potential massing of the proposed structure. Story poles enhance understanding of the project for Town residents, staff, advisory bodies, and decision making bodies. Story poles also provide a visual notice to the community of a forthcoming land use public hearing.

Project identification signs present both written and graphical information that will further communicate the proposed project to the community as well as provide the public hearing dates for the development application.

This policy is for the benefit of the Town and community and is not intended to create a requirement under the California Environmental Quality Act (CEQA).

### **II. Height Poles and Netting:**

Height story poles and netting shall be used for the following types of Community Development Department, Planning Division, land use applications:

#### [For residential projects:](#)

- [If proposed project is a two-story house or second story addition where the adjacent properties on the same side of the street both contain only single-story houses.](#)
- [If proposed project includes a variance or exception to the physical characteristics of the primary structure.](#)

#### [For non-residential projects:](#)

- [New primary structures that exceed 50,000 square feet.](#)
- [Non-residential additions exceeding 100 square feet.](#)
- [If proposed project includes a variance or exception to the physical characteristics of the primary structure.](#)

#### [For properties in the Historic Resource Inventory:](#)

- New residential (excluding single-story accessory structures) and non-residential buildings.

- Residential second story additions.
- Non-residential additions exceeding 100 square feet.

For properties in the Hillside Area as defined in the Hillside Development Standards & Guidelines:

- New primary structures.
- New second story additions.

Exemptions:

- Affordable housing projects.
- Projects in the Hillside Area that are not visible from a viewing platform or the public right-of-way.

The terms height poles and story poles are used interchangeably.

#### **A. Procedure:**

When it is determined that story poles are required, the applicant’s engineer, architect, or building designer may, ~~but is not required to, be required to~~ prepare a “Story Pole Plan” to indicate the locations where the poles will be installed. If submitted, tThe Story Pole Plan shall be approved by the project planner prior to the placement of the poles on the site. Once ~~approved, the applicant shall inform the project planner when~~ the placement of the story poles is complete, the applicant shall inform the project planner and submit photographs showing installation. ~~The story poles shall be installed consistent with the following requirements:~~

~~Residential:~~ The height poles and netting shall be installed prior to the neighborhood notification process and shall remain in place until 30 days after the first public hearing on the project~~the project has been acted upon and the appeal period has ended. If the project is appealed, the height poles and netting shall remain until final action is taken.~~ If ~~final consideration of the project is substantially delayed or~~ the project is substantially modified, staff may direct removal or modification of the story poles.

~~Projects that Require Planning Commission or Town Council Action:~~ The height poles and netting shall be installed prior to the public noticing of the matter and shall be kept in place until the project has been acted upon and the appeal period has ended. ~~If the project is appealed, the height poles and netting shall remain until final action is taken. If final consideration of the project is substantially delayed or the project is substantially modified, staff may direct removal or modification of the story poles.~~

#### **B. Timing**

Public notices will not be mailed and/or application(s) shall not be advertised until ~~a Story Pole Plan has been approved by the project planner,~~ the height poles and netting have been installed, and photographs have been submitted to the project planner, as required in Section II.A.

**C. Location and Number:**

The number of story poles may vary with each specific project. At the discretion of the project planner, story pole locations shall adequately demonstrate the height, mass, and bulk of the project requiring review. At a minimum, story poles shall be placed at all outside building corners of the building wall (excluding eaves) and along the rooflines of the proposed structure(s) or addition. Architectural elements such as towers, spires, elevator and mechanical penthouses, cupolas, mechanical equipment screening and similar elements not used for human activity or storage which are visible from the streetscape shall be represented by the story poles. For multi-building developments, story poles shall only be required for the tallest structures and those along the perimeter of the site.

While guy wires may sometimes be attached to existing fencing or similar onsite structures, Pursuant to Section 29.10.1005 of the Tree Protection Ordinance, the attachment of wires, signs, or ropes to any protected tree is prohibited. Trees may not be "flagged" or used as a substitute for the erection of story poles.

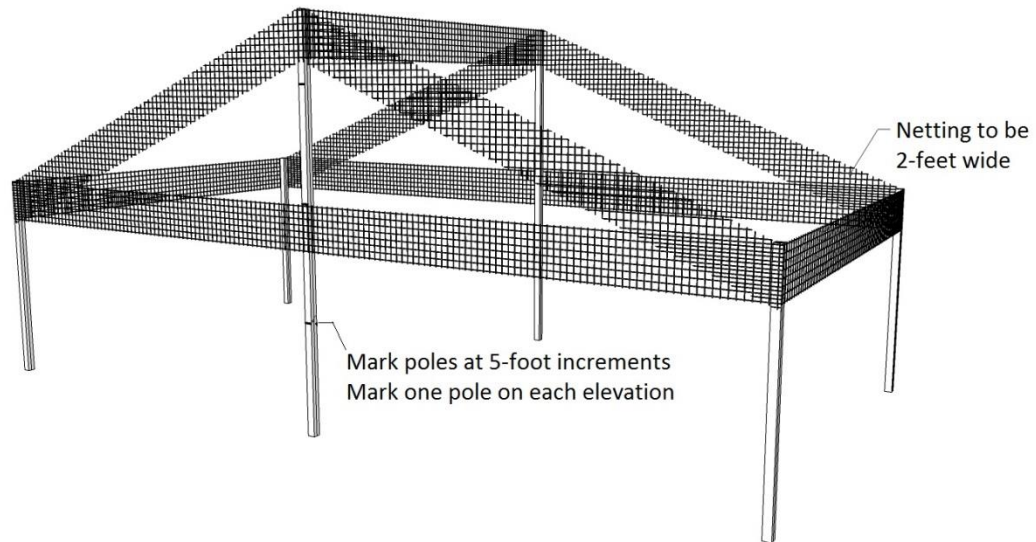
After the placement of the story poles on-site, the applicant shall provide the project planner with photographs of the story poles taken from a variety of vantage points. The vantage point from where the photograph was taken shall be indicated on each photograph.

A licensed surveyor or civil engineer shall submit written verification that the height and position of the poles and netting accurately represents the height and location of the proposed structure(s) or addition.

**D. Materials:**

The material of the story poles shall be indicated on the Story Pole Plan. Story poles shall be constructed of 2"x4" lumber, metal poles, or other sturdy building material acceptable to the project planner. Telephone poles; mechanical equipment, such as cranes; or other materials may be acceptable for higher structures if the Community Development Director determines that the material will adequately portray the height, bulk, and mass of the proposed structure(s) or addition and withstand the wind and weather. At least two foot (2') wide orange woven plastic snow fencing (netting) must be erected to represent the rooflines of the proposed structure(s) or addition. For projects over 35-feet in height, flag rope may be allowed instead of netting. Netting/flag rope must be supported by height poles that are strong enough

to accurately maintain the outlines and height of the structure(s). One of the height poles on each elevation must be clearly marked and labeled in five foot (5') increments measured from existing or finished grade, whichever creates a higher profile, ~~and consistent with the approved Story Pole Plan on file at the Community Development Department.~~



**E. ~~Story Pole Plan and~~ Public Safety:**

All story poles shall be placed, braced, and supported to ensure the health, safety, and general welfare of the public. ~~The Story Pole Plan shall include the methods used to secure the poles.~~ Applicants shall sign an agreement that holds the Town harmless for any liability associated with the construction of, or damage caused by the story poles. If at any time, the Town determines the story poles to be unsafe, they shall be repaired and reset immediately by the project applicant or, at the Town's discretion, removed. Depending on the scope of the poles, the applicant may be requested to verify with the Building Division of the Community Development Department that no permits and/or inspections are required for the poles.

**F. Exceptions:**

In the event there are justifiable reasons why story poles cannot be accommodated for all structures proposed to be constructed on the project site, the applicant shall submit a letter to the Community Development Director no later than 45 days prior to the required installation date, clearly articulating the reasons why an exception to the Story Pole requirement is warranted. Requests for an exception and alternative plan will only be considered if the applicant can clearly demonstrate to the Town, and the Town agrees, that the installation of the story poles would: (1) cause a threat to

public health and safety or (2) would impair the use of existing structure(s) or the site to the extent it would not be able to be occupied and the business or residential use would be infeasible. Some form of poles and netting and/or on-site physical representation of the project will be required, even if an exception is granted.

Planned Development applications with multiple detached commercial structures and/or residential units may request to erect story poles on the locations where the key structures will be placed. The ~~deciding body~~Community Development Director will take into account the density of the development when considering an exception request. The story poles shall be installed on all corner structures and the structures with the greatest height and mass. An exception to providing story poles for all structures in a Planned Development application with multiple commercial structures and/or residential units shall follow the same procedures as outlined below.

The ~~Town Manager~~Community Development Director will review all justifiable requests for an exception to the Story Pole requirement within 14 days of receipt of the request ~~and shall place the matter on the next available Town Council agenda for consideration by the Council. Written notice of the exception request shall be mailed to property owners and residents of properties within 300 feet of the project site. All requested and approved exceptions shall be posted on the Town's Web site under "What's New," in agenda posting locations at Town Hall and the Library, and in the online development activity report when established.~~

If an exception is approved, the applicant will be required to demonstrate the proposed structure height and mass using alternative means as outlined in Section II.~~G#~~.

**G. Alternatives:** If an exception is granted to the Story Pole requirements, the applicant shall provide digital imagery simulations, computer modeling, built-to-scale models or other visual techniques in-lieu of the Story Pole requirements. Simulations may either be prepared by the applicant for technical review by the Town's consultant or the applicant may elect to have the Town's consultant prepare the materials. In either case, the applicant shall be responsible for all technical review(s), materials and cost of the Town's evaluation and/or preparation process. To ensure accuracy, visual simulations shall comply with the following standards:

- Establishing accuracy of the visual simulation: The applicant shall demonstrate that the dimension and scale of the visual simulation and project setting are equivalent. This is accomplished by examining screen views of the model in plan and elevation views for accurate scaling. The visual simulation must also include reference objects corresponding to known objects in the simulated scene, such as buildings, curbs, utility poles, trees, or any other reference points visible in the simulated scene, whose location is known from surveys or, at a minimum aerial

imagery. There shall be a minimum of two reference objects outside of the project in different parts of the photo frame.

- Establishing the equivalence of the virtual and actual camera focal setting: The camera lens focal setting or angle of view for each simulation base photo shall be stated. The camera model shall be provided since the angle of the focal view varies with different cameras. The preparer of the photo simulations shall provide the manufacturer specifications indicating the 35 mm film SLF lens correspondence, or other means to calculate the angle of view.
- Depict the accurate location of the photo and establish the correspondence of the virtual camera with the visual simulation: The photo location shall be indicated accurately on a map or aerial photo, and the correspondence within the visual simulation should be demonstrated. Simulated views should not employ cropping, or if they must, the original, uncropped rendered image shall be provided. Once the images are cropped, it is impossible to validate their accuracy.
- Other Information: The Town's consultant may require other information to assess the accuracy of the visual simulation.

#### **H. Removal:**

Once a final action has been taken and the appeal period is over, the height poles and netting shall be removed at the applicant's expense within 30 days. If not removed, the height poles and netting will be considered rubbish and will be in violation of Section 11.10.020 of the Town Code and the matter will be forwarded to Code Compliance for enforcement action.

### **III. Project Identification Signs:**

All development applications that ~~must comply with the story pole and netting requirements~~ include public notification shall also provide project identification signs on the development site consistent with the following requirements.

#### **A. Timing:**

Public notices will not be mailed and/or application(s) shall not be advertised until project identification sign(s) have been installed. ~~The location of the project identification sign(s) shall be shown on the Story Pole Plan.~~ The applicant shall submit a signed declaration confirming that the project identification sign(s) were installed. The applicant shall also submit a photo showing the on-site sign(s) installed on the subject property prior to the distribution of the public notices.

#### **B. Size:**



- New Residential Structures: One, 2'x2' sign placed on the street frontage. The top of the sign shall be five feet (5') from existing grade and visible from the main street frontage. The sign shall indicate the scheduled public hearing date and the availability of plans for review at the Community Development Department.
- Commercial/Industrial Remodels or New Construction: One 4'x8' sign on each of the property frontages that are visible to surrounding public right of ways, including pedestrian trails such as the Los Gatos Creek Trail. The top of the signs shall be six feet (6') from existing grade. The Community Development Director may require additional signs for development sites that have large frontages.
- Downtown (C-2 Zone) Remodels or New Commercial Development: One 2' by 3' vertical sign constructed of metal frame with water resistant plastic or laminated face. In cases where it is infeasible to install a free-standing sign, the posting of a durable, all weather sign on or inside the window of a building is permitted, provided the sign is visible from public locations outside the building. Requests for an exception to the free-standing sign requirements shall be made to the Community Development Department in writing no less than 30 days prior to the public hearing for the project.

**C. Number and Placement of Signs:**

With one exception, on-site signs shall be placed on each street frontage of the site. The exception is for permits related to an individual new single family dwelling. In this case, only one sign on the street frontage is required. The signs shall be oriented towards the street, within one foot (1') of the front property line or two feet (2') of the back of the sidewalk.

**D. Materials:**

Signs shall be constructed of durable materials, such as foam core or plywood, and shall be laminated during the rainy season (October through April). The sign colors shall be a white background with black printing, and color graphics (excluding single family, which may have black and white graphics). As noted under Section III.B., signs in the Downtown C-2 Zone shall be constructed of higher grade materials, including a metal frame and a plastic or laminated poster board face.

**E. Sign Content:**

Up to 75% of the overall sign area must be used to provide a general description of the project; including number of residential units or commercial buildings and square footage; a color perspective drawing, three-dimensional image or photographic simulation and the name and contact information of the project applicant. Single

family remodel projects are not required to provide a rendering on the sign. The public notice portion of the sign message must constitute 25 percent of the overall sign area and notify the community of the public hearing date and time and contain the following message “For more information about this project, please contact the Town of Los Gatos Planning Division at 110 E. Main Street, Los Gatos, (408) 354-6872. [Plans can be reviewed on the Town’s website at: www.losgatosca.gov/2216/Pending-Planning-Projects.](http://www.losgatosca.gov/2216/Pending-Planning-Projects)” The project address, ~~and~~ application number, ~~and a QR code~~ shall be included on the notice sign.

**F. Duration of Sign Posting:**

Project identification signs shall be placed on site consistent with the timing of installation of the story poles (See Section II.B.) and shall be removed within 30 days of the final actions (See Section II.H.).

**G. Maintenance:**

The applicant is responsible for replacement of any missing, damaged or vandalized signs within five days of request by the Town. The Town may cease processing of the application if the signs are not replaced and/or maintained.

**IV. Definitions:**

Height: As defined by the Zoning Ordinance, height is determined by the plumb vertical distance from the natural or finished grade, whichever is lower and creates a lower profile, to the uppermost point of the roof edge, wall, parapet, mansard, or other point directly above that grade. For portions of a structure located directly above a cellar (refer to Section 29.10.020 of the Zoning Ordinance for definition of cellar), the height measurement for that portion of the structure shall be measured as the plumb vertical distance from the existing natural grade to the uppermost point of the structure directly over that point in the existing natural grade.

Roofline or edge: The contour or shape of a roof.

*This policy was adopted by Town Council on ~~August 1, 2023~~[August 5, 2013](#) (Resolution ~~20213-\_\_\_032~~)*

**DRAFT RESOLUTION**

**RESOLUTION OF THE TOWN COUNCIL  
OF THE TOWN OF LOS GATOS AMENDING HEIGHT POLE AND NETTING POLICY FOR  
ADDITIONS AND NEW CONSTRUCTION**

**WHEREAS**, the Town's Height Pole and Netting Policy for Additions and New Construction was adopted by the Planning Commission in July of 1998 requiring two-foot wide orange netting for all new buildings and second story additions and a requirement for posting of a small sign (2 feet by 2 feet) indicating the public hearing date and approving body was added in September 2002;

**WHEREAS**, a comprehensive review of the policy was conducted in 2012. On August 5, 2013, Town Council approved an updated policy, and minor additions relating to tree protection were made in 2017 to create the current policy;

**WHEREAS**, the use of story poles and project identification signs installed on the sites of an active development application has been found to be extremely helpful and important during the course of the Town's review of those applications by demonstrating the planned rooflines and heights and also provides a visual notice to the community of a forthcoming land use public hearing;

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Planning Commission for public hearings on April 26, 2023, and May 24, 2023;

**WHEREAS**, on April 26, 2023, and May 24, 2023, the Planning Commission held a public hearing to consider modifications to the Height Pole and Netting Policy for Additions and New Construction. The Planning Commission received and considered public comments, reviewed the document, and provided input to staff on recommended modifications;

**WHEREAS**, on May 24, 2023, the Planning Commission recommended that the Town Council make specific recommended modifications to the Height Pole and Netting Policy for Additions and New Construction; and

ATTACHMENT 2

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on August 1, 2023.

**NOW, THEREFORE, THE TOWN COUNCIL FINDS AND RESOLVES:**

1. The revised Height Pole and Netting Policy for Additions and New Construction is consistent with the Town’s General Plan.
2. The revision of the Height Pole and Netting Policy for Additions and New Construction is exempt from CEQA in that it can be seen with certainty that there will not be an impact to the physical environment. [CEQA Guidelines Section 15061(b)(3).]
3. The revised Height Pole and Netting Policy for Additions and New Construction attached hereto as Exhibit 1 is adopted.

DRAFT

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 1<sup>st</sup> day of August, 2023, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

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

ATTEST:

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

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

## **EXHIBIT 1**

### **Height Pole, Netting, and Signage Policy For Additions and New Construction**

#### **I. Purpose:**

It is a policy of the Town of Los Gatos Town Council to have story poles and project identification signs installed on the sites of an active development application. The placement of story poles is extremely helpful and important during the course of Town's review of applications for new development. Proper and accurate placement of story poles demonstrates the planned rooflines and heights and provides some indication of the potential massing of the proposed structure. Story poles enhance understanding of the project for Town residents, staff, advisory bodies, and decision making bodies. Story poles also provide a visual notice to the community of a forthcoming land use public hearing.

Project identification signs present both written and graphical information that will further communicate the proposed project to the community as well as provide the public hearing dates for the development application.

This policy is for the benefit of the Town and community and is not intended to create a requirement under the California Environmental Quality Act (CEQA).

#### **II. Height Poles and Netting:**

Height story poles and netting shall be used for the following types of Community Development Department, Planning Division, land use applications:

For residential projects:

- If proposed project is a two-story house or second story addition where the adjacent properties on the same side of the street both contain only single-story houses.
- If proposed project includes a variance or exception to the physical characteristics of the primary structure.

For non-residential projects:

- New primary structures that exceed 50,000 square feet.
- Non-residential additions exceeding 100 square feet.
- If proposed project includes a variance or exception to the physical characteristics of the primary structure.

For properties in the Historic Resource Inventory:

- New residential (excluding single-story accessory structures) and non-residential buildings.
- Residential second story additions.
- Non-residential additions exceeding 100 square feet.

For properties in the Hillside Area as defined in the Hillside Development Standards & Guidelines:

- New primary structures.
- New second story additions.

Exemptions:

- Affordable housing projects.
- Projects in the Hillside Area that are not visible from a viewing platform or the public right-of-way.

The terms height poles and story poles are used interchangeably.

**A. Procedure:**

When it is determined that story poles are required, the applicant's engineer, architect, or building designer may, but is not required to, prepare a "Story Pole Plan" to indicate the locations where the poles will be installed. If submitted, the Story Pole Plan shall be approved by the project planner prior to the placement of the poles on the site. Once the placement of the story poles is complete, the applicant shall inform the project planner and submit photographs showing installation.

The height poles and netting shall be installed prior to the neighborhood notification process and shall remain in place until 30 days after the first public hearing on the project. If the project is substantially modified, staff may direct removal or modification of the story poles.

**B. Timing**

Public notices will not be mailed and/or application(s) shall not be advertised until the height poles and netting have been installed and photographs have been submitted to the project planner, as required in Section II.A.

**C. Location and Number:**

The number of story poles may vary with each specific project. At the discretion of the project planner, story pole locations shall adequately demonstrate the height, mass, and bulk of the project requiring review. At a minimum, story poles shall be

placed at all outside building corners of the building wall (excluding eaves) and along the rooflines of the proposed structure(s) or addition. Architectural elements such as towers, spires, elevator and mechanical penthouses, cupolas, mechanical equipment screening and similar elements not used for human activity or storage which are visible from the streetscape shall be represented by the story poles. For multi-building developments, story poles shall only be required for the tallest structures and those along the perimeter of the site.

While guy wires may sometimes be attached to existing fencing or similar onsite structures, pursuant to Section 29.10.1005 of the Tree Protection Ordinance, the attachment of wires, signs, or ropes to any protected tree is prohibited. Trees may not be "flagged" or used as a substitute for the erection of story poles.

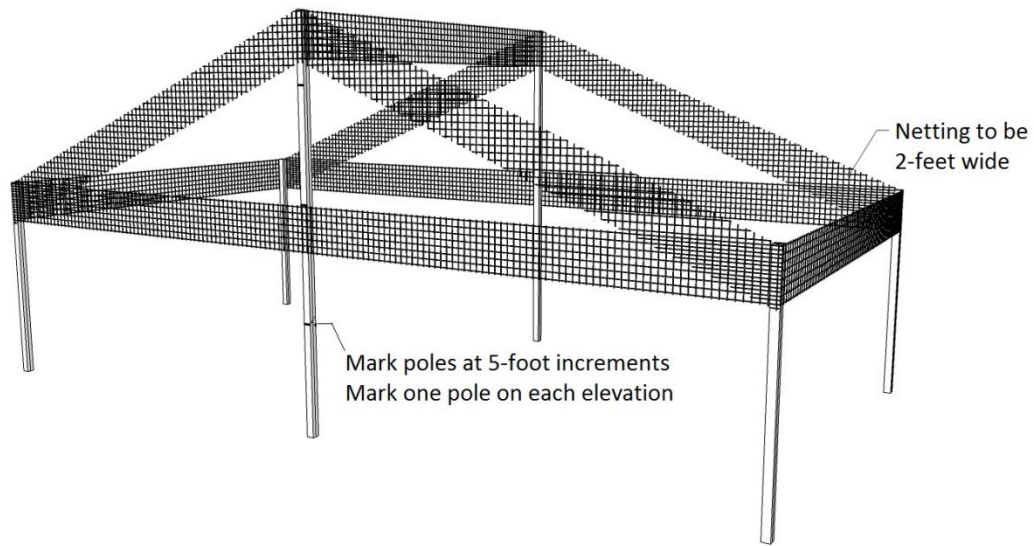
After the placement of the story poles on-site, the applicant shall provide the project planner with photographs of the story poles taken from a variety of vantage points. The vantage point from where the photograph was taken shall be indicated on each photograph.

A licensed surveyor or civil engineer shall submit written verification that the height and position of the poles and netting accurately represents the height and location of the proposed structure(s) or addition.

**D. Materials:**

The material of the story poles shall be indicated on the Story Pole Plan. Story poles shall be constructed of 2"x4" lumber, metal poles, or other sturdy building material acceptable to the project planner. Telephone poles; mechanical equipment, such as cranes; or other materials may be acceptable for higher structures if the Community Development Director determines that the material will adequately portray the height, bulk, and mass of the proposed structure(s) or addition and withstand the wind and weather. At least two foot (2') wide orange woven plastic snow fencing (netting) must be erected to represent the rooflines of the proposed structure(s) or addition. For projects over 35-feet in height, flag rope may be allowed instead of netting. Netting/flag rope must be supported by height poles that are strong enough to accurately maintain the outlines and height of the structure(s). One of the height poles on each elevation must be clearly marked and labeled in five foot (5') increments measured from existing or finished grade, whichever creates a higher profile.





#### **E. Public Safety:**

All story poles shall be placed, braced, and supported to ensure the health, safety, and general welfare of the public. Applicants shall sign an agreement that holds the Town harmless for any liability associated with the construction of, or damage caused by the story poles. If at any time, the Town determines the story poles to be unsafe, they shall be repaired and reset immediately by the project applicant or, at the Town's discretion, removed. Depending on the scope of the poles, the applicant may be requested to verify with the Building Division of the Community Development Department that no permits and/or inspections are required for the poles.

#### **F. Exceptions:**

In the event there are justifiable reasons why story poles cannot be accommodated for all structures proposed to be constructed on the project site, the applicant shall submit a letter to the Community Development Director no later than 45 days prior to the required installation date, clearly articulating the reasons why an exception to the Story Pole requirement is warranted. Requests for an exception and alternative plan will only be considered if the applicant can clearly demonstrate to the Town, and the Town agrees, that the installation of the story poles would: (1) cause a threat to public health and safety or (2) would impair the use of existing structure(s) or the site to the extent it would not be able to be occupied and the business or residential use would be infeasible. Some form of poles and netting and/or on-site physical representation of the project will be required, even if an exception is granted.

Planned Development applications with multiple detached commercial structures and/or residential units may request to erect story poles on the locations where the key structures will be placed. The Community Development Director will take into account the density of the development when considering an exception request. The story poles shall be installed on all corner structures and the structures with the greatest height and mass. An exception to providing story poles for all structures in a Planned Development application with multiple commercial structures and/or residential units shall follow the same procedures as outlined below.

The Community Development Director will review all justifiable requests for an exception to the Story Pole requirement within 14 days of receipt of the request.

If an exception is approved, the applicant will be required to demonstrate the proposed structure height and mass using alternative means as outlined in Section II.G.

**G. Alternatives:** If an exception is granted to the Story Pole requirements, the applicant shall provide digital imagery simulations, computer modeling, built to-scale models or other visual techniques in-lieu of the Story Pole requirements. Simulations may either be prepared by the applicant for technical review by the Town's consultant or the applicant may elect to have the Town's consultant prepare the materials. In either case, the applicant shall be responsible for all technical review(s), materials and cost of the Town's evaluation and/or preparation process. To ensure accuracy, visual simulations shall comply with the following standards:

- Establishing accuracy of the visual simulation: The applicant shall demonstrate that the dimension and scale of the visual simulation and project setting are equivalent. This is accomplished by examining screen views of the model in plan and elevation views for accurate scaling. The visual simulation must also include reference objects corresponding to known objects in the simulated scene, such as buildings, curbs, utility poles, trees, or any other reference points visible in the simulated scene, whose location is known from surveys or, at a minimum aerial imagery. There shall be a minimum of two reference objects outside of the project in different parts of the photo frame.
- Establishing the equivalence of the virtual and actual camera focal setting: The camera lens focal setting or angle of view for each simulation base photo shall be stated. The camera model shall be provided since the angle of the focal view varies with different cameras. The preparer of the photo simulations shall provide the manufacturer specifications indicating the 35 mm film SLF lens correspondence, or other means to calculate the angle of view.

- Depict the accurate location of the photo and establish the correspondence of the virtual camera with the visual simulation: The photo location shall be indicated accurately on a map or aerial photo, and the correspondence within the visual simulation should be demonstrated. Simulated views should not employ cropping, or if they must, the original, uncropped rendered image shall be provided. Once the images are cropped, it is impossible to validate their accuracy.
- Other Information: The Town's consultant may require other information to assess the accuracy of the visual simulation.

**H. Removal:**

Once a final action has been taken and the appeal period is over, the height poles and netting shall be removed at the applicant's expense within 30 days. If not removed, the height poles and netting will be considered rubbish and will be in violation of Section 11.10.020 of the Town Code and the matter will be forwarded to Code Compliance for enforcement action.

**III. Project Identification Signs:**

All development applications that include public notification shall also provide project identification signs on the development site consistent with the following requirements.

**A. Timing:**

Public notices will not be mailed and/or application(s) shall not be advertised until project identification sign(s) have been installed. The applicant shall submit a signed declaration confirming that the project identification sign(s) were installed. The applicant shall also submit a photo showing the on-site sign(s) installed on the subject property prior to the distribution of the public notices.

**B. Size:**

- New Residential Structures: One, 2'x2' sign placed on the street frontage. The top of the sign shall be five feet (5') from existing grade and visible from the main street frontage. The sign shall indicate the scheduled public hearing date and the availability of plans for review at the Community Development Department.
- Commercial/Industrial Remodels or New Construction: One 4'x8' sign on each of the property frontages that are visible to surrounding public right of ways, including pedestrian trails such as the Los Gatos Creek Trail. The top of the signs shall be six feet (6') from existing grade. The Community Development Director may require additional signs for development sites that have large frontages.

- Downtown (C-2 Zone) Remodels or New Commercial Development: One 2' by 3' vertical sign constructed of metal frame with water resistant plastic or laminated face. In cases where it is infeasible to install a free-standing sign, the posting of a durable, all weather sign on or inside the window of a building is permitted, provided the sign is visible from public locations outside the building. Requests for an exception to the free-standing sign requirements shall be made to the Community Development Department in writing no less than 30 days prior to the public hearing for the project.

**C. Number and Placement of Signs:**

With one exception, on-site signs shall be placed on each street frontage of the site. The exception is for permits related to an individual new single family dwelling. In this case, only one sign on the street frontage is required. The signs shall be oriented towards the street, within one foot (1') of the front property line or two feet (2') of the back of the sidewalk.

**D. Materials:**

Signs shall be constructed of durable materials, such as foam core or plywood, and shall be laminated during the rainy season (October through April). The sign colors shall be a white background with black printing, and color graphics (excluding single family, which may have black and white graphics). As noted under Section III.B., signs in the Downtown C-2 Zone shall be constructed of higher grade materials, including a metal frame and a plastic or laminated poster board face.

**E. Sign Content:**

Up to 75% of the overall sign area must be used to provide a general description of the project; including number of residential units or commercial buildings and square footage; a color perspective drawing, three-dimensional image or photographic simulation and the name and contact information of the project applicant. Single family remodel projects are not required to provide a rendering on the sign. The public notice portion of the sign message must constitute 25 percent of the overall sign area and notify the community of the public hearing date and time and contain the following message "For more information about this project, please contact the Town of Los Gatos Planning Division at 110 E. Main Street, Los Gatos, (408) 354-6872. Plans can be reviewed on the Town's website at: [www.losgatosca.gov/2216/Pending-Planning-Projects](http://www.losgatosca.gov/2216/Pending-Planning-Projects)." The project address, application number, and a QR code shall be included on the notice sign.

**F. Duration of Sign Posting:**

Project identification signs shall be placed on site consistent with the timing of installation of the story poles (See Section II.B.) and shall be removed within 30 days of the final actions (See Section II.H.).

**G. Maintenance:**

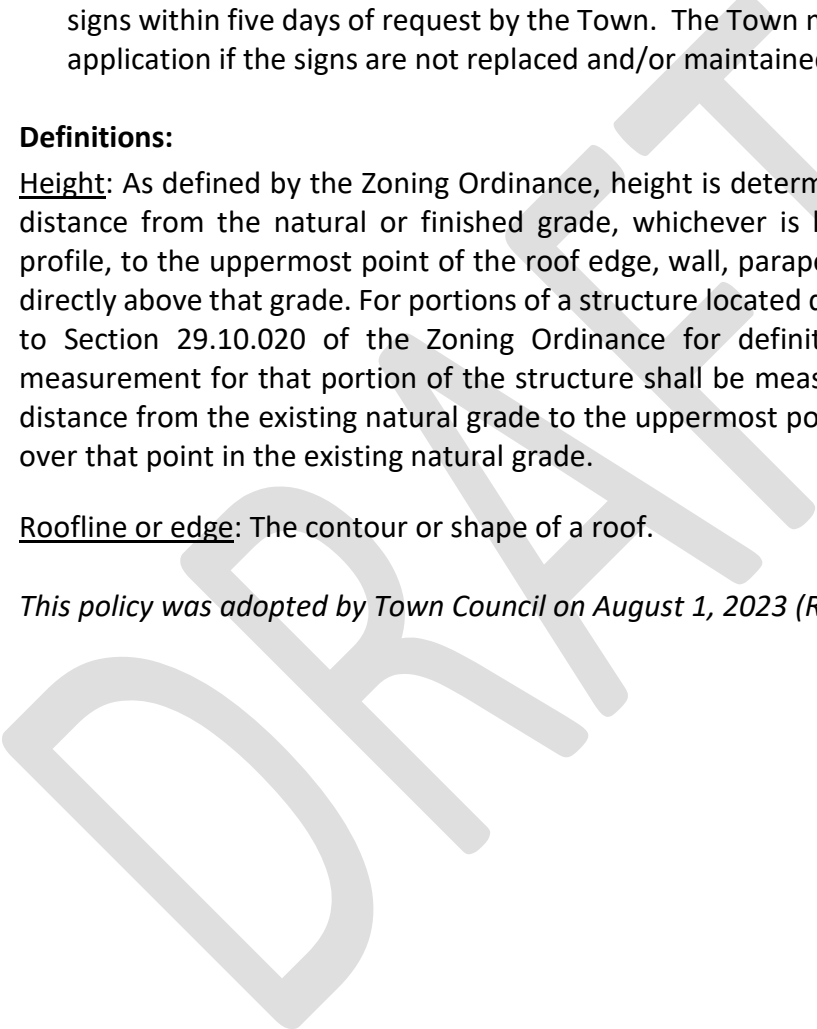
The applicant is responsible for replacement of any missing, damaged or vandalized signs within five days of request by the Town. The Town may cease processing of the application if the signs are not replaced and/or maintained.

**IV. Definitions:**

Height: As defined by the Zoning Ordinance, height is determined by the plumb vertical distance from the natural or finished grade, whichever is lower and creates a lower profile, to the uppermost point of the roof edge, wall, parapet, mansard, or other point directly above that grade. For portions of a structure located directly above a cellar (refer to Section 29.10.020 of the Zoning Ordinance for definition of cellar), the height measurement for that portion of the structure shall be measured as the plumb vertical distance from the existing natural grade to the uppermost point of the structure directly over that point in the existing natural grade.

Roofline or edge: The contour or shape of a roof.

*This policy was adopted by Town Council on August 1, 2023 (Resolution 2023-\_\_\_)*



**DRAFT**

***This Page  
Intentionally  
Left Blank***



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 04/26/2023

ITEM NO: 3

---

DATE: April 21, 2023  
TO: Planning Commission  
FROM: Joel Paulson, Community Development Director  
SUBJECT: Forward a Recommendation to the Town Council on Modifications to the Town Height Pole and Netting Policy for Additions and New Construction. The Proposed Amendments to Town Policy are Not Considered a Project Under the California Environmental Quality Act. **Project Location: Town Wide.** Applicant: Town of Los Gatos.

RECOMMENDATION:

Forward a recommendation to the Town Council on modifications to the Town Height Pole and Netting Policy for Additions and New Construction.

CEQA:

The proposed Amendments to Town policy are not considered a project under the California Environmental Quality Act.

BACKGROUND:

The Town's Height Pole and Netting Policy for Additions and New Construction ("Story Pole Policy") was adopted by the Planning Commission in July of 1998 requiring two-foot wide orange netting for all new buildings and second story additions. A requirement for posting of a small sign (2 feet by 2 feet) indicating the public hearing date and approving body was added in September 2002. At that time, exception requests were reviewed by the Community Development Director.

A comprehensive review of the policy was conducted in 2012. On August 5, 2013, Town Council approved an updated policy. Minor additions relating to tree protection were made in 2017 to create the current policy (Attachment 1).

PREPARED BY: Jennifer Armer, AICP  
Planning Manager

---

Reviewed by: Community Development Director

---

BACKGROUND (continued):

As part of recent Town Council considerations of story pole exceptions requests, staff was asked to bring the Story Pole Policy to Planning Commission for consideration of, and a recommendation to Town Council on, possible modifications.

DISCUSSION:

In response to the Town Council request for a review of the Town's Story Pole Policy, staff has reached out to companies that frequently provide story pole installation in Town and researched where and in what manner story poles are required in nearby agencies.

A survey of the cities in Santa Clara County found that story poles are not required in nine of the cities: Campbell, Cupertino, Gilroy, Los Altos, Morgan Hill, Mountain View, San Jose, Santa Clara, and Sunnyvale. Story poles are required by five: Los Altos Hills, Milpitas, Monte Sereno, Palo Alto, and Saratoga.

The City of Los Altos only recently removed their story pole requirement, on February 14, 2023, as part of the implementation of their Housing Element because they found that the story pole requirement added subjectivity, extended the review process of all development, and added additional cost for a project whereas their other requirements for renderings and 3D Modeling could effectively provide the relationship of the proposed building heights.

As a result of this outreach, the following topics are recommended for discussion and direction:

A. Projects Over 35 Feet in Height

For building heights above 35 feet, especially in areas that have exposure to high winds, the requirement for two-foot netting is problematic. At that height the netting catches the wind and requires numerous repairs during the installation period. In addition, it requires much shorter spans between poles, and therefore the cost of installation increases. Flag rope can span nearly 75 feet as opposed to around 30 feet for the two-foot netting.

Pennant flag rope is preferred by installers for these types of projects because it catches very little wind. This has been allowed for some previous projects with a requirement that two rows of flags be installed. While this is feasible, the installers cautioned that when two rows of flagging are requested they become more difficult to install and usually only one line of flagging can be kept tight.

Should modifications be made to allow one or two rows of flagging for buildings over 35 feet in height?



DISCUSSION (continued):

B. Projects Located Close to Property Lines/Guy Wires

When projects have very small side setbacks and the pole height is above 20 feet, it is hard to secure the pole safely without the need to obtain permission from the neighboring property to tie off guy wires. As a general rule of thumb, it is helpful to have a setback length that is at least one quarter of the height of the pole. In some cases, because the guy wires were not feasible, large more expensive equipment (construction cranes or lifts) have been used for limited periods of time.

Should modifications be made to allow exceptions like relocation of poles to be set inward from the property line, or allowing guy wires to be attached to fencing for projects with very small setbacks?

C. Projects with Multiple Buildings

The current policy includes the possibility for exceptions for Planned Development applications. Should this section be expanded to apply to any development application that involved more than four buildings?

D. Interference with Existing Residents and Businesses

When projects are located on properties that still have an active use (residential or commercial), the installation and maintenance of story poles can cause safety concerns to the property users and increased risk of damage to or from cars or people.

Should modifications be made to allow flag rope for some of these conditions which could reduce the potential conflicts between poles and property users.

E. Exception Process

The Town's policy allows the Community Development Director to determine if alternative materials (telephone poles, cranes, etc.) are appropriate for use as story poles. But the current exception process (Exhibit 1, page 4) for alternatives to other aspects of the policy, including the orange woven plastic snow fencing material or placement of poles at all outside building corners and rooflines of all buildings, requires review by Town Council. Of the five other Santa Clara County cities that have a story pole policy, three do not have an exception process stated, and two have an exception process where the authority is placed with the Community Development Director.

Should a modification be made to change the decision maker for exception requests?

DISCUSSION (continued):

F. Cleanup Edits

In addition, staff recommends some edits that would clean up/clarify information in the existing policy, including updating the references to Town Code and the definition of cellar.

PUBLIC COMMENTS:

Public input has been requested through the following media and social media resources:

- A poster at the Planning counter at Town Hall;
- The Town's website home page, What's New;
- The Town's Facebook page;
- The Town's Twitter account;
- The Town's Instagram account; and
- The Town's NextDoor page.

CEQA DETERMINATION:

The proposed Amendments to the Town Height Pole and Netting Policy for Additions and New Construction are not considered a project under the California Environmental Quality Act.

CONCLUSION:

A. Summary

The Town of Los Gatos has a Height Pole and Netting Policy for Additions and New Construction, and staff has developed a list of a number of elements that might warrant modification. The discussion topics were developed following research by staff on other story pole policies and with input from local story pole installers.

B. Recommendation

The Story Pole Policy has been forwarded to the Planning Commission for review. Staff recommends that the Planning Commission:

1. Receive and consider public comments;
2. Complete the review of the existing Story Pole Policy;
3. Provide input on any recommended modifications to the Story Pole Policy; and
4. Forward a recommendation to the Town Council to approve modifications to the Story Pole Policy.

PAGE 5 of 6

SUBJECT: Story Pole Policy Amendments

DATE: April 21, 2023

CONCLUSION (continued):

C. Alternatives

Alternatively, the Commission can:

1. Forward a recommendation to the Town Council that no changes be made to the Story Pole Policy; or
2. Continue the matter to a date certain with specific direction to staff.

EXHIBITS:

1. Current Story Pole Policy
2. Story Pole Installer Input

*This Page  
Intentionally  
Left Blank*

## **Height Pole and Netting Policy For Additions and New Construction**

### **I. Purpose:**

It is a policy of the Town of Los Gatos Town Council to have story poles and project identification signs installed on the sites of an active development application. The placement of story poles is extremely helpful and important during the course of Town's review of applications for new development. Proper and accurate placement of story poles demonstrates the planned rooflines and heights and provides some indication of the potential massing of the proposed structure. Story poles enhance understanding of the project for Town residents, staff, advisory bodies, and decision making bodies. Story poles also provide a visual notice to the community of a forthcoming land use public hearing.

Project identification signs present both written and graphical information that will further communicate the proposed project to the community as well as provide the public hearing dates for the development application.

This policy is for the benefit of the Town and community and is not intended to create a requirement under the California Environmental Quality Act (CEQA).

### **II. Height Poles and Netting:**

Height story poles and netting shall be used for the following types of Community Development Department, Planning Division, land use applications:

- New residential (excluding single-story accessory structures) and non-residential buildings.
- Residential second story additions.
- Nonresidential additions exceeding 100 square feet.

The terms height poles and story poles are used interchangeably.

#### **A. Procedure:**

When it is determined that story poles are required, the applicant's engineer, architect or building designer may be required to prepare a "Story Pole Plan" to indicate the locations where the poles will be installed. The Story Pole Plan shall be approved by the project planner prior to the placement of the poles on the site. Once approved, the applicant shall inform the project planner when the placement of the story poles is complete and submit photographs showing installation. The story poles shall be installed consistent with the following requirements:

Residential: The height poles and netting shall be installed prior to the neighborhood notification process and shall remain in place until the project has been acted upon and the appeal period has ended. If the project is appealed, the height poles and netting shall remain until final action is taken. If final consideration of the project is substantially delayed or the project is substantially modified, staff may direct removal or modification of the story poles.

Projects that Require Planning Commission or Town Council Action: The height poles and netting shall be installed prior to the public noticing of the matter and shall be kept in place until the project has been acted upon and the appeal period has ended. If the project is appealed, the height poles and netting shall remain until final action is taken. If final consideration of the project is substantially delayed or the project is substantially modified, staff may direct removal or modification of the story poles.

**B. Timing**

Public notices will not be mailed and/or application(s) shall not be advertised until a Story Pole Plan has been approved by the project planner, the height poles and netting have been installed, and photographs have been submitted to the project planner, as required in Section II.A.

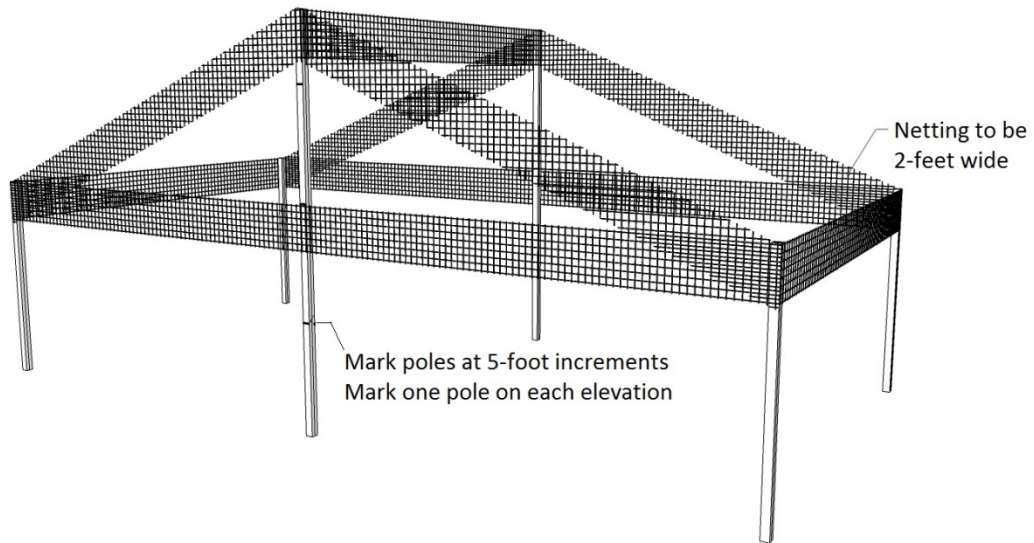
**C. Location and Number:**

The number of story poles may vary with each specific project. At the discretion of the project planner, story pole locations shall adequately demonstrate the height, mass, and bulk of the project requiring review. At a minimum, story poles shall be placed at all outside building corners of the building wall (excluding eaves) and along the rooflines of the proposed structure(s) or addition. Architectural elements such as towers, spires, elevator and mechanical penthouses, cupolas, mechanical equipment screening and similar elements not used for human activity or storage which are visible from the streetscape shall be represented by the story poles. Pursuant to Section 29.10.1005 of the Tree Protection Ordinance, the attachment of wires, signs, or ropes to any protected tree is prohibited. Trees may not be "flagged" or used as a substitute for the erection of story poles. After the placement of the story poles on-site, the applicant shall provide the project planner with photographs of the story poles taken from a variety of vantage points. The vantage point from where the photograph was taken shall be indicated on each photograph.

A licensed surveyor or civil engineer shall submit written verification that the height and position of the poles and netting accurately represents the height and location of the proposed structure(s) or addition.

**D. Materials:**

The material of the story poles shall be indicated on the Story Pole Plan. Story poles shall be constructed of 2"x4" lumber, metal poles, or other sturdy building material acceptable to the project planner. Telephone poles; mechanical equipment, such as cranes; or other materials may be acceptable for higher structures if the Community Development Director determines that the material will adequately portray the height, bulk, and mass of the proposed structure(s) or addition and withstand the wind and weather. At least two foot (2') wide orange woven plastic snow fencing (netting) must be erected to represent the rooflines of the proposed structure(s) or addition. Netting must be supported by height poles that are strong enough to accurately maintain the outlines and height of the structure(s). One of the height poles on each elevation must be clearly marked and labeled in five foot (5') increments measured from existing or finished grade, whichever creates a higher profile, and consistent with the approved Story Pole Plan on file at the Community Development Department.



**E. Story Pole Plan and Public Safety:**

All story poles shall be placed, braced and supported to ensure the health, safety and general welfare of the public. The Story Pole Plan shall include the methods used to secure the poles. Applicants shall sign an agreement that holds the Town harmless for any liability associated with the construction of, or damage caused by the story poles. If at any time, the Town determines the story poles to be unsafe, they shall be repaired and reset immediately by the project applicant or, at the Town's discretion, removed. Depending on the scope of the poles, the applicant may be requested to

verify with the Building Division of the Community Development Department that no permits and/or inspections are required for the poles.

**F. Exceptions:**

In the event there are justifiable reasons why story poles cannot be accommodated for all structures proposed to be constructed on the project site, the applicant shall submit a letter to the Community Development Director no later than 45 days prior to the required installation date, clearly articulating the reasons why an exception to the Story Pole requirement is warranted. Requests for an exception and alternative plan will only be considered if the applicant can clearly demonstrate to the Town, and the Town agrees, that the installation of the story poles would: (1) cause a threat to public health and safety or (2) would impair the use of existing structure(s) or the site to the extent it would not be able to be occupied and the business or residential use would be infeasible. Some form of poles and netting and/or on-site physical representation of the project will be required, even if an exception is granted.

Planned Development applications with multiple detached commercial structures and/or residential units may request to erect story poles on the locations where the key structures will be placed. The deciding body will take into account the density of the development when considering an exception request. The story poles shall be installed on all corner structures and the structures with the greatest height and mass. An exception to providing story poles for all structures in a Planned Development application with multiple commercial structures and/or residential units shall follow the same procedures as outlined below.

The Town Manager will review all justifiable requests for an exception to the Story Pole requirement within 14 days of receipt of the request and shall place the matter on the next available Town Council agenda for consideration by the Council. Written notice of the exception request shall be mailed to property owners and residents of properties within 300 feet of the project site. All requested and approved exceptions shall be posted on the Town's Web site under "What's New," in agenda posting locations at Town Hall and the Library, and in the online development activity report when established.

If an exception is approved, the applicant will be required to demonstrate the proposed structure height and mass using alternative means as outlined in Section II.H.



**G. Alternatives:** If an exception is granted to the Story Pole requirements, the applicant shall provide digital imagery simulations, computer modeling, built-to-scale models or other visual techniques in-lieu of the Story Pole requirements. Simulations may either be prepared by the applicant for technical review by the Town's consultant or the applicant may elect to have the Town's consultant prepare the materials. In either case, the applicant shall be responsible for all technical review(s), materials and cost of the Town's evaluation and/or preparation process. To ensure accuracy, visual simulations shall comply with the following standards:

- Establishing accuracy of the visual simulation: The applicant shall demonstrate that the dimension and scale of the visual simulation and project setting are equivalent. This is accomplished by examining screen views of the model in plan and elevation views for accurate scaling. The visual simulation must also include reference objects corresponding to known objects in the simulated scene, such as buildings, curbs, utility poles, trees, or any other reference points visible in the simulated scene, whose location is known from surveys or, at a minimum aerial imagery. There shall be a minimum of two reference objects outside of the project in different parts of the photo frame.
- Establishing the equivalence of the virtual and actual camera focal setting: The camera lens focal setting or angle of view for each simulation base photo shall be stated. The camera model shall be provided since the angle of the focal view varies with different cameras. The preparer of the photo simulations shall provide the manufacturer specifications indicating the 35 mm film SLF lens correspondence, or other means to calculate the angle of view.
- Depict the accurate location of the photo and establish the correspondence of the virtual camera with the visual simulation: The photo location shall be indicated accurately on a map or aerial photo, and the correspondence within the visual simulation should be demonstrated. Simulated views should not employ cropping, or if they must, the original, uncropped rendered image shall be provided. Once the images are cropped, it is impossible to validate their accuracy.
- Other Information: The Town's consultant may require other information to assess the accuracy of the visual simulation.

**H. Removal:**

Once a final action has been taken and the appeal period is over, the height poles and netting shall be removed at the applicant's expense within 30 days. If not removed, the height poles and netting will be considered rubbish and will be in violation of Section 11.10.020 of the Town Code and the matter will be forwarded to Code Compliance for enforcement action.

### III. Project Identification Signs:

All development applications that must comply with the story pole and netting requirements shall also provide project identification signs on the development site consistent with the following requirements.

#### A. Timing:

Public notices will not be mailed and/or application(s) shall not be advertised until project identification sign(s) have been installed. The location of the project identification sign(s) shall be shown on the Story Pole Plan. The applicant shall submit a signed declaration confirming that the project identification sign(s) were installed. The applicant shall also submit a photo showing the on-site sign(s) installed on the subject property prior to the distribution of the public notices.

#### B. Size:

- New Residential Structures: One, 2'x2' sign placed on the street frontage. The top of the sign shall be five feet (5') from existing grade and visible from the main street frontage. The sign shall indicate the scheduled public hearing date and the availability of plans for review at the Community Development Department.
- Commercial/Industrial Remodels or New Construction: One 4'x8' sign on each of the property frontages that are visible to surrounding public right of ways, including pedestrian trails such as the Los Gatos Creek Trail. The top of the signs shall be six feet (6') from existing grade. The Community Development Director may require additional signs for development sites that have large frontages.
- Downtown (C-2 Zone) Remodels or New Commercial Development: One 2' by 3' vertical sign constructed of metal frame with water resistant plastic or laminated face. In cases where it is infeasible to install a free-standing sign, the posting of a durable, all weather sign on or inside the window of a building is permitted, provided the sign is visible from public locations outside the building. Requests for an exception to the free-standing sign requirements shall be made to the Community Development Department in writing no less than 30 days prior to the public hearing for the project.

#### C. Number and Placement of Signs:

With one exception, on-site signs shall be placed on each street frontage of the site. The exception is for permits related to an individual new single family dwelling. In this case, only one sign on the street frontage is required. The signs shall be oriented towards the street, within one foot (1') of the front property line or two feet (2') of the back of the sidewalk.

**D. Materials:**

Signs shall be constructed of durable materials, such as foam core or plywood, and shall be laminated during the rainy season (October through April). The sign colors shall be a white background with black printing, and color graphics (excluding single family, which may have black and white graphics). As noted under Section III.B., signs in the Downtown C-2 Zone shall be constructed of higher grade materials, including a metal frame and a plastic or laminated poster board face.

**E. Sign Content:**

Up to 75% of the overall sign area must be used to provide a general description of the project; including number of residential units or commercial buildings and square footage; a color perspective drawing, three-dimensional image or photographic simulation and the name and contact information of the project applicant. Single family remodel projects are not required to provide a rendering on the sign. The public notice portion of the sign message must constitute 25 percent of the overall sign area and notify the community of the public hearing date and time and contain the following message “For more information about this project, please contact the Town of Los Gatos Planning Division at 110 E. Main Street, Los Gatos, (408) 354-6872. The project address and application number shall be included on the notice.

**F. Duration of Sign Posting:**

Project identification signs shall be placed on site consistent with the timing of installation of the story poles (See Section II.B.) and shall be removed within 30 days of the final actions (See Section II.H.).

**G. Maintenance:**

The applicant is responsible for replacement of any missing, damaged or vandalized signs within five days of request by the Town. The Town may cease processing of the application if the signs are not replaced and/or maintained.

**IV. Definitions:**

Height: As defined by the Zoning Ordinance, height is determined by the plumb vertical distance from the natural or finished grade, whichever is lower and creates a lower profile, to the uppermost point of the roof edge, wall, parapet, mansard, or other point directly above that grade. For portions of a structure located directly above a cellar (refer to Section 29.10.020 of the Zoning Ordinance for definition of cellar), the height measurement for that portion of the structure shall be measured as the plumb vertical distance from the existing natural grade to the uppermost point of the structure directly over that point in the existing natural grade.

Roofline or edge: The contour or shape of a roof.

*This policy was adopted by Town Council on August 5, 2013 (Resolution 2013-032)*

N:\DEV\Web Documents\Policies\Story Pole Policy Resolution.7-13-17.docx

**From:** Dallas Rutherford  
**Sent:** Thursday, March 23, 2023 10:08 AM  
**To:** Jennifer Armer  
**Cc:** Ashley Snodgrass; California Story Poles  
**Subject:** Re: Story Poles in Los Gatos

Hi Jennifer,

Thanks for the email.

The Los Gatos story pole policy seems to be pretty clear and works fairly well for majority of residential projects, however, I do have a couple suggestions for taller commercial projects.

The first suggestion would be for heights above somewhere in the 35' tall range, especially in areas that have exposure to high winds. Using 2' mesh is quite problematic. Poles shorter than 30' generally don't catch much wind and won't require numerous repairs during the installation period, however, larger projects indeed catch a serious amount of wind, which requires much shorter spans between poles which raises the price. Most other jurisdictions in the bay area allow pennant flag rope for most projects which catches very little wind and generally won't need repairs, as well as less poles. We have been allowed to put up flagging on some tall areas of projects, such as the North 40 project as well as the senior living development on Woods. However, we were told to put 2 rows of flagging which is very difficult to install and usually only one line of flagging can be kept tight. I'm my opinion, the second row does not make it any more visible and only adds to the cost to the property owner.

Second, when commercial projects have very small side setbacks or zero setbacks and the pole height is above 20' or so it is hard to secure the pole safely without the need to obtain permission from the neighboring property to tie off guy wires to. Allowing poles to be set inward on the property to around 6-8' of the property line would be the suggestion.

Lastly, when we install poles at a functioning business there are frequently issues where our poles both impair the business and are damaged by cars, pedestrians, or vandalism. The business owners frequently want to remain open during the installation period which is problematic both during the installation itself as well as the period they remain up. I'm not sure what a good solution to this would be short of allowing some problematic poles to be eliminated and to allow flag rope instead of 2' mesh as it can span nearly 75' as opposed to around 30' for the 2' mesh. This would also make the installation less intrusive and less expensive to the owner. There is also a problem when a closed business is not allowed to have a temporary fence installed around the perimeter. For example, the closed car dealership at Los Gatos Blvd and Los Gatos Almaden Rd. We have installed poles on the proposed buildings on the lot over the last 6 years or so. Each time we have had issues with both cars pulling into the lot and hitting poles or breaking guy wires, as well as pedestrian traffic. The owner did

EXHIBIT 2

install bollards to prevent vehicular traffic for this round of poles but I believe they were told they cannot install a temporary perimeter fence during the installation. There are some homeless people whom I believe have repeatedly caused damage to the poles / guy wires. When there is no perimeter on a project we specifically accept no liability for property or personal injury and I believe as part of the approval process the city forces a waiver of liability from the applicant but also requires the poles to be installed. It would only seem fair to me to at a minimum allow a perimeter fencing to be installed by the property owner to protect them from liability.

I hope that was useful, I'd be happy to discuss further if you would like. Feel free to email or call anytime.

Many Thanks,  
Dallas Rutherford

Dallas Rutherford  
[www.californiastorypoles.com](http://www.californiastorypoles.com)

April 20, 2023

To Whom It May Concern:

Story poles are only for a silhouette, not secondary design features such as dormers etc.

Tying to trees is beneficial many times for safety and support, and does not damage trees in any way. Los Gatos is the only city or county that restricts tying to trees.

Flag poles for many projects are a safe alternative for the taller structures, near power lines or near setbacks where the lines cannot extend off the property site.

Projects should be evaluated within 30 days of installation.

There is no template that can be used for pricing story pole installation, as the staking needs are unique to each project.

Sincerely,

Steve Babcock

Steve Babcock's Storypoles

***This Page  
Intentionally  
Left Blank***





**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 04/26/2023

ITEM NO: 3

ADDENDUM

---

DATE: April 25, 2023  
TO: Planning Commission  
FROM: Joel Paulson, Community Development Director  
SUBJECT: Forward a Recommendation to the Town Council on Modifications to the Town Height Pole and Netting Policy for Additions and New Construction. The Proposed Amendments to Town Policy are Not Considered a Project Under the California Environmental Quality Act. **Project Location: Town Wide.** Applicant: Town of Los Gatos.

REMARKS:

Exhibit 3 includes public comment received between 11:01 a.m., Friday, April 21, 2023, and 11:00 a.m., Tuesday, April 25, 2023.

EXHIBITS:

Previously received with the April 26, 2023, Staff Report:

1. Current Story Pole Policy
2. Story Pole Installer Input

Received with this Addendum Report:

3. Public Comments received between 11:01 a.m., Friday, April 21, 2023, and 11:00 a.m., Tuesday, April 25, 2023

PREPARED BY: Jennifer Armer, AICP  
Planning Manager

---

Reviewed by: Community Development Director

---

***This Page  
Intentionally  
Left Blank***

**From:** Bess Wiersema

**Sent:** Friday, April 21, 2023 1:06 PM

**To:** Jennifer Armer; Joel Paulson

**Cc:** Gary Kohlsaas; Tony Jeans; Tom Sloan; Jennifer Kretschmer; Louie Leu; Noel Cross; JAY PLETT ARCHITECT

**Subject:** Feedback from Local Architects RE: Story Poles

**Importance:** High

[EXTERNAL SENDER]

Jennifer - thanks for reaching out to us, below you will find a summary of our thoughts and concerns. I believe you are sending over info in some sort of staff report today, and we hope this can be included. We are doing our best to get you feedback in a timely fashion- no small task for a group of busy folks - and I am sure you and your team feel the same! Via emails, calls, and some meetings, we (those attached to this email in the CC line) concur on the talking points below. There may also be individuals that have additionally reached out separately or met with Planning to air other concerns, or provide greater detail on certain topics. It is our intent to cull our professional experience and logic around matters Town reaches out on in a concise format so you are not bombarded with Individual notes, emails, and meetings. Hopefully this will help you from a timing standpoint - and we hope that PC understands that is a united and thoughtful response by all of us together.

Local architects have a concern about WHY the story pole plan is being revised, especially as we understand that Town is understaffed, and looking to streamline the permit process. While we all are resolved to producing and dealing with this portion of the Planning process, we agree that the policy should be revised - to simplify it, creating less work and cost for both our team and yours, not create more work and excessive costs to our mutual clients, the residents of our Town. It's odd to us that this is a focus over other, more pertinent and far-reaching items we summarize at the end.

We would argue that:

- story poles are more often hurtful rather than helpful, as they are unsightly, lacking character, and often do not accurately define the finished product as related to bulk and mass (nor grading, site retaining walls, other built elements that are architectural features such as stairs, raised planters, terraces, etc. are not represented - this is especially egregious in Hillside projects
- the current story pole process is an overreach: no other local township requires a drawn out process of having a pole plan reviewed and approved prior to install - why not trust the professionals that they are doing their jobs accurately - requiring certification of the poles is plenty to guarantee they are complete and accurate
- the requirement that pole plans and signage are reviewed and approved prior to being able to install creates further timeline issues - the industry is impacted, and pole plans are not reviewed by planners until the project is complete, from a planning process standpoint, therefore further delaying the overall process

- we estimate the creating pole plans and story poles install / certification often adds approximately \$20K (even more if they have to be adjusted, redone, etc. due to weather, modifications requested at PC, by planners, etc.) to the permit processing portion of the process, not to mention months of time
- story pole plans have too much detail in them, and become more confusing to the layperson when houses have more architectural detail in roof design such as nested hips, dormers, etc., further creating confusion about what the real, final design is all about
- ironically the orange netting has an LRV of approximately 44 (and higher with the neon construction orange color required), which is in direct conflict to Hillside requirements, creating even more issues related to actual visibility
- story poles can damage existing structures when placed for an addition over an existing home, especially with tiled roofs
- no single story new home should be story poled, regardless of location
- no single story addition should be story poled
- no story poles should be required if there are added roof elements to a single or two story home that sit within the overall massing the existing roof (such as new dormers)
- story pole plans should be simplified, showing the overall main ridges only
- there should be an option to not require story poles if immediate neighbors agree that they are not necessary - often neighbors do not what these unsightly poles flopping around, creating an ugly nuisance in their neighborhood - well designed and managed projects should have an opt-out
- an option to create accurate 3D images that are keyed to simple main ridgeline datum points should be available, and would more accurately represent the final product to all parties

We believe it is all of our goal to streamline the permit process and create well designed homes that enhance our community. Story poles only create an unsightly nuisance, that more often creates fear around a project than accurately represents it. They are time consuming and expensive. The current approval process, and the suggestion that almost every portion of the roof must be shown creates more confusing lines for everyone to look at.

There are far more important tasks we believe the Town needs to address related development, and we are happy to help mobilize as a group to provide support for this:

- Most importantly PRC 4290 continues to have a significant negative impact to residential housing and lots, and its interpretation is inconsistent with most of the rest of the state, creating extreme hardship and often destroying entire projects, even on lots deemed legal, buildable lots, that sit within normal neighborhoods that have been annexed into the Town from County not to mention the even more impacted Hillside neighborhoods
- the visibility discussion in Hillside remains unaddressed and is inconsistent with what we believe the intent is, also requiring an excessive amount of work and time like Story Poles

- the recent overturn of the gas ban in the 9<sup>th</sup> Circuit Court, and the Town's unnecessary (and out of sync with other local jurisdictions, even SC County) full ban rather than a stepped process that allows for gas to remain for a limited number of appliances / use will only continue to create more unsafe and uninspected "after permit" work related to re-installing gas, or adding freestanding propane tanks; we also anticipate more appeals which will take more time and energy for all of us, creating further inconsistency and a culture of haves/ have-nots

Thank you!

**Bess Wiersema**  
principal + owner



Shop the  
STUDIO  
AT DESIGN MART

**From:** Adam Mayer [REDACTED]  
**Sent:** Sunday, April 23, 2023 10:18 PM  
**To:** Planning <Planning@losgatosca.gov>  
**Subject:** Public Comment Item #3 (4/26/23)

[EXTERNAL SENDER]

Dear Director Paulson, Planning Staff & Planning Commission,

As an architectural professional, I do not see the point of story poles, especially if a proposed development meets all the local zoning and height limit requirements. I agree with the assessment Los Altos made in recently removing their story pole requirement during their Housing Element process:

*"...they found that the story pole requirement added subjectivity, extended the review process of all development, and added additional cost for a project whereas their other requirements for renderings and 3D Modeling could effectively provide the relationship of the proposed building heights."*

Instead of story poles, I envision requiring a proposed development site to feature signage with 3D renderings within the context of neighboring buildings (perhaps with heights called out) so that the public can get a more accurate visual.

In the future, proposed developments could even offer the ability for curious neighbors to use augmented reality headsets to see what the actual building would look like on its site (as opposed to a collection of rods and netting, which don't do a great job of representing what a building will ultimately look like, and in some cases cause safety hazards as noted in the staff report).

At the very least, I suggest removing the story pole requirement for single-family residential projects within the height limit. However, if a project asks for a height variance, then story poles could be required to understand how tall the proposed home will be beyond the height limit.

On a professional level, story poles are generally an added burden to the design process. The time and financial resources developing story pole plans could be better used to design a better building and make more accurate 3D renderings for visual representation.

Thanks,  
Adam Mayer

--  
STUDIO—AMA

**Adam N. Mayer** AIA, LEED AP BD+C, WELL AP

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 95129

[studio-ama.com](http://studio-ama.com)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S:

Los Gatos Planning Commissioners:  
Jeffrey Barnett, Chair  
Steve Raspe, Vice Chair  
Susan Burnett  
Melanie Hanssen  
Kathryn Janoff  
Emily Thomas

Town Manager: Laurel Prevetti

Community Development Director: Joel Paulson

Town Attorney: Gabrielle Whelan

Transcribed by: Vicki L. Blandin  
(619) 541-3405

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S :

CHAIR BARNETT: We'll move onto Agenda Item 3, which is also a request for a recommendation to the Town Council, this time on Modification to the Town Height Pole and Netting Policy for Additions and New Construction, and the proposed amendments to the Town policy are not considered a project under CEQA.

I'll ask if Staff has a presentation on this matter?

JENNIFER ARMER: Good evening, Chair, Vice Chair, Commissioners. The item in front of you is consideration of changes to the Town's Height Pole and Netting Policy, often referred to as the Story Pole Policy.

This discussion was requested by Town Council as part of recent discussion of requests for exceptions to the current Story Pole Policy, as well as being included as an implementation program in the current Draft Housing Element.

This was expected to be a work plan for discussion by Council Policy Committee, but they directed Staff to move forward and bring the discussion to Planning



1 Commission for consideration and recommendation to Town  
2 Council on what changes might be warranted based on  
3 previous discussion with Town Council, as well as outreach  
4 to story pole installers, architects, and developers in  
5 town.

6           The written Staff Report includes several topics  
7 for discussion, including projects over 35' in height, guy  
8 wires particularly when the story poles are close to  
9 property lines, projects with multiple buildings,  
10 interference with existing residences and businesses, and  
11 the exception process. These items are intended to initiate  
12 tonight's discussion, but we also invite questions and  
13 recommendations for other modifications.  
14

15           This concludes Staff's presentation, but I'd be  
16 happy to answer any questions.

17           CHAIR BARNETT: Thank you for that report.  
18 Questions from the Commissioners for Staff? Commissioner  
19 Hanssen.

20           COMMISSIONER HANSSEN: We received a comment  
21 letter in the addendum and one of the items mentioned was  
22 about having to submit a story pole plan preceding  
23 implementing the story poles, and it's mentioned in the  
24 Staff Report that there are certain jurisdictions in Santa  
25

1 Clara County that do not have story pole requirements and  
2 other ones do. Do most people that have story pole policies  
3 require a story pole plan, or do they leave it the experts  
4 to implement it?

5 JENNIFER ARMER: Thank you for that question. I  
6 don't have that level of detail on the other policies that  
7 other municipalities have. It does seem to vary  
8 significantly from one community to another as to how they  
9 implement this requirement. In some cases there is a  
10 written policy that is available online, in other cases it  
11 is just a Staff policy that is required as part of  
12 processing these projects, and the types of projects that  
13 they apply to also varies from one community to another, so  
14 we saw a wide variety of that.

16 COMMISSIONER HANSSEN: Thank you for that. It was  
17 probably more (inaudible) than I would have expected that  
18 you would have, but I wanted to add onto that question and  
19 ask when we do these view corridor things outside people do  
20 the view corridors, and when we do CEQA we get an outside  
21 company to do the CEQA, so why do we require a story pole  
22 plan? It wasn't on the list of discussion topics, but when  
23 I saw the letter it made me think what would happen if we  
24 didn't do that.

25

1 JENNIFER ARMER: Thank you for that question. I  
2 would say that taking a look at the introduction to the  
3 current Story Pole Policy is very helpful in understanding  
4 the purpose behind having a policy like this. It emphasizes  
5 two primary purposes. One is to show the size and massing  
6 of the proposed buildings or renovation, and the second is  
7 to call attention to the proposed project for public  
8 involvement, and so based on that language I would say that  
9 those are the goals.  
10

11 There are other ways to address those particular  
12 issues: signage and then simulations or other types of  
13 flagging, for example, some of the examples that were  
14 provided in the Staff Report. Did that answer your  
15 question?

16 COMMISSIONER HANSSEN: No, what I was asking was  
17 it's not about whether they do story poles or not, it was  
18 specifically about having to submit a written story pole  
19 plan prior to putting up the story poles. Why do we do  
20 that, and what would happen if we didn't require that step  
21 in the process?

22 JENNIFER ARMER: Based on my experience in  
23 looking at story pole plans it's often helpful for Staff to  
24 ensure that there are poles representing the massing of the  
25

1 building in compliance with the Story Pole Policy, but in  
2 general a lot of the times the certification that we  
3 receive states that the story poles are consistent with the  
4 proposed plans, so I think there is room for that type of  
5 modification if the Planning Commission is supportive of  
6 that. Then I want to check in with our Community  
7 Development Director to see if he has any further thoughts  
8 on that.

9  
10 JOEL PAULSON: I will say just for discussion,  
11 the potential implication is we don't have a plan, they put  
12 up poles, we go out and look at them and say, "That doesn't  
13 work. Modify them." We still don't have a plan, they modify  
14 them, and it still doesn't meet what we want. So the plan  
15 really is, "Here's the plan. Put them up," and there we go.  
16 So that's the other side of it for the potential  
17 implications.

18 COMMISSIONER HANSEN: That's good for now.

19 CHAIR BARNETT: Commissioner Burnett.

20 COMMISSIONER BURNETT: Thank you, Chair. I feel  
21 that our Story Pole Policy has served us very well since  
22 1998. I think it's very important for citizens to have  
23 story poles.  
24  
25

1 I have one question for Staff. A 35' tall  
2 building, for example, how high is 35'? Because we keep  
3 talking about 35' and the wind and how that affects at 35',  
4 so how tall is 35' if we're looking? Can you give me an  
5 example?

6 JENNIFER ARMER: What I would say is that in many  
7 areas in town, residential or commercial, the maximum  
8 height currently is 30-35', and so that gives you a sense.  
9 In downtown the maximum height is 45'. We do have  
10 properties that exceed those height limits in some cases,  
11 but if you think of the housing that you see around town,  
12 if it's a two-story house it's often between 28-35',  
13 sometimes a bit smaller.

14 COMMISSIONER BURNETT: Thank you.

15 CHAIR BARNETT: Other questions of Staff? I have  
16 a question. I should know the answer to this, but are story  
17 poles required if there are added roof elements to a  
18 single- or second-story house that do not affect the  
19 massing?  
20

21 JENNIFER ARMER: If there are roof elements that  
22 don't affect the massing, based on that description I would  
23 say that no, story poles would not be required. We do  
24 occasionally have additions to an existing two-story home  
25

1 where the addition would change substantially the massing  
2 of that second story. It may only be requiring a Minor  
3 Residential Development Application and so wouldn't be  
4 going to a public hearing, but that we would request the  
5 story poles be installed. Also, if it's a brand new second  
6 story on an existing single-story house, we do require them  
7 for those.

8 CHAIR BARNETT: Understood. Thank you. Other  
9 questions? Vice Chair Raspe.

10 VICE CHAIR RASPE: Thank you, Chair. I had a  
11 question for Staff. Just anecdotally, I'm having problems  
12 with the orange netting versus any other type of material  
13 that we can use for story poling, for instance, the pendant  
14 flagging or any others. I know we went through a period of  
15 very high wind and weather in the past several months. I'm  
16 curious, just again in your experience, have those  
17 particular materials proved more problematic than others,  
18 for instance?

19 JENNIFER ARMER: Thank you for that question.  
20 Yes, as you will see in the comments from the story pole  
21 installers there is concern when you go over 30-35',  
22 especially if it's in an area where it will be catching the  
23 wind, that that can cause hazards for those taller poles  
24  
25

1 when you use the netting. There didn't seem to be a concern  
2 with using the flagging instead.

3           This was the source of the recent story pole  
4 exception requests, because there were taller buildings  
5 involved in the Wood Road project and then in the  
6 Winchester Boulevard project that will be coming forward to  
7 you in the coming months. There were concerns, and so a  
8 request for an exception to the Story Pole Policy did go to  
9 Town Council, and that is where we got this discussion of  
10 should we include a specific exception that if it's over a  
11 certain height they'd be allowed to do some alternative  
12 method?  
13

14           VICE CHAIR RASPE: Thanks very much.

15           CHAIR BARNETT: Other questions? We have a card  
16 from Ms. Wiersema. If you could come forward, please? I'll  
17 open the public hearing.

18           BESS WIERSEMA: Hi, Bess Wiersema, Studio3, but  
19 I'm not here for just me. I'm here representing Gary  
20 Kolhsaat, Tony Jeans, Tom Sloan, Jennifer Kretschmer, Louis  
21 Leu, Noel Cross, and Jay Plett.

22           After Jennifer sent the notification out about  
23 the story pole potential revisions, or discussion or  
24 whatever we're calling this, we did all get together,  
25

1 because I think one thing that I can say we all have in  
2 common is we strongly disagree that story poles are  
3 helpful.

4           We actually believe they are more hurtful and  
5 that they are an outdated method for displaying and  
6 explaining a project. We live in a time where people can do  
7 3-D models and can pin them to a height requirement or to a  
8 pole, and then turn those in and they're going to actually  
9 show the finished product of what a project looks like.  
10 They're not going to be ugly, orange, flapping poles that  
11 deer run into, bicyclists run into, kids run around, get  
12 torn down, etc.

14           I think all of us would agree that if someone  
15 built a house that looked like something that was story  
16 poled none of us would like that house, and yet that's  
17 exactly what story poles convey. They do not convey  
18 anything that exists in the character of how we are  
19 supposed to design homes as architects.

20           Massing can be better seen in 3-D models, and  
21 visualization and should be allowed to be an exception  
22 unless a project is highly contested or needs to go to  
23 Planning Commission. I think these are all things that you  
24 guys would find to be actually more useful in terms of  
25



1 creating neighborly conversation between houses and their  
2 built environment, changes in their built environment, and  
3 also are more realistic.

4 I want to remind you that story poles that sit in  
5 hillsides do not show things like retaining walls, terraced  
6 hillsides, the other grading that occurs on the site that  
7 creates a finished product in the end, and so often the  
8 interpretation of what we consider massing is really  
9 irrelevant to actually what it is in the long run.

10 We do have a concern about the way story pole  
11 plans are reviewed in town. No other jurisdiction locally  
12 that we do have story poles go up in has a review process  
13 that's as significant as the one here in Los Gatos. The one  
14 in Los Gatos is time consuming, requires more rounds of  
15 revisions, and in an effort to try to streamline the  
16 process we just respectfully ask that you trust the  
17 professionals that are putting them up and putting a  
18 certified letter together for you. We don't need to build a  
19 whole house out of pick-up sticks and netting.  
20

21 Lastly, I do want to correct something. We do get  
22 required to put story poles up on existing second homes,  
23 even for things like dormers, because while there is the  
24 option that we can maybe ask for an exception, often the  
25

1 exception is not granted. I have several projects of my own  
2 that I could speak to, and I know that the architects all  
3 have others too, and that was one of the reasons we wrote  
4 some of those bullet points in there saying if we're adding  
5 dormers to an existing second story house, yes, dormers can  
6 change some of the massing, but they're really not changing  
7 the big over all footprint and mass of the home, so we  
8 often even on a Minor Residential application are required  
9 to do story poles. These just add more time and more  
10 expense.  
11

12 A basic story pole package, including plans, for  
13 a regular new home in Los Gatos costs about \$20,000. I'm  
14 sure we'd all rather spend \$20,000 on beautiful  
15 architectural details, especially if the house is not  
16 contested by neighbors and meets the design guidelines.

17 CHAIR BARNETT: Thank you. I'll ask if there are  
18 questions for you from the Commissioners? I'm not seeing  
19 any, so thank you for that. Ms. Somers.

20 CATHERINE SOMERS: Catherine Somers again with  
21 the Los Gatos Chamber of Commerce.

22 This is really kind of a big topic, but I would  
23 start with saying that houses at the end of the day are not  
24 orange and they're not see-through, and I think that Bess  
25

1 was correct in stating that story poles are something that  
2 we used to rely on, but now there are so many other tools,  
3 but with that said I do actually still believe that we need  
4 to come up with other ways of engaging the public perhaps  
5 so that they can go and utilize those other tools that are  
6 available.

7           However, going back to the story poles, I do  
8 think that they are truly causing impediments, and I'm  
9 really here representing a lot of my members again at the  
10 Chamber of Commerce who are architects and builders and who  
11 have been really frustrated with this process as of late,  
12 and I'm hoping that you'll consider tonight coming up with  
13 other options so that they can work through these building  
14 processes more quickly and efficiently, because it really  
15 is causing some strain and concern, not only on the part of  
16 the architects and the builders, but also on the homeowners  
17 themselves.  
18 themselves.

19           It's also causing constraints on the Building  
20 Department themselves because we're spending a lot of time  
21 on some of these residential homes that really are pretty  
22 easy maybe, and then we have a lot of commercial projects  
23 also, so I think we need to alleviate some of that street  
24

25

1 from our Building Department if that's at all possible.  
2 That's one other point.

3           Then the last one, I've watched the Planning  
4 Commission deliberate over some of the story poles and what  
5 it looks like to you, the orange story poles that are see-  
6 through, and I think the architects in particular are  
7 professionals and they've gone to school for this for years  
8 and years, and sometimes when they're talking about 2'  
9 versus 3' or an indent here or an indent there, I think we  
10 really have to learn to accept and acknowledge that they  
11 know what they're talking about, and so I think if they're  
12 saying right now that the story poles are obsolete and  
13 there are other ways of sharing with the public what their  
14 designs will look like, then they should be able to do it  
15 that way. There will still be opportunities for you to say  
16 nope, that doesn't fit the character, or no, that's too  
17 high, but I just think that the story poles aren't really  
18 telling that story anymore. Thank you.

20           CHAIR BARNETT: Thank you, Ms. Somers. Are there  
21 questions from Commissioners for you? No. Thank you very  
22 much.

23           JOEL PAULSON: Chair, we do have a speaker that  
24 is on Zoom.  
25

1 CHAIR BARNETT: Thank you very much for bringing  
2 that to my attention.

3 JOEL PAULSON: I'm going to allow Don Capobres to  
4 speak. Go ahead. You have three minutes.

5 DON CAPOBRES: Good evening, Chair Barnett,  
6 Commission, and Staff. I really wish I were there in  
7 person. My name is Don Capobres with Harmonie Park  
8 Development. I've worked on the North Forty project for  
9 over 15 years.

10  
11 In the context in which we were required to  
12 implement it, the Town's story pole policy is an anti-  
13 housing development tool.

14 In his February 10<sup>th</sup> letter on the Town's Draft  
15 Housing Element, which was sent to HCD, our attorney Eric  
16 Phillips stated, "Requiring story poles creates unnecessary  
17 tension within the community and can create false  
18 expectations about the Town's ability to deny or modify  
19 design elements such as height or massing that are  
20 consistent with the Town's development standards. For  
21 example, during phase one of the North Forty development,  
22 acres and acres of unsightly story poles stirred up angst  
23 among community members to temporarily derail the approval  
24 process.  
25

1           However, given that the phase one development and  
2 many other housing developments are protected by State laws  
3 that prevent the Town from denying or reducing the density  
4 of housing development projects, including the Housing  
5 Accountability Act, the State Density Bonus Law, story  
6 poles do nothing more than create unnecessary opposition to  
7 projects that are legally entitled to move forward. Said  
8 simply, the Town's outdated story pole policy is impeding  
9 housing production. We will continue to voice this  
10 sentiment to HCD and other decision makers as long as  
11 policies such as this remain in the books.

13           The Town must allow simpler, less burdensome, and  
14 more effective ways of providing notice and information  
15 such as large informational signs posted onsite, and using  
16 3-D renderings, fly-through videos, and other technological  
17 methods that convey similar information without  
18 unreasonably burdening development projects. This is  
19 especially true as to meet the Town's housing needs it will  
20 have to allow for taller buildings with heights that make  
21 the Town's current story pole policy technically infeasible  
22 to implement.

24           Further, unless members of the public are invited  
25 to walk the interior of a private property, and also we did

1 invite some officials onsite in phase one, there is no  
2 requirement to do so. Story poles can only be seen from  
3 public right-of-ways, making understanding the context of a  
4 larger proposal increasingly challenging.”

5 I do have specific data regarding costs and  
6 logistics on the story pole exercise for phase one on the  
7 North Forty and I’m happy to share if you have any  
8 questions. Thank you.

9 CHAIR BARNETT: Thank you, Mr. Capobres, and I’ll  
10 ask if any Commissioners have questions for you? I’m not  
11 seeing any. Thank you very much. We have no further  
12 speakers on Zoom.

13 If there is no further discussion by the  
14 Commissioners, I’ll call for a motion.

15 JENNIFER ARMER: Through the Chair, once you have  
16 closed the public hearing, then we would go back to  
17 discussion with the Commissioners.

18 CHAIR BARNETT: Thank you, I omitted that. So we  
19 will close the public portion of the public hearing and now  
20 ask Commissioners if they have further questions for Staff,  
21 wish to comment on the request, or propose a motion?  
22 Commissioner Hanssen.

23  
24  
25

1                   COMMISSIONER HANSSEN: This is sort of a question  
2 for Staff. As I read the Staff Report it looked to me like  
3 this was a substitute for a Policy Committee meeting in the  
4 form of a Planning Commission. What I thought we were  
5 supposed to be doing is taking the topic, for example,  
6 projects over 35' feet in height. There's a question at the  
7 end, "Should modifications be made to allow one or two rows  
8 of flagging for buildings over 35' in height?" What I  
9 thought we were going to do is similar to what we did with  
10 the last item where we would discuss each one of these  
11 items, and I think what we're trying to do is make a  
12 recommendation to Council on ideas, concepts, for the Story  
13 Pole Policy to go back to Council or the Policy Committee,  
14 or I'm not sure, so my question is am I on the right track  
15 and what is Staff hoping for out of this?  
16

17                   JENNIFER ARMER: Thank you for that question.  
18 Yes, we did structure this Staff Report similarly to the  
19 last item with sub-topics of interest. This is not quite as  
20 fully developed in terms of direction or recommendation  
21 from the Staff since there are a number of topics that  
22 could have a number of different solutions, and so looking  
23 for some initial direction from Planning Commission for  
24 Staff to develop some additional details, or if the  
25



1 Planning Commission finds that they have specific  
2 recommendations that they feel comfortable making at this  
3 time to Town Council, we can do that as well, so on each of  
4 these items I think it will depend on whether the Planning  
5 Commission feels they have sufficient information to make  
6 suggested changes which we could then take forward to Town  
7 Council, or whether there is additional information or  
8 input that you are looking for.

9  
10 COMMISSIONER HANSSEN: A follow up question.  
11 Nowhere in the Staff Report is a discussion topic saying  
12 should we or should we not have a Story Pole Policy. Do you  
13 want us to have that discussion as well?

14 JENNIFER ARMER: As I stated in my presentation,  
15 we would welcome any discussions about the Story Pole  
16 Policy, which we have heard interest in maintaining, but  
17 maybe that is the recommendation of the property line about  
18 whether we should have one at all or whether it should be  
19 modified, and if modified, then in what ways?

20 CHAIR BARNETT: Commissioner Burnett.

21 COMMISSIONER BURNETT: Not a question for Staff,  
22 but I can make my own comments.

23 CHAIR BARNETT: Please, go ahead with your  
24 comments.  
25

1                   COMMISSIONER BURNETT: I think instead of talking  
2 for architects and builders I'm talking for the citizens of  
3 Los Gatos.

4                   I feel, and I think story poles have served us  
5 actually very well since 1998. We've had this policy moving  
6 forward, and as I say, I think it's an important policy and  
7 I think story poles are important, and I think people in  
8 general are made aware of a project and that could affect  
9 the project, it could affect their view, it could affect  
10 the light, it could affect the streetscape. When you see  
11 story poles you get a good feeling of what's going to be  
12 there, and I think that's important. When you're driving by  
13 you see that's going to be coming up.

14                   They say videos and photos and whatever, but  
15 people aren't going to be looking at videos; they're not  
16 going to take the time to do that. You want to see what's  
17 going to be built. You want to get a feeling for it. You  
18 want to see if mountains are going to be hidden. There are  
19 so many different concerns.

20                   Then comments like other towns are no longer  
21 using story poles. Well, if you look at the towns that  
22 they've suggested, these are big towns. We're Los Gatos.  
23 We're a small town and we're impacted more, so I think it's  
24  
25

1 more important to know what's happening in the Town, and I  
2 think they're especially important in the hillsides. That  
3 was interesting. I really want to see what's happening in  
4 my hillside; I want to see those story poles.

5 I would make suggestions that maybe we could  
6 streamline the permit process to make it easier and maybe  
7 try to cut costs for the builders; I'm sympathetic to that,  
8 so maybe that could be one area. We would look at the  
9 buildings that are very high, over 35', and maybe think of  
10 different colored flags. I know there was an issue with two  
11 sets of flags, and maybe it's because they're the same  
12 color, maybe that was why they couldn't be seen.

14 Then there was the idea of putting your poles if  
15 the property line is... What did I say? Put the poles inward  
16 on the property, because I know there was an issue about  
17 where you put the poles; I know that was an issue.

18 But in general I think the citizens of Los Gatos  
19 like story poles, and personally I think we should keep  
20 them in, maybe with some suggestions for small changes and  
21 adjustments. Thank you.

22 CHAIR BARNETT: Thank you for those comments.  
23 Commissioner Thomas.

24  
25

1           COMMISSIONER THOMAS: I guess I have a question  
2 for you, Chair. Are we going to go through each of these  
3 projects, or do you want us to first give our generic  
4 overview, or should we go through each of the items as  
5 recommended for the discussion and direction by Staff on  
6 page 62.

7           CHAIR BARNETT: We're going through A, B, C, D,  
8 E, and F.

9           COMMISSIONER THOMAS: Are we going through by  
10 order, or no?  
11

12           CHAIR BARNETT: Why don't we proceed in that way,  
13 as suggested by Commissioner Hanssen? Let's go with A on  
14 projects exceeding 35'.

15           COMMISSIONER THOMAS: Yes, and so can I ask a  
16 question about that?

17           CHAIR BARNETT: Please.

18           COMMISSIONER THOMAS: I don't know if you can  
19 answer this, but my question is what are the options and  
20 the cost difference for things that are different for  
21 projects over 35' in height?

22           JENNIFER ARMER: Thank you for that question. I  
23 don't have information specifically about the cost. I think  
24 it varies significantly on the different types and  
25

1 complexity of projects. The height of the poles is one of a  
2 number of factors that affects the cost. Also the time that  
3 they are up and whether they need repair, for example, and  
4 so that's one of the concerns when they do become taller.  
5 The main recommendation for an alternative for those taller  
6 poles was the use of flagging instead of the netting, and  
7 then is there another height beyond which it's just not  
8 reasonable to use poles at all, but that alternative  
9 methods might be considered, or the complexity?  
10

11           As we're going through these different topics I  
12 think that's very useful, but I would also say that we want  
13 to make sure at the end of the discussion to consider  
14 whether there are other topics that have been brought up by  
15 the commenters, for example, the idea of additions to  
16 single-family homes or new single-family homes. Should  
17 those be excluded completely or under certain categories?  
18 So there definitely are additional topics in addition to  
19 what was listed in the Staff Report.

20           COMMISSIONER THOMAS: Can I follow up?

21           CHAIR BARNETT: Please.

22           COMMISSIONER THOMAS: I do think that the  
23 requirement of the 2' netting is problematic and we all  
24 know why, and so I do think that flagging is a good  
25

1 alternative, but I also feel like we should explore as a  
2 town other alternatives, just story poles for some  
3 situations and mainly to also compare the cost, if it could  
4 streamline anything for Town Staff, but also the cost to  
5 developers and everything. Twenty thousand dollars maybe  
6 isn't a lot to a large developer building a lot of housing,  
7 but we don't want this to be an impediment to meeting our  
8 RHNA requirements.

9  
10 CHAIR BARNETT: Thank you. Any other comments on  
11 A? Commissioner Janoff.

12 COMMISSIONER JANOFF: This may not be a popular  
13 approach, however, I'm in favor of all the changes Staff  
14 has recommended, A-F, but I think it misses larger points  
15 that the architects have raised, as well as others in the  
16 community.

17 I do think story poles serve a purpose, but I  
18 think it is a strange purpose. For me, they generally  
19 represent height and that's about it. As the testimony has  
20 come forward tonight, if the height is within our Zoning  
21 Code, then why would we have the flags or netting or  
22 whatever it might be, because that's not a contestable  
23 thing.  
24  
25

1           We ask for netting or we ask for story poles  
2 specifically when you're asking for an exception, so it's  
3 higher than. This was the case on Ms. Wiersema's project,  
4 and so we thought it was very important that the neighbors  
5 see this is where it's going to be and we think 3' makes a  
6 difference, so when there is an exception being asked for I  
7 think it makes sense.

8           I guess I didn't realize that story poles are  
9 required for not just projects that go the Planning  
10 Commission, but for projects decided by Staff.

11           I think it's really important that we do use the  
12 tools of the 21<sup>st</sup> century or whatever. There are so many  
13 great modeling tools, and I would say even that model that  
14 we had of the North Forty that sat out in the lobby of the  
15 Civic Center for a long time was an interesting tool.  
16 Miniaturized wasn't helpful in terms of seeing its overall  
17 impact, but we have such great tools with rendering  
18 software and the capabilities of our experts that those  
19 should be considered as a requirement perhaps over story  
20 poles. I have an issue with the plans being required when  
21 we've got the story poles when they are required, being  
22 certified, and installed by experts.  
23  
24  
25

1           In short, we got a lot of really good information  
2 in the amendments and the comments and I think that input  
3 isn't reflected in the six topics that we are being asked  
4 to talk about. It just seems like there are some bigger,  
5 broader issues.

6           I don't want to monopolize forever, but the issue  
7 of story poles came up most recently when we were talking  
8 about the Housing Element and the negative impact or the  
9 governmental barrier it has on developing housing. It may  
10 be different, \$20,000 when you're developing a single-  
11 family residence is one thing, but your story poles are  
12 going to be really complicated if you've got a more  
13 complex, larger structure, so that's going to be a  
14 significantly greater cost, and if that's a negative impact  
15 on the Town's ability to see housing getting developed, I  
16 think we really have to think about that too.

18           So for me, what Staff is recommending is okay,  
19 but it doesn't cover the larger conversation. I feel like  
20 we need a second recommendation from Staff having gone  
21 through what we're hearing from the experts.

22           CHAIR BARNETT: I noted that the alternatives  
23 presented on page 65 included a possible motion to continue  
24 the matter to a certain date. Commissioner Hanssen.  
25



1                   COMMISSIONER HANSSEN: I was going to go exactly  
2 there. After listening to the discussion and considering  
3 the input from the architects I think it would be worthy to  
4 continue this to have a more discussion, because I think  
5 the fundamental issue has to start with whether or not we  
6 have story poles and under what circumstances, and then  
7 these things that are listed in the Staff Report are kind  
8 of details and specific cases of story poles, and I think  
9 there's a bigger discussion.  
10

11                   I did want to also add that, as Commissioner  
12 Janoff noted, this did come up in the Housing Element  
13 discussion, but I will say that when we discussed it  
14 briefly at the Housing Element meeting back about a month  
15 ago Council Member Hudes spoke very passionately about the  
16 importance of story poles and how he would never let them  
17 go away on his watch, that they are the thing that our  
18 residents have to hold onto with all this new building, and  
19 he's only one person that's speaking. It is a very  
20 controversial topic and I think it's worthy of having the  
21 whole picture to discuss, and maybe we don't have that  
22 right now.  
23

24                   CHAIR BARNETT: Let me start with Commissioner  
25 Thomas, and then I'll go the Commissioner Janoff.

1                   COMMISSIONER THOMAS: I agree that I think some  
2 points were brought up and I feel like I would like to be  
3 able to do some more looking around at what other districts  
4 have done for options and in changing requirements and  
5 everything like that, so I do think that it would be  
6 helpful to do that, but I think that it would also be  
7 helpful to Staff to tell them exactly what we want more  
8 information on for further discussion, so that would be my  
9 recommendation.  
10

11                   One of the things would be like specifically  
12 looking at some certain projects and language from some of  
13 these other locations where story poles are and are not  
14 required, and specifically I'm very interested in Los Altos  
15 versus Los Altos Hills, because I think that Los Altos  
16 Hills is in the hills and Los Altos is not, and one removed  
17 and the hillside area didn't, and we have both those  
18 spaces, so what might that look like on a policy level for  
19 maintaining some of that in areas that are in our  
20 hillsides? We have different requirements for stuff.  
21

22                   CHAIR BARNETT: So we don't have a motion to  
23 continue yet, but maybe one is developing. Ms. Armer.

24                   JENNIFER ARMER: Thank you. I would definitely  
25 ask that we get specific direction as to what additional

1 information the Planning Commission needs to further this  
2 conversation. As previously stated, we invite you to talk  
3 about topics that weren't listed in the Planning Commission  
4 report. In the written Staff Report we included some  
5 topics, but not even specific recommendations, just ideas  
6 that we had heard, and we received additional ideas in the  
7 public comment, and those are worth discussing as well, so  
8 that should not stop the Commission from discussing those  
9 questions in whatever order or fashion works for you.  
10

11           If there are specific questions about other  
12 agencies, story pole policies that I could answer now, I do  
13 have a number of those here in front of me in terms of, for  
14 example, the City of Los Altos did just remove their  
15 policy, they don't require it. The town of Los Altos Hills,  
16 however, does have a policy and they require it for new  
17 buildings, second story additions, additions exceeding 900  
18 square feet that increase the roof height, etc. I could go  
19 through the full list.

20           But if there are particular questions, I may be  
21 able to answer some of that, or if there are particular  
22 topics that you can include in discussion tonight and then  
23 really narrow in on what additional information Staff can  
24 provide for further discussion.  
25

1 CHAIR BARNETT: Vice Chair Raspe.

2 VICE CHAIR RASPE: Thank you, Chair. I think it  
3 makes perfect sense to continue this discussion with  
4 specific direction to Staff, and I actually wanted to join  
5 almost 100% with all the comments that Commissioner Janoff  
6 said.

7 I came from Los Angeles before I lived here, and  
8 one of the things you first notice as you come into town  
9 are story poles; we don't have those in Los Angeles. I  
10 think they serve a purpose. I think they help you, and as  
11 Commissioner Burnett noticed, you visualize site lines that  
12 you don't get from renderings.

13 That being said, it's also my view that you don't  
14 need them for every project, and we can certainly, I think,  
15 start moving towards a more 21<sup>st</sup>/22<sup>nd</sup> century use of  
16 technology. The renderings, I think, are going to be great.  
17 The problem with that is not every one of our citizens is  
18 ready to use all those tools, and so I don't think we can  
19 today jump to just renderings as opposed to story poles,  
20 but I think as a town we should start moving there.

21 What I would like to see as part of our further  
22 discussion is perhaps a discussion of what technology is  
23 available and who is using it.  
24  
25

1 I would also like a discussion, as Commissioner  
2 Janoff indicated, on should we be using this only when  
3 variances are sought and perhaps not use them if no  
4 variances are sought and everything is built pursuant to  
5 code? What's the use essentially of the story poles?

6 Then maybe perhaps thirdly, a discussion of  
7 commercial versus residential uses of story poles and  
8 should there be a distinction in those applications? One  
9 certainly applies more directly to business, but I guess  
10 they both do since they both impact architects and  
11 builders.

12  
13 Off the top of my head, those are the areas I  
14 think I would like to see a little bit further information  
15 from Staff, so thank you.

16 CHAIR BARNETT: Any other specific  
17 recommendations to Staff? We'll start with Commissioner  
18 Burnett.

19 COMMISSIONER BURNETT: Thank you, Chair. I would  
20 say that we could have exceptions to story poles, that some  
21 large projects, maybe like the North Forty where it's very  
22 specific plans, you have the density, the intensity, the  
23 height, the massing is pretty well talked about,  
24 documented, and so it's not a huge surprise, I think, to  
25

1 the Town or the Town's people driving by that area that  
2 this is coming about, this is going to be part of Los  
3 Gatos. There could be a model down at the Council chamber  
4 like they'd had previously; of course it didn't turn out  
5 looking like that, but it would still be available. So I  
6 could see there would be structures that wouldn't need  
7 story poles.

8  
9           Where I think story poles are so important are  
10 neighborhoods and the downtown area where there's a lot of  
11 vitality and a lot of community activities going on, so I  
12 could see where we could have exceptions to story poles,  
13 which would help with the building costs for the large  
14 projects like the North Forty; I would think that that  
15 could work.

16           So there are options. I think we could meet in  
17 the middle and get all our needs met. Thank you.

18           CHAIR BARNETT: Thank you. Other comments or  
19 suggestions? Commissioner Janoff.

20           COMMISSIONER JANOFF: Council Member Hudes makes  
21 an interesting point, and he is one voice, one vote.  
22 However, without alternatives that's probably where most  
23 people would land, so I'd be interested in understanding  
24 why the other municipalities in the County have eliminated  
25

1 their requirement for story poles. Was that a recent thing?  
2 Are they tied to the Housing Element and the whole barriers  
3 thing? In particular, Los Altos on February 14<sup>th</sup>, I'm  
4 assuming that was related to the..

5 COMMISSIONER HANSSEN: Yes.

6 COMMISSIONER JANOFF: So they probably got a  
7 comment back from HCD and said there's a barrier to remove.

8 I also think that the letter alone from the group  
9 of architects has a number of points that could be  
10 discussed, particularly the last seven or so. No single-  
11 story home. No single-story addition. No story poles  
12 required if there are added roof elements that don't change  
13 the overall height. Simplified to show the main ridges.

14 Part of the problem that I have with story poles  
15 sometimes is that you're seeing so many poles representing  
16 different peaks of different elements, and some of the  
17 homes that are architected are so interesting in their  
18 rooflines you get a lot of mixed up sightlines, so you  
19 really do see. So I think there's a list here that's a good  
20 list to start from in terms of grouping what would be  
21 excluded and what might not be excluded for purposes of  
22 discussion going forward.  
23  
24  
25

1 CHAIR BARNETT: Thank you. Other specific  
2 recommendations for Staff investigation? Commissioner  
3 Thomas.

4 COMMISSIONER THOMAS: I have a list of questions  
5 and comments. Basically the first one is just what are the  
6 main alternative options to story poles, especially for  
7 single-family homes? Like some of these suggestions that  
8 were listed: additions, remodels, and just new development.

9  
10 Then how can we best ensure that the story poles  
11 don't impede our Housing Element plans for moving forward?  
12 Because we know that that's a concern and it's going to be  
13 hard for us to get that stuff done, so we don't want to  
14 just add extra trouble for ourselves.

15 Is it legal or are we allowed to only require  
16 story poles when variances are requested? Can we align some  
17 of the story pole requirements or alternatives to story  
18 poles requirements with... If we were going to make  
19 distinctions between things, would it be about density with  
20 regard to housing? Would it be with number of units, or lot  
21 size, or FAR? What is the defining thing that would  
22 triggers story poles going up because this is considered a  
23 big project? We see projects that are asking for variances,  
24 or it's the biggest house in the neighborhood, or it's a  
25



1 new this in the neighborhood, etc., so what would trigger  
2 the story poles maybe needing to be put up for some  
3 specific projects? What are the parameters and how might we  
4 best go about that in a way that is streamlined and easy  
5 for everyone to understand?

6           Then how can we still make sure, because I think  
7 that this is really the concern that everyone is talking  
8 about and Council Member Hudes' main concern, that  
9 neighbors know that construction is going to happen, that  
10 things are going to be torn down, that new stuff is going  
11 to be built or added on? What alternatives are there to  
12 these big, ugly things that do often scare people and that  
13 don't also follow up by looking at the plans in as much  
14 detail as we maybe do? How can we really make sure that  
15 people are still aware that projects are happening? I think  
16 that is a lot of peoples' main concern, because it is true.  
17 I walk around in my neighborhood on a walk with my dog or  
18 my friend and I see orange poles, and that triggers an oh,  
19 this is happening and I'm aware of what's going on in town,  
20 so I do think that that is a concern. How do we flag  
21 something so that neighbors and people walking by know in a  
22 way that is no quite a egregious as a story pole but is  
23  
24  
25

1 better than just a small sign in front of someone's house,  
2 so where does that happen?

3 My last question is the legality of looking at  
4 the distinction between hillside areas and not. Is that  
5 something that would be easy for us to distinguish between,  
6 or would Staff or the Town Attorney recommend that it needs  
7 to be a more blanket policy with regard to all housing and  
8 a different policy for commercial, etc.?

9 CHAIR BARNETT: Commissioner Hanssen.

10 COMMISSIONER HANSSEN: I would like to echo what  
11 was said earlier. I would like to understand a little bit  
12 more about actually the jurisdictions that are still  
13 keeping their story pole policies. In looking at the list,  
14 the Towns are all place where there are a lot of views.

15 I will also add that as difficult and expensive  
16 it was for the North Forty, the North Forty Specific Plan,  
17 we had our own Specific Plan committee with I believe 11  
18 people on it who met for years and years. The plans were  
19 under development for years and years. The time it really  
20 got the Town's attention was when the story poles went up.  
21 This is what always happens, and so I think we would have  
22 to think really long and hard about removing the  
23 requirement for story poles period. That would be a very,  
24  
25

1 very difficult discussion for our town, but there is  
2 probably a lot of intermediate discussions about maybe if  
3 you're just adding a second story addition maybe that's not  
4 necessary, especially when you consider the cost relative  
5 to the cost of the development, things like that.

6 CHAIR BARNETT: Commissioner Janoff.

7 COMMISSIONER JANOFF: I think Commissioner Thomas  
8 raises an interesting point about what could we install to  
9 raise the flag?  
10

11 The other thing I'd like to comment on is the  
12 orange netting in a hillside setting, like we had on this  
13 recent project, was alarming. I don't know if it's possible  
14 to have beige netting instead of orange netting, but it is  
15 true that it sends a message of alarm, and that starts a  
16 negative conversation before it starts a positive one, I  
17 think, so I think that point is well taken.

18 Yet I do agree that the conversation gets going  
19 when the netting goes up, and we hear many, many times  
20 people will say, "I had no idea until I saw the orange  
21 poles next door," so it really does serve as notice, even  
22 the requirement to notice your neighbors is there, and even  
23 though the better notification of your neighbors include  
24 renderings so you can see what it's actually going to look  
25

1 like in your neighborhood, not everybody looks at those. So  
2 what are people doing to make sure? What are communities  
3 doing to make sure neighbors are alerted, the community is  
4 alerted?

5 CHAIR BARNETT: I'm going to jump in with a  
6 couple of my own. The issue was raised about whether the  
7 flagpole requirements are in violation of the Housing  
8 Accountability law or perhaps other statutes promoting  
9 housing. I think it would be good for the Town Attorney to  
10 respond to us on that issue.  
11

12 Then concerning Mr. Rutherford's email of March  
13 23<sup>rd</sup>, he brought up the issue of flag ropes as a more  
14 feasible alternative, particularly in higher heights, and I  
15 think that feedback on that would be helpful.

16 He also made a point about fencing not being  
17 allowed, which he thought was a safety issue. I thought he  
18 said a fence had been applied for but not granted. I think  
19 that was on the car dealership in particular. Thank you.

20 Commissioner Burnett and then Commissioner  
21 Thomas.

22 COMMISSIONER BURNETT: Thank you, Chair.  
23 Question: What is the average length of time the story  
24 poles are up? Is there any number?  
25

1           JENNIFER ARMER: It varies greatly. Thank you for  
2 that question. It can be that it's put up and we send out  
3 the notice and within a month a decision has been made and  
4 the appeal period has been completed. For example, if it  
5 was a new second story addition that stayed as a Minor  
6 Residential Development Application.

7           But for many it is for several months, because  
8 the story poles need to go up, and then we need to notice  
9 for public hearing, get notice in the newspaper, and then  
10 following the public hearing, even if there is only one,  
11 there then is the additional ten-day appeal period.

12           Then we have some that are up for a very long  
13 time as it goes through various Commission meetings or than  
14 appeals.

15           COMMISSIONER BURNETT: Thank you for that. I have  
16 a follow up question.

17           CHAIR BARNETT: Go ahead, please.

18           COMMISSIONER BURNETT: Not a question, but a  
19 comment. Another reason why I think story poles are  
20 important, there was a large home that was built in my  
21 neighborhood and we didn't realize the mass of it until the  
22 story poles went up, and that alerted the neighbors and we  
23 were able to meet with the contractor, the designer, the  
24  
25

1 builder, and the massing was reduced. So that's a key part  
2 of why story poles are important, especially in a  
3 neighborhood. You get the feeling of what it's going to be  
4 and it's the massing and the height, and we were able to  
5 speak with the owner and builder and be able to make  
6 adjustments, which was a much better project for our  
7 neighborhood.

8 CHAIR BARNETT: Thank you. Commissioner Thomas,  
9 we want to get back to you.

10 COMMISSIONER THOMAS: Thank you. I completely  
11 understand and agree. Like I said, the story poles tell us  
12 when a project is happening, but like with the North Forty,  
13 by the time the story poles go up it's too late really for  
14 the public and neighbors to be heavily involved in the  
15 process of deciding what this project is going to end up  
16 being and looking like, and so for us I feel like story  
17 poles go up, people come to Planning Commission meetings,  
18 neighbors are upset because they didn't understand, and  
19 we're sitting here telling people that have gone through  
20 all of the processes they're supposed to, done everything  
21 they're supposed to do, like you have to go back a couple  
22 of steps to appease your neighbors, and that process is not  
23 productive, so I think that we should really try to be  
24  
25

1 innovative and creative in the way that we let the public  
2 know, and maybe we need to start getting some ideas of  
3 alternatives to story poles out sooner in the process,  
4 specifically I think with residential projects, because I  
5 know that that's what we deal with a lot, but with  
6 residential projects or the big, giant, huge projects, like  
7 get public comment in sooner so that it can actually be  
8 taken into account, because that's where it becomes so much  
9 tension.  
10

11           When the North Forty thing happened people were  
12 so, so upset, and we don't want to be a reactionary town  
13 that is making policies after the fact to fix things, so  
14 getting more people involved beforehand, informing people  
15 earlier on in the process is the thing that is going to  
16 make it more productive for everyone involved, and I don't  
17 know the answer to how we do that, but I think that looking  
18 at how maybe other places have tried to do that is  
19 something that would be really helpful.

20           JOEL PAULSON: Through the Chair, prior to the  
21 Vice Chair speaking, just for a little background. If  
22 someone comes up to the counter and say, "I'm thinking of  
23 doing a project," make sure you talk to your neighbors.  
24 They don't talk to their neighbors. They submit their  
25

1 application. We give them the comments. Make sure you talk  
2 to your neighbors. Staff does that, but many people choose  
3 not to take that option and we can't force them or require  
4 them to do that, but I want to make sure that you have that  
5 context.

6           COMMISSIONER THOMAS: Thank you, and I think that  
7 people do just hope that it squeaks by and they get it  
8 through and people just won't notice the giant story poles  
9 or whatever, or it's too late in the process, but I do  
10 think that with individuals it's hard, but maybe with some  
11 of the bigger projects there is something that we can do  
12 earlier on to get more people involved. Thank you.

14           CHAIR BARNETT: Vice Chair Raspe, you had a  
15 comment?

16           VICE CHAIR RASPE: I think you raise great  
17 points. I just wanted to raise a kind of counter point. I  
18 think it was the Wood Road project where we had story poles  
19 up, and I guess it was very early on in the process, and  
20 the neighbors had really... So I would agree with you, story  
21 poles I think are most useful if we can do it right at the  
22 outset and it's an accurate reflection on what the project  
23 is going to be, and I think in that particular instance  
24 it's not just the immediate neighbors, because those were  
25



1 in sight lines, so the entire town had a great idea of what  
2 was proposed up on that hill.

3 CHAIR BARNETT: Do we have any other comments? Go  
4 ahead, Commissioner Thomas.

5 COMMISSIONER THOMAS: Thank you, Chair and Vice  
6 Chair. I totally agree that that was really helpful, and it  
7 was early on in the project. I have no idea if this is even  
8 normal or possible, but is it possible for us to explore  
9 options where if someone wants to develop something and  
10 they want to build something around the height requirement,  
11 then putting things up earlier in the process, because we  
12 all know it doesn't reflect the mass or what the finished  
13 product is going to look like, so is that something? I see  
14 Ms. Armer maybe with an idea.

15 JENNIFER ARMER: Thank you for that question. The  
16 one caution that I would give is that it's not unusual that  
17 through the Staff review process, and particularly review  
18 by the Town's consulting architect, that there do end up  
19 being changes to the proposed massing of the building, and  
20 so those kinds of changes then, if it was for example, a  
21 project that was coming to Planning Commission for review,  
22 would then necessitate changes to the story poles,  
23  
24  
25

1 additional ones being installed, and so could in the end  
2 compound the expense and requirement for those projects.

3 CHAIR BARNETT: Thank you for that. I think we're  
4 ready for a motion to continue if there are no more  
5 specific recommendations for Staff. Not seeing any, so I'll  
6 entertain a motion to continue, and I'll be asking Staff if  
7 there's a projected date for that?

8 JENNIFER ARMER: Thank you for that question. We  
9 would recommend that it be continued to May 24<sup>th</sup>, and if we  
10 need more time to prepare the information you've requested,  
11 then we could always continue it at that time.

12 CHAIR BARNETT: Thank you. Vice Chair Raspe, were  
13 you raising your hand?

14 VICE CHAIR RASPE: I probably was, so I will go  
15 ahead. I will make a motion to continue the matter before  
16 the Planning Commission, specifically the discussion of  
17 recommendation to Town Council on Modifications to Town  
18 Height Pole and Netting Policy for Additions and New  
19 Construction to a date certain of May 24, 2023 so that  
20 Staff can gather information requested by Planning  
21 Commission and commentators this evening.

22 CHAIR BARNETT: Thank you. Is there a second?  
23 Commissioner Burnett.

1 COMMISSIONER BURNETT: I second.

2 CHAIR BARNETT: Is there discussion on the  
3 motion? Commissioner Thomas.

4 COMMISSIONER THOMAS: I just have a question  
5 about the pathway that this takes after we will make our  
6 recommendation on the 24<sup>th</sup>, and then it goes to Town  
7 Council, and then what happens?

8 JENNIFER ARMER: As with other recommendations  
9 that you have made, for example the objective standards,  
10 this is something that once the Planning Commission feels  
11 they have something that they can recommend, it would go to  
12 Town Council and then Town Council would consider the  
13 modifications to the policy.  
14

15 COMMISSIONER THOMAS: Thank you.

16 CHAIR BARNETT: Any further discussion? If not,  
17 I'll call the question. Commissioner Hanssen.

18 COMMISSIONER HANSSEN: Yes.

19 CHAIR BARNETT: Commissioner Thomas.

20 COMMISSIONER THOMAS: Yes.

21 CHAIR BARNETT: Vice Chair Raspe.

22 VICE CHAIR RASPE: Yes.

23 CHAIR BARNETT: Commissioner Burnett.

24 COMMISSIONER BURNETT: Yes.  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CHAIR BARNETT: And Commissioner Janoff.

COMMISSIONER JANOFF: Yes.

(END)



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 05/24/2023

ITEM NO: 2

---

DATE: May 19, 2023  
TO: Planning Commission  
FROM: Joel Paulson, Community Development Director  
SUBJECT: Forward a Recommendation to the Town Council on Modifications to the Town Height Pole and Netting Policy for Additions and New Construction. The Proposed Amendments to Town Policy are Not Considered a Project Under the California Environmental Quality Act. **Project Location: Town Wide.** Applicant: Town of Los Gatos.

BACKGROUND:

On April 26, 2023, Planning Commission considered modifications to the Town's Height Pole and Netting Policy for Additions and New Construction ("Story Pole Policy"). The discussion was continued to May 24, 2023, with a request for additional information.

DISCUSSION:

As discussed in the April 26, 2023, Planning Commission Staff Report, a survey of the 15 cities/towns in Santa Clara County found that story poles are not required in nine of the cities: Campbell, Cupertino, Gilroy, Los Altos, Morgan Hill, Mountain View, San Jose, Santa Clara, and Sunnyvale. Story poles are required by five: Los Altos Hills, Milpitas, Monte Sereno, Palo Alto, and Saratoga. The available policies/regulations are included as Exhibit 4, along with five additional examples from Burbank, Corte Madera, Portola Valley, Santa Barbara, and Woodside. Milpitas does not have a written policy.

As discussed in the April 26, 2023, Planning Commission Staff Report, the City of Los Altos only recently removed their story pole requirement, on February 14, 2023, as part of the implementation of their Housing Element. The City's Housing Element included an Implementation Program that specifically stated that, "The requirement of story poles installations will be eliminated for all development applications." The staff report explained that this was because they found that the story pole requirement added subjectivity, extended

PREPARED BY: Jennifer Armer, AICP  
Planning Manager

---

Reviewed by: Community Development Director, Town Attorney

---

DISCUSSION (continued):

the review process of all development, and added additional cost for a project whereas their other requirements for renderings and 3D Modeling could effectively provide the relationship of the proposed building heights. Prior to this modification, the requirement had applied to multiple-story multiple-family, commercial, and mixed-use projects, and public facilities, and required the story poles reflect the outline of the proposed building on the site.

As a result of the Planning Commission discussion on April 26, 2023, and the public comment received for that meeting, additional information has been prepared on the following topics for discussion and direction.

A. Story Pole Requirement

Should the Town retain a requirement for installation of story poles for development projects?

As mentioned above, only 36 percent of the agencies in Santa Clara County (excluding Los Gatos) have a requirement for story pole installation for development projects. Comments received have included both those who are concerned that this requirement is out of date and should allow for digital alternatives, and would be a constraint on future housing development, as well as those who have discussed the value that it brings to the Town.

B. Types of Development Projects

What types of projects should be required to install story poles? What types should be excluded/exempt?

The current Story Pole Policy requires installation of story poles for:

- New residential (excluding single-story accessory structures) and non-residential buildings;
- Residential second story additions; and
- Nonresidential additions exceeding 100 square feet.

The Town could consider exclusion or exceptions for certain types of projects. This could be done by modifying the list above, or by creating a list of project types (by use, size, scope, or some other factor) that are excluded from the story pole requirements or allowed to use specific alternative methods. For example, the story pole requirement could exclude projects that are 100 percent affordable housing, or projects that are not asking for any exceptions from the Town's requirements. The following is a sample (not exhaustive) list of categories that could be considered as thresholds for inclusion in or exclusion from this requirement:

DISCUSSION (continued):

Use types:

- New residential
- New detached single-family residential
- New multi-family residential
- New commercial
- New mixed-use

Project size:

- Building height
- Number of proposed buildings

Project scope:

- Additions under a set square foot limit

Other factors:

- Location in Hillside Area
- Location in a Historic District
- Amount of affordable housing
- Compliance/non-compliance with Town regulations
- Reviewing body (Community Development Director, Development Review Committee, Planning Commission, Town Council)

Several of the example policies (Exhibit 4) have lists of what types of applications require installation of story poles. The requirements and specificity vary. In most cases, it is the construction of new primary buildings or additions of a certain size (over 500 square feet, over 900 square feet, "substantial additions," etc.). In a few it is just for new construction and additions in the hillside or open space areas.

C. Modify Physical Requirements

Should the current requirements be modified?

The current Story Pole Policy requires, "At least two foot (2') wide orange woven plastic snow fencing (netting) must be erected to represent the rooflines of the proposed structure(s) or addition," and that, "At a minimum, story poles shall be placed at all outside building corners of the building wall (excluding eaves) and along the rooflines of the proposed structure(s) or addition. Architectural elements such as towers, spires, elevator and mechanical penthouses, cupolas, mechanical equipment screening and similar elements not used for human activity or storage which are visible from the streetscape shall be represented by the story poles."

DISCUSSION (continued):

These requirements could be modified to allow alternatives to the netting, for example flag rope or alternative color(s), though the orange netting seems to be a consistent requirement across jurisdictions. These requirements could be modified to not require the entire project to be represented, but just certain aspects, like the front facade, tallest ridge, etc.

D. Provide Alternatives

Should alternatives be detailed in the Story Pole Policy?

The inclusion of standard options/alternatives within the Story Pole Policy would provide for more clarity and predictability and could potentially reduce the number of exception requests received. Recent story pole exception requests have included one or more of the following:

- Use of one or two rows of flag rope in place of netting
- Renderings and digital simulations
- Signage
- Reduced number of poles for multi-building projects

Comments provided as Exhibit 2 to the April 26, 2023, Staff Report and verbally during the meeting included these additional suggestions:

- Relocation of poles when located close to property lines to reduce guy wire conflicts
- Attachment of guy wires to existing trees, fences, and equipment
- Exemption of buildings or portions of the buildings not visible from the public right of way

These options could be provided as part of the standard story pole requirements or as part of a modified exception process as discussed below.

E. Modify Exception Process

Should a modification be made to change the decision maker for exception requests?

The Town's policy allows the Community Development Director to determine if alternative materials (telephone poles, cranes, etc.) are appropriate for use as story poles. But the current exception process (Exhibit 1, page 4) for alternatives to other aspects of the policy, including the orange woven plastic snow fencing material or placement of poles at all outside building corners and rooflines of all buildings, requires review by Town Council. Of



DISCUSSION (continued):

the five other Santa Clara County cities that have a story pole policy, three do not have an exception process stated, and two have an exception process where the authority is placed with the Community Development Director.

F. Story Pole Plan Requirement

Should the requirement for submittal and approval of a story pole plan be removed from the policy?

As mentioned at the April 26, 2023, Planning Commission meeting, Los Gatos is the only agency in Santa Clara County that requires submittal and approval of a story pole plan. However, the two additional example Story Pole Policies that were provided from the City of Burbank and the Town of Corte Madera both include this requirements.

G. Housing Element

Do these requirements conflict with the Housing Element or Housing Accountability Act (HAA)?

The State Housing Accountability Act prohibits the Town from denying or reducing the size of housing developments that are compliant with the Town's Zoning Code and other objective standards. Any proposed story pole policy would consist of objective standards. Requiring applicants to comply with the objective standards contained in a story pole policy does not violate the State Housing Accountability Act.

State housing element law requires that the Town's Housing Element, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing. There is a potential argument to be made that the expense of story poles constrains the development of housing. Case law discussing this housing element requirement describes such constraints as including land use controls, density controls, growth management limits, building height limits, parking standards, and processing and permit procedures. Conceivably, a story pole policy falls into the category of "processing and permit procedures." There is no case law directly addressing the question of story pole policies. In the Town Attorney's opinion, a court would not consider a story pole policy to constitute a constraint on housing in that it serves the important purpose of informing the public regarding the future appearance of developments. Even if a court did consider a story pole policy to be a constraint on housing, the remedy would be for the Town to amend its Housing Element, potentially with an implementation program to remove/reduce that constraint.

CEQA DETERMINATION:

The Planning Commission's recommendation is not a project subject to CEQA, because any story pole policy will be adopted by Town Council action.

CONCLUSION:

A. Summary

The Town of Los Gatos has a Height Pole and Netting Policy for Additions and New Construction, and staff has developed a list of a number of elements that might warrant modification. The discussion topics were developed following research by staff on other story pole policies and with input from local story pole installers.

B. Recommendation

The Story Pole Policy has been forwarded to the Planning Commission for review. Staff recommends that the Planning Commission:

1. Receive and consider public comments;
2. Complete the review of the existing Story Pole Policy;
3. Provide input on any recommended modifications to the Story Pole Policy; and
4. Forward a recommendation to the Town Council to approve modifications to the Story Pole Policy.

C. Alternatives

Alternatively, the Commission can:

1. Forward a recommendation to the Town Council that no changes be made to the Story Pole Policy; or
2. Continue the matter to a date certain with specific direction to staff.

EXHIBITS:

Previously received with the April 26, 2023, Staff Report:

1. Current Story Pole Policy
2. Story Pole Installer Input

Previously received with the April 26, 2023, Addendum Report:

3. Public Comments received between 11:01 a.m., Friday, April 21, 2023, and 11:00 a.m., Tuesday, April 25, 2023

PAGE 7 of 7

SUBJECT: Story Pole Policy Amendments

DATE: May 19, 2023

EXHIBITS (continued):

Received with this Staff Report:

4. Story Pole Policy Examples

*This Page  
Intentionally  
Left Blank*

# TOWN OF LOS ALTOS HILLS

26379 Fremont Road  
Los Altos Hills, CA 94022  
Phone: (650) 941-7222  
www.losaltoshills.ca.gov



---

## Story Pole Policy

---

### **PURPOSE**

To request new construction and some remodels be staked on site and that height poles and fencing shall be erected to provide the decision making bodies (City Council, Planning Commission, Planning Staff) and neighbors with a better visual tool to evaluate proposed construction.

### **POLICY**

Story poles shall be used for the following types of applications:

- New buildings
- Second story additions
- Additions exceeding 900 square feet and increases in roof height
- Accessory structures (exceeding 900 square feet)
- Second units (if in conjunction with new residence or major addition)
- Driveway entrance modifications, sports court and pools (outlined with stakes and ribbon at ground level)
- Open Space easements
- Trees proposed to be removed (marked with ribbons or tags or some type of obvious marker)

*Exceptions may be granted by the Planning Department based on scope of work proposed.*

### **Timing**

Story poles shall be installed approximately two weeks prior to advertising the project for public hearing. Staff will inform the applicant when the story poles should be installed. The story poles shall remain in place until the project has been reviewed at a public hearing and the appeal period has passed. If the project is appealed, the story poles shall remain until the appeal has been acted upon. The applicant shall provide photographs of the installed story poles. Please note that public notices will not be mailed until the staking has been completed and approved by staff.

### **Requirements**

The project Surveyor or Civil Engineer shall determine the perimeter points of the proposed structures for story pole installation. Story poles shall be constructed of rigid material (plastic piping is not acceptable) and a two (2) foot wide band of plastic orange snow fencing which must clearly outline the proposed ridgelines and eaves for the new structure, addition and/or accessory buildings. In addition, proposed swimming pools, tennis courts, open space easements, and/or

driveway modifications should be outlined and marked with ribbon at ground level. Please note that all trees proposed to be removed shall be marked with tape, flags, or other obvious identification markers.

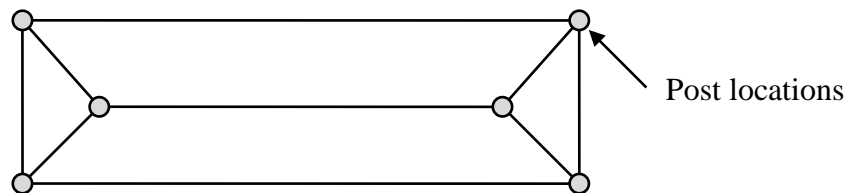
Staff may approve alternative materials for story pole construction for minor projects. If you have questions about materials contact the Planning Department.

Orange snow fencing at least two feet (2') wide must be erected to represent the roofline of the proposed structure/addition. The fencing must be supported by height poles strong enough to accurately maintain the outline and height as shown below (plastic piping is not acceptable).

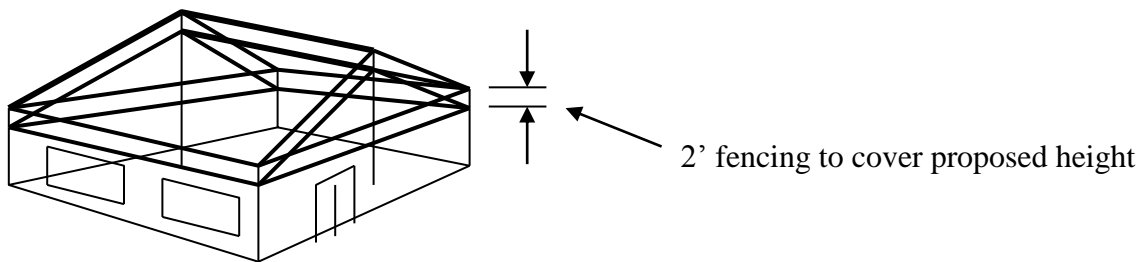
The height of story poles should indicate the final height of the building (grading should be accounted for in the height of the poles).

**Example:**

Roof Plan



Story Poles





**CITY OF MONTE SERENO**  
18041 Saratoga-Los Gatos Road  
Monte Sereno, CA 95030  
Phone (408) 354-7635 Fax (408) 395-7653  
www.cityofmontesereno.org

# **APPLICANTS DON'T FORGET!!!!!!!!!!!!!!!!!!!!!!!!!!!!**

## **Netting and Ribbon Requirements**

If your project is one of the following, story poles and certification are **REQUIRED**:

- Any second story addition
- The construction of any structure exceeding 500 sq. ft.
- Any addition exceeding 500 sq. ft.

**THE FOLLOWING MUST BE COMPLETE BY 9:00am 14 DAYS PRIOR** to the Site and Architecture Meeting:

- Erection of story poles and netting
- Outline of footprint
- Tagging of trees
- Completion and submittal of Story Pole Certification Form

Erection of netting and outline of footprint must remain in place for a period of 15 days following the final decision. After the 15 days, the netting shall be removed within one week.

### **BUILDING ROOFLINE**

Netting at least two (2) feet wide and made of woven plastic snow fencing (orange in color) must be erected to represent the roofline of the proposed structure. Stakes or wires strong enough to accurately maintain the outline and height as shown above must support netting.



2' orange netting to show the entire roofline and all ridges

### **BUILDING FOOTPRINT AND FLOOR LEVEL**

Ribbon at least two (2) inches wide and of a bright color must be staked to represent the perimeter or outline of the building AND floor levels of all floors. Different color ribbons must be used for the building AND the floor levels of all floors. Different color ribbon must be used for the building and decks located on the first level.



# City of Monte Sereno Story Pole Certification

**Instructions:** The story pole certification must be performed by a registered land surveyor or civil engineer. The completed certification statement must be submitted to the City two weeks prior to the Public Hearing date.

I, \_\_\_\_\_ have surveyed the story poles located at  
NAME OF SURVEYOR

\_\_\_\_\_  
ADDRESS OF SUBJECT PROPERTY

on \_\_\_\_\_, which is based on Planning Application, \_\_\_\_\_,  
DATE APPLICATION NUMBER

Submitted to the City of Monte Sereno by \_\_\_\_\_.  
NAME OF APPLICANT

The survey was taken from the following benchmark:

\_\_\_\_\_  
LOCATION OF MONTE SERENO BENCHMARK

at an elevation of \_\_\_\_\_.  
BENCHMARK ELEVATION

The highest ridge height elevation was measured at a height of \_\_\_\_\_.

I certify that the story poles located on the above-referenced site were installed or inspected by the undersigned, and found to be in conformance (within three inches, plus or minus) with the design, height and location shown on the plans and elevations, for the planning application referenced above.

For additional information, please contact me at: \_\_\_\_\_  
PHONE NUMBER

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME (PRINTED OR TYPED)

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
LICENSE NO./EXPIRATION DATE

**Please stamp & sign below**



## City of Palo Alto Municipal Code Section 18.28.070 Additional OS District Regulations

The following additional regulations shall apply in the OS district:

...

### (o) Story Poles and Other Visual Review Aids

Story poles (with associated taping or flagging) shall be erected for projects involving new residences or other structures, or for substantial additions to new residences, for the purpose of providing a better understanding of the visual impacts of a proposal in the OS district. Story poles shall accurately outline the perimeter and key and highest rooflines of the proposed structure(s) and shall be durable and sturdy enough to be visible from distant views. Story poles shall be constructed to the satisfaction of the director prior to notice of a hearing and shall remain in place through the public hearing date. Erection of story poles prior to public hearing notice may be required by the director to allow for staff and neighbors to view the project. Other aids, such as taping the perimeter of other development (structures, pools, sport courts, etc.) on the site and identifying trees to be removed, may also be required by the director. Story poles shall be removed upon final action on a project or upon the direction of the director.

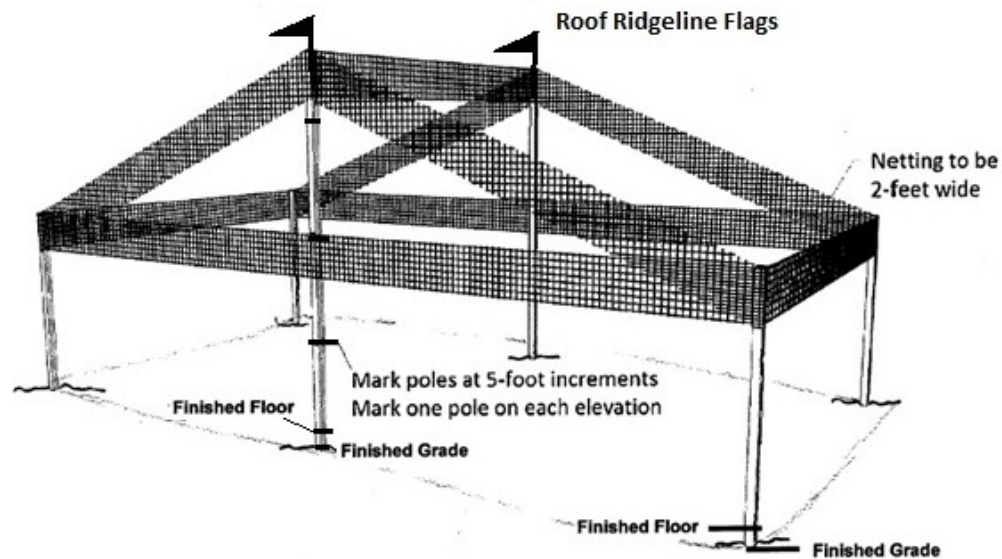


**Community Development Department**  
City of Saratoga  
13777 Fruitvale Avenue  
Saratoga, California 95070

## Story Pole Requirements

Story poles shall be constructed of wood or metal which delineate the height, area, and approximate shape and massing of a proposed structure. Story poles must be installed in the manner set forth below:

- 1) On each building elevation of the proposed structure at least one story pole shall show graduated five-foot interval height measurement markings in either paint or tape.
- 2) At least one building elevation of the proposed structure must show the proposed finished grade and finished floor elevation markings in either paint or tape.
- 3) The story poles shall be erected so that orange netting (or other materials approved by the Community Development Director) will be used to approximate the mass, shape and roofline (e.g., roof pitch/slope, ridge, and volume, including covered porches) of the proposed structure as shown below. For complex roof forms, the Community Development Director may also require that ridge flags be installed to delineate a main roof ridge or high point.



**Tree Removals:** Any tree proposed for removal as part of the proposed project shall be clearly marked in the field. Acceptable means of identifying trees include using fluorescent tape wrapped around the tree's trunk, removable marking on the tree trunk that is easily visible, or another means approved by the Community Development Director

**Required Signage:** The applicant shall erect on the story pole elevation facing the main access to the building site or the main street frontage, a minimum 11-inch by 17-inch sign which contains the following information:

- a) Name of applicant/property owner
- b) Contact telephone number of applicant/property owner
- c) A brief description of the proposed project's scope of work
- d) Community Development Department main telephone number

**Duration:** Once story poles are installed, all concerned parties will have fifteen (15) calendar days to review the application and provide written comments. The Community Development Director shall approve or deny the application within fifteen (15) days of the close of the review period. The decision may be appealed to the Planning Commission within fifteen (15) calendar days of the decision. The story poles shall not be removed until a final action has been taken and all appeal periods have expired.

**Photographs of Story Poles:** the applicant shall submit photos of the completed story pole installation including required signs to the project Planner, *prior to the Notice of Intent to Approve/Public Hearing being distributed.*

**Story Pole Certification:** Upon completion of installation the applicant must provide to the Community Development Department a stamped and signed letter from a State licensed land surveyor or civil engineer verifying the accuracy of the story pole installation in terms of location, heights, and elevation data. In addition, the Architect/Designer shall sign below stating that they have inspected the story poles and they accurately represent the proposed plans prepared by them and return to the project planner and *prior to the Notice of Intent to Approve/Public hearing being distributed.*

**I have inspected the story poles and find they accurately represent the mass, shape and roofline as shown on the plans.**

\_\_\_\_\_

Print name

\_\_\_\_\_

Date

\_\_\_\_\_

Signature



City of Burbank  
Planning Division  
**Single-Family Hillside**  
**STORY POLE INSTRUCTIONS AND REQUIREMENTS**

150 North Third Street  
Burbank, California 91502  
www.burbankca.com  
T: 818-238-5250  
F: 818-238-5150  
E: [planning@burbankca.gov](mailto:planning@burbankca.gov)

**PURPOSE:** To provide requirements for the installation of story poles for new construction and additions for all projects subject to a Hillside Development Permit (HDP) located within the designated hillside area of the R-1 Single Family Residential zone.

**Why Story Poles?** Story poles are three-dimensional, full-scale, silhouette structures that best represent the location, bulk and mass of a proposed structure(s) on a site for view assessment, allowing property owner(s), neighbor(s), and city staff to consider the visual impact of a structure(s) from various vantage points (*also known as a view study*). Story poles are required in order to document the impacts of a proposed structure(s) on views from adjacent properties prior to a final decision on an HDP by the Community Development Director, or their designee. The view impacts may not be limited to only those parcels that are abutting or adjacent to the project site. In some cases, a house may impact the views from homes further up (or down) the hillside, depending upon the surrounding terrain. In unique cases, the story pole requirements may be waived where it is determined through on site investigation, evaluation of topographic maps, photographic evidence, or by other means that there is no possibility the proposed development will create or contribute to adverse impacts upon views.

**Who Can Assist Me With Story Poles?** Story poles must be installed by a story pole or construction company who can certify the accuracy of installation to the proposed project plans. You can consult with your architect or designer for recommendations or review the complimentary list of companies enclosed.

**STEP 1 – Story Pole Plan:** Once your Hillside Development Permit has been reviewed for code compliance and your plans are in good order, your Project Planner will advise you to prepare a story pole plan. *Your application can not be deemed complete until a view study has been completed.*

- Provide one hardcopy (11" x 17" format) and one electronic copy (PDF) of your Story Pole Plan to your Project Planner for review and approval before installation on site.
- The story pole locations are to be shown on the roof plan and building elevations of the proposed new structure or addition. Story poles should be shown in a distinct color (e.g. red preferred) superimposed on black-and-white plan sheets. Hand-drawn plans will not be accepted.
- At minimum, the poles shall be placed at all outside building corners and at each end of the prominent ridgelines of the structure(s) to accurately demonstrate the different roof lines and maximum roof heights. The height should be accurate for the finished building surface at that point. The end of the roof ridge and top of the hip roof should also be marked. See example story pole plans on following page.
- The plan should include the existing grade elevation at the base of each pole and the elevation of the ridges. If the storypoles are constructed entirely above an existing structure such that the poles do not touch existing grade, the existing grade at the base of the existing structure shall be shown on the elevations along the peak height of the new roofline. Story poles at deck locations shall extend to the top of railings.
- The plan must also include the contact information for the licensed contractor, surveyor, architect, or engineer installing the story poles.
- If at any time the plans are modified, City staff may require the story poles and certification to be updated.

**STEP 2 – Story Pole Installation:**

- The story pole material shall be constructed of 2" x 4" lumber, or other sturdy material (*PVC is not acceptable*), and should be properly braced and supported to ensure the health, safety and general welfare of the public and withstand weather.
- The top one foot of the pole shall be painted with black paint and the height of each pole should be clearly marked on the base of each pole.
- The netting shall be of bright orange construction mesh (snow fencing) material, or a comparable material or color, measuring at least twenty-four (24) inches in width and be able to withstand reasonably foreseeable weather. Netting shall be extended atop one pole to another pole to depict the roofline and ridgelines and should be placed on top of the blank painted portions of the posts. Flags, string, or rope are not acceptable netting materials.
- If story poles are damaged or at any time become unsafe, they must be replaced or repaired and reset immediately. The City is not liable for any damage or injury associated with the erection of story poles.

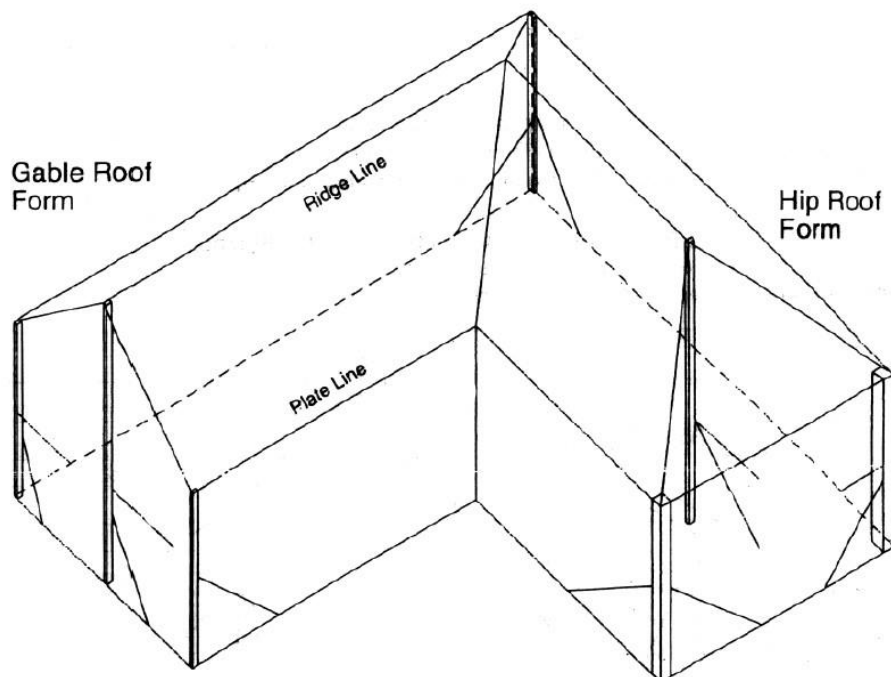
- The City can request the story poles be removed or modified if it is determined at any time there is a risk to public health and safety.

### STEP 3 – Story Pole Certification:

- Upon completion of the story pole installation per the Planner-approved story pole plan, the installation must be certified accurate by a licensed architect, engineer, or surveyor with the enclosed *Story Poles Affidavit* based on the Story Pole Plan. The property owner may not certify the story pole height or position.
- Once installed, the applicant shall submit photographs from at least 3 vantage points showing the completed story pole installation. ***The photos submitted for certification must include a key that identifies the location and direction of each of the views photographed from perspectives of neighboring properties.*** Photographs and drawings should be numbered or otherwise keyed to the locations shown on the site map.
- Once the affidavit and photos are completed, submit them to your Project Planner for verification. The Project Planner will verify the Affidavit was completed and conduct a site visit. Upon confirmation by your Project Planner, the public noticing period for your HDP application can begin once the postcards have been mailed out.

### STEP 4 – Story Pole Removal:

- Story poles must remain in place throughout the application review process, inclusive of the 15-day appeal period. They can be removed the next business day after conclusion of the appeal period, if no appeal has been filed.
- Should an appeal be filed on the permit, the story poles must remain in place until a final decision has been made on the application by the Planning Board and/or City Council and the subsequent appeal periods have concluded.





# STORY POLES AFFIDAVIT

TO: City of Burbank  
Community Development Department  
Planning Division

## REFERENCE:

\_\_\_\_\_  
Name of Applicant

\_\_\_\_\_  
Project Address

\_\_\_\_\_  
Permit Number

As the licensed architect / engineer / surveyor (circle one) for the above-referenced project, I hereby declare that the project's story poles have been installed in accordance with the approved Story Pole Plan on file in the Planning Division office. I further declare that all story poles have been accurately placed, installed to ensure the safety of all persons and the general public, and are the correct height in accordance with the approved Story Pole Plan. A certified copy of the Story Pole Plan (site plan and roof plan) that verifies accuracy is attached herewith. This information is accurate to the best of my knowledge.

I/WE DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON \_\_\_\_\_, 20\_\_\_ AT \_\_\_\_\_, CALIFORNIA.

\_\_\_\_\_  
PREPARER'S SIGNATURE

\_\_\_\_\_  
PREPARER'S NAME (PLEASE PRINT CLEARLY)

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
PREPARER'S TELEPHONE NUMBER

\_\_\_\_\_  
*FOR OFFICE USE ONLY*

Date Stamp Received:

## STORY POLE CONTRACTOR LIST

*Note: This list is provided as a convenience only. The City of Burbank assumes no responsibility for the product or actions of the companies herein described.*

<p>Scharff Construction Inc. 3714 Sawtelle Blvd. Los Angeles, CA 9006 (310) 391-4464 ext. 303</p>	<p>Coastline Story Poles (310) 266-7197 <a href="mailto:coastlinestorypoles@gmail.com">coastlinestorypoles@gmail.com</a></p>
<p>California Story Poles (310) 439-3203 <a href="mailto:info@californiastorypoles.com">info@californiastorypoles.com</a></p>	<p>Bronze House Development Inc. 501 W. Glenoaks Blvd, Suite 610 Glendale, CA 91202 (818)913-9119 <a href="mailto:info@bronzehousedevlopment.com">info@bronzehousedevlopment.com</a></p>



# Town of Corte Madera

## Story Pole Information and Requirements

Planning Department  
240 Tamal Vista Blvd., Ste. 110, Corte Madera  
415-927-5064

### Definition:

Story poles are three-dimensional, full-scale, silhouette structures that outline the location, bulk and mass that a proposed structure or addition will occupy on a site. They are required for certain design review applications and may be requested for any discretionary review where warranted by visual impact or location issues. Story poles allow staff, neighbors and others to assess the location and general massing of a proposed building from various vantage points.

### Requirements:

- The applicant shall provide a **Story Pole Plan** at the time of application. The plan shall indicate the location and height of the story poles, based on the roof plan of the proposed structure. Staff approval of the story pole plan is required prior to installation of the story poles.
- Install story poles to accurately outline the proposed building/addition's major wall planes, gables and ridges. Decks, balconies, entries and other similar features must be shown if staff believes they have the potential to impact neighboring properties. Story poles at deck locations shall extend to the top of railings.

Story poles shall be constructed of 2x4 or 2x6 lumber or similar other sturdy building material. Story poles should be braced at the base to ensure that they remain correctly positioned and can withstand strong winds, shaking and gravity. A building permit may be required to ensure public safety. Bright orange construction mesh, tape, or similar high-visibility material shall connect poles to show the building's major exterior walls and roof ridgelines. Where grading would change the site's natural grade elevation, story poles shall represent the final height of the building, with grading accounted for in the height of the poles.

- Following construction of the story poles, the applicant shall provide a **Story Pole Certification** (on reverse), signed by a licensed land surveyor or civil engineer, certifying that the poles located on the site were surveyed and found to be in conformance with the project plans and story pole site plan. (Other qualified professionals, such as an architect, may certify the location of the story poles if such measurement is made from a point that can easily be verified in the field, such as the finished floor of an existing structure.)
- Note that if plans are modified, staff may require the story poles and certification to be updated.

### Installation and Removal Timing:

- The story poles must be satisfactorily installed at least 14 days before the scheduled hearing date unless an earlier date is deemed necessary by staff. If at any time the story poles become unsafe or shift location, they shall be repaired and reset immediately. The Town shall not be liable for any damage or injury associated with the erection of story poles.
- Story poles must remain in place until the later of: (1) The expiration of any appeal period to the Town Council; or (2) The final determination on an appeal by the Town Council.
- Story poles must be removed within 10 calendar days following the expiration of the appeal period, unless other arrangements have been made with the Planning Department.

### Exceptions/Compliance

The Director of Planning and Building may grant exceptions to this policy based on unusual circumstances provided that the purposes of this policy are not impaired.

The Zoning Administrator, Planning Commission or Town Council may determine that failure to comply with these requirements is grounds to continue a public hearing to allow the story poles to be installed.





THE TOWN OF  
CORTE MADERA  
MARIN COUNTY CALIFORNIA

## Town of Corte Madera Story Pole Certification

**Instructions: The story pole certification must be performed by a registered land surveyor or civil engineer. Please attach a copy of the roof plan with the surveyed roof ridge elevations labeled.**

I, \_\_\_\_\_ have surveyed  
NAME OF LAND SURVEYOR/CIVIL ENGINEER

the story poles located at \_\_\_\_\_  
ADDRESS OF SUBJECT PROPERTY

on \_\_\_\_\_, which is based on Planning Application  
DATE OF SURVEY

number \_\_\_\_\_, submitted to the Town of Corte Madera  
APPLICATION NUMBER

by \_\_\_\_\_ . The survey was taken from the following  
NAME OF APPLICATION

benchmark: \_\_\_\_\_  
DESCRIPTION/LOCATION OF BENCHMARK

at an elevation of \_\_\_\_\_. The ridge elevations silhouetted are indicated on  
ELEVATION  
the attached plan.

**I have surveyed the building envelope, setbacks and ridge elevations of the story poles and silhouette described above, and I certify that all dimensions, location and elevations are accurate within \_\_\_\_\_ of the plans submitted (Town standard is within 6" maximum).**  
INCHES

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
License Number/Expiration Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Email

PLEASE STAMP AND SIGN BELOW:

# Story Poles

## Requirements and Guidelines

The placement of story poles is extremely helpful and important during the course of Town architectural review of applications for new development. Proper and accurate placement of story poles provides a demonstration of the planned rooflines and heights and some indication of the potential massing of the proposed structure. Story poles enhance understanding of the project and potential impacts not only for the Town's Architectural and Site Control Commission (ASCC) and staff, but also for the residents of neighboring properties and home owner association committees that may be involved in review of the project. The statements that follow set forth the Town's ordinance requirements and guidelines associated with the placement and removal of story poles.

Municipal Code Section 18.64.040.D. requires that the perimeter of all proposed structures are to be clearly staked and labeled on the site at the time of submittal of an application for ASCC review. The staking is to be maintained throughout the time period the application is under review by the Town. Pursuant to this ordinance section, the ASCC may also require that the actual bulk of the structure be demonstrated through story poles and ridgeline taping.

Staff will inform an applicant and/or his or her designer during the pre-application meeting if story poles will be required for the proposed project. If it is determined story poles are to be placed on the project site, a site plan depicting the proposed location of the story poles shall be provided for staff review at the time application is made for architectural review. The above notwithstanding, pursuant to the policy of the ASCC story poles **must** be installed as part of the application review process for all proposals for new residences.

The story poles should be in place for review at least 10 days prior to the scheduled hearing date with the ASCC. Staff will inform an applicant and/or designer of the anticipated hearing date in order to provide adequate time for placement of the story poles. Once the application has been reviewed and acted on by the ASCC (i.e., to approve, conditionally approve or deny the project), the story poles shall remain in place during the 15 day architectural review appeal period, and removed no later than 10 days after the appeal period has expired. If an application has been appealed, the poles shall remain in place during the appeal process and then be removed within 10 days of completion of action on the appeal.

The key factors in the placement of story poles are that the poles accurately show locations and proposed heights and remain "accurately" in place during the course of project review. *If poles are not installed accurately, the ASCC may continue project review until such time that the pole placement has been corrected.*

In addition to the above, the following story pole guidelines should be followed:

- The story pole site plan shall clearly identify where the story poles have been placed, what they model and the heights of the story poles relative to existing ground elevation. The tops of the story poles should accurately match the heights of the features they are modeling and the heights of the poles should be clearly recorded on the site plan. The story pole plan and the actual placement of the story poles shall be certified by the project surveyor, engineer or architect.
- The story poles should model the proposed ridgeline heights and should outline the locations where the roofs meet the planned wall planes and not the roof eave extensions.
- The tape used to outline the ridges and tops of walls should be tightly strung and have sufficient size and color to be readily identifiable from reasonable distances. Further, the story poles should be of sufficient size, 2"x4" or heavier boards, and placed with sufficient support to stand for two weeks without leaning so that taping can be as stable as possible during the project review process.
- If, during the course of project review, a design change is made or required by the ASCC that changes the planned heights, the story poles shall be modified if required by the ASCC. If the story poles are required to be modified, they shall be in place in the modified condition at least 10 days prior to final ASCC action.

If the application requires public hearing review by the Planning Commission, the story poles shall remain in place until the Commission has completed its review. Once the application has been reviewed and acted on by the Planning Commission, the story poles shall remain in place during the appeal period, which will be 15 or 30 days after the action depending on the nature of the specific application. The poles shall be removed within 10 days of the expiration of the appeal period. If an application has been appealed, the poles shall remain in place during the appeal process and removed within 10 days of completion of the action on the appeal.

Timely removal of story poles maintains the visual quality of the Town and is respectful of relationships with neighbors.



# VISUAL AIDS & STORY POLES

## SUPPLEMENTAL APPLICATION



### GENERAL INFORMATION

#### WHAT IS A VISUAL AID?

“Visual aids” include story poles, photo simulations, digital animations, and other means, such as 3-D computer models, to assist the City and the public in understanding a project’s size, bulk and scale in relation to the neighborhood and its effects on important public scenic views.

#### WHEN ARE STORY POLES NECESSARY?

Story poles are required on most development review projects subject to review by the Planning Commission or Staff Hearing Officer in order to make the required findings, or when necessary to make a determination on whether the project will result in significant environmental impacts on important public scenic views. Design Review bodies also require story poles or other visual aids in order to make findings regarding appropriate size, bulk and scale, and neighborhood compatibility.

#### HOW DOES THE PROCESS WORK?

If required, story poles shall be installed after design review conceptual review but before project design approval or Planning Commission or Staff Hearing Officer review. Planning staff, or the design review bodies, may consider exceptions to the requirements for story poles, based on the criteria described on page 3, prior to determining application completeness. Design review bodies or planning staff may also request other visual aids, such as photo simulations, perspective drawings, neighborhood context studies, three-dimensional aerial views, or massing models, on a case-by-case basis.



## STORY POLE REQUIREMENTS

*Story poles are required for the following projects. On development review projects, exemptions must be requested by the applicant and granted by staff prior to determining application completeness. On design review projects, the design review body will consider requests to waive story poles during conceptual review.*

### Development Review Projects

- A new **nonresidential, mixed-use, or multi-unit** residential building, or substantial addition, that exceeds 17-feet in height from existing grade.
- A new **single-unit** residential building, or substantial addition, when **ANY** of the following apply:
  - Floor to lot area ratio exceeds **0.40**
  - Height of the building **substantially exceeds** that of surrounding buildings
  - Building will block or reduce important **public scenic views**
  - Building is **highly visible to the public\***
  - Proposed on, or to project above, a topographic **ridgeline**
  - Exceeds **85%** of the required **Maximum Floor Area**

### Design Review Projects

- A **single-unit** residential project that exceeds **85%** of the required **Maximum Floor Area**
- At the **discretion** of the design review body, story poles may be required if the project has the potential to substantially exceed the height of surrounding buildings, or block or reduce important public scenic views, or if the majority of the design review body is having difficulty finding the project consistent with the **Project Compatibility** criteria or **Neighborhood Preservation** findings.
- Multi-unit housing projects using the **Average Unit-Size Density Incentive Program** require story poles when **ANY** of the following apply (per City Council Resolution 17-006):
  - Projects with **4 stories** located outside of El Pueblo Viejo (EPV) Landmark District
  - Projects with **3 stories**, or that measure 30-feet or more in height (whichever is lower) when proposed in a **residential zone** (R-M or R-MH Zones)
  - Projects with 3 stories, or that measure 30-feet or more in height (whichever is lower) when proposed in a location where 3-story buildings do not currently exist within **300-feet** of the project site.
  - Projects of any height proposed within 150 feet of a designated **Historic Resource**
  - Projects that require **Planning Commission Concept Review** pursuant to [Section 30.150.060](#). Pre-Application and Concept Review Required.
  - Projects that are determined to be **highly visible to the public\*** and referred by the design review body for Planning Commission comments.

## Projects That Do Not Include Buildings

---

*Tentative Subdivision Maps often do not include future buildings to be constructed on the new parcels. In order to provide information necessary to evaluate the project, the following information shall be provided on site for the Planning Commission or Staff Hearing Officer site visit:*

- Mark all **trees** to be removed.
- Stake all **building envelopes** or footprints and driveway locations.
- Stake or otherwise mark all existing and proposed property and **parcel corners**.
- In some cases, where impacts on important **public scenic views** are potentially significant, story poles may be required to delineate a reasonable worst-case scenario for environmental review. Planning staff will determine if they are required. In some cases, staff may request story poles to show **retaining walls** that are more than 42-inches in height. Story poles should be installed at the ends of the retaining walls, as well as at various points in-between sufficient to indicate the length and height of the retaining walls.

## Criteria for Story Pole Exemptions

---

*The following projects may be exempted from story pole requirements if planning staff, or the design review bodies, make the following determinations during Conceptual Review, or prior to determining application completeness.*

- Structures are **clearly consistent** in terms of size, bulk, and scale with other buildings in the surrounding neighborhood.
- Structures are the **same height** as, or smaller than, existing buildings in the neighborhood.
- The proposed structures will not involve blockage or substantial reduction of an important **public scenic view**.
- The proposed structures will not be on or project above a **topographic ridgeline**.
- The **existing condition** of the site (dense vegetation, existing buildings, etc.) does not allow for adequate story pole installation. In this case, one or more of the other types of visual aids will be required.

**\*Highly Visible to the Public.** A building, structure, or improvement is highly visible to the public if it appears prominently and is easily observed by an average person standing or traveling upon a public right-of-way (including streets and sidewalks) or prominent and easily visible from a public park, beach, or other area generally open for public use. A building, structure or improvement highly visible to the public usually fronts public streets or other public areas.



## SUBMITTAL INFORMATION

Provide any supporting materials described in this Supplemental Application and submit it along with a complete Planning (PLN) Application.

### STORY POLE SITE PLAN

Plans are required for all story pole installations prior to the application being determined complete.



#### Location

Show location and height of each pole. Show major plate heights and ridgelines to be identified in the field. Focus on major ridgelines and wall plate lines along the building edges. The goal is to show a simple “box” that outlines the mass of the building. It is not necessary or appropriate to include all of the articulations. Do not forget to account for proposed changes in grade or finished floor with depictions of proposed finished height and elevation notations. Show location of any stakes or chalk/string lines used to outline the building footprint.



#### Legend

Include a legend on the Story Pole Plan that shows the location of each story pole with a symbol for each story pole that includes its number, location and height. In addition, all stake locations and all chalk/string line locations shall be noted.

### STORY POLE INSTALLATION

Story poles shall be installed prior to the public hearing for decision-maker determination as follows.



#### Materials

Story poles should be made of 2x lumber, PVC piping, or other sturdy material and should be properly braced for safety purposes. The connections used to show ridgelines and plate heights should be made of bright construction tape or netting. Other materials may be acceptable, subject to approval by the Planning Division.



#### Placement

The major building corners, outer plate heights (not the outer edge of the eaves) and ridgelines should be shown. In addition, stake and string or chalk the property lines where they are not clear and outline the building footprints with stakes and strings or chalk lines. Also, mark all trees to be removed. If there is substantial grading that will result in tall or long retaining walls, the Planning Division may request that their location and height be marked on the property. The number and placement of story poles may be reduced in order to reduce costs, subject to consultation with staff or design review bodies, to assure that there will be sufficient story poles to illustrate the end product.



#### Timing

The story pole installation shall be completed a **minimum of 7 days** prior to the public

hearing and shall stay in place until the public hearing, unless story pole placement will result in substantial obstructions to the existing use of the property and a shorter installation period has been approved in advance by the Planning Division. For major projects, longer installation periods may be required. Planning staff will determine whether they will be installed prior to the environmental hearing or for the project consideration hearing. In certain circumstances, re-installation of the story poles may be required for City Council appeals. The applicant may choose to leave the installation in place until the appeal period is over.



**Adequacy**

In the event required story poles are not installed, or are inadequate, the applicant will be requested to install or improve the story poles and the project hearing will then be continued to a future date to allow the decision-making board or commission to make an additional site visit.



**Photographic Record**

Once the story poles are in place, the applicant shall photograph the story pole installation, including any angles from which it is visible to the public. Where the project has the potential to affect important public scenic views, additional photos from more distant points may be required. Include a plan or map showing the locations from which the photos were taken and the direction of the photos (i.e., with an arrow), keyed to the photos. The record shall be submitted to the Planning Division at least 1 day prior to removal of the story poles or earlier, if possible. It is recommended that at least one of the photos include a person next to a story pole to provide scale. In addition, prior to issuance of the Final Inspection/Certificate of Occupancy for the project, the applicant will be required to submit photographs of the completed building from the same locations as the photographs taken of the story pole installation for documentation purposes.



**Certification Letter**

Story poles shall be installed and certified by a licensed professional (surveyor, engineer, architect, landscape architect or contractor). A signed certification letter shall be submitted to staff after installation of the story poles, and before their removal. The certification letter shall include the project address, Assessor Parcel Number (APN), the PLN Record ID number, plus the following statement:

This is to certify that on \_\_\_\_\_ (date), the story poles located on the above-referenced site were installed or inspected by the undersigned, and found to be in conformance (+/- six inches) with the design, height and location shown on the plans, elevations and the attached story pole plan. For additional information, please contact me at:

\_\_\_\_\_ (Email and Phone No.)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Signature  
\_\_\_\_\_ Name (printed or typed)  
\_\_\_\_\_ Title and Professional License Stamp



## OTHER VISUAL AIDS

*Other visual aids are required as noted below or may be requested on a case-by-case basis by the design review body or planning staff prior to project design approval.*

### NEIGHBORHOOD CONTEXT STUDY

*A Neighborhood Context Study is required on all Full Board/Commission projects to assist in the presentation of proposed infill development projects. A Neighborhood Context Study is required for SFDB projects greater than 85% of the maximum required Floor to Lot Area Ratio (FAR).*

- The Neighborhood Context Study should include at least **10 surrounding parcels** (ABR and HLC) or **20 surrounding parcels** (SFDB projects). Begin by selecting all parcels directly abutting the project site, parcels located directly across the street and at least one parcel in each direction along the streetscape.
- **Aerial Photographs** to show the project's site and the parcels selected for the Neighborhood Context Study. The maps must display the following: property lines, building outlines, and locational reference for the photos provided.
- Supplemental **photographs** must include the following: all buildings, any established public vistas of the ocean and mountains, photos must be keyed to match the locational reference on the map described above.
- Neighborhood context **data** for the surrounding properties should include heights of buildings, number of stories, zoning designation, size of parcels, building lot coverage (square footage of building outlines).

### PHOTO SIMULATIONS

*Photo simulations help demonstrate how a proposed building will integrate into its surroundings.*

- At a minimum, the **proposed project** shall be shown as an overlay over the existing property, showing the existing buildings on either side of the proposed project for a minimum of one parcel in either direction.
- The photographs should be taken at **eye level** (approximately 5 feet above grade). Reduce proposed building elevations to match the scale of the photographs and overlay on the site photograph. **Color** the elevation to match the proposed materials. If **landscaping** is shown, it shall be shown at no more than 5 years growth unless it is included as a separate overlay. Verify the accurate depiction of plate height, overall roof height and other measurements.
- Include a **map** or plan showing the locations from which the photos were taken and the direction of the photos (with an arrow), keyed to the photos.
- The photo simulation may be created by combining a drawing of the proposed building with photographs. The drawing may be cut out and pasted into a **panoramic photograph** or several photographs put together into a montage of the subject property and neighboring properties. It is vital that the **scale** of the drawing accurately match the scale of the photographs. Also, the viewing perspective of the drawing must accurately match the **viewing perspective** of the

photographs. An effective and accurate way to produce the photo simulation is with a computer program such as SketchUp, CAD, REVIT, or similar 3-D program.

- **Streetscape:** In some cases, a larger section of streetscape, such as the entire street block, may be required to be presented to evaluate a project's compatibility. In these cases, a **rendered streetscape elevation** may be required. The elevation may need to show all of the buildings on the block, including the proposed new building. This elevation should be no less than 1/8" scale and should be in **color**. It is helpful to see the streetscape drawn with and without **trees**. An additional plan sheet might include building elevations that are color-coordinated to show the setback from the street (0 to 5 feet, 5 to 10 feet, etc.).

## **PERSPECTIVE DRAWINGS**

*A perspective drawing shows an object as solid volume, rather than as a flat, two-dimensional drawing and shows the composition of the project as it would appear from a certain distance and height, or "perspective" from the project.*

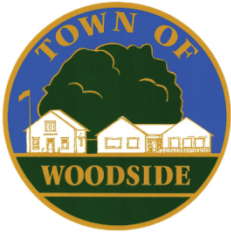
- Perspective drawings from one or more prominent **viewpoints** may be required. All roofing variations, wall articulation and eave lines (including plate heights) must be shown. Major trees should also be shown. These drawings must be drawn from the viewpoint of a person (approximately 5 feet above grade).
- The drawings should show **neighboring buildings** and **important features** of adjacent sites in sufficient detail to demonstrate the relationship between the proposed development and its surroundings.
- The drawing must represent how the proposed project would appear to a passerby as seen from the public street at the primary **property frontage**. If the project does not have frontage on a public right of way or is not clearly viewable from the public right of way, the drawing must display an on-site **front view** of the project the drawing must include at least **one human figure** to give a sense of scale.

## **THREE-DIMENSIONAL MASSING MODEL & AERIAL VIEWS**

*Computer based 3-D modeling or physical scale models may help visually explain the project.*

- Design details are not required; however, all **roofing variations, wall articulation and eave lines** (including plate heights) should be shown. Major trees should also be included as part of the model. Changes in topography in the area covered by the model must be shown accurately.
- Provide a minimum of **four** aerial photographs from different angles of the existing project site along with the 10 closest properties. Aerial view modeling may be added to the **aerial photographs** to create a photo simulation to visually represent the proposed project's building massing, height, lot coverage, and open space in relation to neighboring buildings and the surrounding area.

A technical guide titled *A Comparative Analysis of Three Story Buildings for Downtown Santa Barbara with Respect to Size, Bulk and Scale* is available on the City's website to assist in the preparation of supplemental studies for the purpose of comparing height, length, elevation, floor-to-floor heights, and relative scale of architectural elements.



## LOCATION OF STORY POLES – WORKSHEET

### Town of Woodside

2955 Woodside Road  
Woodside, California 94062  
650 851.6790  
www.woodsidesidetown.org

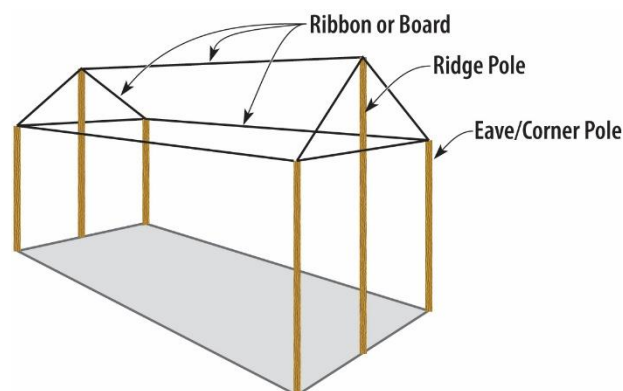
Story poles are frequently used in Woodside to help decision makers, staff, neighbors, and other interested parties to visualize the mass of a proposed project and potential visual impacts to adjacent properties and streets. Story poles should reasonably indicate building corners, roof ridges, setbacks, or other physical aspects of the projects.

**Story poles should be erected at least ten days prior to the meeting date, and removed no later than fourteen days after the appeal period ends, unless requested differently by staff.**

Please follow these steps if your project entails a second story addition, a new structure, a major addition, and/or if staff requests that they be erected.

1. Erect poles equal to eave heights at each corner of the proposed structure. Such poles should be erected at appropriate heights to approximate heights of the finished project.
2. Erect story poles equal to the heights of the proposed roof ridges. Poles should be placed at the ends of the ridges.
3. Connect the eave poles and ridge poles with ribbon or boards so that the outline of the proposed structure/project is easily discernible on site. **(See diagram below.)**
4. All story poles need to be erected so as to withstand weather and remain standing until meeting dates.
5. If a new driveway entrance is being proposed, please mark the driveway with white stakes to show where it will enter the road.
6. If address numbers are not clearly seen from the roadway, please place a sign at the property entrance which identifies the address of the property.
7. If a swimming pool and/or gate is proposed, the location(s) of the swimming pool and/or gate shall be shown using stakes for the gate and string or ribbon for the swimming pool.

Contact Planning Staff (650 851-6790) at the Planning Department should you have any questions, or would like direction as to what poles need to be erected.



***This Page  
Intentionally  
Left Blank***



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 05/24/2023

ITEM NO: 2

ADDENDUM

---

DATE: May 23, 2023  
TO: Planning Commission  
FROM: Joel Paulson, Community Development Director  
SUBJECT: Forward a Recommendation to the Town Council on Modifications to the Town Height Pole and Netting Policy for Additions and New Construction. The Proposed Amendments to Town Policy are Not Considered a Project Under the California Environmental Quality Act. **Project Location: Town Wide.** Applicant: Town of Los Gatos.

REMARKS:

Exhibit 5 includes public comment received between 11:01 a.m., Friday, May 19, 2023, and 11:00 a.m., Tuesday, May 23, 2023.

EXHIBITS:

Previously received with the April 26, 2023, Staff Report:

1. Current Story Pole Policy
2. Story Pole Installer Input

Previously received with the April 26, 2023, Addendum Report:

3. Public Comments received between 11:01 a.m., Friday, April 21, 2023, and 11:00 a.m., Tuesday, April 25, 2023

Previously received with the May 24, 2023, Staff Report:

4. Story Pole Policy Examples

Received with this Addendum Report:

5. Public Comments received between 11:01 a.m., Friday, May 19, 2023, and 11:00 a.m., Tuesday, May 23, 2023

PREPARED BY: Jennifer Armer, AICP  
Planning Manager

---

Reviewed by: Community Development Director

---

*This Page  
Intentionally  
Left Blank*

**From:** Chris Spaulding

**Sent:** Friday, May 19, 2023 2:27 PM

**To:** Jennifer Armer <JARmer@losgatosca.gov>

**Subject:** Re: Planning Commission to Continue Discussion of Modifications to Story Pole Policy

[EXTERNAL SENDER]

Hi Jennifer,

I'd be happy to add some comments:

1. The requirement for orange netting is unnecessarily alarming. There is no need to scare people. No new structure will be bright orange. If the purpose is to encourage people to complain, then the orange netting is working.
2. The story poles are also unnecessarily expensive. Many cities allow individual story poles, without the need to connect them together with netting. The netting is actually the expensive part, as it requires a lift to attach the netting that high above the ground.

- Chris

*This Page  
Intentionally  
Left Blank*





**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 05/24/2023

ITEM NO: 2

DESK ITEM

DATE: May 24, 2023  
TO: Planning Commission  
FROM: Joel Paulson, Community Development Director  
SUBJECT: Forward a Recommendation to the Town Council on Modifications to the Town Height Pole and Netting Policy for Additions and New Construction. The Proposed Amendments to Town Policy are Not Considered a Project Under the California Environmental Quality Act. **Project Location: Town Wide.** Applicant: Town of Los Gatos.

REMARKS:

Exhibit 6 includes Planning Commissioner comments.

EXHIBITS:

Previously received with the April 26, 2023, Staff Report:

1. Current Story Pole Policy
2. Story Pole Installer Input

Previously received with the April 26, 2023, Addendum Report:

3. Public Comments received between 11:01 a.m., Friday, April 21, 2023, and 11:00 a.m., Tuesday, April 25, 2023

Previously received with the May 24, 2023, Staff Report:

4. Story Pole Policy Examples

Received with the May 24, 2023, Addendum Report:

5. Public Comments received between 11:01 a.m., Friday, May 19, 2023, and 11:00 a.m., Tuesday, May 23, 2023

Received with this Desk Item Report:

6. Commissioner Comments

PREPARED BY: Jennifer Armer, AICP  
Planning Manager

Reviewed by: Community Development Director

***This Page  
Intentionally  
Left Blank***

**From:** Emily Thomas  
**Sent:** Wednesday, May 24, 2023 10:15 AM  
**To:** Alexa Nolder  
**Cc:** Joel Paulson; Jennifer Armer; Jocelyn Fong  
**Subject:** Re: ADDENDUM: Planning Commission Meeting - 05/24/2023

Hi,

Can the following suggestions to the Story Pole Policy recommendations be shared as a Desk Item, please?

***II. Height Poles and Netting:***

*Height story poles and netting shall be used for the following types of Community Development Department, Planning Division, land use applications:*

- *For Hillsides and Open Space:*
  - *New Buildings*
  - *Second story additions*
  - *Additions exceeding 900 square feet and increases in roof height*
  - *Accessory structures exceeding 900 square feet*
  - *Tees proposed to be removed (marked with ribbons, tags, or other approved & obvious marker)*
- *Other:*
  - *Projects in Historic Districts asking for exceptions to height, FAR, setbacks (?), etc*
  - *Special Story Pole Requirements for "Specific Plans" (ie North 40 Specific Plan) (if legal and possible)*

***III. Project Identification Signs:***

*All development applications that must comply with the story pole and netting requirements shall also provide project identification signs on the development site consistent with the following requirements.*

*E. Sign Content:*

- *Requirements need to be updated (the address and phone number of the planning department is less helpful than website information) - what information should be required to be included?*
- *How can we make sure these signs act as a "visual notice" for the community?*
- *Can we require a QR code and/or website link for people to scan to get to the application? Contact information for town staff or developers? Town Meeting & Agenda page? AND any digital representations required?*

The above ideas are informed by the following:

- The Town's Current Height Pole and Netting Policy
- The Town of Los Altos' findings that story poles (1) add subjectivity, (2) extend the review process, and (3) add additional cost
- Los Altos Hills current Story Pole Policy
- Information provided in the staff report and exhibits (including public comment)

Thanks,  
Emily Thomas

EXHIBIT 6

***This Page  
Intentionally  
Left Blank***

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S:

Los Gatos Planning Commissioners:  
Jeffrey Barnett, Chair  
Steve Raspe, Vice Chair  
Susan Burnett  
Kylie Clark  
Melanie Hanssen  
Emily Thomas

Town Manager: Laurel Prevetti

Community Development Director: Joel Paulson

Town Attorney: Gabrielle Whelan

Transcribed by: Vicki L. Blandin  
(619) 541-3405

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S :

CHAIR BARNETT: Now we'll move onto Agenda Item 2, which is a submission by the Town in which we are asked to consider a request to forward a recommendation to the Town Council on Modification to the Town's Height Pole and Netting Policies for Additions and New Construction. Staff notes that the proposed amendments to the Town policy are not considered a project for purposes of CEQA.

Are there any disclosures by Commissioners?  
Seeing none, is there a Staff Report on Agenda 2?

JENNIFER ARMER: Good evening, Chair, Vice Chair, and Commissioners. The item in front of you is consideration of changes to the Town's Height Pole and Netting Policy, often referred to as the Story Pole Policy. This discussion is a continuation of the item from the April 26<sup>th</sup> Planning Commission meeting.

The reason for considering the current Story Pole Policy started with recent requests for exceptions to the current Story Pole Policy, but additional questions and suggestions have been raised in the public comment and at the April meeting.

1           The written Staff Report that has been provided  
2 to you for your discussion tonight provides a series of  
3 topics for discussion presented as a series of questions.

4           First, should the Town retain a requirement for  
5 installation of story poles for development projects? If  
6 yes, then what types of projects should be required to  
7 install story poles? What types should be excluded or  
8 exempt?

9                   Should the current requirements be modified?

10                   Should specific alternatives be detailed in the  
11 Story Pole Policy?

12                   Should a modification be made to change the  
13 decision maker for the exception requests or certain  
14 exception requests?

15                   Should the requirement for submittal and approval  
16 of a Story Pole Plan be removed from the policy?

17                   This concludes Staff's presentation, but I'd be  
18 happy to answer any questions.

19                   CHAIR BARNETT: Thank you for the presentation.  
20 Are there any questions of Staff at this time? Commissioner  
21 Hanssen.

22                   COMMISSIONER HANSSSEN: I have a question about  
23 ADUs. It doesn't specifically say that we do or don't  
24  
25

1 require ADUs, but I would assume that we cannot require  
2 story poles for ADUs.

3 JENNIFER ARMER: Thank you for that question.  
4 That's correct. Because Accessory Dwelling Units are  
5 processed as a non-discretionary process at this time it's  
6 actually just a Building Permit for those applications,  
7 Story Pole Policy would not apply to those.

8 COMMISSIONER HANSSEN: So when it says additional  
9 structures, it would be a nonresidential structure on a  
10 property, like a pool cabana or something like that, not an  
11 ADU?  
12

13 JENNIFER ARMER: It could be if there were  
14 multiple structures on a property, but for Accessory  
15 Dwelling Units, because they are ministerial, they would  
16 not be required to do story poles.

17 COMMISSIONER HANSSEN: Chair, one more question.

18 CHAIR BARNETT: Please.

19 COMMISSIONER HANSSEN: One of the things that  
20 were suggested in the Staff Report is a possibility to  
21 consider if it was the will to continue the Story Pole  
22 Policy. One thing that could possibly be an exception was  
23 100% affordable housing, so what would qualify as 100%  
24 affordable housing? People would want to understand that.

25 So the North Forty has met requirements for affordable



1 housing, but it's not 100% affordable, so 100% affordable  
2 is what?

3 JENNIFER ARMER: Thank you for that question. I  
4 would say that if that is the recommendation of the  
5 Planning Commission that we could provide some additional  
6 information to Town Council about the different levels of  
7 affordability and what those thresholds are for them to  
8 consider whether there is a specific threshold, but in  
9 general what I would say is that if all of the units in the  
10 proposed development are deed restricted to be below market  
11 rate, that that would qualify as 100% affordable housing.  
12

13 CHAIR BARNETT: Other questions for Staff?  
14 Commissioner Clark.

15 COMMISSIONER CLARK: Thank you. I have two  
16 questions. First I was wondering what we do for a proposed  
17 70' tall building, for example? I can't imagine that we can  
18 do story poles that tall.

19 JENNIFER ARMER: Thank you. My understanding is  
20 that for that type of building there are some options that  
21 could be considered, for example, getting the large cranes  
22 that are used in high construction, and those get set up to  
23 have the string of flags between them. I believe that when  
24 we had the Netflix development coming through that they did  
25 something similar to that to show what the height was. You

1 can imagine though that, depending on how many of those  
2 cranes you need to have, it is something that becomes a  
3 pretty significant investment, especially depending on how  
4 long they need to be in place for.

5 COMMISSIONER CLARK: May I ask a second question?

6 CHAIR BARNETT: Please.

7 COMMISSIONER CLARK: Thank you. The other thing I  
8 was wondering is one of the possibilities that was  
9 mentioned is only showing things like front façade or  
10 tallest ridge and things like that, and I know it varies  
11 drastically I'm sure between projects, but in general would  
12 that save a considerable portion of the cost for a lot of  
13 projects?  
14

15 JENNIFER ARMER: My understanding is that the  
16 extent of the story poles and netting does add  
17 significantly to the cost, and so if it were just showing  
18 certain portions that would reduce that impact. We will  
19 have some members of the public speaking. I know that we do  
20 have a few developers joining us to provide their  
21 perspective, and so that type of question based on their  
22 experience may add to the Commission's discussion.  
23

24 COMMISSIONER CLARK: Thank you.

25 CHAIR BARNETT: Anything further? Commissioner  
Thomas.

LOS GATOS PLANNING COMMISSION 5/24/2023  
Item #2, Modifications to Town Height  
Pole and Netting Policy

1 COMMISSIONER THOMAS: Thank you, Chair. I have  
2 two questions for Staff. The first is that in our current  
3 policy it states that the story poles enhance understanding  
4 of the project for Town residents, Staff, etc., including  
5 us. Can Staff make decisions without story poles? I have an  
6 assumption about an answer, but I still want to know.

7  
8 Then are there any instances where story poles  
9 are necessary for Staff to make decisions?

10 JENNIFER ARMER: Thank you for that question. I  
11 would say that it is not the majority of the agencies in  
12 Santa Clara County that actually require story poles and  
13 that there is a clear answer of yes, Staff can make  
14 decisions without story poles.

15 COMMISSIONER THOMAS: Is there any instance that  
16 anyone would know about where they would be really  
17 important to the decision making process on your end?

18 JENNIFER ARMER: From Staff's perspective, I  
19 don't believe that it would be required for us in making  
20 our recommendations for compliance with the regulations,  
21 because there would still be the information in the plans.  
22 As stated at the beginning of Story Pole Policy, it has a  
23 multi-pronged kind of purpose, and so it is a question of  
24 what the intent and goal of the policy is and how best to  
25 accomplish that.

LOS GATOS PLANNING COMMISSION 5/24/2023  
Item #2, Modifications to Town Height  
Pole and Netting Policy

1 COMMISSIONER THOMAS: Thank you. May I?

2 CHAIR BARNETT: Please.

3 COMMISSIONER THOMAS: Thank you. My second  
4 question is about the Story Pole Policy, and I know we  
5 discussed this a little bit last time too, but I just  
6 wanted to clarify, is the Story Pole Policy helpful for  
7 Staff, and if yes, why? Then, on average do you approve the  
8 Story Pole Policy or do you suggest changes before the  
9 story poles actually go up.  
10

11 JENNIFER ARMER: Thank you for that question. As  
12 mentioned at our last meeting, we find that it is helpful  
13 to have the Story Pole Policy in advance so that Staff has  
14 the opportunity to make sure that the critical elements of  
15 the building are represented, and there is the concern that  
16 if there wasn't a Story Pole Policy but Staff was still  
17 expected to go out and take a look and make sure that it  
18 really was fully represented that there might need to be  
19 modifications in the field to what was installed, so that's  
20 part of the question behind it and I think we do often  
21 indicate a need to have more poles, or different poles, or  
22 something is inconsistent.

23 I'm not sure how often there would actually need  
24 to be changes in the field, because based on my experience  
25 the story pole installer will represent the building

1 reasonably well. Sometimes the corrections to the Story  
2 Pole Policy actually just have to do with how it was drawn  
3 rather than how it would all actually be installed.

4           One of the additional benefits to having a Story  
5 Pole Policy that we have found is that it sometimes is  
6 helpful to members of the public to understand how those  
7 poles and netting represent the building that is drawn in  
8 the plans.

9           CHAIR BARNETT: Commissioner Burnett.

10           COMMISSIONER BURNETT: Thank you, Chair. The  
11 Story Pole Policy has been in effect since 1998. I'm  
12 wondering why now are there changes that want to be made to  
13 it? Is it because of the new pending larger projects? I  
14 know the builders have always known of the cost. This is  
15 usually a built-in cost and they've been aware of this, so  
16 I'm wondering is there something that has triggered the  
17 desire to change our policy?  
18

19           JENNIFER ARMER: Thank you for that question.  
20 Yes, as stated in the Staff Report the reason for bringing  
21 this forward was based on direction from Town Council,  
22 because we have had several taller projects come through  
23 that required a request for an exception, which added  
24 multiple months to the process for those and added to the  
25 work of the Town Council, and Council indicated that once

1 buildings go more than 35-40' that this may be a recurring  
2 issue. They did ask Staff to bring to Planning Commission  
3 this discussion for what modifications may be needed.

4 In addition to that, you have heard and seen in  
5 written comments a number of other concerns from the public  
6 and suggestions for modifications and alternatives, and so  
7 those have also been incorporated into the items proposed  
8 for consideration tonight as part of this discussion.

9 In addition, as was previously mentioned, there  
10 also is a discussion for production of housing and whether  
11 this is considered a governmental constraint. It is  
12 something that is currently in the Draft Housing Element  
13 for consideration, that we would look at the Story Pole  
14 Policy to consider whether modification should be made. No  
15 determination has been made whether it needs to be changed.

16 CHAIR BARNETT: Does that answer the question?  
17 Any further questions of Staff at this time? If not, we'll  
18 open the public portion of the public meeting on Item 2 and  
19 invite comments from members of the public, and we'll start  
20 with anyone who may be participating on Zoom. Mr. Paulson,  
21 do we have any?  
22

23 JOEL PAULSON: Thank you, Chair. For the  
24 participants on Zoom, if you wish to speak on the Story  
25

1 Pole Policy please raise your hand. The first speaker will  
2 be Jessie.

3 JESSE BRISTOW: Good evening. I'm not sure if you  
4 can hear me, but my name is Jessie Bristow of Swenson  
5 Builders and I'm listening in for YouTube because there is  
6 no audio on Zoom, but I hope you can hear me, and it looks  
7 like everyone can.

8 I'll just speak to our project, which is on  
9 Shelburne and Winchester, and as earlier discussed the  
10 project that we're proposing, the building height is around  
11 38 feet and then we have a mansard roof, which is designed  
12 to hide the solar equipment and heating and all those  
13 things and reflect the architecture that was requested per  
14 our Community Advisory Committee meeting.

15 Essentially what happened is we used string flags  
16 to accommodate that size, because once you go that height  
17 you cannot do netting and so we had asked for a Variance,  
18 and then actually had to ask for a Variance twice because  
19 of trying to implement that new design that Council  
20 recommended for us, and additionally all the storms that we  
21 had, so now we have a Variance to create a 3-D walk-through  
22 video of the project, which we actually feel articulates  
23 the architecture in the finished project much better, but I  
24  
25

1 would agree with the discussion that it could be a  
2 constraint for future housing.

3           It is exceptionally costly. The vendor that we  
4 used is one of, I want to say, two in the Bay Area and our  
5 initial install was about \$70,000, and on top of that we  
6 pay about \$7,000 a month on rent for those flags that  
7 essentially aren't doing anything for our project, and  
8 we've had those flags installed since November, so it is  
9 painfully expensive and it does prevent us from trying to  
10 move our project forward to the Planning Commission.  
11

12           And again, one of our discussions that we had at  
13 our most recent City Council meeting was do the flags  
14 really even highlight what's going to be there? There were  
15 some neighbors and some Council Members saying, "We just  
16 see some orange flags in the sky and we don't know what  
17 that means," and so I feel that it can be prohibitive.

18           I think there are alternative solutions, such as  
19 renderings, such as videos. We have a lot of technology  
20 today that we can use, so that's just our experience in a  
21 nutshell.

22           I apologize, I only have three minutes, but we do  
23 encourage a change to the policy, especially with future  
24 RHNA housing goals and density bonuses that allow you to  
25 break the height. Thank you for your time.

LOS GATOS PLANNING COMMISSION 5/24/2023  
Item #2, Modifications to Town Height  
Pole and Netting Policy



1 CHAIR BARNETT: Thank you very much, Jessie, and  
2 before you go we will ask any of the Commissioners if they  
3 have questions for you? I'm not seeing any. Thank you very  
4 much. Oh, I guess I would like you to explain the video  
5 process, like were there particular protections to make  
6 sure that it was accurate?

7 JESSE BRISTOW: (No response.)

8 CHAIR BARNETT: He may have hung up.

9 JOEL PAULSON: Did KCAT look into...  
10

11 JENNIFER ARMER: KCAT did check and they've got  
12 the audio coming through, so they're not sure whether it's  
13 something on his end.

14 CHAIR BARNETT: Well, Jessie, we'll give you  
15 another opportunity to participate after we're done with  
16 the other public comments, and I'd like to see if you have  
17 responses to that kind of question, or if any other  
18 Commissioners at that time wish to ask questions of you.

19 Do we have anyone on Zoom, Mr. Paulson?

20 JOEL PAULSON: Thank you, Chair. If anyone else  
21 on Zoom would like to speak on this item, please raise your  
22 hand. I'm not seeing any hands yet, Chair, but maybe we'll  
23 go to the folks in the room and then reach out again.

24 CHAIR BARNETT: Agreed. So why don't we start  
25 with Mr. Fagot? Thank you for coming and speaking.

LOS GATOS PLANNING COMMISSION 5/24/2023  
Item #2, Modifications to Town Height  
Pole and Netting Policy

1           LEE FAGOT: Good evening, and thank you all for  
2 the work that you're doing on behalf of our community.  
3 Appreciate it. I'm speaking as an individual in our town, a  
4 long-term resident; I'm not representing any groups.

5           I think that we need to be considerate of the  
6 long-term impact of new construction that goes on in town,  
7 regardless of whether it is residential, commercial, or  
8 whatever. It's there for a long time and it's in a variety  
9 of different types of neighborhoods, historic as well as  
10 general commercial, and so forth. It is not just in that  
11 particular neighborhood where the construction is  
12 occurring, but it is impactful town-wide, and therefore all  
13 members of the community, all members of the Town, should  
14 be able to see what this new construction is going to look  
15 like.  
16

17           I like the idea of the virtual, but not alone.  
18 I'm advocating for the story poles. Story poles help give a  
19 better image of what the impact is going to be from  
20 different perspectives as you look at the site,  
21 particularly with the hillsides and our various  
22 topographies.

23           I believe that there is an opportunity to perhaps  
24 have less dense netting so it's not going to be impacted by  
25 strong winds as we saw back in December and January, so

1 that type of amendment I think would be very helpful for  
2 the contractors, and story poles without netting makes no  
3 sense.

4 I think also the suggestion that was made to put  
5 flags at the top where the peak of a roof would be would  
6 help to give it a perspective, so the flags with less dense  
7 netting would be good with these story poles.

8 Also, markings on the story poles like every 10'  
9 so you get a sense of how high this construction is going  
10 to be, and those markings should start at the new grade,  
11 not just where the site is currently.

12 That's my proposal. Please consider that as you  
13 make a decision to make your recommendation to the Council.  
14 Story poles have been working for a long time. Yes, there  
15 is a cost associated with it, but the benefit is the larger  
16 community gets to see what the impact is going to be on  
17 that site, and that's helpful for this town to have its  
18 sense of community and wellbeing. Thank you for your time  
19 and your work for us.

20 CHAIR BARNETT: Thank you, and I'll ask if any  
21 Commissioners have questions for you. Commissioner Thomas.

22 COMMISSIONER THOMAS: Yes, I do. Thank you, Mr.  
23 Fagot, for coming tonight.  
24  
25

1 My question for you is you mainly mentioned new  
2 construction. Our Story Pole Policy accounts for remodels  
3 and things like that, so I was wondering what your feelings  
4 were about those?

5 LEE FAGOT: When I say new construction I mean on  
6 perhaps an existing site that has already been developed,  
7 so not just a blank tarmac.

8 COMMISSIONER THOMAS: So additions and new  
9 builds?

10 LEE FAGOT: Correct.

11 COMMISSIONER THOMAS: Thank you.

12 CHAIR BARNETT: Thank you. Any other questions?  
13 It looks like not. Thank you again. We'll now call on Mr.  
14 Cross.

15 NOEL CROSS: Thank you. My name is Noel Cross;  
16 I'm a practicing architect for over 35 years, and most of  
17 that has been in the Town of Los Gatos and I've had maybe  
18 dozens of projects before the Commission.

19 I hope you read our letter. Bess Wiersema mostly  
20 wrote it, but there are six or eight of us architects that  
21 regularly go before this Commission and work with the Town  
22 and we had a lot of input into that. Thank you for letting  
23 us talk about something that we deal with every day very  
24  
25

1 intimately and we know all the ins and outs of it. I'd like  
2 to underline just a few points in the letter.

3           Basically story poles are really more hurtful  
4 than helpful. They really don't represent the character of  
5 the building at all. They represent only the worst parts of  
6 it: the mass, the height and the bulk of the structure, but  
7 they don't communicate any nuance, any materials, color,  
8 shade, shadow, roofline, proportion, all the things  
9 architects care passionately about and we work on in our 3-  
10 D renderings, and we think about that all the time, and  
11 those things go up and it conveys none of that.  
12

13           What I have learned in over 35 years of doing  
14 this is that the neighbors of our projects are very  
15 fearful, mostly about the unknown, and because these story  
16 poles convey none of the nuance and the beauty, how the sun  
17 reflects off of a roof or wall or how a certain overhang  
18 shades the building, none of that gets conveyed with these  
19 story poles and so it only stokes the fear and makes it  
20 worse. Our renderings are way better at communicating  
21 actually what is going on, because sometimes there are  
22 areas where the hill is graded away, there's a fence,  
23 there's some trees, there's landscaping, all of which is in  
24 our renderings, none of which is conveyed by these story  
25 poles.

1           An analogy is it's like trying to convey one of  
2 Mozart's most beautiful symphonies by just showing you the  
3 sheet music; you don't get it at all. You don't really  
4 understand any of it.

5           Also, the ironic part is the color of the netting  
6 is orange. Somebody did the research and it's an LRV of 44,  
7 but the Hillside Design Guidelines require nothing more  
8 than a 30. Why are we having something orange and  
9 fluorescent when that is not what is really going to be up  
10 there? Most roofs are dark, earth tone, black, brown, grey,  
11 and the orange is not a color that's in any project I've  
12 ever designed, that's for sure.

13  
14           CHAIR BARNETT: Unfortunately, your time is up.  
15 You'll have a further opportunity to speak if there are  
16 questions from the Commissioners. Vice Chair Raspe.

17           VICE CHAIR RASPE: Thank you, Chair. First of  
18 all, thank you, Mr. Cross, for your comments. You indicated  
19 that you are an architect practicing here in Los Gatos. I  
20 imagine you've practiced in other jurisdictions as well?

21           NOEL CROSS: Oh, yes.

22           VICE CHAIR RASPE: Can you explain to us your  
23 experience in other jurisdictions that don't use story  
24 poles? How do you convey the massing, the idea of the  
25 building, in those jurisdictions?

1 NOEL CROSS: They rely on our renderings.

2 VICE CHAIR RASPE: How do you convey those to the  
3 public?

4 NOEL CROSS: Well, we have to turn in renderings.  
5 We do it because it's a smart thing, showing floor plans  
6 and elevations. Most people can't understand that, so  
7 computer renderings are really the... And they're extremely  
8 accurate, because they have to be, because we're designing  
9 the entire building; we're representing it. They also  
10 become our elevations which get measured by Staff, and so  
11 it's really something from which you get the sense of what  
12 the building looks like as opposed to just the poles and  
13 the orange netting and all you get is the worst part, which  
14 is the size of it.  
15

16 And to make it worse, especially if there's any  
17 existing building that you're either tearing down or adding  
18 to, it's so confusing for people. I did one project in  
19 Saratoga where 80% of the new building was not in the same  
20 footprint as the old building, so it would have appeared  
21 twice as big, because people cannot subtract the building  
22 that's going to be torn down, and so we were given the  
23 option of not doing them and we took that.  
24

25 VICE CHAIR RASPE: Thank you. I appreciate that  
answer.

1 CHAIR BARNETT: Other questions for Mr. Cross? I  
2 have a question. Jessie who spoke first talked about a  
3 video presentation. Is that something that the  
4 architectural community is beginning to look at?

5 NOEL CROSS: Yes. In the last couple of years our  
6 software that we use is Archicad, and there's a new app  
7 with the last maybe three iterations of the software and  
8 it's called Twinmotion, and you basically input the thing  
9 and then you can create a movie. You can drive down the  
10 sidewalk, you can go around the back yard, you can fly and  
11 you can create a movie, and then show context obviously  
12 too. We often will show the neighboring buildings in a very  
13 simple way, basically just relatively boxy, so that you can  
14 see the relationship of the sizes of the buildings.  
15

16 CHAIR BARNETT: It would show the size and height  
17 of the neighborhood residences?

18 NOEL CROSS: Yes. We have to do that already with  
19 streetscape elevations, especially if it's in a  
20 neighborhood where the buildings are close together. Not so  
21 relevant with a hillside project.

22 CHAIR BARNETT: Those are my questions. Thank you  
23 for your responses. Commissioner Thomas.

24 COMMISSIONER THOMAS: I just have a follow up to  
25 that question. Thank you for coming tonight and speaking



1 and answering our questions. My question is related to once  
2 that video is made how easy is it to change things? For  
3 example, if those videos of like in the renderings were  
4 made available to the public and public notice went out  
5 earlier than typically what we've seen with the story  
6 poles, story pole go up and then it's kind of toward the  
7 end of the process. How easy is it to tweak things if  
8 something came out about people having an issue with the  
9 color or something and that was a compromise that needed to  
10 be made during the planning process?  
11

12 NOEL CROSS: I'm not sure the video changes  
13 anything, because we're going to do renderings anyway, and  
14 it's to our advantage and it's a requirement. You just take  
15 stills from different angles and if changes are going to be  
16 made with the color, height, roof, and things like that,  
17 we're going to make them in the model. When you create a  
18 video you don't need to recreate it in a sense, you just  
19 change the building and hit play again and it's the same  
20 video.  
21

22 COMMISSIONER THOMAS: So it would be similar to  
23 like if you were changing the renderings: you just click a  
24 few things and save the changes and it's updated?  
25

NOEL CROSS: You make it sound so simple.

1 COMMISSIONER THOMAS: But yes, it's a similar  
2 process.

3 NOEL CROSS: No, the video doesn't change  
4 anything.

5 COMMISSIONER THOMAS: Okay, perfect. Thank you.

6 CHAIR BARNETT: Further questions? I came up with  
7 another one. Can you speak to the issue of the cost of  
8 doing actual modeling?

9 NOEL CROSS: Well, we're doing 3-D stuff anyway.

10 CHAIR BARNETT: I'm talking about physical  
11 modeling.

12 NOEL CROSS: Part of the construction documents  
13 process is part of the entire process of designing the  
14 building. We're doing the virtual 3-D model, and so there's  
15 no added cost.

16 CHAIR BARNETT: I'm speaking to a physical model.

17 NOEL CROSS: Oh, physical model. That's a whole  
18 different thing. We used to do those, but they are very  
19 costly; they are quite costly. They are cool though. I  
20 would have to say that even in video, renderings, things  
21 like that, and even if you were just to do a walk-around on  
22 screen, it's still harder for the human eye and brain to  
23 figure that stuff out. When you see a physical model, it  
24 takes one second and you get it.

25  
LOS GATOS PLANNING COMMISSION 5/24/2023  
Item #2, Modifications to Town Height  
Pole and Netting Policy

1 I did a presentation to the San Jose City Council  
2 and we were doing a very large 105 unit thing and it was  
3 relatively modern, and so we had floor plans and elevations  
4 and it was relatively featureless, and we got a lot of  
5 nonverbal communication from the members of the City  
6 Council who were like this is not going well. Then the  
7 people who were bringing the model in, which we were late,  
8 it's big model, and they brought it in and set it down and  
9 it was a couple of city blocks. All of a sudden everybody  
10 is smiling and so many people said, "I was going to vote  
11 no, but it's an absolute solid yes," just because of that  
12 physical model, so they are really effective.  
13

14 CHAIR BARNETT: Can you give us any idea of a  
15 cost factor that's involved in it?

16 NOEL CROSS: I don't know, it's kind of hard to  
17 say; we haven't done it in a while. But they are time  
18 consuming, and if you really want to do it professionally  
19 you get somebody to do it. We've done 3-D models. I've done  
20 them with the 3-D printer; we've done that. Kind of  
21 expensive, but I would wager to say on a typical  
22 residential project probably not as much as story poles.  
23 Story poles are in the \$15,000-\$20,000 range.  
24

25 CHAIR BARNETT: No other questions? Okay, thank  
you again. Next we have Ms. Wiersema.

LOS GATOS PLANNING COMMISSION 5/24/2023  
Item #2, Modifications to Town Height  
Pole and Netting Policy

1           BESS WIERSEMA: Good evening, Commissioners. Bess  
2 Wiersema, Studio3. Also a local architect. I've been  
3 working in the Town of Los Gatos for not as long as Noel,  
4 probably don't make as pretty models as Noel, but I just  
5 wanted to reiterate please take a look at the points that  
6 we made in the letter that we gave you last time that were  
7 some specific suggestions that we felt could be built into  
8 modifying the Story Pole Policy in terms of creating  
9 certain buckets.

10  
11           Maybe there are projects that don't need story  
12 poles. Maybe if something is highly contested, or a larger  
13 project, or is asking for an exception or a Variance, maybe  
14 those are the projects that are story poled, but if  
15 neighbors are fine with looking at 3-D computer models and  
16 renderings... And I think when we all refer to 3-D models  
17 today we're really talking computer renderings over actual  
18 physical models, and I think those are more helpful anyway.

19           I would like to say that we know staff has put a  
20 lot of work into this issue, but unfortunately the owners,  
21 developers, and design professionals have not had a chance  
22 to timely produce our recommendations. We're trying to get  
23 better following Staff communication and deadlines, but  
24 they have been challenging to keep up with, and direct  
25 notices and requests for comments come too late, as in last

1 Friday, for us to remember to give you additional feedback;  
2 we apologize for that. We know this is a very important  
3 issue and we feel very strongly that it's actually directly  
4 related to the permit streamlining process, which is  
5 something that Town Council has directed staff to work with  
6 local design professionals on.

7           We would like to suggest having a study session  
8 for a group of design professionals, owners, developers,  
9 story pole contractors, and Town staff and to use tonight's  
10 Staff Report as a basis for a more thorough and meaningful  
11 discussion, and to be able to come back to the Planning  
12 Commission with a collaborative recommendation that  
13 probably has more specifics in it that actually address  
14 things like buckets of when something, or at what level  
15 something, and how something should be story poled.

17           I think there are two issues here. One is story  
18 poles—as you've heard every design professional say—do not  
19 accurately represent a project, period, end of report.  
20 There is no workaround for that. Second, it's the process  
21 in which the Town deals with the story poles, and that's  
22 where the permit process gets hung up and where we would  
23 like to see additional streamlining, because that's far  
24 different than even other local jurisdictions that have  
25 story poles.

LOS GATOS PLANNING COMMISSION 5/24/2023  
Item #2, Modifications to Town Height  
Pole and Netting Policy

1 I think it would be nice if Staff and ordinances  
2 that were made would rely on the professionals like civil  
3 engineers who have to certify that ridge heights are there,  
4 story pole setters that have to put the poles up and know  
5 how to put them up better than what we might draw, better  
6 than might get edited for what wants to see them being  
7 drawn. We're not building a house out of pickup sticks.

8 CHAIR BARNETT: We're at three minutes. Why don't  
9 we let Commissioners ask you questions, and you can get  
10 into some of the other areas you wanted to. Other  
11 questions? Commissioner Burnett.

12 COMMISSIONER BURNETT: Yes, thank you, Chair. I'm  
13 a little confused. Are you requesting no story poles for  
14 any and all new buildings, or buildings, or additions? I'm  
15 sure the Town could streamline your permit process and do  
16 other things to help with what you've requested in the  
17 past, but what do you really want from us?

18 BESS WIERSEMA: I want to be clear. The letter,  
19 even though it came from my email and I'm the one who  
20 somehow got to wear the crown, the "we" in this is not me.  
21 I am part of it, but it is actually a collaborative group  
22 of six or eight architects and a developer who got together  
23 and talked about how we can help things be better in the  
24 process or how we're each managing different things.

1           In the original letter that we submitted after we  
2 knew that this was on the docket we did have some  
3 suggestions that we didn't believe certain things needed to  
4 be story poled. We suggest that no single-story new home  
5 needs to be story poled regardless of location unless it is  
6 asking for an exception or a Variance. No single-story  
7 addition should need to be story poled. No story poles  
8 should be required if there are added roof elements to a  
9 single- or two-story home that sits within the overall  
10 massing and below the highest existing ridgeline, such as  
11 dormers or an additional shed roof portion or things of  
12 this nature.  
13

14           I think we also had a conversation as a group  
15 about neighbors and owners really want renderings. They  
16 want to see what this is actually going to look like. They  
17 are more responsive to that, they have more educated  
18 questions about it. It's not a fear-based conversation, so  
19 if there is no contest from the immediate neighbors, which  
20 I think is who we are deemed to really making sure that the  
21 overall massing is fitting in on, and we do a lot of  
22 drawings, not just story poles. Plans to show how that  
23 works, and that's reviewed by Larry Cannon, by the  
24 planners, we get feedback on it. I think if it's an  
25 uncontested project and we don't have an issue, then why

1 are we going through this extra step? If the immediate  
2 neighbors, who are supposed to be the most impacted, are  
3 okay with it, do we really need to story pole the project?

4 Did I answer your question?

5 COMMISSIONER BURNETT: Mostly. I have a follow up  
6 question.

7 CHAIR BARNETT: Sure, please proceed.

8 COMMISSIONER BURNETT: The follow up question  
9 would be so people in town that are driving by and there's  
10 going to be a project, and they're working and not aware of  
11 what's going on, but the policy now has changed and there's  
12 going to be no story poles but you have to access it by  
13 video or what your suggestions are to see what the new  
14 project will be like, and then all of a sudden now this  
15 large building goes up. So are there other ways to sort of  
16 let the public know rather than video? I don't see people  
17 that are busy with work accessing a video. If you have  
18 flyers, if you put it in the newspaper, if you document it  
19 if it's going to be a large project, and I'm just saying  
20 this might be an option, to help alert the neighbor or the  
21 community of what's going on. I think there should be some  
22 communication.  
23

24 BESS WIERSEMA: I agree with that. Let me back up  
25 and say that the majority of the comments that we gave and



1 what I can speak to as a professional has really to do with  
2 single-family homes from an architectural perspective. My  
3 feedback really is not about a big 100-unit development or  
4 something like that, so when I'm answering this, that's on  
5 our behalf and we speak as a group of residential  
6 architects. I know some of us in the group do bigger  
7 projects, but in general our comments are based on  
8 individual single-family homes.  
9

10 Notification happens in a couple different ways.  
11 We are asked, if not required, to be sure that immediate  
12 neighbors are notified; those are the ones that are most  
13 impacted. There is a sign that goes up when we story pole a  
14 project, so why not continue the sign? Why not have more  
15 than one rendering and have a couple views of that? On  
16 those signs it's required that we put the application  
17 number, the request, what's going on, some critical  
18 information, so there's a lot of information and people can  
19 then go on to Town's site and look at plans. They can also  
20 come down and now meet at the counter and have a planner  
21 walk them through questions, and this does happen. We do  
22 sometimes get feedback from some completely random person  
23 that isn't even in the neighborhood that has decided to  
24 take an interest in the project.  
25

1           On most of these projects they will also have a  
2 tech review or another form of a hearing where neighbors  
3 can come and speak and ask questions and talk about it, so  
4 there are multiple steps along the way besides story poles  
5 where people do get noticed.

6           COMMISSIONER BURNETT: Thank you.

7           COMMISSIONER BURNETT: Further questions?  
8 Commissioner Clark.

9           COMMISSIONER CLARK: Thank you. Just a quick  
10 question. How do you generally notify the immediate  
11 neighbors?  
12

13           BESS WIERSEMA: What I recommend to my clients,  
14 and I think you could ask everyone here, we ask our client,  
15 who obviously has these people as their neighbors, to  
16 please reach out at the appropriate time. We ask our  
17 clients to host a little social, whether that's a happy  
18 hour, a coffee hour, or whatever, and I normally come so  
19 that I can answer any questions. We have a set of plans  
20 there, and normally we'll have the 3-D rendering views that  
21 aren't required with story poles per se except for the one  
22 for the sign, and we share those, we talk about them, we  
23 keep a list of which neighbors and what address came.  
24

25           If it's a project that's noticed to a larger  
group because it's a larger project, then that notification

1 goes out from the Town and we make sure that we also say  
2 this is when we're doing this and we let people know.

3           Some of my clients will prefer not to do  
4 something in person, so they do kind of an email blast and  
5 we just collect information and we let the planners know  
6 what we did for changes or no changes. It's kind of a mix.

7           The thing I think is interesting is that people  
8 do respond to renderings much better, in person, etc., and  
9 I think we'd love the opportunity to share with you. We  
10 could all bring project examples where we show you what  
11 some story poles look like, we show you what an actual  
12 rendering that's keyed to that looks like, and we can even  
13 show you final products, and I'm going to bet that all of  
14 you are going to hate the story poles, the rendering is  
15 going to be exciting on some level, and the final product  
16 is actually going to be the best.

17           I think you should understand the documents that  
18 go into the process. I think you should know and see what  
19 those all are. We do get edits from Staff that add to the  
20 time of the permit process, etc., so I think there are a  
21 couple of issues going on here, not just the story poles  
22 themselves and how neighbors are noticed, but also the  
23 process.  
24  
25

1 CHAIR BARNETT: Other questions? It looks like  
2 you're free finally to go. Thank you so much for coming and  
3 providing your opinions. Do we have anyone back on Zoom?

4 JOEL PAULSON: We do. I'm not certain that we  
5 actually have the problem solved, but we're going to give  
6 it a shot.

7 JENNIFER ARMER: Through the Chair, I have  
8 actually communicated with the two people who are on Zoom.  
9 They are both interested in speaking and they've been  
10 listening to it through YouTube, so they have been able to  
11 listen to the discussion, but they may be delayed in  
12 answering questions. What I'd like to recommend is that if  
13 you want to restate the question that you had for the first  
14 online speaker, Jessie, that we might go to Mr. Capobres  
15 for him to give his comments, and that gives the first  
16 speaker time to hear your question so that then we can come  
17 to him at the end, if that works for the Chair. It's a  
18 little confusing and tangled, I know.

19 CHAIR BARNETT: That's fine. Why don't we proceed  
20 in order beginning with Jessie, if he's back, and we can  
21 certainly interrupt our larger discussion to receive other  
22 comments from the public?

23 JENNIFER ARMER: So for Jessie, who we already  
24 heard from, he has already used the three minutes but he is

1 available to answer your question, so if you still have a  
2 question to ask of him, you could ask that now.

3 CHAIR BARNETT: Okay, thank you for that. My  
4 question to Jessie was how do you perceive a way to ensure  
5 the...

6 JESSE BRISTOW: Jessie Bristow again. I  
7 apologize. There's probably about a 30-second lag in what I  
8 hear on YouTube. I apologize. So I would just like to  
9 answer as far as the original question from the Chair on  
10 how precise is the model? The previous speaker, Noel, spoke  
11 greatly about that. It's exact, so it is a CAD model and it  
12 is to those exact measurements, so the video you are seeing  
13 is to true scale.

14 I know there is discussion about the cost and I  
15 think that was more related to single-family homes, so I  
16 just wanted to express that the cost is kind of reflective  
17 of the size and we do have a relatively large building, so  
18 that's why our cost is more.

19 Another note that I took was how do people  
20 passing by have access to these potential renderings or 3-D  
21 video? We were directed by Town Council to put in a QR code  
22 on our signage with renderings. We have four parcels, so we  
23 were directed to have a sign on each parcel with the  
24 rendering with a disclaimer saying, "These flags do not  
25

1 represent the true model Please look at this QR code," and  
2 the QR code will take someone to our 3-D video, which the  
3 previous architect spoke of, that you can look at these  
4 with plantings, with shadows, at different times of day.

5 I would say we're about 90% done with the video  
6 that we are working on after we were allowed by Town  
7 Council to have a 3-D walk-through model, and we're really  
8 excited about it, and so we're hopeful that you guys will  
9 be able to see that soon and maybe that's something that  
10 can help with your decision making in the future.

11 I do apologize if I'm not able to answer anything  
12 further, but I will listen to the feedback. Thanks.

13 CHAIR BARNETT: Well, if I can just ask for one  
14 clarification, and that is in the video is there a key to  
15 existing landmarks, corners of adjacent homes, for example,  
16 or other visual points of reference that could be used to  
17 assure the accuracy in terms of the viewpoints, for  
18 example?  
19

20 JOEL PAULSON: As Ms. Armer mentioned, it's  
21 probably going to be about 30 seconds before he hears this,  
22 so we'll just have to sit and wait.

23 JESSE BRISTOW: Hello. I don't mean to interrupt;  
24 I'm trying to keep up. To answer the question, the whole  
25 intent of the 3-D model is to show the true relationship of

1 the neighbors. More specifically I believe it's University  
2 Townhomes or University Oaks, which are the townhomes right  
3 next door, and so really wanted to show the relationship of  
4 the concerned neighbors and the adjacent building that's at  
5 two stories with their related frontage, and then we  
6 actually use drone footage to do a flyover to show the  
7 relationship of the finished product to the rest of the  
8 Town and the neighbors. So yes, it's to further highlight  
9 that relationship more so than what you would see in a 2-D  
10 rendering. I apologize if I'm speaking out of turn.

11  
12 CHAIR BARNETT: No, that's a very good response  
13 to my question. I appreciate that, and I don't think there  
14 are other questions from the Commissioners, so thank you  
15 for your participation.

16 JOEL PAULSON: Chair, there is one more speaker  
17 on Zoom, Don Capobres.

18 DON CAPOBRES: My name is Don Capobres. Good  
19 evening, Chair Barnett, Commissioners, and Staff.

20 I'm going to just kind of jump to the chase. I  
21 know we've submitted some letters on our viewpoint on the  
22 story poles, but in the spirit of trying to be  
23 collaborative and give you some of our experience on the  
24 North Forty and maybe some suggestions on other methods,  
25

1 I'm going to skip all that negativity in my prepared  
2 comments.

3           At the last hearing there was general consensus  
4 that story poles are largely effective in alerting the  
5 general public about potential land uses, and I believe  
6 that, but there has got to be a better way to do this. I  
7 want to highlight some of the biggest concerns that we had  
8 during the North Forty story pole program.

9           First of all, they should have been done when  
10 there was a chance for the public to make an impact on the  
11 land use policy decisions, and I'm not really sure how to  
12 implement this, but for example, it should have been done  
13 at the beginning of the Specific Plan process, not with an  
14 application that complied with the Specific Plan. In the  
15 case of phase two of the North Forty, we're in the Housing  
16 Element; we now have an SB 330 pre-application in. It's too  
17 late for the general public to really make significant  
18 changes to that, given State law protections.

19           Second, the interior story poles at the North  
20 Forty, we put up over 600 story poles at a cost of nearly  
21 \$1 million, and the general public could not see the  
22 interior poles and the only way to see them was to access  
23 the private property through an invitation. We're not  
24 required to have Council Members and Planning Commissioners  
25



1 walk the interior of the site, and so the general public  
2 really didn't have a chance to see the interior story  
3 poles.

4           Then the third biggest issue was that we were  
5 required to keep the 600-plus story poles up standing for  
6 over half a year as the various Planning Commission and  
7 Town Council hearings got extended, and that put a lot of  
8 cost into it, and danger, I think, from impacts on weather.  
9 We had to provide free rent to businesses out there,  
10 Enterprise Rent-A-Car, some office tenants, impacted  
11 residents. I think the length of time that the story poles  
12 were up was not really helpful to anybody. Again, if the  
13 main intent is to alert the public, I think people knew  
14 within the first couple of weeks that there was something  
15 happening on the North Forty.

17           I think there are other things. Technology has  
18 made great advances; other speakers have commented on that.  
19 I would say we have an 80-foot tall building proposed on  
20 phase two. Renting cranes to do story poles for that is  
21 just... We had to rent the boom lifts in phase one, and to  
22 rent four of those cost us \$20,000 times six months of  
23 \$20,000 just on that, so we would advocate looking at  
24 tethered balloons, the photo-simulations, and computer  
25 renderings. QR code-based technology, as the other speaker

1 has talked about, has advanced very well and we would be  
2 excited to try something like that out. We did build a  
3 physical model of the entire phase one of the North Forty  
4 that was housed at the library for some time, and 3-D  
5 printing has really helped the cost efficiency of that.

6 CHAIR BARNETT: Are there questions for Mr.  
7 Capobres from members of the Commission? I do not see any,  
8 so we'll move on to another speaker from Zoom.

9  
10 JOEL PAULSON: There are no more speakers on  
11 Zoom, Chair.

12 CHAIR BARNETT: Very well, so now we'll close the  
13 public portion of the public hearing on Item 2, and I would  
14 proposed we proceed to the Staff Report on the suggested  
15 outline from Staff considering issues related to the story  
16 poles. They are designated items A-F on pages 14-17 of the  
17 Staff Report, and Item G sets forth opinions from our Town  
18 Attorney and we can consider that after covering the  
19 previous sections.

20 On each item we'll see if we have a consensus  
21 that would support a motion. If not, I understand that  
22 Staff will bring to the Council the ideas that we've  
23 discussed on that item.

24 We talked about the fact that there are no appeal  
25 rights on this. Did we talk about appeal rights? There will

1 be no appeal rights since this is only a recommendation to  
2 Council, and we discussed the fact that no findings will be  
3 required.

4           So why don't we move on to the Staff Report, Item  
5 A on page 14? This raises the basic question of whether  
6 story poles should be required by the Town or not, and  
7 we've been informed that the majority of the jurisdictions  
8 in the County do not have that requirement, and the issue  
9 is open for discussion by the Commission as to whether we  
10 want to follow the majority, or for reason particular to  
11 Los Gatos we would like to keep them. So we'll start with  
12 Commissioner Hanssen.  
13

14           COMMISSIONER HANSEN: I sit on the Housing  
15 Element Advisory Board and it was brought up by the HCD  
16 letter that potentially story poles can be an impediment to  
17 production of affordable housing, and I heard all the  
18 testimony from the architects and whatnot.

19           That being said, I don't think the people in our  
20 town would be ready to not have story poles at all. I think  
21 instead what might make sense is to look at the totality of  
22 the Story Pole Policy and see if there can be some things  
23 that could be taken out of having to have story poles, and  
24 we could talk about that. Those were some of the items that  
25 you have that are in the Staff Report.

LOS GATOS PLANNING COMMISSION 5/24/2023  
Item #2, Modifications to Town Height  
Pole and Netting Policy

1           For me personally, we've had story poles for  
2 quite some time, and with all due respect on the North  
3 Forty, even after having a committee that met for several  
4 years on the North Forty Specific Plan it wasn't until  
5 those story poles went up that people really started to  
6 understand what it meant to the Town, and it's been a hot  
7 topic of discussion on all the threads like Next Door and  
8 stuff since then, and so I think it would be a big, big  
9 step for the Town to think about going from what we have  
10 now to nothing, and I would prefer something, from my point  
11 of view, in between with a reduction and some streamlining.

12  
13           CHAIR BARNETT: Thank you for that comment.  
14 Commissioner Clark.

15           COMMISSIONER CLARK: I just have a quick question  
16 for Staff. For the majority of cities in our county that  
17 don't require story poles, does that mean that story poles  
18 never go up in their cities?

19           JENNIFER ARMER: That is my understanding, that  
20 they generally have signage that goes up with certain types  
21 of projects, but that story poles are not part of the  
22 process.

23           COMMISSIONER CLARK: Okay, thank you.

24           CHAIR BARNETT: Other comments? Vice Chair Raspe.  
25

1           VICE CHAIR RASPE: Thanks, Chair. First of all, I  
2 want to thank the public comments tonight via writing and  
3 on Zoom, as difficult as that was, to help us inform our  
4 decision. I think this really is a technical discussion in  
5 a lot of respects and I think it's really helpful to the  
6 Commission to have an informed and educated discussion.

7           I think it's evident from what we're hearing that  
8 story poles are at best a blunt instrument. There are  
9 certainly more effective ways, I think, that are coming  
10 into fashion now that we can use for our projects. That  
11 being said, I don't think they're without some purpose. I  
12 think they have a purpose of educating and alerting our  
13 public that projects are coming online, and I think they're  
14 useful in certain projects, although I think we probably in  
15 this town overuse them for every project.

16           My sense is, much like my fellow commissioner,  
17 there is a time and a place for them and I'd like to have a  
18 discussion about maybe winnowing that down to the more  
19 essential time and place and letting more projects go  
20 through a more streamlined and economic basis. Those are my  
21 thoughts.  
22

23           CHAIR BARNETT: Thank you. Other comments are  
24 most welcome. Commissioner Thomas.  
25

1                   COMMISSIONER THOMAS: I agree with what my fellow  
2 commissioners have said tonight. Are we going to make a  
3 motion?

4                   CHAIR BARNETT: We're ultimately looking for a  
5 motion. We can discuss that in the course of that.

6                   COMMISSIONER THOMAS: So then I move to recommend  
7 that we retain a requirement for installation of story  
8 poles for development projects with further details coming  
9 in the other sections with all of the things.  
10

11                   JENNIFER ARMER: Yes, I believe that should work.

12                   COMMISSIONER THOMAS: We think we should still  
13 have requirements, but not as many as we have right now, so  
14 we will discuss those.

15                   CHAIR BARNETT: Thanks for the motion. A second?  
16 Commissioner Burnett.

17                   COMMISSIONER BURNETT: I second that motion.

18                   CHAIR BARNETT: Thank you. Discussion?

19                   I just had a comment, which is I think there's  
20 some uniqueness to our town that may not be shared by some  
21 of the other jurisdictions in the County. We've got the  
22 hillsides, we've got historic areas, we've got established  
23 neighborhoods that have their own distinct characters, and  
24 while I believe in certainly paring down the requirements  
25

1 to when they're most essential, I do think that we should  
2 keep them also.

3 Can we have a show of hands in support of the  
4 motion? It's unanimous. Thank you very much.

5 Now lets move on to Item B concerning what types  
6 of projects should be required to install story poles, and  
7 what type should be excluded or exempt. You've got the  
8 agenda and Staff Report before you, so I don't know that I  
9 need to read the whole thing. I'll ask you to give some  
10 thought to that, I'm sure you already have, and to begin a  
11 discussion. Commissioner Thomas.

12  
13 COMMISSIONER THOMAS: I'm happy to go first since  
14 I submitted some public comments to be shared with the  
15 Commission.

16 Just based on all of the comments that we've  
17 gotten from all of the public, architects, developers,  
18 etc., I agree that we are a unique jurisdiction compared to  
19 some of these other towns and cities near us, and so I  
20 thought that a good compromise would be we have different  
21 requirements for hillsides. I kind of looked at what the  
22 Town of Los Altos is doing versus the Town of Los Altos  
23 Hills and thought if we did a mix of that it would really  
24 meet our requirements here in town. I thought that we  
25 should have, similar to the different categories that the

1 architects that spoke tonight and submitted public comment  
2 a month ago had, for in hillsides any new buildings, second  
3 story additions, additions exceeding 900 square feet,  
4 accessory structures exceeding 900 square feet, and then  
5 trees proposed to be removed.

6 I do have a couple of questions for Staff. I did  
7 notice in our policy and in other policies that were  
8 provided that this tree tagging is lumped into these story  
9 pole policies, but it's kind of a separate issue. I see why  
10 it was lumped in, but at the same time I don't know if we  
11 already have some sort of policy like our Tree Ordinance.  
12 Does our Tree Ordinance cover this anyway?  
13

14 JENNIFER ARMER: Thank you for that question. I  
15 can provide clarification. At this time we require that  
16 when there are trees being removed as part of a project  
17 that there be an arborist report, and that would number and  
18 tag the trees with a little number on them, and the  
19 arborist report then shows which of those numbered trees  
20 would be removed.

21 I think what is being suggested in some of the  
22 comments is that some sort of colored tape would be put  
23 around the trees. I would say that in many cases those are  
24 going to be interior to the project site, and so putting  
25 that kind of tape on them would not actually be visible



1 from the public right-of-way to the public, but I would say  
2 that generally that is a separate category from story  
3 poles, but clearly has been part of the discussion in the  
4 comments received.

5           COMMISSIONER THOMAS: Okay, thank you. I feel  
6 like the trees should be removed, because it just  
7 complicates things, so I would no longer recommend that we  
8 include that here.

9           The main changes for this part was that it looked  
10 like the City of Los Altos Hills had a marker of 900 square  
11 feet or larger and that is what triggered this. Ours is  
12 smaller now; I think it was 100 square feet, which I feel  
13 is a little bit excessive. I just kind of put down the 900  
14 square feet. I'd be happy to hear what other Commissioners  
15 think about that number, but I do think that something  
16 different for hillsides would be important.

17           Then also I do think that projects in historic  
18 districts asking for exceptions or Variances is something  
19 that from all of the public comments that I've ever heard  
20 in all of the hearings that we've ever done, I know our  
21 historic districts are really important to us in town, and  
22 so I think that if anyone is asking for exceptions or  
23 Variances, unless the lot is nonconforming, because we do  
24 have some odd size or nonconforming lots in those areas

1 too, so I don't know if that triggers to the Community  
2 Development Director with regard to the exceptions process.

3           Those were kind of my thoughts, and then also  
4 requiring them maybe for Specific Plans similar to the  
5 North Forty, even though I understand that that didn't end  
6 up being productive, but some sort of requirement for that.

7           CHAIR BARNETT: Thank you. That gets us well on  
8 our way in the discussion. I recognize that Section B is  
9 the longest in the Staff Report and that there are  
10 subsections here, so I want to encourage comments in  
11 general, but maybe we should move on. In the first  
12 paragraph there's a general suggestion of discussion of the  
13 types of projects, and that's sort of continued in the use  
14 types, but I was wondering if other Commissioners had  
15 comments that are specifically related to the type of  
16 projects that should be included or excluded, and then we  
17 can move on. Commissioner Clark.

18  
19           COMMISSIONER CLARK: I have a few thoughts. One  
20 is I don't see why we would need story poles for anything  
21 that's not going to Planning Commission. Sometimes I'll be  
22 on a walk and I'll see story poles and get excited, because  
23 we'll get to vote on this, and then I see that it's a minor  
24 development, so I think that we shouldn't have story poles  
25 for those.

1 I don't think that they should be a requirement  
2 if it's a 100% affordable development, and I think we  
3 should even consider lessening that percentage. We have  
4 very few incentives available to us to incentivize  
5 affordable housing development, and I actually think that  
6 this could be something we could leverage to try to get  
7 developers to include more affordable units in their  
8 developments. For example, if they want to build something  
9 that is like 60'-70' I would hope that a lot of those would  
10 be affordable, and maybe if there was a percentage that if  
11 they reached they wouldn't need to have story poles, then  
12 they wouldn't have to do those cranes and stuff, and I  
13 think that that could end up being a good incentive.

15 I don't think there should be story poles for  
16 additions to buildings, at least for the most part; I don't  
17 know how many nuances there would be in that.

18 Then also, we might start seeing more non-  
19 discretionary developments, like things that the Town  
20 doesn't even get a say over using the different bills and  
21 stuff, so I don't know if there already wouldn't be story  
22 poles for that because of the nature of it, but if we're  
23 not going to have a say in it I don't see why we would need  
24 to put those story poles up and make people afraid of  
25

1 something that probably won't look nearly as ugly as the  
2 story poles anyway.

3           Last, I agree that there should be a different  
4 set of requirements for the hillsides. I think that's a  
5 really good idea and that we should have more story poles  
6 around there, because those developments are a little more  
7 serious, I think.

8           CHAIR BARNETT: Thank you very much. That's a  
9 good contribution to the discussion. Commissioner Hanssen.  
10

11           COMMISSIONER HANSSEN: I wanted to thank  
12 Commissioner Thomas for those suggested proposals.

13           I was looking at all the different kinds of  
14 things and where my thinking is in general on this is that  
15 there are certain parts of town where we do want to  
16 consider having story poles, for example, the hillsides,  
17 because when all is said and done we have the Hillside  
18 Standards and Guidelines and Hillside Specific Plan and the  
19 whole idea is to make sure we do our best to preserve the  
20 hillside while allowing some amount of residential  
21 development, so I think to take away story pole  
22 requirements for that would be a tough thing, not to  
23 mention the fact that even without the current land use for  
24 the 2040 General Plan, it's been referended, whatever gets  
25 approved is likely to go in that same direction because of

1 fire safety to be very careful about development that is in  
2 the hillsides.

3 I would add to that list of projects, since we  
4 have a Historic Presentation Committee and it's so  
5 important to preserve our historic features of town, that I  
6 would want to have story poles for those kinds of projects,  
7 whether or not it is asking for a Variance.

8 Speaking to Commissioner Clark's general  
9 suggestion about Planning Commission or not, I would think  
10 that any other residential, especially single-family  
11 developments, if it's not asking for a Variance in height  
12 or setback or whatever that would cause it to come the  
13 Planning Commission, but I would call it a Variance, that I  
14 would think it wouldn't be an issue, except for one thing,  
15 and that's because of all the time I've sat on the Planning  
16 Commission where we have a lot of single-story  
17 neighborhoods, if someone comes in and both of the  
18 neighbors on either side are a single-family home with a  
19 single story and they're going to be 10' or 20' above them,  
20 I think that's something we have to consider as needing a  
21 story pole for that case, even if they're not asking for an  
22 exception, just because it's going to change the character  
23 of the neighborhood.  
24  
25

1           Then as far as the affordable housing, I too  
2 thought that if we were lucky enough to get a 100%  
3 affordable housing project we should let it happen, and it  
4 has to comply with our standards anyway, and so I think  
5 that we should give an exception for that, and that  
6 requires story poles.

7           CHAIR BARNETT: Thank you very much. Other  
8 comments? Vice Chair Raspe.

9           VICE CHAIR RASPE: Thank you, Chair. Commissioner  
10 Hanssen, I think you've taken all my great ideas, which we  
11 both took from Commissioner Thomas.

12           My thinking is, and I think I'm repeating  
13 ourselves, I think we're coming hopefully to somewhat of a  
14 consensus, but maybe just to simplify, my sense is I would  
15 like to see the story poles continue in historic districts  
16 and in the hillside areas for all projects. I think  
17 especially in the hillsides it's very valuable to see  
18 what's happening up there. We've had a couple projects that  
19 came before us you really don't get a sense of it until you  
20 look from the ground and you look up into a hillside and  
21 you see either netting or flags or whatever that may be. I  
22 think there is a value there.

23           With respect to every other portion of town my  
24 sense is with respect to new construction for single-family  
25

1 homes and commercial, if you are not seeking a Variance  
2 with respect to height or FAR or any other matter, and this  
3 goes with respect to additions, new construction, new  
4 rooflines, I don't see the value necessarily of story  
5 poles. I think those matters could be handled probably  
6 better by renderings, and as long as we have those  
7 renderings and can somehow make them available to the  
8 public via QR code or something else, I think that works,  
9 so I would use story poles in the hillside, in the historic  
10 districts for all construction, I would use them in other  
11 areas for where there are Variances sought, and I'd also  
12 use them for projects where there are Specific Plans or  
13 they're unusually large—North Forty is the obvious example—  
14 just to give a better sense of scale, but I think for the  
15 lion's share of single-family construction going on in our  
16 town that would obviate the need for story poles and handle  
17 it in a much less intrusive, more efficient manner with 3-D  
18 renderings.  
19

20 CHAIR BARNETT: Thank you for those comments.  
21 Commissioner Clark.

22 COMMISSIONER CLARK: I just have one very brief  
23 comment. I agree with Commissioner Hanssen that a  
24 development in a neighborhood that's majority single-story  
25 and they come to Planning Commission because they're the

1 first two-story development in the immediate neighborhood  
2 or something like that, I think that's exactly the kind of  
3 thing where it still might make sense to have story poles  
4 to get an idea of the massing, because the whole reason  
5 it's coming to Planning Commission in that case is the  
6 massing, and that's why I was now using the language of  
7 Variances, why I would try to say if it's coming to  
8 Planning Commission because, yes, I do think that's an  
9 instance where we should have them.  
10

11 CHAIR BARNETT: Thank you. I do have one question  
12 for the Town Attorney. I think this is addressed in Section  
13 G already, but can you comment on the issue of story poles  
14 under the new emerging housing laws in terms of cost burden  
15 or procedural delay?

16 ATTORNEY WHELAN: There is no case exactly on  
17 point, but there are cases talking about what constitutes a  
18 constraint on housing in other contexts, and the cases talk  
19 about height limits, they talk about parking standards, and  
20 processing and permit procedures.

21 I do think conceivably an applicant could make an  
22 argument that imposing a story pole requirement did  
23 constitute a constraint on housing, but in the case that  
24 has been decided under the other fact patterns where it had  
25 to do with building height and parking standards the court



1 weighed that public interest against the burden on the  
2 applicant, and in those cases they came out in favor of the  
3 public interest that was at stake, and so that's a policy  
4 decision for the comment, like to what extent do the story  
5 poles serve a public policy interest, but the court would  
6 put a lot of weight on the public policy interest.

7 CHAIR BARNETT: Thank you very much. Before we  
8 ask for a motion, let be see if we have any further  
9 discussion. Commissioner Thomas.

10 COMMISSIONER THOMAS: My only question is that  
11 right now it does say this is nonresidential additions  
12 exceeding 100 square feet. I don't think that we are going  
13 to have non-residential in hillsides, so I don't think that  
14 we really need to discuss that here.

15 I suggested the 900 square feet because that's  
16 what Los Altos Hills has, and I assumed that their staff  
17 had been informed by some reason, but I am interested in  
18 hearing what other Commissioners think about that number or  
19 if that is something that we can just say of a specific  
20 number and say in our motion that Town Council decides.

21 CHAIR BARNETT: Thank you. Commissioner Clark.

22 COMMISSIONER CLARK: I'll just say that I would  
23 be in favor of the 900 square feet. I like that number; I  
24  
25

1 think it makes sense that if Los Altos Hills is doing it  
2 that we would do on our hills.

3           COMMISSIONER HANSSEN: I like the 900 square feet  
4 as well, I think it made a lot of sense, and plus we have  
5 an example from another jurisdictions that it seems to be  
6 working for them.

7           But I do also want to comment on the  
8 nonresidential additions exceeding 100 square feet. A lot  
9 of times we see in the hillside they don't just build a  
10 house, they build a compound, and the compound would have  
11 multiple buildings that they may not be living in. They use  
12 them and it's part of their residential compound, but  
13 they're not going to be sleeping there, and so I think, and  
14 Staff can correct, that a nonresidential addition exceeding  
15 100 square feet if in their current policy needs to be  
16 story poled.  
17

18           JENNIFER ARMER: Thank you for that question. No,  
19 my understanding of that third bullet is that that is for  
20 commercial properties where there are additions.

21           One clarification that I wanted to add to the  
22 discussion is the first bullet point in terms of what it  
23 applies to now excludes single-story accessory structures,  
24 so regardless of the size of a detached structure it is not  
25 currently required to be story poled even if it were 900

1 square feet or more, so that is one component to consider  
2 since I know that is included in the comments from  
3 Commissioner Thomas.

4 JOEL PAULSON: Through the Chair, one other idea  
5 to think about is even if we just go to hillsides, you  
6 potentially can do a 900 square foot addition or more  
7 through just a Building Permit, so if they're not tearing  
8 it down and they're not creating a demolition, then that  
9 would just be a Building Permit where we also would not be  
10 able to require story poles.

11 CHAIR BARNETT: Thanks for that clarification.  
12 Commissioner Thomas.

13 COMMISSIONER THOMAS: Then I do need some  
14 additional clarification. What is considered an accessory  
15 structure versus just a regular residential structure then?  
16

17 JENNIFER ARMER: Thank you. An accessory  
18 structure, you have the primary house and then you have  
19 detached structures; those are accessory to the main house.  
20 In some cases it may be an Accessory Dwelling Unit, in  
21 which case regardless of whether it's over 900 square feet  
22 it would just be a Building Permit. We do have a trigger in  
23 the hillsides that detached structures, accessory  
24 structures, over a certain size do need to have a higher  
25 level of review. I can look up what that threshold is right

1 now; I believe it's 450 square feet but I'll check on that  
2 for you.

3           JOEL PAULSON: While she's checking that I think  
4 just a little more information. It's a detached garage,  
5 it's an ADU, it's a pool house, so those are typical  
6 detached structures that we would see that are actually  
7 floor area, so it's not like a gazebo or something that's  
8 not enclosed, which are accessory structures but we still  
9 wouldn't have them story poled, because they're not  
10 technically square footage.  
11

12           CHAIR BARNETT: Thank you for that clarification.  
13 Commissioner Thomas.

14           COMMISSIONER THOMAS: So I think then that I'm  
15 open to any suggestions. I do feel like we need to keep  
16 some story poles for the hillsides, but I don't want to  
17 create additional burdens that what we currently have,  
18 because I feel like the standards that we currently have  
19 are working for the hillsides, so whatever other  
20 Commissioners think, however that looks I am happy with.

21           Then also we didn't discuss commercial yet, so I  
22 don't know if people have different opinions about  
23 commercial and/or mixed-use.  
24

25           CHAIR BARNETT: Right, so B is very comprehensive  
and we've been appropriately discussing it in different

1 contexts, but I think that that's a good point,  
2 Commissioner Thomas, and we can move on to that. I see on  
3 page 14 that the current Story Pole Policy requires  
4 nonresidential additions exceeding 100 square feet, and we  
5 just talked about it in terms of residential accessory  
6 structures. Maybe I could ask Staff to address where we  
7 might see the description of a nonresidential addition  
8 exceeding 100 square feet?  
9

10 JENNIFER ARMER: Thank you. A nonresidential  
11 addition exceeding 100 square feet often will trigger an  
12 Architecture and Site review application. In some cases  
13 that may just be going to the Development Review Committee  
14 if they are not asking for exceptions and they are  
15 complying with the Commercial Design Guidelines, and so  
16 that could just be an existing grocery store wants to add a  
17 little additional space for a café out front or something  
18 of that nature, so the 100 square foot is the trigger for  
19 those.

20 There are some minor changes to commercial  
21 buildings that can be done through a Building Permit, but  
22 generally if it's adding square footage, 100 square feet is  
23 generally threshold that we use for that moving to a  
24 Discretionary Permit.  
25

1 CHAIR BARNETT: Thank you, that's very helpful. I  
2 guess we have the larger question of whether we want to  
3 exclude story poles from new commercial or mixed-use, and  
4 maybe we could talk about that. Commissioner Hanssen.

5 COMMISSIONER HANSSEN: Our current Story Pole  
6 Policy, under what conditions do we require story poles for  
7 commercial and mixed-use?  
8

9 JENNIFER ARMER: For commercial buildings we  
10 would require it for new structures or for additions of 100  
11 square feet or more, as stated there.

12 In addition, to answer the earlier question about  
13 detached structures in the hillsides, the threshold for  
14 coming to Planning Commission for a detached structure is  
15 1,000 square feet. It would require a Discretionary Review  
16 for the Development Review Committee if it was between 600  
17 and 1,000 square feet, but over 1,000 is automatically  
18 reviewed by Planning Commission at this time, but would not  
19 generally be story poled if it's a single-story detached  
20 structure based on the current policy.

21 CHAIR BARNETT: Any other comments in terms of  
22 mixed-use or commercial? Vice Chair Raspe.

23 VICE CHAIR RASPE: Thank you, Chair. My thoughts  
24 on commercial and mixed-use are much like my thoughts on  
25 residential, that is, I'm not sure they are a great tool

1 where our applicant is bringing a project that's not  
2 seeking an exception to, again, either height, FAR, or  
3 other limiting requirements, so as long as the project is  
4 within our guidelines I think for all new and redeveloped  
5 commercial mixed-use projects story poles probably are not  
6 the best tool.

7 I'll put one caveat on there; we may want to  
8 consider really large projects, something bigger than the  
9 Whole Foods project that we just considered last month.  
10 That was a larger size project. I thought the story poles  
11 expressed pretty well what that project looked like, so  
12 perhaps there's a square footage we might want to consider  
13 over which we would use story poles. I think the day-to-  
14 day, to the extent there are any day-to-day mixed-use  
15 commercial projects in town, to the extent that they are  
16 not seeking exceptions, I wouldn't impose upon them a story  
17 pole requirement and, again, would just require 3-D  
18 renderings.

19  
20 CHAIR BARNETT: Thank you very much. Other  
21 thoughts? Commissioner Hanssen.

22 COMMISSIONER HANSEN: I agree with the Vice  
23 Chair on that general approach, and I thought of another  
24 property which we have seen before and I don't know where  
25 it currently stands because I think it's going through

1 things, but at the corner of Shannon Road there's the  
2 Artisan Wine Depot. We had seen that previously at Planning  
3 Commission and it caused a big up-stir with the neighbors,  
4 and ultimately I think they are going in a different  
5 direction anyway, but that's the kind of thing where I  
6 would not want story poles for that kind of project, but if  
7 it's just some remodeling or a new commercial building  
8 that's in compliance and it's not a very large structure  
9 that would seem like overkill to do the story poles for  
10 that kind of project.

11  
12 CHAIR BARNETT: I'm giving some thought to that.  
13 To the best of my knowledge the Shannon Road/Los Gatos  
14 Boulevard property originally was talking about a mixed-use  
15 commercial and residential, is that correct?

16 COMMISSIONER HANSSEN: The last thing was an  
17 office, I believe. Staff could correct me.

18 CHAIR BARNETT: Office only?

19 JENNIFER ARMER: Office above commercial of this  
20 different sort.

21 CHAIR BARNETT: Residential above commercial?

22 JENNIFER ARMER: It was office. At this time the  
23 proposal is office over commercial. I don't believe there  
24 is any residential as part of the current proposal.  
25



1 CHAIR BARNETT: Okay, that was my understanding  
2 too. Commissioner Burnett.

3 COMMISSIONER BURNETT: Yes, thank you. I have a  
4 question for Staff. If a project comes through and there  
5 are no Variances and it gets the green light from our  
6 Staff, however, the neighbors find out about the project  
7 and they're not happy about it, can they still appeal the  
8 project?  
9

10 JENNIFER ARMER: Thank you for that question. If  
11 there is a project that is going through a Discretionary  
12 Review process, whether it is a Minor Residential  
13 Development or a new second story on a single-story house,  
14 that does not require a public hearing. It still involves  
15 public notice and the ability to appeal the Director's  
16 decision. Projects that go to the Development Review  
17 Committee where they are complying with all of the  
18 regulations and complying with the Design Guidelines also  
19 can be appealed to the Planning Commission as long as the  
20 appellant is someone who qualifies to appeal the project as  
21 stated in Town Code.

22 COMMISSIONER BURNETT: Thank you.

23 CHAIR BARNETT: Other thoughts? We've covered a  
24 lot of ground. Commissioner Hanssen.  
25

1                   COMMISSIONER HANSSEN: I just wanted to bring up  
2 something that we didn't talk about, which was the building  
3 height. It did cross my mind that when we've talked about  
4 70', as Mr. Capobres mentioned, the complexities of doing  
5 story poles for that seem to be quite onerous because of  
6 the danger factor, so I don't know if we can recommend like  
7 a certain height limit that we can consider X alternative;  
8 I don't know if that would be better.

9  
10                   Some things were suggested, like putting a crane  
11 or whatever, or maybe we don't do story poles at all. I  
12 don't know what the best solution is, but I think it's  
13 important to make sure that the people in the Town are able  
14 to see those, but maybe the traditional way of doing story  
15 poles might not work, so I'm just curious to what other  
16 people think.

17                   CHAIR BARNETT: Thank you. Other thoughts?  
18 Commissioner Thomas.

19                   COMMISSIONER THOMAS: I agree, and I think that  
20 what we've heard from public comment is that one of the  
21 most important parts of the story poles is that it gives  
22 notice to people, and so I think that the concern with  
23 especially tall buildings or something, and some of these  
24 even commercial projects that we're talking about right  
25 now, it's really just about letting the public know, and I

1 think that we want to move away from the story poles  
2 letting the public know for reasons like what happened at  
3 the North Forty. By the time those story poles went up and  
4 everyone was like what's going on here, it was really too  
5 late for the community to be as heavily involved with the  
6 decision making, so I do think that when we talk in Section  
7 D, Signage And Alternatives For Signage I think that we can  
8 cover a lot of the major concerns and hopefully start to  
9 help people in town to transition from story poles trigger  
10 like this is a project that's happening and now I see the  
11 sign that triggers this is a project that's happening.  
12

13           That being said, for commercial and mixed-use  
14 projects I don't think that most of the time, even if  
15 they're new builds, we need story poles. I agree that if  
16 they're asking for an exception or a Variance, but I think  
17 we should kind of specify that, because I do think that  
18 there are a lot of exceptions and Variances that story  
19 poles aren't going to add or change anything. Maybe if it  
20 has to do with height or setbacks or something else I guess  
21 related to those things, but if it's any exception for,  
22 let's say, parking minimums, which I know we're going to  
23 get a lot more of because we're going to be in the process  
24 of changing our parking, I'm sure, and that's just the  
25 trend overall, so as the Boulevard redevelops we're going

1 to be getting a lot of requests for those things, I don't  
2 think something like a parking minimum should trigger story  
3 poles having to go up, if that makes sense. I don't know if  
4 there's a list of specific items that we could include or  
5 just make a general recommendation to Town Council that it  
6 should be specific for commercial buildings, but it looks  
7 like Ms. Armer has a suggestion.

8 JENNIFER ARMER: If that is the direction that  
9 the Commission is going it could be stated in the form of a  
10 Variance or exception related to physical characteristics  
11 of the structures, and so that it is something that is  
12 being shown by those story poles, and we could work to get  
13 something specific and more detailed for Town Council to  
14 consider.

15 CHAIR BARNETT: Good suggestion. We also haven't  
16 talked about the issue of flag ropes or pendants, and also  
17 the visibility exception. I wonder if anyone has comments  
18 on either of those topics? Oh, that's under alternatives.  
19 I'm sorry, I had that in my notes at this point. So let me  
20 just review our topics, we're under B, and make sure we've  
21 covered those.

22 I do think that we could focus more on the  
23 discretion issue, although that also comes up later. But on  
24 page 15 there's a discussion about the reviewing body: the

LOS GATOS PLANNING COMMISSION 5/24/2023  
Item #2, Modifications to Town Height  
Pole and Netting Policy

1 Director, Development Review Committee, Planning  
2 Commission, and Town Council. I guess this would be a  
3 suggestion that we consider this in terms of exceptions?

4 JENNIFER ARMER: Correct. I would say that a  
5 discussion of whom the deciding body is for any  
6 discretionary parts of this, that that's something that  
7 could be part of the discussion under Section E of the  
8 Staff Report, Modifying the Exception Process.

9  
10 And some of the other topics that you have  
11 mentioned recently about the flags could fall under the  
12 modifying physical requirements under Section C. Providing  
13 alternatives also could be discussed under Section D. The  
14 type of projects this applies to, I think, is what's been  
15 discussed so far, but we haven't received a motion on that  
16 yet.

17 CHAIR BARNETT: Right. Commissioner Hanssen.

18 COMMISSIONER HANSEN: I was just going to say  
19 relative to what you said, I think this started with  
20 Commissioner Clark making a suggestion that if the Planning  
21 Commission was the deciding body that there probably needed  
22 to be story poles, and that would include things like we  
23 talked about where it's the first two-story house in a  
24 single-family neighborhood, or it could be if there's a  
25

1 Variance; those types of things tend to trigger Planning  
2 Commission.

3 I thought we had already discussed that and had  
4 sort of a consensus, but I just put that out there. I know  
5 we did discuss it.

6 CHAIR BARNETT: Thank you. I guess the subject  
7 could also be addressed in Section E on page 16 when we get  
8 to that, or it could be made part of the motion; I have no  
9 problem with that. Commissioner Thomas.

10 COMMISSIONER THOMAS: I did have a question about  
11 Specific Plans, because I did put that into my  
12 recommendation about like special story pole requirements  
13 for Specific Plans. I have not been on the Planning  
14 Commission while any of these Specific Plans have been  
15 developed, but I know that the example is the North Forty  
16 Specific Plan, so I don't know if Staff could answer a  
17 couple of questions about how that's developed, if story  
18 poles can be included in that process or not, etc.

19 JENNIFER ARMER: Thank you for that question. I  
20 would say that just like with the development of the  
21 General Plan it's difficult when you don't have a specific  
22 development project in front of you to do a story pole  
23 installation. Generally a Specific Plan is going to be a  
24 smaller area than the General Plan, but it is generally for  
25

1 a large area, and so it's going to be looking at multiple  
2 buildings and you don't know what the configuration of  
3 those buildings are, whether the floor area would be done  
4 in a multi-story building or flat across. That is one of  
5 the difficulties about planning documents is we don't know  
6 how they will actually be implemented, and so it's  
7 difficult to do physical story poles in that case at that  
8 stage in the process.

9  
10 COMMISSIONER THOMAS: But is it legally possible  
11 when that plan is being developed as part of those  
12 agreements and the plan being processed that story poles  
13 will be part of the process later?

14 JENNIFER ARMER: I'll open it to our Town  
15 Attorney to see if she wants to add on that.

16 ATTORNEY WHELAN: I wouldn't refer to a Specific  
17 Plan as an agreement per se. I would consider it as like a  
18 mega zoning ordinance, like it's setting forth what the  
19 rules are, what the maximum can be, and so I think any  
20 requirement to impose story poles would probably live  
21 outside of the Specific Plan.

22 You might also be thinking of like Development  
23 Agreements where an Applicant comes in and they want a  
24 Development Agreement, and maybe they want to give an  
25 entity something extra in exchange for like vesting to

1 existing standards, and so as part of that Development  
2 Agreement maybe something extra they would give would be  
3 providing story poles or something like that, but for the  
4 Commission I would think of imposing the story pole  
5 requirement outside of the Specific Plan.

6 COMMISSIONER THOMAS: I was just thinking if we  
7 have like a large area. We don't have a lot of larger open  
8 spaces, but if we have a large area that there is going to  
9 be a development for, would we want in that specific space,  
10 but it's probably very niche, so not important.

11  
12 I did want to go back to the reviewing body  
13 before making a motion, because I do not feel that every  
14 single thing that comes in front of the Planning Commission  
15 needs to be story poled, and I think that that might  
16 significantly delay processes that we're trying to help  
17 people streamline, so I'm happy to come to an agreement and  
18 just state that and know that Town Council knows that, but  
19 I don't think that every single thing that comes before us  
20 needs to be story poled, but I am curious to see what other  
21 people have to say about that, just to clarify that point.

22 Then also with regard to the historic districts,  
23 I just wanted some clarification about do you think all  
24 projects in historic districts, or just projects that are  
25



1 listed in the historic inventory within the historic  
2 districts, should require story poles? Thank you.

3 CHAIR BARNETT: A lot of good thinking going on  
4 here. Commissioner Burnett.

5 COMMISSIONER BURNETT: Yes, thank you. To respond  
6 to that question, I think all homes in a historic district  
7 should have story poles, because it affects the whole  
8 district. Like if we ever get the Glenridge a district it  
9 will be 12 blocks, so I think homes impact the whole  
10 district.  
11

12 But back to another question for Staff, I'm a  
13 little confused here. You were saying that a large project  
14 would not require story poles if it doesn't have Variances,  
15 and of course there probably would be Variances, but if it  
16 didn't have Variances and it's a large project, let's say  
17 one of the ones that are going up on Los Gatos Boulevard,  
18 and it doesn't have Variances so it wouldn't require story  
19 poles, but on the other hand then how would citizens be  
20 able to appeal the size of it and the mass and density of  
21 it? Are they already permitted? When does that happen? I'm  
22 trying to educate myself and the probably the public on  
23 this subject; it's important to me. What I'm trying to  
24 address is that citizens have an ability to respond to a  
25 project, and if it's not required with story poles because

1 there are no Variances, how will the public know? I don't  
2 think looking at videos and renderings will do it, because  
3 people are busy and I don't think they'll be aware so much.

4 JENNIFER ARMER: Thank you for those questions.  
5 If you'd like, I can try to address some of that.

6 We were talking about where I was saying that  
7 story poles would not be required is when a Specific Plan  
8 or General Plan is being considered and adopted, because at  
9 that point we don't have a specific building design being  
10 proposed, it's more about setting the zoning rules for an  
11 area, and so when a development project does come through,  
12 then the question is at what points do story poles get  
13 installed?  
14

15 As I'm looking at my notes from the discussion  
16 the Planning Commission has been having this evening, the  
17 consensus items that I have heard was interest in having  
18 story poles for certain projects in the hillsides, projects  
19 in the historic district, projects where it is the first  
20 second story in what we define as the "immediate  
21 neighborhood," and for larger commercial projects the  
22 example of Whole Foods was given as trying to give a sense  
23 of what the threshold might be for what might be considered  
24 a larger project, but for anything smaller than that on any  
25 other single-family homes or smaller projects that it would

1 not require story poles unless they were requesting a  
2 Variance or an exception to a physical Zoning Code  
3 requirement.

4           So that's what I've heard so far. I expect there  
5 will be further discussion, but hopefully that helps you  
6 understand, what I've heard at least in, terms of the size  
7 of the projects that would still require some sort of story  
8 poles. We of course haven't gotten to the section of the  
9 discussion where what that story pole requirement might be  
10 for some of the larger, more complex projects. In any case,  
11 I think there's an understanding that signage would still  
12 be required, and so there is still the opportunity to then  
13 ask questions and understand and be part of the development  
14 project.  
15

16           COMMISSIONER BURNETT: Okay, thank you. Just a  
17 quick follow up. When do story poles go up? When the  
18 project comes before you? It doesn't have a permit yet,  
19 right?

20           JENNIFER ARMER: Correct. Generally an  
21 application comes in and it goes through review by Staff,  
22 and Staff is looking to make sure there is sufficient  
23 understanding of what the project is. Sometimes we don't  
24 have the details that are needed in the project scope in  
25 the plans, and so we're working to make sure we've got

1 those details and to understand what type of permit is  
2 required, whether it triggers architectural review, for  
3 example. Once we have gotten to a point working with the  
4 Applicant that the project is whole and is ready to move  
5 forward to public hearing or public noticing, that's when  
6 story poles go up, because otherwise as part of the Staff  
7 review there might be changes to the form of the building  
8 that would require them to modify the story poles.

9  
10 COMMISSIONER BURNETT: Thank you. That was very  
11 helpful.

12 CHAIR BARNETT: Commissioner Hanssen and then  
13 Commissioner Clark.

14 COMMISSIONER HANSSEN: I just wanted to comment  
15 back on what Commissioner Thomas brought up, which is about  
16 the Planning Commission, and I think you summarized it  
17 correctly, Ms. Armer, in terms of what I think there was  
18 sort of consensus on.

19 It's not everything that comes to Planning  
20 Commission, but if it's a Variance that involves bulk and  
21 mass, such the setbacks, the height, the FAR, if it's a  
22 fence issue, they don't have enough parking spaces, or  
23 something like that, those are not things that I would  
24 think of, so I just wanted to be clear that that's what I  
25 was thinking of when Commissioner Clark mentioned Planning

1 Commission or not, but it wouldn't include Variances that  
2 didn't pertain to the bulk and mass of the structure.

3 CHAIR BARNETT: Thank you. Commissioner Clark was  
4 next.

5 COMMISSIONER CLARK: Thank you. I appreciate you  
6 bringing that back up, because I meant we should never  
7 require them, at least for the most part or at all, for  
8 things that are not coming to Planning Commission, but I  
9 don't think we should require them for everything coming to  
10 Planning Commission. I really do think we should make an  
11 effort to not require them whenever possible. I think like  
12 what Vice Chair Raspe was saying, just when we need them we  
13 require them sort of thing, so I appreciate the  
14 clarifications on that. Then, for me, I would say that we  
15 should only require them in terms of the Historic District  
16 for homes that are in the Historic Resources Inventory, but  
17 I am open to going the other way on that.

18 CHAIR BARNETT: Vice Chair Raspe.

19 VICE CHAIR RASPE: My comment was similar. I've  
20 served on the Historic Preservation Committee now for three  
21 years, so the best way to think of our historic homes, we  
22 have districts but we have many historic homes that are not  
23 in our districts. Presumptively, all are pre-1941 homes or  
24 historically designated, so I would say in our category of  
25

1 homes that should require story poles for work as performed  
2 would include all homes on our historic inventory, whether  
3 or not in a district.

4 I think one other point we had at least working  
5 toward consensus was not requiring story poles where there  
6 was a large percentage of affordable housing in the  
7 project, perhaps 100%, maybe not requiring 100% but I think  
8 a favorable view towards that, making it more efficient and  
9 creating incentives for those projects where possible.

10  
11 CHAIR BARNETT: Very good. Other thoughts before  
12 we try a motion? Commissioner Thomas.

13 COMMISSIONER THOMAS: Since I have not served on  
14 the Historic Preservation Committee, I am curious how the  
15 story poles have been helpful for you all in your decision  
16 making, because in my opinion there are alternatives, and I  
17 don't think that these houses are on the Historic Resources  
18 Inventory. The adjustments that we're approving, I just  
19 don't know how story poles are actually valuable for houses  
20 outside historic districts but that are still historic.

21 VICE CHAIR RASPE: I'll give you an example. The  
22 Historic Preservation Committee actually met today and we  
23 had a small Mediterranean home very close to the street,  
24 and much to the developer's credit they are saving the  
25 façade of the home, but to make it a more livable home in

1 2023 they are adding an entire section to the back of the  
2 home; they're creating a second story and they're pushing  
3 about another 35', setting the structure back 21' from the  
4 façade of the home. It could potentially—and we've seen it  
5 on other projects—change the entire character of the house,  
6 the sizing and massing of it.

7           Maybe 3-D renderings solves that problem, but I  
8 don't know, because in HPC we've been using oftentimes  
9 story poles, which sends that message, so I in HPC found  
10 that a useful tool in that kind of situation. Granted, if  
11 we're adding 100 square feet in the back, that's probably  
12 not what we need to see, but where it really changes the  
13 character of the home story poles are a valuable tool for  
14 me.  
15

16           CHAIR BARNETT: Other thoughts? I assume that in  
17 the context of a Planned Development there are going to be  
18 modifications from the standard rules, and could be, say,  
19 that in Planned Developments there would be story poles, or  
20 what is Staff's recommendation on that?

21           JENNIFER ARMER: Thank you for that question.  
22 It's hard to know exactly the modifications from the  
23 standard rules that would be requested as part of a Planned  
24 Development, and I can think of a couple of examples that  
25 wouldn't meet the criteria that we're currently talking

1 about in terms of physical Variances from the rules. For  
2 example, having a smaller width to the roadway, not wanting  
3 to do a private roadway and so having a smaller width  
4 there; or having a smaller lot size so that the homes on a  
5 hillside property could be clustered in a flatter area and  
6 leave more room open for open space; that that type of  
7 project would be potentially going through a Planned  
8 Development process but the structures themselves may be  
9 actually complying with the physical floor area and height  
10 setback requirements.  
11

12 CHAIR BARNETT: So that could be a possible  
13 format for a Planned Development if there were in fact  
14 changes that related to the building structures or  
15 setbacks. What would your recommendation be in term of  
16 story poles?

17 JENNIFER ARMER: I would say that it's an item  
18 worth discussing, but it is hard to know since each Planned  
19 Development, as is the intent of that tool, is going to be  
20 custom to the particular project and setting, and the  
21 detail that the Planned Development goes into in the terms  
22 of the form of the structures really does vary  
23 significantly from one Planned Development to another. Most  
24 of the ones we've seen recently do get pretty specific  
25 about the form of the buildings, and so then at that point



1 the Architecture and Site Application really is just making  
2 sure that it complies with what was already prepared, the  
3 drawings in the Planned Development, so it's hard in that  
4 case. I would say to recommend one blanket rule for all  
5 Planned Developments, but I think they could potentially be  
6 guided in the same way as the other rules that the Planning  
7 Commission is currently discussing.

8 CHAIR BARNETT: Thank you for that answer. The  
9 Chair will now entertain a motion from a brave  
10 Commissioner. Commissioner Thomas.

11 COMMISSIONER THOMAS: I think I got it. For  
12 Section B, Types of Development Projects, I move to include  
13 the following types of projects that should be required to  
14 install story poles, and that would be for residential  
15 projects if they're the first second story in a  
16 neighborhood, or if the project is requesting a Variance of  
17 exception to physical characteristics of the structures  
18 only. Then for historic districts all now residential and  
19 nonresidential buildings in historic districts, and all  
20 residential second story additions in historic districts,  
21 and nonresidential additions exceeding 100 square feet;  
22 what we have right now, but just for historic districts.  
23 Then for the hillsides, just new buildings or second story  
24 additions in the hillsides. Then generic commercial  
25

1 everywhere else besides the historic districts. Only  
2 additions over 100 square feet for new builds asking for  
3 Variances or exceptions to physical characteristics of the  
4 structure. I think that includes everything.

5 CHAIR BARNETT: Did you comment on affordable  
6 housing?

7 COMMISSIONER THOMAS: Oh, affordable housing.  
8 Yes, some number of affordable housing, to be discussed by  
9 Town Council, should be allowed an exception, or one of the  
10 categories of exceptions, or be exempt, I guess I should  
11 say.  
12

13 CHAIR BARNETT: Then Vice Chair Raspe, you  
14 brought up the concept of a large project.

15 VICE CHAIR RASPE: Yes, commercial, and I think  
16 we used by way of example Whole Foods, so anything of the  
17 Whole Foods or larger size would require commercial project  
18 mixed-use of X number of feet to be determined by Town  
19 Council, but by form of reference to Whole Foods.

20 COMMISSIONER THOMAS: Do we think in general or  
21 only if they're asking for exceptions? I think that if  
22 they're only asking for exceptions to the physical...like to  
23 mass and height and all of that, that's really valuable,  
24 but once again, I think that the signage is what we need  
25 to... I think we need to get off the crutch of story poles

1 telling people this is going to happen and lean into the  
2 signage as this is telling people it's going to happen.

3 VICE CHAIR RASPE: My thought, and again I'm  
4 flexible, is two requirements in the commercial mixed-use  
5 area: a) where this is a Variance with respect to massing  
6 location, the physical structure; or b) all structures over  
7 X square footage, because some are of such scale that I  
8 think the netting or flagging, whatever we call it, serves  
9 a purpose of conveying the sense of scale for it.

10  
11 I use by way of example Whole Foods. I got a  
12 sense as I was driving down Los Gatos Boulevard because of  
13 the story poles. I thought that was helpful. On your run of  
14 the mill day-to-day commercial I don't think it's that  
15 helpful. For something big like that, and I don't know what  
16 the cutoff is, but I use Whole Foods by way of example. I  
17 would like to try to retain a story pole requirement for  
18 the super size buildings.

19 JENNIFER ARMER: Through the Chair, since we do  
20 have a motion on the table, she could accept modifications  
21 to her motion, or it could be a follow up motion if  
22 additions were...whether we had the majority of the  
23 Commission to add in this additional commercial.

24  
25 COMMISSIONER THOMAS: Do you know offhand the  
size of what Whole Foods was?

LOS GATOS PLANNING COMMISSION 5/24/2023  
Item #2, Modifications to Town Height  
Pole and Netting Policy

1 JOEL PAULSON: It was 40,000-50,000, somewhere in  
2 that range.

3 COMMISSIONER THOMAS: Anything 50,000 or above?

4 VICE CHAIR RASPE: (Inaudible).

5 COMMISSIONER THOMAS: Yes, just around 50,000 or  
6 above perhaps. I'm not happy about it, but I'll accept it.  
7 No, I'm just kidding. Yes, the motion is amended to include  
8 those. Thank you.

9 CHAIR BARNETT: And for consideration by the  
10 maker of the motion we talked about possible height limits.  
11 Is that something you want to include, or not?

12 COMMISSIONER THOMAS: I didn't have anything  
13 specific written down. I think that that maybe can also be  
14 in the Modified Physical Requirements section, just because  
15 that has to do, I think, with how high we can do story  
16 poles.

17 CHAIR BARNETT: Okay, very well. I'll just raise  
18 the question. Did the motion include our thoughts about not  
19 requiring story poles if it's not going to the Planning  
20 Commission level? It did include that. Okay, thank you. So  
21 now we'll look for a second. Commissioner Hanssen.

22 COMMISSIONER HANSSEN: I can make a second, but I  
23 did have a requested modification. So I will second the  
24 motion, but I would ask the maker of the motion, the part  
25

1 that you brought up about the very first two-story house in  
2 a single-family... I also considered the scenario where it  
3 might not be the first house in the way we define it in the  
4 Residential Design Guidelines, but if there is a single-  
5 story house on either side of it and it's going up to two  
6 stories, these are the ones that cause the most  
7 consternation with the neighbors, so I would put that case  
8 in there as well. If on both sides it's got single stories  
9 and it's going up to two stories, that would be one where I  
10 would think it would be important.  
11

12 JENNIFER ARMER: Just for clarification, it  
13 sounds like right now as the motion stands as I hear it,  
14 that requirement for story poles would only apply to a new  
15 two-story home or a new second story addition when it is  
16 the first in the immediate neighborhood, and the immediate  
17 neighborhood includes two houses on either side of the  
18 proposed project plus the properties across the street,  
19 generally five properties across the street, and so what  
20 Commissioner Hanssen is suggesting is that even if you have  
21 a two-story home that's in one of those, say, two houses  
22 away, if the two houses, one on either side of the proposed  
23 house, if those are both single-story and this is kind of a  
24 taller building in between. I believe that suggesting is  
25

1 that that would also trigger, even if there were other two  
2 stories in the immediate neighborhood?

3 COMMISSIONER HANSSEN: Yes, that is what I meant.  
4 If there was a two-story across the street and on either  
5 side there are single-stories, yes, that's when I would  
6 want the story poles.

7 JENNIFER ARMER: So, to the maker of the motion?

8 COMMISSIONER THOMAS: If that's the will of the  
9 Commission, then yes. Again, not what I originally planned,  
10 but happy to change the motion to include that.  
11

12 CHAIR BARNETT: So we have a motion and a second.  
13 Discussion? Commissioner Clark.

14 COMMISSIONER CLARK: I have two questions. One is  
15 I feel like sometimes we have a home come to Planning  
16 Commission and it's not the first two-story home in the  
17 immediate neighborhood, but maybe it's like the second in  
18 the immediate neighborhood and one of the few in a  
19 predominantly single-story neighborhood, is that the case  
20 and if so should we consider that in our motion?

21 COMMISSIONER THOMAS: (Inaudible).

22 COMMISSIONER CLARK: For the one where it's the  
23 first two-story in the immediate neighborhood, but  
24 sometimes it would be the second two-story in the immediate  
25

1 neighborhood but would come to Planning Commission because  
2 of its bulk.

3 JENNIFER ARMER: Thank you for that question.  
4 Yes, there have been some examples. For example, if it's  
5 the largest house in the immediate neighborhood by floor  
6 area or floor area ratio, then that is sometimes something  
7 that will trigger review by the Planning Commission. Not  
8 necessarily a recommendation for denial from Staff, but a  
9 higher level of review.

10  
11 At this time with the motion as it stands those  
12 wouldn't necessarily be triggering story poles, but they  
13 might still be coming to Planning Commission, depending on  
14 the adjacency, whether there are two-story homes adjacent.

15 CHAIR BARNETT: So I'll come back to Commissioner  
16 Thomas on that.

17 COMMISSIONER THOMAS: I think that if they were  
18 requesting a Variance of an exception to something related  
19 to height or setbacks or whatnot, then it would require  
20 story poles. From my understanding I think that that's a  
21 good compromise, just because of the situation to become  
22 too specific, but do you want me to amend the motion?

23 COMMISSIONER CLARK: I wanted to at least flag  
24 it, because it is changing what generally triggers us to  
25 consider those things for review by the Planning

1 Commission, and so it felt like if that's our concern is it  
2 being like the bulkiest in the neighborhood, but then we  
3 define it differently than we would normally if we might be  
4 voting on it, so I'm open. I just wanted to bring that up.

5 CHAIR BARNETT: Commissioner Burnett, and then  
6 we'll get back to the maker of the motion.

7 COMMISSIONER BURNETT: Thank you. Considering the  
8 motion, it's gotten a little involved now, so I want to be  
9 sure, would your motion cover what Vice Chair Raspe talked  
10 about, a pre-1941 home would require the story poles, even  
11 if it was not in a historic district?  
12

13 COMMISSIONER THOMAS: I don't know if that was  
14 explicitly mentioned, but yes, that was my intent.

15 JENNIFER ARMER: It could be stated as homes that  
16 are part of the historic inventory. That does include all  
17 homes within the historic districts as well.

18 COMMISSIONER THOMAS: Okay, so homes within the  
19 historic inventory that are the new builds, new residential  
20 and nonresidential buildings, or residential second-story  
21 additions.

22 CHAIR BARNETT: Commissioner Clark, if you would.

23 COMMISSIONER CLARK: I have a question for Staff.  
24 Do you know roughly how much of our town is historic  
25 districts?



1           JENNIFER ARMER: Unfortunately, I don't have that  
2 number off the top of my head.

3           COMMISSIONER CLARK: I think my concern is I  
4 think for me I would probably be opposed to requiring story  
5 poles in all historic districts, and for me it would also  
6 depend on how much of town it is, but that could end up  
7 being like a lot of town, I might think.

8           JENNIFER ARMER: The clarification that I can  
9 provide is that the historic districts really are downtown  
10 at this time. There is the potential that others could be  
11 added in the future. The part that would extend beyond the  
12 downtown area are these houses that were built before 1941  
13 that when it is listed as a pre-1941 build date, then we  
14 presume it to be historic until it has gone to the Historic  
15 Preservation Committee and requested and received  
16 permission to remove it from that, in which case it would  
17 no longer have these requirements, but at this time  
18 anything that is triggering that review by the HPC would be  
19 falling under this requirement as well, as currently  
20 stated.  
21

22           CHAIR BARNETT: Commissioner Burnett.

23           COMMISSIONER BURNETT: I would hope we would  
24 retain that and not the change the motion on that subject.  
25

I think it's very important to keep our pre-1941 homes

1 intact as much as possible and I think story poles help  
2 actually the designer, the builder, and the homeowner to  
3 help design to keep the home as it started out, like the  
4 home we had today. It was a very good project and it was  
5 very helpful, so I think it's very important and I would  
6 encourage the maker of the motion to retain that.

7 CHAIR BARNETT: Thank you for that comment. I  
8 have one question. Did we talk about a project where  
9 there's no visibility from the public right-of-way, to  
10 exclude the requirement of story poles under those  
11 circumstances?

12 COMMISSIONER THOMAS: I did not, but I assumed  
13 that most of those projects were a lot of times in the  
14 hillsides, but then we can see them from view corridors. I  
15 do think that if they can't be viewed from a view corridor,  
16 and they cannot be viewed from a public right-of-way in any  
17 way, shape, or form, then I think that should be included  
18 in the excluded or exempt category, so I would amend my  
19 motion to include that, because it seems unnecessary.

20 CHAIR BARNETT: Thank you for that. Is there a  
21 second?

22 COMMISSIONER HANSEN: I guess I have an issue to  
23 bring up then. We saw at the Conceptual Development  
24 Advisory Committee, the first meeting this year, the  
25

1 concept for a very large development in Surrey Farms, and  
2 that would be 22-23 homes including ADUs, and you can't see  
3 that from the viewing platforms, but everyone in that  
4 neighborhood would be able to it, so I wouldn't want them  
5 not to have to do story poles. I was hesitating about  
6 taking out if you can't see it from public viewing  
7 platforms, because there are quite a few developments where  
8 you wouldn't want that to happen without the neighbors  
9 being able to see it.

10  
11 COMMISSIONER THOMAS: I totally agree and I know  
12 exactly where that lot is, and it is viewable not from our  
13 specific view corridors, but it is viewable from all of  
14 Longmeadow Drive, and so I understand. My intent was that  
15 this was truly a project that couldn't be viewed from any  
16 street, but I don't even know if that is legally too  
17 complicated to write in. Yes, probably.

18 ATTORNEY WHELAN: It sounds like you answered  
19 your own question, but it's not too complicated to write it  
20 in if the Commission wants to exclude properties that  
21 aren't viewable from view corridors or public right-of-way,  
22 but it sounds like there's a debate happening.

23 COMMISSIONER THOMAS: So any public right-of-way  
24 would include Longmeadow, so this wouldn't not be included  
25 as exempt?

1                   JENNIFER ARMER: One question of clarification.  
2 What about private roadways? We have a number of private  
3 roadways which are done by easement rather than public  
4 right-of-way, especially in the hillsides, so just to fully  
5 understand and discuss the implications of that. It can be  
6 written in there, but you may have cases where something is  
7 visible from a private street to the people who drive up  
8 and down that private street, but it would not qualify for  
9 this requirement of story poles because of the way you're  
10 currently phrasing it.

11  
12                   COMMISSIONER THOMAS: So the way that I'm  
13 currently phrasing it, I think that for me that would be  
14 okay, because that seems like a huge burden to put  
15 financially on a builder/developer for one or possibly a  
16 couple of private property owners to be able see the story  
17 poles versus like we do know that there are alternatives of  
18 the renderings, etc., so I am comfortable with that, but  
19 thank you for bringing that up.

20                   CHAIR BARNETT: Other comments on the motion?  
21 Vice Chair Raspe.

22                   VICE CHAIR RASPE: Just on this last issue, my  
23 whole concern is it seems to me that the types of homes  
24 we're talking about here are the ones most likely to be in  
25 hillsides, and those I think are among the categories when

1 we first started discussion that would be most benefited by  
2 story poles, and viewing corridors change over time. My  
3 sense is that by introducing an element of not visible from  
4 viewing corridors we're introducing maybe an element that's  
5 creating too much ambiguity. A thought.

6 COMMISSIONER THOMAS: I agree, but I also  
7 included public right-of-ways, so I feel like there would  
8 be very few lots of properties that would qualify with all  
9 of that, but I don't know, because I don't know that much  
10 about the extent of the mountainsides and everything, so  
11 I'm happy to get rid of it if we feel like it's too  
12 complicated, or now the Town Council knows we mentioned  
13 this if they want to deal with it, that's fine with me, so  
14 yes.  
15

16 I also do just want to state that I am on the  
17 same page with Commissioner Clark. I don't feel we need  
18 story poles for everything in all of the historic  
19 districts. I'm happy to keep it for the historic inventory  
20 list, and I understand that would cover all of the historic  
21 districts anyway, so then I guess it doesn't really matter  
22 if you guys feel strongly about it.  
23

24 CHAIR BARNETT: So we have a motion and we have a  
25 second. Any further discussion? If not, I'll ask the

1 Commissioners to raise their hand in approval, and we have  
2 a unanimous vote on that. Thank you.

3 ATTORNEY WHELAN: So did the motion delete the  
4 requirement for the proposal that properties be exempt if  
5 they're not visible from right-of-way or viewing corridors?

6 CHAIR BARNETT: That was removed, yes.

7 COMMISSIONER THOMAS: No, I included it.

8 VICE CHAIR RASPE: It's included.

9 COMMISSIONER THOMAS: Because the seconder didn't  
10 ask, but yes, but the Town Council knows that we weren't  
11 sure, so there you go.

12 VICE CHAIR RASPE: It was included, yes.

13 ATTORNEY WHELAN: And everybody who voted knew  
14 that? Okay, thank you.

15 CHAIR BARNETT: Let's see, our time is 9:30. We  
16 could take a break now if Commissioners are desirous of  
17 doing that; otherwise we can plow ahead.

18 VICE CHAIR RASPE: I think the remaining topics  
19 are quick, hopefully.

20 CHAIR BARNETT: So we've got Sections C and D  
21 left. We'll move on to C at the bottom of page 15, and this  
22 addresses the concept of what kind of netting or  
23 alternatives we should consider. Current policy requires  
24 all building corners and heights to be demonstrated by the  
25

1 flagging system, and that would include towers, spires,  
2 elevators and mechanical (inaudible), cupolas, mechanical  
3 equipment, screening and similar elements not used for  
4 human activity or storage which are visible from the  
5 streetscape. See I'll open discussion on that item and see  
6 if there are any comments. Commissioner Clark.

7           COMMISSIONER CLARK: I have two changes I'd like  
8 to see. I don't think we should require internal story  
9 poles. I think that adds a huge cost burden.

10           Something I want to note looking at the North  
11 Forty. Those units are expensive and we know that it took  
12 almost \$1 million to put in all those story poles, and that  
13 cost gets passed down to the homeowner or tenant, it's not  
14 absorbed by the developer, so I think it's important to  
15 look at where we can lower the costs; I think that's a good  
16 way.

17           Then I also think we should make modifications  
18 for things like only front façade and tallest ridge rather  
19 than every architectural detail.

20           CHAIR BARNETT: Thank you for those comments.  
21 Other comments? Commissioner Thomas.

22           COMMISSIONER THOMAS: I support Commissioner  
23 Clark's comments; I am in agreement with that.  
24  
25

1 I also must say that I understand comments about  
2 the orange netting, but I also don't know if there's a  
3 real... I'm happy with flags or something else that could be  
4 used that's easy to get access to, that's inexpensive, but  
5 when I was thinking and looking at the other jurisdictions  
6 it's not like there's another alternative besides the  
7 orange netting that does a much better job of representing  
8 what the final product is going to look like, which I feel  
9 like was a big comment that we got from the architects, so  
10 I don't know if there's a way that we can really adjust  
11 that, because I don't think there's really a product out  
12 there that's less expensive, less wasteful, and that's more  
13 available, according to my very little research.

15 But I do agree that the outside of the building  
16 and the height is the most important part, and I do think  
17 that if we're talking about from the perspective of this  
18 also is a signal to the community that this project is  
19 happening, it doesn't matter if there are four poles or ten  
20 poles, the four poles are going to do it for people, so  
21 that's my opinion.

22 CHAIR BARNETT: Vice Chair Raspe.

23 VICE CHAIR RASPE: Thanks. I'm generally in  
24 accordance with both Commissioners' prior comments. I think  
25 a representation of the general outline of the structure



1 without going into its internal spaces, representing its  
2 high points specifically.

3 I think there was a comment about it only  
4 representing the front façade. I think we need more than  
5 the front façade; I think we need a general footprint of  
6 the space.

7 With respect to the orange netting, I find it  
8 generally non-problematic. I understand orange is a  
9 shocking color, but I think at some point we want the  
10 public to see it, and I think it's better than the  
11 alternatives. My only caveat would be if we are in high  
12 wind areas or extraordinarily high areas, then I think the  
13 netting becomes more of a problem, and so maybe in those  
14 situations we would go to flags instead of netting. Aside  
15 from that, a system that just gives us the outline with  
16 peaks using orange netting I think is a reasonable  
17 solution.  
18

19 CHAIR BARNETT: Thank you for that. Commissioner  
20 Hanssen.

21 COMMISSIONER HANSSEN: When I was looking at this  
22 I thought of a couple of things. Maybe I'm not seeing the  
23 whole picture, but the Story Pole Policy is all outside  
24 building corners and along the rooflines, and presuming  
25 that the rooflines are going to be higher than the outside

1 corners unless it has a flat roof, so I'm not sure why  
2 that's so onerous.

3           Then as far as the architectural elements, when I  
4 first went through Leadership Los Gatos I remember we had a  
5 section on land use, and one of the things that came up  
6 from the assistant town manager or town manager at the time  
7 was something along the lines of the dome building—you guys  
8 know what I'm talking about and where it is—and I don't  
9 know if that had story poles representing the dome part  
10 that is not used for anything but it basically is covering  
11 up a big part of the hillsides as you're driving down Los  
12 Gatos Boulevard. I wouldn't want that not to be story  
13 poled, so when I was reading this I thought of that.

14           I don't want it to be too onerous, but if we're  
15 taking it away from enough different properties I don't see  
16 that it's too much to ask to show us the things that are  
17 really going to stick out, so maybe there's a better way to  
18 say it than to take away all these things. I don't have a  
19 better way to say it than that, but I wouldn't want to take  
20 that away from the story pole requirement so that people  
21 wouldn't really see what's going to be built.

22           CHAIR BARNETT: Okay, thank you. We might  
23 consider that as part of a discretionary decision by the  
24  
25

1 Town. Just throwing that out as an idea, maybe something we  
2 can look at later. Other comments? Commissioner Clark.

3 COMMISSIONER CLARK: I just have a quick  
4 question. Is the netting significantly more expensive than  
5 flags?

6 JENNIFER ARMER: I'm not sure. I think there was  
7 a comment to that effect, but I'm not sure what the  
8 difference in the cost is between the two materials.

9 JOEL PAULSON: Through the Chair, I'd just add I  
10 think some of the other comments were that you can span a  
11 greater distance with the flags than you can with the  
12 orange netting without any issues, so that's less poles you  
13 technically have to put up, which probably makes it cheaper  
14 overall.

15 COMMISSIONER CLARK: I personally would be in  
16 favor of looking into flags instead of netting.

17 CHAIR BARNETT: Other thoughts on Section C?  
18 Commissioner Thomas.

19 COMMISSIONER THOMAS: I agree that I think that  
20 the poles and something strung across signals that a  
21 project is happening, and so I agree that with having an  
22 option besides the netting, flags I guess was the other  
23 suggestion. I guess rope was also included as an example; I  
24 think that that would need to be a pretty bright color. I  
25

1 don't know how rope would be better than flags, but I do  
2 think that maybe that could be included in the modify  
3 exception process and we could maybe try to streamline that  
4 area, so I am happy to leave this here and then discuss it  
5 more in the Modify Exception Process section in E, but I  
6 did want to ask the Town Attorney if that is where we  
7 should... In this section I guess we're not actually  
8 requiring any policy, but would it be necessary to mention  
9 that alternatives can up to the discretion of the Community  
10 Development Director, etc.? Would that be necessary to be  
11 included right after the comments about what is allowed, or  
12 is it just in a completely different section of the policy?  
13

14 ATTORNEY WHELAN: I don't know what section it  
15 would be best in, but I do think it would be a good idea to  
16 specify the criteria under which an exception would be  
17 allowed so that it gets applied evenhandedly and so you  
18 could recommend to the Town Council that the ultimate  
19 policy allow exceptions to the netting under the following  
20 circumstances.

21 JENNIFER ARMER: And that could be part of your  
22 discussion of Section C of your Staff Report or Section D,  
23 either of those. We will take the recommendations from  
24 Planning Commission and work them into a revised Story Pole  
25 Policy as appropriate.

LOS GATOS PLANNING COMMISSION 5/24/2023  
Item #2, Modifications to Town Height  
Pole and Netting Policy

1 CHAIR BARNETT: All right, Commissioner Hanssen.

2 COMMISSIONER HANSSEN: I just wanted to ask the  
3 question, pursuant to what was brought up earlier in  
4 Section B, Building Height, the 70' high building. I'm  
5 looking at the exception process and it says the current  
6 exception process for alternatives, including the orange  
7 snow fencing and replacement of poles, and I would think  
8 the height thing would require an exception from Town  
9 Council. I'm trying to think of ways to get around that and  
10 to put it more with the Community Development Director. I  
11 don't know where this height thing would fall, but I think  
12 as long as there's a way to represent the building  
13 physically that's similar to the story poles that it would  
14 be fine to leave that to the discretion of the Community  
15 Development Director.  
16

17 JENNIFER ARMER: Thank you for that question. I  
18 would say that you could place that as an exception or you  
19 could just build it in to say this is the material that  
20 is...the netting is required for all buildings unless they  
21 exceed a height of 35', in which case an alternative  
22 material of this flag rope—I don't think it is just rope, I  
23 think it is flag rope; it's the rope that has the flags on  
24 it—that that is the alternative material that could be  
25 allowed when a building exceeds 35', for example.

1 COMMISSIONER HANSSEN: That sounds reasonable to  
2 me.

3 JENNIFER ARMER: So then it's not an exception  
4 process, it's just built in.

5 COMMISSIONER HANSSEN: Right, because I do want  
6 to honor what the Town Council asked us to do. They have  
7 other things to focus on, not that.

8 CHAIR BARNETT: Other questions or comments? I  
9 believe one of the examples we saw talked about netting  
10 that designated the plate heights in different colors, and  
11 that seemed interesting to me. We talked about possible  
12 markers on the poles themselves to designate distances,  
13 perhaps at 10' intervals or something like that, but I  
14 think actually somehow demonstrating where the plate lines  
15 is would be helpful to envision the future building. Just a  
16 thought to throw out. Commissioner Hanssen.

17  
18 COMMISSIONER HANSSEN: I would also note that Mr.  
19 Fagot also mentioned about the flags at the top where you  
20 have the netting, but then at the very highest point there  
21 are flags at the top, if I got that correctly, that would  
22 be worth considering.

23 CHAIR BARNETT: Thank you for remembering that.  
24 Commissioner Clark.  
25

1 COMMISSIONER CLARK: I wanted to ask, one of the  
2 architects during public comment talked about only 30 being  
3 required but we use 44 for the level of orange or  
4 something. Do you know what that means?

5 JENNIFER ARMER: Thank you for that question.  
6 They were talking about the brightness of colors on the  
7 building that are allowed in the hillsides, and so when  
8 we're talking about a new hillside home, it's limited, it  
9 can't be a bright color, and then they were saying that the  
10 flags or the netting is very bright and therefore does not  
11 comply with the Hillside Development Standards and  
12 Guidelines for new homes.

14 COMMISSIONER CLARK: Okay, got it. Thank you.

15 CHAIR BARNETT: Other comments or a possible  
16 motion?

17 COMMISSIONER THOMAS: I can do both again.

18 CHAIR BARNETT: Thank you.

19 COMMISSIONER THOMAS: My comment is actually  
20 related to the flag at the top. I guess that's not as  
21 difficult, but adding more requirements to the story poles  
22 feels like it is only going to increase this reliance on  
23 story poles, and I feel like at the end of the day the goal  
24 needs to be to get information to people to authentically  
25 engage in a better, more meaningful, and constructive way

1 and I don't know if adding more information to story poles  
2 is going to do that.

3 I think that we need to encourage and require  
4 outreach and information sharing in a different platform,  
5 so I agree that it would be really helpful for me as a  
6 planning commissioner to be able to see the plate heights  
7 and everything in real life, I would really appreciate that  
8 and have the poles be marked, but I feel like it would  
9 create further reliance on this process that is clearly a  
10 burden to part of our community, and so that is just my  
11 only fear and hesitation for adding specific requirements.  
12

13 That being said, I am happy to make a motion if  
14 you want me to anyway.

15 CHAIR BARNETT: Please do.

16 COMMISSIONER THOMAS: So for Section C, Modify  
17 Physical Requirements, should the current requirements be  
18 modified? We say yes, the modification should be that above  
19 35' alternatives to netting can be approved, such as flag  
20 rope, and I think that that's pretty much it.

21 CHAIR BARNETT: Commissioner Clark.

22 COMMISSIONER CLARK: And then also we had  
23 discussed something more toward just displaying the general  
24 footprint of the building versus every architectural  
25



1 detail, so like something in that direction, and also no  
2 internal story poles.

3 JENNIFER ARMER: Through the Chair, may I ask for  
4 clarification on that?

5 CHAIR BARNETT: Please.

6 JENNIFER ARMER: We don't currently require story  
7 poles in the middle of a building unless it's supporting a  
8 tall ridge, so was that intended to address situations  
9 where there are multiple buildings?  
10

11 COMMISSIONER CLARK: Yes, so for like the North  
12 Forty, all the ones that weren't even visible unless you  
13 got a private invitation.

14 JOEL PAULSON: Through the Chair, that's actually  
15 in Section D, so if we get to D then we can handle that  
16 there. I think the Commission has been having a lot of good  
17 discussion, but once we get a motion on the table we really  
18 should get a second, and then we can start talking about  
19 potential amendments; it might be a little cleaner that way  
20 for us to unravel when we watch the video.

21 CHAIR BARNETT: Okay, so we have a motion. We  
22 don't have a second.

23 COMMISSIONER HANSEN: I'll second the motion.  
24

25

1 CHAIR BARNETT: Commissioner Hanssen, thank you.  
2 Any discussion on the motion? If not, I'll ask for a raise  
3 of hands of those in support, and it's unanimous.

4 JENNIFER ARMER: Through the Chair, I just want  
5 to clarify, the motion was the flags would be allowed over  
6 35'? Okay, thank you.

7 CHAIR BARNETT: We've made our way to Section D  
8 on page 16. This addresses alternatives to the Story Pole  
9 Policy, including more clarity and predictability and  
10 potentially reducing the exception request, which as I  
11 understand has been a burden to both the Applicant and  
12 perhaps to the Town, and to consider these options for  
13 perhaps eliminating or limiting the story pole  
14 requirements, and that is to use flag ropes, renderings and  
15 digital simulations, signage, and reduced number of poles  
16 for multi-building projects. I think the rest of it has  
17 been reviewed and understood, so I'll open the discussion  
18 on Section D. Commissioner Clark.

19 COMMISSIONER CLARK: I have a couple of things.  
20 One thing I think that we should discuss is some people had  
21 a problem with having to rent story poles for a really long  
22 time, so maybe we should consider—and I don't know if this  
23 is where we would do it or if we'd want to do it in another  
24 spot—adding a time limit or something so that they're not  
25

1 having to rent story poles for months on end and the cost  
2 keeps accumulating.

3           Also I wanted to bring up the option of in order  
4 to officially notify the neighbors if we're not doing story  
5 poles something the Town could do is send a mailer to the  
6 ten immediate neighbors or something, and I just wanted to  
7 throw that idea out there, but those were my first couple  
8 of thoughts.

9           CHAIR BARNETT: Thank you. Vice Chair Raspe.

10           VICE CHAIR RASPE: Thank you, Chair. On  
11 Commissioner Clark's point with respect to notifying  
12 neighbors, I'd like to see perhaps a system whereby the  
13 proposed development has a sign in the front and could have  
14 a rendering on that sign, and maybe even I think  
15 Commissioner Thomas indicated in her notes before, a QR  
16 code which immediately could provide the viewer access to  
17 3-D renderings to the extent those were created.

18           And then, again, with respect to items in here in  
19 Section D, it also has reducing number of poles for multi-  
20 building projects. I think this is where we would include  
21 our opinion that in multi-building projects such as the  
22 North Forty there wouldn't be a requirement to include  
23 internal poles, but rather we would look for story poles,  
24 around the perimeter of the project. Those are my thoughts.  
25

1 CHAIR BARNETT: One question I had on the net  
2 concept is what if there are higher buildings on the  
3 interior than at the four corners? Maybe something worth  
4 considering. Other thoughts? Commissioner Hanssen.

5 COMMISSIONER HANSSEN: I have a question for  
6 Staff. We require signage and renderings under what  
7 circumstance? Because we did hear from the architects that  
8 they are always doing at least the renderings anyway. What  
9 do we require now, story poles or not?  
10

11 JENNIFER ARMER: Correct. In the Story Pole  
12 Policy it does actually include specifics about what needs  
13 to be on the signage, and it does require the front  
14 elevation on the proposed building. When we get into  
15 something that's more complex than just a single-family  
16 home, then a rendering is required.

17 COMMISSIONER HANSSEN: My thought was since  
18 they're already doing that it's easy to do that, and since  
19 we're taking away story poles from a lot of developments  
20 that we should continue to, even if they don't have to put  
21 up story poles, that they should do renderings and digital  
22 simulations and signage, and if they are doing story poles  
23 they should do it as well, but the people that aren't  
24 having to do story poles should also do it. I don't know  
25

1 how you'd do that when it's not in the Story Pole Policy,  
2 but you see where I'm going with this?

3 JENNIFER ARMER: The Story Pole Policy does  
4 include signage requirements, and so it could require for  
5 those projects that don't trigger story poles that signage  
6 would still be required. I think it's possible for us to  
7 work that in in terms of this larger story poles, netting,  
8 and signage policy if that is the desire of the Planning  
9 Commission.

10  
11 COMMISSIONER HANSSEN: It was just my suggestion,  
12 because I think that would be an easy way to create  
13 visibility and it would help take us on the path of weaning  
14 people off of the need for story poles, and if that was the  
15 only thing they had to look, at and we could get some  
16 experience with it as well.

17 CHAIR BARNETT: Any thoughts? Commissioner  
18 Thomas.

19 COMMISSIONER THOMAS: I agree, and if we're  
20 discussing our Height Pole and Netting Policy—but really I  
21 feel like it needs to be renamed to Story pole and Netting  
22 and Signage or whatever—I think that signage is a really  
23 important part of this moving forward and hopefully can  
24 just be more useful with the access to technology that we  
25 have.

1 I did have a question. I know that this wasn't  
2 necessarily in the topics of discussion, but it came up  
3 multiple times in all the policies that we looked at and  
4 it's with regard to timing, and I think that that's where  
5 we've been coming with a lot of the story pole stuff. I  
6 think that because we can post signage and link  
7 information, but the linked digital information can be  
8 updated, is it possible for us to require signage to be  
9 posted earlier in the process than right now, which is they  
10 go up with story poles? That's my first question.

12 My second question is related to our timing with  
13 the public notices. It says in our current policy that it  
14 should be the height poles and netting have been installed..  
15 It was something about it has to be before the public  
16 comment period or something. Either way, other  
17 jurisdictions have specifics like a 7-day or a 10-day or a  
18 14-day, so is there a recommendation that we should put  
19 something more specific than just like sometime before?

20 JENNIFER ARMER: At this time the signage meets  
21 the same rules as our 10-day noticing for these projects,  
22 and so we require that the story poles be up, certified,  
23 and photographed, and the signage be installed prior to the  
24 beginning of the 10-day notice when we send notice cards.

25 In general, notice cards are sent to any property within

1 300 feet, unless we're talking about a Minor Residential  
2 Development Application where it's a smaller radius, or the  
3 hillsides, in which case it's actually a 500-foot radius.  
4 And those notice cards do include the web link to find more  
5 information about the project online so that they can see  
6 any drawings, renderings, or project descriptions  
7 available.

8           COMMISSIONER THOMAS: Okay, thank you. With that  
9 being said, I think that we should mention the ten days in  
10 here, unless that causes confusions because the notice  
11 period could change and then we'd also have to amend this  
12 policy.  
13

14           Right now the requirements on the sign are the  
15 address and the phone number of the Planning Department.  
16 Not that people shouldn't physically come down; that's  
17 great if people want to physically come down and look at  
18 things in person, but I also think information about who to  
19 email is probably also helpful, and then also making sure  
20 that there are requirements about website links and QR  
21 codes and things like that, because I do think that that is  
22 the most helpful way to gain access to digital information  
23 right away.  
24

25           I still do think that putting the signs up  
earlier would be helpful for everyone involved, even if the

1 renderings end up changing, and I would be in favor of also  
2 making these signs more of a template format in some way,  
3 shape, or form that really does give visual notice to the  
4 community. A lot of the signage is developed by architects  
5 or people that work with architects, and they're really  
6 beautiful and nice to look at, not that that's problematic,  
7 but if we're trying to get signage to replace the indicator  
8 of a story pole, maybe it does need to be outlined in  
9 orange, or the title needs to be in all the same exact font  
10 and same exact size, and then there's the area where they  
11 add the additional information. I'm not exactly sure what  
12 that would look like, but I do think something that's more  
13 visually striking would be really helpful during this  
14 transition period away from the story poles.

16 CHAIR BARNETT: Thank you for those comments.  
17 Other thoughts? Vice Chair Raspe.

18 VICE CHAIR RASPE: Thanks. First of all, I join  
19 in all the comments by Commissioner Thomas.

20 I have one question for Staff. How long do the  
21 story poles have to remain up? We've heard horror stories  
22 about how they were up for six months and it cost \$1  
23 million. Is there a requirement of X days?

24 JENNIFER ARMER: Thank you for the question. The  
25 requirement is based on completion of the public hearing



1 process. They must be installed prior to the public notice  
2 going out, so that's ten days in advance of the first  
3 public hearing, and then it must remain up until the end of  
4 any appeal period. The examples that were given were ones  
5 where there were multiple Planning Commission meetings,  
6 continuances, and then an appeal to Town Council,  
7 continuances there, and so that is how it ended up becoming  
8 that length of a period.

9  
10 VICE CHAIR RASPE: So maybe one of the things we  
11 might want to consider is putting a cap on so that that  
12 burden doesn't become too onerous for our developers. I  
13 don't know if it's 30 days, 60 days, but it seems to me six  
14 months of carrying costs can be extraordinary, so if we  
15 want to consider that as well.

16 CHAIR BARNETT: Thank you. Other thoughts?  
17 Commissioner Clark.

18 COMMISSIONER CLARK: Thank you. I like the idea  
19 of adding a cap. I think that in a perfect world it would  
20 be up until it's gone all the way through, but if the goal  
21 is to get the public's attention, after 30 days they should  
22 know that it's there, and maybe we do a really good job  
23 updating the signage to make it clear the story poles are  
24 down but this project is still being considered or  
25

1 something, but I would say 30-day cap, because I don't know  
2 what 60 days would get you compared to that.

3 CHAIR BARNETT: Is it correct that the Staff  
4 materials online include photographs of the story poles?

5 JENNIFER ARMER: We do require that photographs  
6 of the story poles be provided, and if we were considering  
7 a shorter period of time for the story poles I think that  
8 would become standard practice that we would provide the  
9 photos online.

10 One element to consider is if a project then gets  
11 appealed to another deciding body and the story poles are  
12 no longer up, then they would be relying on the photos and  
13 any renderings that were provided.

14 CHAIR BARNETT: Thank you. Commissioner Hanssen.

15 COMMISSIONER HANSSEN: I had a question. In  
16 general I am okay with the idea of exempting parts of the  
17 buildings that are not visible from the public right-of-  
18 way, but just taking the example of the North Forty, if you  
19 go by the outside of it most everything is at a 35' height  
20 limit, however, the Market Hall with the two layers of  
21 affordable housing is at least 10', if not 15', more. Is it  
22 more than 45'?

23 JOEL PAULSON: Yes.

24  
25

1           COMMISSIONER HANSSEN: I think one of the things  
2 they got for the density bonus is more height there. I just  
3 would want to make sure, because we will see other projects  
4 like this with the new Housing Element, that they would  
5 still have to story pole at least the highest thing in  
6 there, even if they don't have to story pole every  
7 building. Does that make sense? I put that out there that  
8 way, and hopefully it's good. Other than that, I don't  
9 think they have to story pole every building.  
10

11           CHAIR BARNETT: Okay, thank you. I'll interject a  
12 comment. The current policy, which is on page 75, includes  
13 as alternatives digital imagery, simulation, and computer  
14 modeling, and I was struck by the detail in the Santa  
15 Barbara requirements that went into this in considerable  
16 detail, particularly on pages 41 and 42 relating to photo-  
17 simulations, perspective drawings, 3-dimensional modeling,  
18 and aerial views, and my thought would be to commend those  
19 to the Town Council for possible consideration as specific  
20 requirements if we go away from story poles.  
21

22           If we don't have other comments, I guess we're  
23 looking for a motion at this time. Commissioner Clark.  
24

25           COMMISSIONER CLARK: I can try. I move under  
Section D, Providing Alternatives, to have a reduced number  
of poles for multi-building projects, so that only the

1 outer buildings need to be story poled, as well as the  
2 tallest building if not one of the outside ones. That there  
3 be a QR code and email address included on the signage, and  
4 that there be a time limit with cap of 30 days for story  
5 poles to be up. For projects that don't trigger story poles  
6 for signage to be required. To consider having signage up  
7 earlier than the story poles. And to maybe standardize  
8 signage to ensure it is visually striking or catches  
9 attention.

10  
11 CHAIR BARNETT: Thank you. That's your motion,  
12 and I'll look for a second. Commissioner Thomas.

13 COMMISSIONER THOMAS: I second that, and then I  
14 did just want to clarify for the 30 days. Should it be 30  
15 days after the notice, or 30 days total?

16 COMMISSIONER CLARK: I like 30 days after the  
17 initial public hearing I think is a good idea.

18 COMMISSIONER THOMAS: So that typically would be  
19 like 40 days, the minimum, right? Okay.

20 CHAIR BARNETT: Any thoughts about other  
21 inclusions into the possible motion or discussion about it?  
22 Commissioner Hanssen.

23 COMMISSIONER HANSSSEN: I meant to ask this  
24 earlier. It was in the comments of the Staff Report. Do we  
25 need to consider adding or mentioning anything? Towards the

1 end it says, "Relocation of poles when located close to  
2 property lines to reduce guide wire conflicts and  
3 attachment of guide wires to existing trees, fencing, and  
4 equipment." We didn't discuss that in the motion. What does  
5 the policy say right now on that point?

6 JENNIFER ARMER: Our policy does not currently  
7 have any exception for those situations, except going  
8 through the standard exception process to Town Council.  
9

10 JOEL PAULSON: Through the Chair, one option  
11 might be to have Section D have two separate motions,  
12 because these really are pretty separate topics. Like  
13 moving forward with what you have, and then see what kind  
14 of comments we have on the second portion.

15 COMMISSIONER HANSSEN: Fair enough, but since it  
16 was under Section D I wanted to make sure that we didn't  
17 skip it.

18 CHAIR BARNETT: So we have the motion, we have  
19 the second, and we've had discussion. Anything further? If  
20 not, I'll call for a raise of hands for those who are in  
21 favor of the motion, and again it's unanimous. Thank you  
22 very much.

23 Commissioner Hanssen, do you want to formulate a  
24 motion on your thoughts?  
25

1 COMMISSIONER HANSSEN: Let me ask a question  
2 first. Is it reasonable if we gave a more automatic  
3 exception for people that need to relocate poles that are  
4 close to property lines? What would be the consequence of  
5 letting them relocate the poles, and how much does that  
6 happen? I just want to understand how that works.

7 JENNIFER ARMER: Since this isn't an exception  
8 that we've seen frequently, it's a case where I think  
9 they've just found a way to make it work, but it could be  
10 phrased as an exception. It could be considered either  
11 automatically that within a certain distance of a property  
12 line that the poles could be set in. We could include some  
13 language that there needs to be some note about that on the  
14 signage to specify that it's not representing the full  
15 width of the building. This is me just kind of  
16 brainstorming some ideas as to how you would address that.

17 Alternatively, you could consider this as another  
18 exception process, so as the Town Attorney had suggested we  
19 would want to have some specific guidelines to guide Staff  
20 through that type of exception process and when to grant  
21 it.  
22

23 COMMISSIONER HANSSEN: Given what you just said,  
24 I would just say that it's not a big issue, so I would  
25 leave it to the discretion of the Community Development

1 Director whether that was okay or not. It doesn't sound  
2 like it's going to be a big problem, and I wouldn't want  
3 them to have to go to Town Council for that.

4           Also, the attachment of guide wires to existing  
5 trees, fences, and equipment, I do maybe have an issue  
6 about trees, because we have so many protected trees, but  
7 the fences and equipment, as long as it's not going to  
8 damage them, I again wouldn't want to send people with an  
9 unnecessary exception, because we want them to get the  
10 story poles up, so if they can't do it another way then  
11 they should have that kind of alternative.  
12

13           So that would be a motion I would make to say  
14 that we can allow the relocation of poles located close to  
15 property lines to reduce guide wire conflicts without  
16 getting an exception, and the same with attaching to other  
17 devices other than the poles they're putting up, but not  
18 trees. So that's my motion.

19           CHAIR BARNETT: Thank you for the motion. Do we  
20 have a second? Commissioner Clark.

21           COMMISSIONER CLARK: I second.

22           CHAIR BARNETT: And discussion? Seeing none, I  
23 call for the raise of hands in favor. Also unanimous. Thank  
24 you.  
25

1           Now we're going to move on to Section E, Modify  
2 Exception Process. This relates to who is going to be the  
3 decision maker on certain exception requests, and I believe  
4 you've had a good opportunity to look at that and consider  
5 it, so why don't we open up for discussion? Vice Chair  
6 Raspe.

7           VICE CHAIR RASPE: Thanks, Chair. My sense is the  
8 Community Development Director already handles quite a few  
9 issues with respect to the poles, and it's only certain  
10 issues that are not handled by the CDD that go up to Town  
11 Council. I don't see a good reason to break it down that  
12 way. To me, I think the CDD should handle all issues with  
13 respect to those story poles, take it all out of the hands  
14 of the Town Council who have many more important things to  
15 do, so my recommendation would be to make the CDD the  
16 decision maker for all matters with respect to the story  
17 poles and signage as we've talked about tonight.

18           CHAIR BARNETT: Okay, that's a clear motion. Is  
19 there a second? Commissioner Hanssen.

20           COMMISSIONER HANSSEN: I second.

21           CHAIR BARNETT: And discussion? Commissioner  
22 Clark.

23           COMMISSIONER CLARK: I just wanted to say I think  
24 that's a good motion and that we can support that if the  
25



1 Town Council would like to make that decision to offload  
2 it, we would support them doing that, but ultimately I  
3 think this one, mostly it's going to be what the Town  
4 Council wants to do, because it falls under them a lot of  
5 the time now.

6 CHAIR BARNETT: Thank you. Commissioner Thomas.

7 COMMISSIONER THOMAS: I agree, and do we need to  
8 be discussing what is part of the exemption process or just  
9 the process itself for Staff right now? Just the process?  
10

11 JOEL PAULSON: Yes, just the process, and this is  
12 really just specifically the deciding body for exceptions,  
13 because the reality is with the motions that have been made  
14 thus far we're going to have far fewer exception requests  
15 probably even for larger buildings, because you provided  
16 some options. Ultimately, we'll have to wait and see what  
17 Council says, but I think that's where we'll find out  
18 whether or not we need to build in additional comments  
19 related to the exceptions request, but this is specific to  
20 the decision maker for any exception requests.

21 COMMISSIONER THOMAS: Okay, perfect. Then that's  
22 it.

23 CHAIR BARNETT: I noticed in the Staff Report it  
24 refers to only two jurisdictions in the County that have an  
25

1 exception process where the authority is placed within the  
2 Community Development Director, but I support the motion.

3 Any further discussion? If not, raise your hands,  
4 and it's unanimous.

5 We move next to Section F, Story Pole Policy  
6 requirements, and we've heard about that issue from some of  
7 the commentators, and I guess we can move right on to  
8 discussion of that. Vice Chair Raspe.

9 VICE CHAIR RASPE: My sense is the Story Pole  
10 Policy requirement is the Applicant has to provide a plan  
11 to the Town for it's prior approval before raising the  
12 poles and putting up the netting. To me that makes eminent  
13 sense. The alternative is no plan, the poles go up, and God  
14 forbid they're incorrect and they have to be redone to a  
15 greater expense. So, yes, there is a great upfront expense  
16 in preparing a plan, but it seems to me it's the most  
17 efficient probably cost effective measure, and so I would  
18 recommend keeping that system in place.

19 CHAIR BARNETT: Commissioner Hanssen.

20 COMMISSIONER HANSSEN: I totally understand what  
21 the Vice Chair just said, however, the story poles have to  
22 be certified by an independent certification, and if I  
23 understand the role of those certifying bodies it's that  
24 they're supposed to take the plans and say yes, I agree,  
25

1 and because I'm qualified to say so that those story poles  
2 represent the development plans as submitted. So while I  
3 understand having a plan would help, is that onerous on top  
4 of them having to get them certified anyways? That's just a  
5 question I have and I had written down before I came to the  
6 meeting.

7 CHAIR BARNETT: Is that a question to Staff?

8 COMMISSIONER HANSSEN: It's a question to the  
9 other Commissioners.

10 CHAIR BARNETT: I see. Thank you. Commissioner  
11 Clark.

12 COMMISSIONER CLARK: I think what I heard from  
13 the architects and developers is that it's very onerous to  
14 put together that Story Pole Policy; it sounded like it is  
15 legitimately a problem for them, and if Los Gatos is the  
16 only agency in the County that requires the Story Pole  
17 Policy, it must work not to have one though would be my  
18 opinion, because everyone else seems to be getting by okay.

19 I think one thing we could do is provide the  
20 option to get a Story Pole Policy approved before putting  
21 them up so that if somebody is concerned that their story  
22 poles would end up needing to be changed once they were up,  
23 they could come forward, but if they don't they understand  
24  
25

1 that they might be assuming an additional cost if they do  
2 need to be changed.

3 CHAIR BARNETT: Okay, thank you. Commissioner  
4 Hanssen.

5 COMMISSIONER HANSSEN: I think that's a fantastic  
6 suggestion. It's the story pole version of the Conceptual  
7 Development Advisory Committee. It's an option if they want  
8 the confidence that they're doing the right thing and then  
9 they can choose to do it, and it could also be a warning  
10 that if you don't do it, it might be an additional expense  
11 for you. I like that approach.

12 CHAIR BARNETT: It sounds like there's a growing  
13 consensus. Is there further discussion? Commissioner Clark.

14 COMMISSIONER CLARK: I move to make a Story Pole  
15 Policy plan optional rather than required.

16 CHAIR BARNETT: Thank you. Now do we have a  
17 second? Commissioner Thomas.

18 COMMISSIONER THOMAS: I second the motion.

19 CHAIR BARNETT: Any further discussion? If not,  
20 raise your hands in support. Another unanimous vote.

21 Now we are down to Section G, the one that is  
22 remaining, and we've heard from the Town Attorney on this  
23 issue tonight, but does anyone have any further questions  
24 or comments about it? Commissioner Hanssen.

25  
LOS GATOS PLANNING COMMISSION 5/24/2023  
Item #2, Modifications to Town Height  
Pole and Netting Policy

1                   COMMISSIONER HANSSEN: I will just mention that  
2 this was discussed at the last Housing Element Advisory  
3 Board meeting, and although we didn't come to any  
4 recommendation on that particular point it was discussed at  
5 least briefly because it was brought up by HCD, but I think  
6 we all took comfort in the fact that our Town Attorney's  
7 opinion is that a court wouldn't consider that being an  
8 issue, and especially since we are loosening a lot of the  
9 requirements for Story Pole Policy it seems to me that that  
10 shouldn't be an impediment, especially with what we've done  
11 with mainly affordable housing.  
12

13                   CHAIR BARNETT: And I assume in our iterative  
14 process with HCD that this hasn't been mentioned as a  
15 requirement or concern?

16                   JOEL PAULSON: I don't believe it has  
17 specifically been mentioned, but we did provide a lot of  
18 additional information in this second round, which may lead  
19 to some comments.

20                   CHAIR BARNETT: Okay, thank you.

21                   (END)  
22  
23  
24  
25

*This Page  
Intentionally  
Left Blank*



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 08/01/2023

ITEM NO: 15

DESK ITEM

---

DATE: August 1, 2023  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Consider Adoption of a Resolution Modifying the Height Pole and Netting Policy for Additions and New Construction. The Proposed Modifications to Town Policy are Not Considered a Project Under the California Environmental Quality Act. Project Location: Town Wide. Applicant: Town of Los Gatos.

REMARKS:

Attachment 10 includes public comment received between 11:01 a.m., Monday, July 31, 2023, and 11:00 a.m., Tuesday, August 1, 2023.

ATTACHMENTS:

Previously received with the August 1, 2023, Staff Report:

1. Draft Revised Story Pole Policy with Changes Red-Lined
2. Draft Resolution with Exhibit 1
3. April 26, 2023 Planning Commission Staff Report with Exhibits 1-2
4. April 26, 2023 Planning Commission Addendum Report with Exhibit 3
5. April 26, 2023 Planning Commission Verbatim Minutes
6. May 24, 2023 Planning Commission Staff Report with Exhibit 4
7. May 24, 2023 Planning Commission Addendum Report with Exhibit 5
8. May 24, 2023 Planning Commission Desk Item Report with Exhibits 6
9. May 24, 2023 Planning Commission Verbatim Minutes

Received with this Desk Item:

10. Public Comment received between 11:01 a.m., Monday, July 31, 2023, and 11:00 a.m., Tuesday, August 1, 2023

PREPARED BY: Jennifer Armer, AICP  
Planning Manager

---

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

---

***This Page  
Intentionally  
Left Blank***



July 31, 2023

Mayor Maria Ristow and  
Los Gatos Town Council  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

**Re: Agenda Item 15: Story Pole Policy Modifications**

Dear Honorable Mayor and Council Members:

Our firm represents Grosvenor USA Limited (“Grosvenor”) in connection with housing and land use matters for development of the North Forty Specific Plan Area in the Town of Los Gatos (the “Town”). Grosvenor has submitted a preliminary application to the Town to develop the North Forty Phase II site in manner consistent with the policies and assumptions applicable to the site as an opportunity site for housing development for lower income households included in the Town’s 2023-2031 Housing Element. Because Grosvenor’s housing development project will be affected by the Town’s policy regarding height pole and netting requirements (collectively, the “Story Pole Policy”), we have been following the Town’s process to update its Story Pole Policy with interest.

The current proposed Story Pole Policy modifications presented in your agenda packet for the August 1, 2023 Town Council Meeting represent an improvement over the Town’s current requirements. However, without further revisions, the Story Pole Policy will continue to be an impediment on projects that seek to deliver much needed housing at all income levels, including projects with a significant percentage of affordable housing. In its May 30, 2023 letter to Community Development Director Joel Paulson regarding legal deficiencies with the Town’s 2023-2031 Housing Element, the State Department of Housing and Community Development (“HCD”) directed the Town to “commit to an actual outcome” regarding Story Pole Policy modifications that will reduce housing costs and “establish alternatives or modifications [to the Story Pole Policy] that promote approval certainty.” HCD suggested removing the Story Pole Policy or allowing for its requirements to be satisfied though an alternative such as visual renderings.

Los Gatos Town Council  
July 31, 2023  
Page 2

The proposed Story Pole Policy revisions fall short of HCD's direction and do not fully mitigate the Story Pole Policy's constraint on housing production in the Town. Requiring installation of height poles and netting on a site before any development can begin imposes a significant financial and political obstacle to housing development.

First, installing story poles is extremely expensive. Installing story poles for Phase 1 of the North 40 development cost hundreds of thousands of dollars and took weeks to install, only to be later uninstalled before development could begin. Modern tools such as 3D renderings could just as effectively illustrate the proposed building locations and heights for a fraction of the cost and time. Moreover, while members of the public must physically travel to the development site during a finite period to "see" the proposed development, 3D renderings could be made available online for members of the public to view from anywhere at any time. Renderings have the added advantage of giving the public information about building design and views from within the interior of a site that may otherwise be unavailable to the public when a project is proposed and would provide specific detail regarding the aesthetics of the proposed buildings rather than requiring viewer speculation.

Second, requiring story poles also creates unnecessary tension within the community and can create false expectations about the Town's ability to deny or modify design elements such as height or massing that are consistent with the Town's development standards. For example, during Phase 1 of the North 40 development, acres and acres of unsightly story poles stirred enough angst among community members to temporarily derail the approval process for a project that satisfied all of the Town's development criteria specified in its adopted Specific Plan. However, given that the Phase 1 development (and many other housing developments) are protected by state laws that prevent the Town from denying or reducing the density of housing development projects, including the Housing Accountability Act and the State Density Bonus Law, the story poles do nothing more than create unnecessary opposition to projects that are legally entitled to move forward, which in turn can create an impediment for projects to achieve the full density ostensibly allowed by the Town's development standards.

The Planning Commission recommended that the Story Pole Policy continue to require height poles and netting for proposed residential and non-residential buildings "[i]f proposed project includes a variance or exception to the physical characteristics of the primary structure." The language referencing an "exception to the physical characteristics of the primary structure" could be interpreted to apply to projects that are legally entitled to incentives, concessions, or waivers under the State Density Bonus Law. This would impose a requirement specifically on projects that include affordable

Los Gatos Town Council  
July 31, 2023  
Page 3

housing, and it creates an economic and political barrier discouraging use of the State Density Bonus Law. The Story Pole Policy should be amended so that receipt of incentives, concessions, or waivers under the State Density Bonus Law does not trigger height pole and netting requirements.

The Planning Commission recommended that the Story Pole Policy include an exemption for projects that include a “high level of affordable housing” without specifying how much affordable housing would trigger the exemption. Staff has recommended that projects must double the Town’s below market price program (“BMP”) requirements in order to qualify for an exemption, which would mean that projects could be required to provide as much as 40 percent of their units as BMP units. This means that the Story Pole Policy would continue to apply to many projects that would be eligible for “by-right” approval under Government Code Section 65583.2(i) by virtue of providing 20 percent of their units as affordable to lower income households on opportunity sites included in the Housing Element. The Story Pole Policy should be amended to include an exception for all projects that include at least 20 percent of their units as affordable to lower income households.

The Planning Commission also recommended that flag rope be allowed in place of netting when buildings are over 35 feet tall and to reduce the number of poles required for multi-building developments to only include the tallest structure and those along the perimeters of the site. These are clear improvements over the current Story Pole Policy, but they remain more burdensome than other available alternatives. Projects with more than one building should be allowed to comply using 3-D renderings and project identification signs that comply with Sections II.G and III of the Story Pole Policy.

Amending the Story Pole Policy is an important step towards helping the Town achieve its housing production goals and comply with HCD’s direction to adopt a legally adequate Housing Element that includes programs to eliminate development constraints. We encourage the Town Council to make further amendments to the Story Pole Policy as suggested above to fully comply with HCD’s direction while still achieving the Town’s goal of informing Town residents, staff, and decision-makers about a project’s proposed massing.

Los Gatos Town Council  
July 31, 2023  
Page 4

Thank you for considering our suggested revisions. The Grosvenor team looks forward to working with the Town to deliver much needed housing during the planning period.

Sincerely,



Eric S. Phillips

cc: Steve Buster, Senior Vice President, Grosvenor  
Whitney Christopoulos, Senior Development Manager, Grosvenor  
Don Capobres, Principal, Harmonie Park Development  
Louis Liss, Associate Director of Real Estate Development, Eden Housing  
Jennifer Renk, Esq., Partner, Sheppard Mullin  
Paul McDougall, HCD Senior Program Manager  
Jose Armando Juaregui, HCD Housing Policy Analyst



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 08/01/2023

ITEM NO: 16

---

DATE: July 25, 2023  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Provide Direction on Legislative Priorities with Regard to State, Federal, and Regional Legislation and Town Council Policy #2-18: Legislative Policy

**RECOMMENDATION:**

Provide direction on legislative priorities with regard to State, Federal, and regional legislation and Town Council Policy #2-18: Legislative Policy.

**BACKGROUND:**

In 2016, the Town Council adopted Council Policy #2-18: Legislative Policy (Attachment 1). This Policy sets forth the procedures for engagement in the legislative process and the types of issues that are appropriate for the Town to state a position.

On March 28, 2023, the Policy Committee discussed a list of potential legislative priorities. These priorities are intended to be helpful to Town Council members as they engage in discussions with State legislators and as the Town considers which bills it chooses to endorse, oppose, or recommend amendments.

**DISCUSSION:**

Prior to the March 28, 2023 Policy Committee meeting, Committee Chair/Council Member Rob Moore compiled legislative priorities for Los Gatos's State and Federal Representatives (Attachment 2).

At the March 28, 2023 Policy Committee meeting, the Committee unanimously voted to bring these legislative priorities to the full Council.

**PREPARED BY:** Holly Young  
Senior Management Analyst

---

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

---

DISCUSSION (continued):

Consistent with the Legislative Policy, the following draft legislative priorities were brought to the Policy Committee for consideration because they align with proposals that impact Los Gatos and funding resources:

- Concealed Weapons: In light of the recent Supreme Court ruling, the Town should advocate for legislation that clarifies the concealed carry weapons process and protects sensitive places from the presence of concealed weapons. Senate Bill (SB) 2 is an example of a such a bill. On June 20, 2023, the Council voted to introduce an ordinance to update the Town's Concealed Carry Firearm Licensing Ordinance and prohibit the carry of firearms in sensitive places.
- Clarifications regarding SB 9: The Town may want to advocate for legislation that clarifies SB 9 lot splits and developments in Very High Fire Hazard Severity Zones, affordability requirements, and the attestation of intent to occupy.
- Reform of Proposition 47 and 57: Several bills are expected to address the unintended consequences of these ballot measures. For example, AB 1708 would increase accountability for repeat theft offenders and offer pathways for pre-plea diversion programming.
- Protect Vehicle License Fee (VLF) and Educational Revenue Augmentation Fund (ERAF): As the State may consider how it will address future budget shortfalls, it is critical that the State not take funding from local government. In the past, these two funding sources have been redirected to the State for its own budgeting purposes.
- Internet Sales Tax: With the exception of our Measure G district sales tax, internet sales tax goes into a pool and is distributed based on a jurisdiction's share of the overall sales tax collected in the respective County. In contrast, the Town's Measure G district sales tax is distributed based on the buyer's location, yielding higher revenue for the Town. Changes to the general distribution of sales tax would benefit Los Gatos.

Based on the discussion at the Policy Committee meeting, the proposed legislative priorities are being brought to the full Council for discussion and direction. Council may also wish to provide direction on the Legislative Policy. For example, the Legislative Policy does not outline a process for Council to set legislative priorities and it could be amended to include such a process. Specifically, the Council may direct a draft update to the Legislative Policy to:

DISCUSSION (continued):

- Add language to recognize that the Council may wish to consider its potential legislative priorities on an annual or periodic basis. The priorities themselves would likely change over time and would not be added to the Legislative Policy. With this option, Council may also direct specific legislative priorities for 2023 and 2024; or
- Refine the list of categories for legislative engagement (Legislative Strategies, page two of Attachment 1). With this option, specific priorities would not be required; however, the Council may wish to provide specific guidance on an annual or periodic basis; or
- Address other options.

In addition, the Town Attorney has identified that the “Legislative Position Process” section of the Policy (Attachment 1) may need to be updated to meet the Brown Act and/or other State laws. If so directed, these proposed modifications could return with the draft update of the Policy to address legislative priorities.

CONCLUSION AND NEXT STEPS:

Staff looks forward to the Council’s direction and will return with revised documents based on this direction.

COORDINATION:

This report was coordinated with the Town Manager’s Office and Town Attorney.

FISCAL IMPACT:

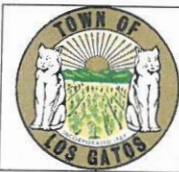
There is no associated fiscal impact.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Council Policy #2-18: Legislative Policy
2. Council Member Moore’s Memorandum regarding Los Gatos State and Federal Legislative Priorities



**Title:** Legislative Policy

**Policy Number:** 2-18

**Effective Date:** 10/5/16

**Pages:** 3

**Enabling Actions:**

**Revised Date:**

**Approved:**

*Barbara Spate*

**PURPOSE**

The purposes of the Legislative Policy are to: identify opportunities for the Town to participate in state, federal, and regional legislation and other policy matters, and describe a process for Town positions, actions, and related activities.

**BACKGROUND**

Council Members have the opportunity to learn of legislative issues from their work on the Council, general awareness of current topics, and their service on other Board and Committees as representatives of the Town. The Town Manager encourages all Town Departments to monitor and be knowledgeable of any legislative issues related to their disciplines. The Town Manager and Town Attorney similarly stay engaged with their professions as well as monitor the activities of the League of California Cities and other organizations. The Town benefits from a Legislative Policy to articulate overarching legislative principles to guide the Town's engagement in the legislative process as outlined in this Policy.

**LEGISLATIVE PRINCIPLES**

The Town should take a position and advocate for the position when proposed federal, state, County, or other agency legislative or measure has a potential direct impact on the Town. Direct impact includes and is not limited to issues of local control, revenue reductions, grant eligibility, unfunded mandates and regulatory burdens.

**POLICY GOALS**

1. Advocate the Town's legislative interests at the federal, state, regional, and County levels.
2. Inform and provide information to our legislators, Town Council, and staff on the key issues and legislation that could have potential impact on the Town.
3. Serve as an active participant with other local governments, the League of California Cities, local profession organizations, and/or other entities on legislative/regulatory issues that are important to the Town and our region.
4. Seek grant and funding assistance for Town projects, services, and programs to enhance services for our community.



## **LEGISLATIVE STRATEGIES**

1. Communicate legislative positions on proposed federal, state, and County legislation, measures, initiatives, and governmental regulations.
2. Work with Town Departments to develop positions on proposed federal and state legislative measures based on analysis done by the League of California Cities, communication with legislators' offices, and other local government/professional associations in formulating our positions.
3. Take positions only on proposals that clearly impact our Town or are a threat to local control.
4. Actively track key bills through the legislative process, utilizing various legislative websites, government/professional associations, and other means.
5. Communicate the Town's position to our federal, state, regional, and County members, bill author(s), Committees, and/or other governmental bodies through correspondence, testimony, and in-person meetings.
6. Work cooperatively with other cities, associations and the League of California Cities on advocating our legislative positions.
7. As necessary, participate in the drafting and amending of proposed federal, state, regional, and/or County measures that have the potential to significantly impact the Town.
8. Meet with legislators and their representatives, as well as other federal, state, regional, and/or County government officials on a regular basis to discuss local government issues, proposed legislation, requests for funding assistance, and Town programs and services.
9. Seek federal, state, and County funding through earmarks, grants, and other discretionary funding for Town projects, services, and programs.
10. Annually identify Town projects for potential submittal for federal earmark consideration and develop a submittal packet for legislators that provides information and need for the projects.
11. Provide information to Town Departments on potential grant funding opportunities and recognition programs.
12. Advocate and request letters of support for Town projects and grant applications or other resources that are being considered for federal, state, regional, and/or County funding.

## **LEGISLATIVE POSITION PROCESS**

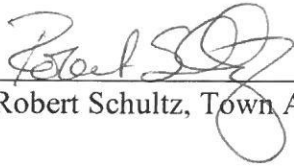
The process for responding to legislative proposals is as follows:

1. Once the Town Manager and/or Town Attorney determines that a legislative proposal may impact the Town, a letter outlining the Town's position (support, neutral or oppose) will be drafted for the Mayor's signature.
2. The Town Manager will circulate the draft position letter to the Town Council for review.
3. If there is Council objection, the position letter will be placed on the next Town Council agenda for consideration.

Title: Legislative Policy	Page: 3 of 3	Policy Number: 2-18
---------------------------	-----------------	------------------------

4. If there is no objection, staff will finalize the position letter for the Mayor's signature and forward the signed letter to the bill's author, the League of California Cities, and other stakeholders as deemed appropriate.
5. A copy of the final letter will be distributed to the Town Council.

APPROVED AS TO FORM:



Robert Schultz, Town Attorney

## Los Gatos State and Federal Representative's 2023 Legislative Priorities

In anticipation for the 3/28 Policy Committee Legislative Priorities discussion, I took the liberty to contact all of our state and federal legislators. I included our pre-redistricting and post-redistricting representatives, as some of our representatives have changed. In order to be effective at the state and federal level, we in Los Gatos need recognize the hard work and support the legislative priorities of our elected representatives. These representatives are able to secure significant funding and legislative victories for communities like Los Gatos if we are able to assist each other and act in partnership.

### **Assemblymember Gail Pellerin:**

#### AB 1206 - Electronic Registration Information Center

- If passed, California would join the Electronic Registration Information Center (ERIC). ERIC is a nonpartisan nonprofit governed by its 30+ member states.
- These member states mutually agree to share data, such as voter registration and vehicle licensee data, in order to keep their voter rolls accurate and to reach out to eligible unregistered citizens to encourage their participation.

#### AB 492 - Behavioral Health Integration in Reproductive Health Care Pilot Program

- This bill would empower reproductive health care providers through a pilot program requiring the State Department of Health Care Services to provide funding to develop and implement reproductive and behavioral health integration pilot programs.
- This would expand the availability and government integration of behavioral health services for beneficiaries with mild-to-moderate behavioral health conditions.

### **Senator Cortese:**

#### SB 333 - Homeless pupils: California Success, Opportunity, and Academic Resilience (SOAR) Guaranteed Income Program

- Approximately 15,000 high school seniors experiencing homelessness would receive direct cash assistance to help them advance to higher education or employment.
- SB 333 would establish the Success, Opportunity, & Academic Resilience (SOAR), a guaranteed income pilot program. The funding would be eligible to all 12th grade unhoused students who lack a fixed, regular, and adequate nighttime residence.

#### SB 406 - California Environmental Quality Act: exemption: financial assistance: housing

- This bill would promote affordable housing development without circumventing environmental review by extending to local governments an existing law that makes State financial assistance for affordable housing projects—but not the projects themselves—exempt from California Environmental Quality Act (CEQA) review.

### **Congresswoman Anna Eshoo:**

Largely due to a divided federal government, federal lawmakers do not have as much latitude as they would like to push legislation. Accordingly, our federal representatives are advocating for Los Gatos and other Bay Area cities in the budgeting process. A few key areas Congresswoman Anna Eshoo is focused on this legislative cycle are:

- *Housing*
  - In response to feedback from cities in her district, Congresswoman Eshoo has been focused on helping cities build more affordable housing and support the needs of low-income community members.

- Accordingly, Congresswoman Eshoo is pushing for the expansion of the Housing Choice Voucher (formerly called Section 8) program and with Council feedback, would advocate for more Housing Choice Vouchers to be allocated to Los Gatos.
- *Transportation*
  - Transportation is one of the Congresswoman’s top priority areas.
  - She shared that “build.gov” is home to many transportation grants for municipalities like Los Gatos to apply for. Many of these grants focus on topics like Vision Zero, Safe Streets, Safe Routes to Schools, Road Diets, and more.
  - Further, the Congresswoman’s office has asked Los Gatos Town Staff to reach out to her office ([eric.henshall@mail.house.gov](mailto:eric.henshall@mail.house.gov)) if we do apply for any federal grants. Congresswoman Eshoo has offered to author a letter of support for grants on our behalf.
- *Protecting Choice*
  - In response to the United States Supreme Court decision overruling Roe v. Wade, Congresswoman Eshoo is doing everything in her power to protect choice in all areas of life, from a woman’s right to choose to gay marriage.

**(Incoming Representative) Senator Josh Becker:**

*SB 49 - Renewable energy: solar canopy tax incentives: Department of Transportation strategic plan*

- This bill would provide tax incentives for the construction of solar canopies over large parking lots to boost the local generation of clean electricity in urban and suburban areas.

*SB 308 - Carbon Dioxide Removal Market Development Act*

- SB 308 would create a long-term predictable market for carbon removal, signaling to California’s innovators to jumpstart carbon removal & sequestration investment for the trillions of tons California will need to remove.

**(Past Representative) Assemblymember Evan Low**

*ACA 5 – Marriage equality*

- ACA 5 would bring a 2024 ballot initiative to voters to remove anti-same sex marriage language from the California constitution.