

**TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
FEBRUARY 07, 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 2nd and 4th Tuesdays at 7:00 p.m.

Live & Archived Council Meetings can be viewed by going to:

www.LosGatosCA.gov/TownYouTube

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

**TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
FEBRUARY 07, 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.

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/83387683101?pwd=Ky9lWmRneEFURHl6MTRUbml2SDBCUT09>
Passcode: 266177 You can also type in 833 8768 3101 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 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.

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 without first being recognized;
- interrupting speakers, Town Council, 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 403.

MEETING CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

COUNCIL / MANAGER MATTERS

ANNOUNCEMENT OF FINANCE COMMISSIONER SELECTION BY COUNCIL MEMBER ROB RENNIE

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 January 17, 2023 Closed Session Town Council Meeting.
2. Approve Minutes of the January 17, 2023 Town Council Meeting.
3. Approve Minutes of the January 24, 2023 Special Town Council Meeting.
4. Approve Minutes of the January 30, 2023 Special Town Council Meeting.
5. Adopt a Resolution Reaffirming Resolution 2021-044 and Making Findings Pursuant to Government Code Section 54953, as Amended by Assembly Bill 361, and, Due to Health and Safety Concerns for the Public, Authorizing the Use of Hybrid Meetings for the Town Council and the Continued Use of Virtual Meetings for Boards and Commissions While Town Staff Makes the Necessary Arrangements to Transition to Hybrid Meetings for All Town Boards, Commissions, and Committees.
6. Consider the Following Actions for the Americans with Disabilities Act (ADA) Public Restroom -- Adult Recreation Center Project (CIP No. 821-2601):
 - a. Approve Plans and Specifications; and

- b. Authorize Advertising the Project for Bid; and
 - c. Authorize the Town Manager to Execute the County of Santa Clara Grant Agreement (Fiscal Year 2022/23) and Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$250,000 to Recognize Receipt and Expenditure for CIP No. 821-2601; and
 - d. Authorize the Town Manager to Execute the Santa Clara County Community Development Block Grant (CDBG) City/County Contract for Fiscal Year 2023 and Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$140,000 to Recognize Receipt and Expenditure of the Community Development Block Grant Fund for CIP No 821-2601.
7. Authorize Budget Adjustments in the Total Amount of \$43,500 to Recognize Receipt and Expenditure of Black Gold Library Consortium Grant Funds.
 8. Consider the Following Actions for the Annual Curb, Gutter, and Sidewalk Maintenance Project (CIP No. 813-9921):
 - a. Approve the Plans and Specifications; and
 - b. Authorize Advertising the Project for Bid.
 9. Consider the Following Actions for the Property Location: 137 Bersano Lane. APN 424-29-054. Property Owner: Lisa DeGeorge.
 - a. Adopt a Resolution Approving a Purchase and Sale Agreement for the Re-Purchase of an Affordable Housing Unit Subject to an Existing Below Market Price (BMP) First Right of Refusal Option; and
 - b. Authorize the Town Manager to Negotiate and Execute all Agreements and Documents Necessary and Appropriate to Effectuate the Preservation of the Affordable Housing Unit; and
 - c. Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$436,276 from Available BMP Housing In-Lieu Fee Fund to Re-Purchase, Repair, and Pay Past Due Fees and Taxes of the Property.
 10. Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion Accepting the Work of Ashron Construction and Restoration, Inc., and Authorize Recording by the Town Clerk for PPW Job No. 817-0708 Parking Lot 4 Repair and Waterproofing.
 11. Authorize the Town Manager to Execute First Amendments to the Master Lease Agreements with Tait Firehouse, LLC and Forbes Mill, LLC.
 12. Authorize the Town Manager to Execute an Agreement with Sustainable Waze to Continue the Coordination of Music in the Park (MIP) Summer Concert Series for 2023, with Options for Annual Extensions for Two Additional Years.

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.)

- [13.](#) Introduce a Proposed Ordinance Amending Chapter 24 (Subdivision Regulations) and Chapter 29 (Zoning Regulations) of the Town Code Regarding Town-Initiated Parcel Mergers.

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

- [14.](#) Discuss Valley Transportation Authority (VTA) Proposed Changes to Route 27 Weekend Bus Service.
- [15.](#) Consider Modifications to Town Council Policy 2-01: Town Agenda Format and Rules Regarding Remote Attendance for Town Boards, Commissions, and Committees as Discussed by the Council Policy Committee.
- [16.](#) Receive the Senior Service Committee Roadmap for Senior Services and Provide Any Additional Direction to the Committee and/or Staff.
- [17.](#) Consider the Following Items Recommended by the Art and Culture Commission:
 - a. Receive the Arts and Culture Commission's Three-Year Plan Consisting of Capital Improvement Program (CIP) Funding for Completion of the Gateway Project and Annual Funding for Maintenance of Existing Town-Owned Public Artwork; and
 - b. Authorize the Town Manager to Enter into a Memorandum of Understanding with Silicon Valley Creates; and
 - c. Grant permission for Arts and Culture Commissioners to Solicit Philanthropic Funding for Future Public Art Projects.
- [18.](#) Receive a Report on the Town Resources Utilized to Support 2022 Special Events, Provide Direction for the Allocation of Resources to Support Anticipated 2023 Special Events, and Approve the Attached Modifications to the Town's Facilities Use Policy.
- [19.](#) Approve the Library's Holiday and Recognition Work Plan.

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.

Note: In accordance with Code of Civil Procedure §1094.6; litigation challenging a quasi-adjudicatory decision of the Town Council must be brought within 90 days after the decision is final unless a shorter time is required by State or Federal law.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2023

ITEM NO: 1

**DRAFT
Minutes of the Town Council Special Meeting – Closed Session
January 17, 2023**

The Town Council of the Town of Los Gatos conducted a special meeting in-person and utilizing teleconferencing means on Tuesday, January 17, 2023 to hold a Closed Session at 5:30 p.m.

MEETING CALLED TO ORDER AT 5:30 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

None.

THE TOWN MOVED TO CLOSED SESSION ON THE FOLLOWING ITEM:

1. Conference With Real Property Negotiator (Government Code Section 54956.8)
 - a. Property: 137 Bersano Lane (APN: 424-29-054)
Negotiating Parties: Town of Los Gatos and Lisa DeGeorge
Negotiator: Arn Andrews, Assistant Town Manager and Lisa DeGeorge
To Be Negotiated: Terms of purchase
 - b. Property: 4 New York Avenue (Venue) (APN: 529-27-024), a portion of New York Avenue from the west side of Pleasant Avenue to the terminus, and all of Chicago Avenue
Negotiating Parties: Town of Los Gatos
Negotiator: Arn Andrews, Assistant Town Manager and Los Gatos-Saratoga Union High School District
To Be Negotiated: Terms of purchase, sale, exchange or lease
 - c. Property: 4 Tait Avenue (Museum) (APN: 510-44-054)
Negotiating Parties: Town of Los Gatos
Negotiator: Arn Andrews, Assistant Town Manager and Imwalle Asset Management
Negotiations: Terms of lease
 - d. Property: 75 Church St. (Forbes Mill) (APN: 529-54-050)
Negotiating Parties: Town of Los Gatos
Negotiator: Arn Andrews, Assistant Town Manager and Imwalle Asset Management

PAGE 2 OF 2

SUBJECT: Draft Minutes of the Special Town Council Meeting of January 17, 2023

DATE: January 20, 2023

Negotiations: Terms of lease

ADJOURNMENT

Closed Session adjourned at 6:05 p.m.

Attest:

Submitted by:

Jenna De Long, Deputy Town Clerk

Laurel Prevetti, Town Manager



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2023

ITEM NO: 2

**DRAFT
Minutes of the Town Council Meeting
January 17, 2023**

The Town Council of the Town of Los Gatos conducted a regular meeting in-person and via teleconference on Tuesday, January 17, 2023, at 7:00 p.m.

MEETING CALLED TO ORDER AT 7:01 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

PLEDGE OF ALLEGIANCE

Michael Hein led the Pledge of Allegiance. The audience was invited to participate.

PRESENTATIONS

Mayor Ristow presented commendations to outgoing Commissioners.

CLOSED SESSION REPORT

Gabrielle Whelan, Town Attorney, stated the Town Council met in Closed Session as duly noted on the agenda and there was no reportable action.

COUNCIL/TOWN MANAGER REPORTS

Council Matters

- Council Member Hudes stated he attended Senior Service Committee and Subcommittee meetings, met with Los Gatos-Saratoga Recreation, and observed the Finance Commission meeting.
- Council Member Rennie stated he attended the Bay Area Air Quality Management District Board meeting, Hannukah on Main Candle Lighting event, Silicon Valley Clean Energy Authority (SVCEA) Risk Oversight Committee meeting, Finance Commission meeting, SVCEA Board meeting, and the Valley Transportation Authority Board meeting.
- Vice Mayor Badame stated she met with Lee Fagot (moderator of the Democracy Tent community group), observed the Finance Commission meeting, and disclosed she met with the applicant/appellant for agenda item #15.

Council Matters – continued

- Council Member Moore stated he met with Destination Home CEO and its executive leadership, attended the Governor's inauguration, participated in the CalCities training for New Mayors and Council Members, attended the West Valley Sanitation Board District Authority Board meeting, met with many community members, attended Hannukah on Main Candle Lighting event, and supported the Town residents and vulnerable community members who were affected by the storms.
- Mayor Ristow stated she attended Hannukah on Main Candle Lighting event, new Commissioner Orientation, Finance Commission meeting, Senior Service Committee meeting, Complete Streets and Transportation Commission meeting as an observer, and announced the Los Gatos Theatre grand opening on Thursday, January 20.

Manager Matters

- Thanked the Community Emergency Response Team (CERT) and Disaster Assistance Response Team (DART) for the storm response efforts.
- Announced the Finance Commission recruitment is underway and applications are available on the Town website and are due on January 27.
- Announced the launch of the Town's updated website.
- Announced a valet parking survey is now available on the Town website.
- Announced a Special Meeting of the Town Council to be held on January 24, 2023, to discuss Strategic Priorities.
- Announced a Special Meeting of the Town Council will be held on January 30, 2023, to discuss the Draft Housing Element with a potential second meeting on January 31, 2023.
- Announce the Town will be partnering with the school districts to host a community workshop on February 1 at 6:00 p.m. via Zoom to prevent underage drinking by promoting healthy norms.

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

1. Approve Draft Minutes of the December 20, 2022 Town Council Meeting.
2. Approve Draft Minutes of the January 10, 2023 Special Town Council Meeting.
3. Adopt a Resolution Reaffirming Resolution 2021-044 and Making Findings Pursuant to Government Code Section 54953, as Amended by Assembly Bill 361, and, Due to Health and Safety Concerns for the Public, Authorizing the Use of Hybrid Meetings for the Town Council and the Continued Use of Virtual Meetings for Boards and Commissions While Town Staff Makes the Necessary Arrangements to Transition to Hybrid Meetings for All Town Boards, Commissions, and Committees. **RESOLUTION 2023-002**
4. Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505):
 - a. Approve the Plans and Specifications;
 - b. Authorize Advertising the Project for Bid Upon Receipt of Formal Funding Approval (E-76) from Caltrans; and
 - c. Authorize the Release of a Request for Proposals for Construction Management, Inspection, and Materials Testing Services.

Consent Items – continued

5. Legal Costs for Colantuono, Highsmith & Whatley, PC
 - a. Authorize Payment of Up to An Additional \$50,000 for a Total Payment Not to Exceed \$150,000 for Fiscal Year 2022/23; and
 - b. Authorize Expenditure Budget Adjustment in an Amount of \$100,000 From Available General Fund Capital/Special Projects Reserve.
6. Adopt a Resolution to Extend the Term of the Housing Element Advisory Board.
RESOLUTION 2023-003
7. Authorize Budget Adjustments in the Total Amount of \$57,046 to Recognize Receipt and Expenditure of Pacific Library Partnership, California State Library, and Library Services & Technology Act Grant Funds.
8. Authorize the Town Manager to Execute a Fifth Amendment to the Agreement for Services with Brightview Tree Care Services, Inc. to Increase Compensation for Fiscal Year 2022/23 in an Amount of \$100,000 for a Total Annual Amount Not to Exceed \$200,000 with the Total Agreement Amount Not to Exceed \$1,096,000.
9. Authorize the Town Manager to Execute a Third Amendment to a Consultant Agreement for Executive Recruitment Services with Teri Black & Company, LLC for an Additional Amount of \$31,000 with a Total Amount Not to Exceed \$170,500 and Authorize an Expenditure Budget Adjustment from Available General Fund Capital/Special Projects Reserve.
10. Receive Monthly Investment Reports for October and November 2022.

Council Member Hudes pulled item #4.

MOTION: Motion by Council Member Rennie to approve consent items 1-10, exclusive of item 4. **Seconded** by Vice Mayor Badame.

VOTE: Motion passed unanimously.

VERBAL COMMUNICATIONS

Sue Ahmadian, St. Vincent de Paul

- Commented on the unhoused and requested Council consider opening and overnight warming center.

Ramesh Sastry

- Commented on a recent burglary and catalytic converter thefts.

Naomi Salowe

- Read a letter from Ellie, whose boyfriend passed away in a fatal crash on Blossom Hill Road and Belgatos Road.

Verbal Communications – continued

Sriram Narayanan

- Commented on concerns with Blossom Hill Road safety and requested Council consider additional safety measures on Blossom Hill between Leigh Avenue and Harwood Road.

Kelly Massini

- Commented on concerns with Blossom Hill Road safety and requested Council consider additional safety measures on Blossom Hill between Leigh Avenue and Harwood Road.

Katrina Brinkman

- Commented on concerns with Blossom Hill Road safety and requested Council consider additional safety measures at Blossom Hill and Belgatos Road.

Blake Thornberry

- Commented on concerns with Blossom Hill Road safety and requested Council consider additional safety measures at Blossom Hill and Belgatos Road.

Lee Fagot

- Commented on the Housing Element and requested the Town Council consider convening additional community meetings to discuss the Draft Housing Element.

The Mayor stated the 30-minute time limit had been reached and that Verbal Communications would continue for any additional speakers at end of the meeting.

PUBLIC HEARINGS

11. Consider Objections to the Proposed Abatement of Hazardous Vegetation (Weeds) for Properties Listed on the 2023 Weed Abatement Program Commencement Report and Order the Abatement.

Meredith Johnston, Administrative Technician, presented the staff report.

Opened Public Comment.

Eugene Della Maggiore

- Requested Council consider removing his address from the list so he could abate the weeds on his own property. He was unable to do so earlier due to COVID.

Closed Public Comment.

Council discussed the matter.

Public Hearing Item #11 – continued

MOTION: **Motion by Vice Mayor Badame** to order the abatement of weeds for properties listed on the 2023 weed abatement program in attachment one and remove parcel number 410-17-008 from the list due to the hardship of having COVID. **Seconded by Council Member Hudes.**

VOTE: **Motion passed unanimously.**

12. Consider a General Plan Amendment by Resolution to Add Policies to the Hazards and Safety Element. Location: Town-Wide. General Plan Amendment Application GP-22-002.
RESOLUTION 2023-004

Jennifer Armer, Planning Manager, presented the staff report.

Opened Public Comment.

No one spoke.

Closed Public Comment.

Council discussed the matter.

MOTION: **Motion by Council Member Moore** to approve a General Plan amendment by Resolution to add policies to the Hazards and Safety Element. **Seconded by Vice Mayor Badame.**

VOTE: **Motion passed unanimously.**

OTHER BUSINESS

13. Receive the Police Services Report: July – December 2022.

Jamie Field, Police Chief, and Derek Moye, Operations Captain, presented the staff report.

Opened Public Comment.

John Shepardson

- Commented on traffic stop data and requested a cost benefit analysis of police services be conducted.

Closed Public Comment.

Council discussed the matter and received the report.

Other Business Item #13 – continued

Recess 8:53 p.m.

Reconvene 9:00 p.m.

14. Review and Approve the Town’s Response to the 2022 Civil Grand Jury of Santa Clara County Report Entitled, “Show Me the Money: Financial Transparency Needed” and the Changes to the Town’s Operating Portfolio Investment Policy as Reviewed by the Finance Commission.

Gitta Ungvari, Finance Director, presented the staff report.

Opened Public Comment.

John Shepardson

- Commented on the item and suggested a review of the Grand Jury’s concerns.

Jak Van Nada

- Commented on the purpose of the Civil Grand Jury Report, referred to the City of Saratoga’s report and suggested the Town add tables 1 and 2 from Saratoga’s report to the Town’s the investment report.

Closed Public Comment.

Council discussed the matter.

MOTION: Motion by Council Member Moore to approve the Town’s Response to the 2022 Civil Grand Jury of Santa Clara County Report entitled, “Show Me the Money: Financial Transparency Needed” and the changes to the Town’s Operating Portfolio Investment Policy as reviewed by the Finance Commission. **Seconded by Council Member Rennie.**

VOTE: Motion passed 3-2, Vice Mayor Badame and Council Member Hudes voted no.

PUBLIC HEARINGS

15. Consider an Appeal of a Planning Commission Decision to Deny a Fence Height Exception Request for Construction of a Six-Foot Fence Located Within the Required Front Yard Setback and a Vehicular Gate Set Back Less than 18 Feet from the Edge of the Adjacent Street on Property Zoned R-1:10. Located at 755 Blossom Hill Road. APN 523- 04-043. PROPERTY OWNER/APPELLANT: David and Ilana Kohanchi. APPLICANT: Nina Guralnic.
RESOLUTION 2023-005

Public Hearing #15 – continued

Savannah Van Akin, Assistant Planner, presented the staff report.

Council Member Moore disclosed he met with the property owners and stated the owners have sold fruit and purchased luxury cars.

Vice Mayor Badame disclosed she met with property owner.

Council Member Hudes disclosed he met with the property owners.

Council Member Rennie disclosed he visited the property.

Mayor Ristow disclosed she visited the property.

Opened Public Comment.

Ilana Kohanchi, Applicant/Appellant, commented on the item and provided opening comments.

David Kohanchi, Applicant/Appellant, commented on the item provided closing comments.

Closed Public Comment.

Council discussed the matter.

MOTION: Motion by Council Member Hudes to adopt a resolution to grant the appeal and approve the application with the following 3 conditions: (1) the spikes be removed from the fence, (2) the gate be reconfigured to work from the other side so it does not obstruct traffic, and (3) the appellants to use their best efforts to ensure the gate remains open from 6:30 a.m. to 9:00 p.m. and provide some documentation to the Town of their efforts to do that; and make the findings that the safety would not be extraordinarily harmed because the fence has good visibility, the public safety weighed with the safety of the property owner is balanced, the adjacency to commercial perimeter of eight feet is a safety concern, and the Planning Commission decision did not include some of the issues discussed so it was not supported by substantial evidence with regard the information on the website and the lack of consideration of the adjacency to the commercial perimeter. **Seconded by Council Member Rennie.**

VOTE: Motion passed 3-2, Mayor Ristow and Council Member Moore voted no.

Pulled Consent Items

4. Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505):
 - a. Approve the Plans and Specifications;
 - b. Authorize Advertising the Project for Bid Upon Receipt of Formal Funding Approval (E-76) from Caltrans; and
 - c. Authorize the Release of a Request for Proposals for Construction Management, Inspection, and Materials Testing Services.

Nicolle Burnham, Parks and Public Works Director, answered Council questions.

Opened Public Comment.

John Shepardson

- Commented on concerns with the item.

Closed Public Comment.

Council discussed the matter.

MOTION: Motion by Council Member Hudes to approve the plans and specifications; authorize advertising the project for bid upon receipt of formal funding approval (E-76) from Caltrans; and authorize the release of a request for proposals for construction management, inspection, and materials testing services. **Seconded by Council Member Moore.**

VOTE: Motion passed unanimously.

ADDITIONAL VERBAL COMMUNICATIONS

DOC

- Commented on concerns with security and safety such as data mining the use of facial recognition technology.

Lynley Kerr Hogan

- Commented on maxims.

Joanne Rodgers

- Read a letter written by Planning Commissioner Kylie Clark regarding the Town's Housing Element sent to the California Department of Housing & Community Development (HCD).

Chris Wiley

- Commented on concerns with the letter written by Kylie Clark to the HCD and her capacity to be an objective Planning Commissioner.

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SUBJECT: Draft Minutes of the Town Council Meeting of January 17, 2023

DATE: January 17, 2023

Additional Verbal Communications – continued

Lisa Harris

- Commented on concerns with the letter written by Kylie Clark to the HCD and requested she be removed from her position as a Planning Commissioner.

John Shepardson

- Commented on concerns with Blossom Hill/Belgatos traffic safety and Diversity Equity and Inclusion (DEI) efforts.

ADJOURNMENT

The meeting adjourned at 11:10 p.m.

Respectfully Submitted:

Jenna De Long, Deputy Clerk



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2023

ITEM NO: 3

**DRAFT
Minutes of the Town Council – Special Meeting
January 24, 2023**

The Town Council of the Town of Los Gatos conducted a special meeting in-person and utilizing teleconferencing means on Tuesday, January 24, 2023, at 7:00 p.m. to discuss Strategic Priorities.

MEETING CALLED TO ORDER AT 7:01 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

OTHER BUSINESS

1. Affirm and/or Refine Existing Strategic Priorities and Determine the Priorities for New Ordinance.

Laurel Prevetti, Town Manager, provided the staff report.

Opened public comment.

Shai Vankat, Plant-Based Advocates

- Commented in support of the Town funding plant-based diet programs.

Nancy Rollett, Executive Director of Los Gatos Saratoga-Recreation

- Commented on the Los Gatos Saratoga-Recreation programs and requested lease abatement.

Ami Davis, Executive Director of NUMU

- Commented on NUMU's programs and requested the Town reduce their rent to one dollar a year.

Blake Thornberry

- Commented in support of bicycle and pedestrian improvements and requested Council consider traffic safety as a strategic priority.

Lisanne Kennedy, Recreation Coordinator of the 55+ program Los Gatos-Saratoga Recreation (LGS Rec)

- Commented on the 55+ program and requested Council allocate funds for this program.

Other Business Item #1 – continued

Maureen Heath, Senior Services Committee Member

- Commented on older adult services in Los Gatos and requested Council continuing to prioritize older adult support.

Joe Musser

- Requested the Town provide a warming and cooling shelter for homeless residents.

Alysia Heyer

- Requested the Town provide a homeless shelter and showers.

Tim O’Rorke, St. Vincent De Paul Society at St. Mary’s

- Commented in support of the Town providing a warming and cooling shelter for homeless residents.

Peter Hertan

- Commented in support of updating and supplementing emergency preparedness technology and Emergency Operation Centers.

Rob Stump

- Commented in support of prioritizing emergency communication, emergency evacuation, roadside fuel reduction, and requested the Town re-establish the Ad Hoc Wildfire Committee.

Kylie Clarke, West Valley Community Services

- Commented on the unhoused and requested the Council add homelessness as a strategic priority.

Ed Losawiki

- Commented on the unhoused and requested the Town provide a warming center for homeless residents.

Steve Hall

- Commented on the needs and safety for the unhoused and requested this be a strategic initiative.

Jan Schwartz, President of the Board of NUMU

- Commented on the NUMU programs and requested the Town reduce their rent to one dollar a year.

Dick Konrad, Senior Service Committee (SSC)

- Commented on senior services in the community and requested the Council continuing to prioritize senior services.

Other Business Item #1 – continued

Tylor Taylor, Board Member of KCAT

- Commented on the Producers Network program and requested the Council consider an ordinance to allow for bingo permits.

Katrina Brinkman

- Commented on traffic concerns on Blossom Hill Road and in the Belgatos neighborhood.

Karen Rubio, Plant-Based Advocates

- Commented on concerns with the production of meat and dairy and requested Council make plant-based diet education programs a priority.

Lisa Wade, Plant-Based Advocates

- Commented on plant-based diet education and requested Council make it a propriety.

Nate Vandegrift

- Commented on the damage of fallen trees and requested the Council prioritize the removal and ban of eucalyptus trees.

Maureen Cappon-Javey, NUMU Board Member

- Commented on NUMU's programs and requested the Town remove the rent requirement.

Sketch O.

- Commented on the unhoused, the need for a shelter, and requested the Council add homelessness to the priorities.

Kelly Masini

- Commented on improving traffic safety at Blossom Hill between Leigh and Harwood.

Tom Picraux

- Commented on the Senior Services Committee Roadmap and would like the Town to continue its support.

James Rojas

- Commented on the tobacco ordinance and requested assistance with enforcing the flavored tobacco ban.

Jessica Matthew

- Commented on prioritizing affordable housing and services to unhoused residents.

Ali Miano

- Commented on prioritizing affordable housing and improved public transportation.

Other Business Item #1 – continued

Melissa Toren, KCAT Executive Director

- Commented on the KCAT partnership with the Town for the Producer's Network program and requested \$100,000 to fulfill the plan.

Zachary Benitez, KCAT Producer's Network

- Commented on the Producer's Network and requested funds to continue the program.

Joni Russell, KCAT Producer's Network

- Commented on the Producer's Network and requested funds to continue the program.

Jim Foley, Los Gatos Chamber of Commerce Board President

- Commented on the Chamber of Commerce priorities and is looking forward to collaborating with the Town.

Sarah Chaffin

- Commented on prioritizing affordable housing.

Susan Fenton, KCAT Producer's Network

- Commented on the Producer's Network and requested funds to continue the program.

Umar Ellahie, KCAT Board Member

- Commented on the Producer's Network and requested funds to continue the program.

Joseph Enz

- Commented in support of unhoused residents and emergency preparedness.

Closed public comment.

Recess 8:46 p.m.

Reconvene 8:58 p.m.

Gabrielle Whelan, Town Attorney, provided information on the Ordinance priorities.

Council discussed the item.

Other Business Item #1 – continued

MOTION: Motion by Vice Mayor Badame to prioritize the order of the ordinances as recommended by the Town Attorney with the following modifications: move the E-Bike ordinance to priority number 6, consider the comments of Council Member Hudes to be sensitive regarding item number 1 (Amendment to the Town’s Concealed Carry Weapons Ordinance and Adoption of “Sensitive Places” Ordinance), and add a Bingo permit ordinance as priority number 15. The motion included granting the Town Attorney the discretion to move an item up if it can be done quickly. **Seconded by Council Member Moore.**

VOTE: Motion passes unanimously.

The Town Council discussed the Strategic Priorities, generally affirming the existing priorities and making the following modifications:

Safety:

- Amend Vegetation Management to Vegetation and Hazardous Tree Management
- Amend EOC Readiness & Emergency Plan Development to add Communications

Prudent Financial Management:

- Replace New Revenue Opportunities with:
 - 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

Quality of Life:

- Modify Senior Road Map to Adopt a Senior Road Map
- Delete the completed items: Dittos Lane Affordable Housing and Objective Standards
- Add: Streamline Permitting Process
- Modify Affordable Housing to Affordable Housing Partnerships
- Add: Work with Town Partners to Support the Needs of Unhoused Residents
- Add: Redefine Town Commissions in Alignment with Strategic Priorities

Traffic and Transportation:

- Add: Traffic Calming/Safety for All Users

ADJOURNMENT

The meeting adjourned at 10:42 p.m.

Respectfully submitted:

Jenna De Long, Deputy Clerk



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2023

ITEM NO: 4

**DRAFT
Minutes of the Town Council – Special Meeting
January 30, 2023**

The Town Council of the Town of Los Gatos conducted a special meeting in-person and utilizing teleconferencing means on Tuesday, January 30, 2023, at 7:00 p.m. to consider adoption of a 2023-2031 Housing Element.

MEETING CALLED TO ORDER AT 7:02 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

PUBLIC HEARING

1. Consider the Adoption of the Los Gatos 2023-2031 Housing Element. An Environmental Analysis Based on the Previously Certified 2040 General Plan Final Environmental Impact Report has been Prepared for the Los Gatos 2023-2031 Housing Element. Location: Town-wide. Applicant: Town of Los Gatos. General Plan Amendment Application GP-22-003.

RESOLUTION 2023-006

Erin Walters, Associate Planner, provided the staff report.

Opened public comment.

Lee Fagot

- Commented on concerns and spoke in opposition of the item.

Lee Quintana

- Commented on concerns and spoke in opposition of the item.

Rene Baez, NorCal Carpenters Unit

- Commented on labor requirements for housing construction and requested Council consider adding apprentice program, healthcare, and local hire requirements.

Jak Van Nada, Los Gatos Community Alliance

- Commented on concerns and spoke in opposition of the item.

Closed public comment.

PAGE 2 OF 2

SUBJECT: DRAFT Minutes of the Town Council Special Meeting of January 30, 2023

DATE: January 30, 2023

Public Hearing Item #1 – continued

Council discussed the item.

Recess 8:42 p.m.

Reconvene 8:55 p.m.

MOTION: Motion by **Council Member Moore** to adopt the revised resolution (Attachment 16) to adopt the Draft 2023-2031 Housing Element with the revised site inventory analysis and sites inventory form. **Seconded** by **Mayor Ristow**.

VOTE: Motion passes 4-0-1. Vice Mayor Badame abstained.

ADJOURNMENT

The meeting adjourned at 9:09 p.m.

Respectfully submitted:

Jenna De Long, Deputy Clerk



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 2/7/2023

ITEM NO: 5

DATE: January 26, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt a Resolution Reaffirming Resolution 2021-044 and Making Findings Pursuant to Government Code Section 54953, as Amended by Assembly Bill 361, and, Due to Health and Safety Concerns for the Public, Authorizing the Use of Hybrid Meetings for the Town Council and the Continued Use of Virtual Meetings for Boards and Commissions While Town Staff Makes the Necessary Arrangements to Transition to Hybrid Meetings for All Town Boards, Commissions, and Committees

RECOMMENDATION:

Adopt a Resolution reaffirming Resolution 2021-044 and making findings pursuant to Government Code Section 54953, as amended by Assembly Bill 361, and, due to health and safety concerns for the public, authorizing the use of hybrid meetings for the Town Council and the continued use of virtual meetings for Boards and Commissions while Town staff makes the necessary arrangements to transition to hybrid meetings for all Town Boards, Commissions, and Committees.

BACKGROUND:

On March 17, 2020, Governor Newsom issued Executive Order N-29-20, which allowed for relaxed provisions of the Ralph M. Brown Act (Brown Act) that allowed legislative bodies to conduct meetings through teleconferencing without having to meet the strict compliance of the Brown Act. All provisions of Executive Order N-29-20 concerning the conduct of public meetings expired on September 30, 2021.

AB 361 was signed into law by the Governor on September 16, 2021, and went into effect immediately upon signing. It amends the Brown Act to allow local legislative bodies to continue using teleconferencing and virtual meeting technology after the September 30, 2021, expiration of the current Brown Act exemptions as long as there is a "proclaimed state of emergency" by

PREPARED BY: Wendy Wood
Town Clerk

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

BACKGROUND (continued):

the Governor and state or local officials recommend social distancing. Through December, the County of Santa Clara recommended social distancing at public meetings but has recently rescinded that public health order. Given the continued spread of COVID-19 and variants, the Town Council recommends continued social distancing.

DISCUSSION:

The Town Council will continue to provide a remote participation option in addition to in-person meetings. Staff will gradually transition all Town Board, Commission, and Committee meetings to a similar hybrid format.

AB 361 requires public agencies to make findings by majority vote within 30 days of the first teleconferenced meeting under AB 361 and every 30 days thereafter that a state of emergency still exists and that state or local officials continue to impose or recommend measures to promote social distancing.

Town Council adopted Resolution 2021-044 on October 5, 2021 regarding Brown Act compliance and teleconferencing pursuant to Government Code Section 54953, as amended by AB 361, and adopted resolutions on the following dates reaffirming Resolution 2021-044:

- November 2, 2021 adopted Resolution 2021-046
- November 16, 2021 adopted Resolution 2021-048
- December 7, 2021 adopted Resolution 2021-054
- December 21, 2021 adopted Resolution 2021-059
- January 18, 2022 adopted Resolution 2022-001
- February 1, 2022 adopted Resolution 2022-003
- February 15, 2022 adopted Resolution 2022-004
- March 1, 2022 adopted Resolution 2022-006
- March 15, 2022 adopted Resolution 2022-009
- April 5, 2022 adopted Resolution 2022-013
- April 19, 2022 adopted Resolution 2022-017
- May 3, 2022 adopted Resolution 2022-021
- May 17, 2022 adopted Resolution 2022-031
- June 7, 2022 adopted Resolution 2022-032
- June 21, 2022 adopted Resolution 2022-037
- July 12, 2022 adopted Resolution 2022-048
- August 2, 2022 adopted Resolution 2022-050
- August 16, 2022 adopted Resolution 2022-055
- September 6, 2022 adopted Resolution 2022-056

DISCUSSION (continued):

- September 20, 2022 adopted Resolution 2022-059
- October 4, 2022 adopted Resolution 2022-060
- October 18, 2022 adopted Resolution 2022-065
- November 1, 2022 adopted Resolution 2022-068
- November 15, 2022 adopted Resolution 2022-070
- December 6, 2022 adopted Resolution 2022-073
- December 20, 2022 adopted Resolution 2022-076
- January 17, 2023 adopted Resolution 2023-002

CONCLUSION:

Adopt a Resolution reaffirming Resolution 2021-044 making findings pursuant to Government Code Section 54953, as amended by Assembly Bill 361, and authorizing the continued use of virtual meetings. The Town Council will conduct hybrid meetings and staff will work to prepare for a transition to hybrid meetings for all Town Boards, Commissions, and Committees.

COORDINATION:

This report was coordinated with the Town Attorney and Town Manager's offices.

FISCAL IMPACT:

There will be no fiscal impact to the Town at this time.

ENVIRONMENTAL ASSESSMENT:

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

Attachment:

1. Draft Resolution

DRAFT RESOLUTION 2023-

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS REAFFIRMING RESOLUTION 2021-044 REGARDING BROWN ACT COMPLIANCE AND TELECONFERENCING PURSUANT TO GOVERNMENT CODE SECTION 54953, AS AMENDED BY ASSEMBLY BILL 361, DURING THE COVID-19 PANDEMIC

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19; and

WHEREAS, on March 12, 2020, the Town Manager of Los Gatos acting in the capacity of Town of Director of Emergency Services, issued a Proclamation of Local Emergency; and

WHEREAS, on March 17, 2020, Governor Newsom issued Executive Order N-29-20, which suspended and modified the teleconferencing requirements under the Brown Act (California Government Code Section 54950 et seq.) so that local legislative bodies can hold public meetings via teleconference (with audio or video communications, without a physical meeting location), as long as the meeting agenda identifies the teleconferencing procedures to be used; and

WHEREAS, on March 17, 2020, the Town Council of the Town of Los Gatos ratified the Proclamation of Local Emergency as set forth in Resolution 2020-008 and remains in full force and effect to date; and

WHEREAS, on June 4, 2021, the Governor clarified that the “reopening” of California on June 15, 2021, did not include any change to the proclaimed state of emergency or the powers exercised thereunder; and

WHEREAS, on June 11, 2021, the Governor issued Executive Order N-08-21, which extended the provision of N-29-20 concerning the conduct of public meetings through September 30, 2021, and the Governor subsequently signed legislation revising Brown Act requirements for teleconferenced public meetings (Assembly Bill 361, referred to hereinafter as “AB 361”); and

WHEREAS, on September 16, 2021, Governor Newsom signed AB 361, which added subsection (e) to Government Code section 54953 of the Brown Act, and makes provision for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, the Town Council of the Town of Los Gatos approved Resolution No. 2021-044 on October 5, 2021, declaring the need for the Town Council, Boards, Commissions, and Committees to continue to meet remotely in order to ensure the health and safety of the

public; and

WHEREAS, the Town of Los Gatos remains in a state of emergency due to the continuing spread of COVID-19; and

WHEREAS, given the continued spread of COVID-19 and variants, the Town Council recommends maintaining measures to promote social distancing; and

WHEREAS, technology exists that allows full participation from members of the public without requiring in-person attendance at a Town Council, Board, Commission, or Committee meeting.

WHEREAS, the Town Council has considered all information related to this matter, including the associated staff report and other information relating to COVID-19 provided at prior public meetings of the Town Council; and

WHEREAS, the Town Council wishes to conduct hybrid meetings, at which members of the public have the option to participate remotely, and to transition to hybrid meetings for the Town's Boards, Commissions, and Committees; and

WHEREAS, the Town Council wishes to adopt a Resolution finding that the requisite conditions continue to exist for the legislative bodies of the Town of Los Gatos, as defined in the Brown Act, to conduct remote teleconference meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES HEREBY RESOLVE:

1. The Town Council hereby finds that the fact set forth in the above recitals and as contained in Resolution 2021-044 are true and correct, and establish the factual basis for the adoption of this Resolution;
2. There is an ongoing proclaimed state of emergency relating to the novel coronavirus causing the disease known as COVID-19 and as a result of that emergency, meeting in person may present risks to the health or safety of attendees of in-person meetings of this legislative body and all Town advisory bodies within the meaning of California Government Code section 54953(e)(1).
3. Under the present circumstances, including the risks mentioned in the preceding paragraph, attendees may wish to participate in Town meetings remotely.
4. As authorized by Assembly Bill 361, the Town Council wishes to conduct hybrid meetings and to transition to hybrid meetings for the Town's Boards, Commissions, and Committees.
5. Staff are directed to take all actions necessary to implement this Resolution for

all Town Council meetings and Town Board, Commission, and Committee meetings on a rolling basis, in accordance with the foregoing provisions and the requirements of Government Code section 54953, as amended by Assembly Bill 361, including but not limited to returning for ratification of this Resolution every 30 days after teleconferencing for the first time pursuant to Assembly Bill 361 for so long as either of the following circumstances exists: (a) the state of emergency continues to directly impact the ability of this legislative body to meet in person; and/or (b) state or local officials, including but not limited to the County Health Officer, continue to impose or recommend measures to promote social distancing.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 7th day of February 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: 02/07/2023

ITEM NO: 6

DATE: January 23, 2023

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Consider the Following Actions for the Americans with Disabilities Act (ADA) Public Restroom -- Adult Recreation Center Project (CIP No. 821-2601)

- a. Approve Plans and Specifications; and
- b. Authorize Advertising the Project for Bid; and
- c. Authorize the Town Manager to Execute the County of Santa Clara Grant Agreement (Fiscal Year 2022/23) and Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$250,000 to Recognize Receipt and Expenditure for CIP No. 821-2601; and
- d. Authorize the Town Manager to Execute the Santa Clara County Community Development Block Grant (CDBG) City/County Contract for Fiscal Year 2023 and Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$140,000 to Recognize Receipt and Expenditure of the Community Development Block Grant Fund for CIP No 821-2601.

RECOMMENDATION:

Staff recommends that the Town Council authorize the following actions for ADA improvements to the Adult Recreation Center restroom:

- a. Approve Plans and Specifications; and
- b. Authorize Advertising the Project for Bid; and
- c. Authorize the Town Manager to Execute the County of Santa Clara Grant Agreement (Fiscal Year 2022/23) (Attachment 1) and Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$250,000 to Recognize Receipt and Expenditure for CIP No. 821-2601; and
- d. Authorize the Town Manager to Execute the Santa Clara County Community Development Block Grant (CDBG) City/County Contract for Fiscal Year 2023 (Attachment 2) and Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$140,000 to Recognize Receipt and Expenditure of the Community Development Block Grant Fund for CIP No 821-2601.

PREPARED BY: Dan Keller
Facilities & Environmental Services Manager

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

PAGE 2 OF 3

SUBJECT: Americans with Disabilities Act (ADA) Public Restroom - Adult Recreation Center (CIP No. 821-2601)

DATE: January 23, 2023

BACKGROUND:

The Adult Recreation Center is lacking an ADA compliant restroom and needs improvements to the ADA accessible approach and pathway into the facility.

The adopted Fiscal Year (FY) 2022/23-2026/27 Capital Improvement Program (CIP) Budget designates funding for ADA Restrooms in the Adult Recreation Center (CIP No. 821-2601).

This project includes design and construction of a single use ADA compliant restroom in the Adult Recreation Center. ADA deficiencies in the approach to the building and new restroom will also be addressed.

Community Development Block Grant and County Supervisor approved funding has been offered to the Town to design and construct an ADA compliant restroom for the Adult Recreation Center. Architectural plans have been developed and permitting has been approved for the project.

DISCUSSION:

The Plans and Specifications for the project, including the final design for an ADA single use restroom, are available for review on the PPW capital improvement webpage at <https://www.losgatosca.gov/108/Capital-Improvement-Program>.

Once authorized by the Town Council to advertise for bid, the following is the anticipated schedule for the project:

| <u>Milestones</u> | <u>Anticipated Timeline</u> |
|-------------------------------|-----------------------------|
| Advertise the Project for Bid | February 10, 2023 |
| Bids Due | March 2, 2023 |
| Present Bid Award to Council | April, 4, 2023 |
| Execute Agreement | April 2023 |
| Start Construction | May 2023 |
| Anticipated Completion | August 2023 |

The engineer's estimate to complete the Adult Recreation Center ADA compliant restroom is \$250,000, including a fifteen percent construction contingency. The Plans and Specifications cover all proposed work.

PAGE 3 OF 3

SUBJECT: Americans with Disabilities Act (ADA) Public Restroom - Adult Recreation Center (CIP No. 821-2601)

DATE: January 23, 2023

CONCLUSION:

Approval of the recommendations will allow for the construction of an ADA compliant restroom for public use and a fully ADA accessible path of travel from the parking lot into the Adult Recreation Center.

FISCAL IMPACT:

The adopted Fiscal Year (FY) 2022/23-2026/27 Capital Improvement Program (CIP) Budget, with the approved allocation of funds would be sufficient for the construction contract, including contingency and project delivery costs. Funds remaining after the completion of this project have the potential to be utilized for additional Town ADA projects at this site or returned to GFAR for other priority projects.

| Americans with Disabilities Act (ADA) Public Restroom Upgrade - Adult Recreation Center CIP No. 821-2601 | | |
|---|-------------------|-------------------|
| | Budget | |
| GFAR | \$ 183,000 | |
| CDBG Grant Funding Previously Approved | \$ 130,861 | |
| CDBG Grant Funding (With Approval of this Staff Report) | \$ 140,000 | |
| Grant Funding - Santa Clara County Board of Supervisors (from approval of this staff report) | \$ 250,000 | |
| Total Budget | \$ 703,861 | |
| | | |
| | | Costs |
| Prior Project Expenses | | \$ 86,882 |
| Future Construction Contract with Engineer's Estimate (including 15% contingency) | | \$ 250,000 |
| Total Costs | | \$ 336,882 |
| | | |
| Available Balance | | \$ 366,979 |

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. County of Santa Clara Grant Agreement (Fiscal Year 2022-2023)
2. Community Development Block Grant Fund Agreement

County of Santa Clara

Office of the Clerk of the Board of Supervisors
County Government Center, East Wing
70 West Hedding Street, 10th Floor
San Jose, California 95110-1770
(408) 299-5001 TDD 993-8272

Tiffany Lennear
Clerk of the Board

GRANT AGREEMENT (FY 2022-23)

This Grant Agreement is made between the County of Santa Clara (“County”) and Town of Los Gatos (Grantee), effective June 16, 2022. A grant in the total amount of \$250,000 (“Grant”) to be disbursed to the Grantee was approved by the Board of Supervisors (“Board”) on June 16, 2022. This Grant Agreement shall be effective upon approval of all parties. The following terms and conditions apply to the Grant:

1. **PURPOSE AND ACTIVITY.** Grant funds may only be used by the Grantee for expenses related to Americans with Disabilities Act-related improvements to the Los Gatos-Saratoga Adult Recreation Center. This Grant Agreement is not a pledge or commitment by the County to make any other grants or contributions to Grantee.
2. **DURATION OF GRANT-FUNDED ACTIVITY.** Grant funds shall be spent on programs or activities, as approved by the Board, from July 1, 2022 to June 30, 2023. Any Grant funds that remain unexpended after this period shall be returned to the County.
3. **DISBURSEMENT.** Grantee shall submit proof of compliance with Board direction within five (5) business days after the funds are expended by Grantee or within 30 days after funds are disbursed to Grantee, whichever comes first. If Grant funds are not expended within 30 days, Grantee shall provide an explanation to the Clerk of the Board of Supervisors, including an estimated date for the expenditure. In this case, proof of compliance shall be submitted when the Grant funds are ultimately expended. If matching funds or other conditions are required, proof must be provided prior to disbursement.
4. **ACKNOWLEDGMENT.** Grantee shall acknowledge disbursement by County by email to the Clerk of the Board of Supervisors at AdminUnit@cob.sccgov.org no later than five (5) business days after receipt. Grantee shall also acknowledge the contribution of the County in its annual reports and all publications related to the County-funded program, event, or activity.
5. **RECORD KEEPING.** Grantee shall maintain records, including original receipts and invoices, demonstrating compliance with the Grant Agreement and with conditions associated with matching funds (if any) for a period of seven (7) years. The County may request these records, which shall be provided no later than five (5) business days after

request. Grantee shall further comply with any reasonable requests for information about program activities and any reporting requested by the County, and any audit or investigation regarding the proper use of funds. If subsequent reporting on performance measures is required in Paragraph 1, Grantee shall provide a report to the Clerk of the Board of Supervisors in the timeframe specified.

6. **RETURN OF FUNDS.** Grantee shall return any and all funds that the County determines were not used for the purpose(s) approved by the Board. The funds shall be returned within five (5) business days after the County's determination.
7. **DUTY TO DEFEND, INDEMNIFY AND HOLD HARMLESS.** To the maximum extent allowed by law, Grantee shall indemnify, defend and hold harmless the County and its officers, agents, and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this agreement by the Grantee and/or its agents, employees or sub- contractors, excepting only loss, injury, or damage caused by the sole negligence or willful misconduct of personnel employed by the County.
8. **GENERAL RESTRICTIONS:**
 - a. **Compliance with all laws.** Grantee shall comply with all applicable laws and regulations in the spending of Grant funds. The Grantee shall (a) not use any Grant funds for religious worship, instruction, or proselytization or to pay for equipment or supplies to be used for religious worship, instruction, or proselytization; (b) not use any Grant funds to construct, rehabilitate, or restore any property that is used for religious worship, instruction, or proselytization; (c) not use any Grant funds to engage in partisan political activities or participate in, or endorse, events or activities that advocate for or against political parties, political platforms, political candidates, proposed legislation, or elected officials including any "campaign activities" as defined by state law; and, (d) comply with all applicable laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, Grantee shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Grantee discriminate in the provision of services provided under this grant because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status. Grantee shall comply with, and shall ensure that all contractors shall conform to and comply with,

applicable California prevailing wage laws for work funded by this Grant where applicable.

b. **No Assignment.** Grantee may not assign or delegate performance of this Grant Agreement or of the project to any other person or entity, without the prior written consent of the County.

c. **Governing Law, Forum.** This Grant Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to its conflict of laws provisions. Any disputes or proceedings between the County and Grantee arising from or concerning this Grant Agreement shall be brought in the state or federal court in the counties of Santa Clara, San Francisco, or Sacramento in the sole discretion of the County. Grantee hereby consents to the personal jurisdiction and venue of such courts.

d. **Ownership.** The County retains all rights, title, and interest in and to the County's name, seal, and logos.

9. **TERMINATION AND EXPIRATION.** The County may terminate the Grant Agreement for convenience at any time, for any reason, without penalty or liability. This Grant Agreement shall expire by its own terms on June 30, 2023. Paragraphs 1, 5-9 shall survive termination or expiration of the Grant Agreement.

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

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11. **AUTHORITY.** The person(s) signing this Grant Agreement on behalf of Grantee represents and warrants to County that he or she has the requisite legal authority and power to execute it, and to bind Grantee to the obligations contained herein.

ACCEPTED AND AGREED TO:

COUNTY OF SANTA CLARA:

By: _____

Name: Tiffany Lennear

Title: Clerk of the Board of Supervisors

Date: _____

APPROVED AS TO FORM AND LEGALITY:

By:

Date:

RECIPIENT:

By: _____

Name: Laurel Prevetti

Title: Town Manager

Date: _____

By: _____

Name: Nicolle Burnham

Title: Director of Parks and Public
Works

Date: _____

By: _____

Name: Gabrielle Whelan

Title: Town Attorney

Date: _____

By: _____

Name: Wendy Wood, CMC

Title: Town Clerk

Date: _____

**SANTA CLARA COUNTY
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
CITY/COUNTY CONTRACT
between the
COUNTY OF SANTA CLARA and TOWN OF LOS GATOS
FY2023**

Contract No. LG-23-01- Adult Recreation Center Restrooms

CDBG Grant Amount: \$140,000

THIS Contract (hereinafter "CONTRACT" or "AGREEMENT") is made and entered into pursuant to the Catalog of Federal Domestic Assistance (CFDA) 14.218 by and between the **COUNTY OF SANTA CLARA**, a political subdivision of the State of California (hereinafter "COUNTY"), and the **TOWN OF LOS GATOS** (hereinafter "CITY" or "SUBRECIPIENT") participating as a member of the County of Santa Clara COMMUNITY DEVELOPMENT BLOCK GRANT (hereinafter "CDBG") Joint Powers Agreement. The allocation of funds pursuant to this CONTRACT is a grant. COUNTY approved the allocation and disbursement of Community Development Block Grant (hereinafter "CDBG") funds on **May 3, 2022**.

RECITALS

WHEREAS, COUNTY has applied for and received Community Development Block Grant (hereinafter "CDBG") Entitlement Program funds (hereinafter "FUNDS"), identified more specifically as **B-21-UC-06-0007**, from the United States Department of Housing and Urban Development (hereinafter "HUD") as an entitlement jurisdiction pursuant to the provisions of Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383 as amended (hereinafter "ACT"); and

WHEREAS, these FUNDS were received pursuant to CFDA Number 14.218 Department of Housing and Urban Development Community Development Block Grant Entitlement Grants; and

WHEREAS, COUNTY on **May 3, 2022**, authorized the allocation of CDBG FUNDS for **Fiscal Year 2023** in the total amount of **Two Million Two Hundred Fifty Thousand and Nine Hundred Thirty Five Dollars (\$2,252,935)**; and

WHEREAS, said allocation of FUNDS pursuant to this CONTRACT is a grant and includes **One Hundred Forty Thousand Dollars (\$140,000)** to SUBRECIPIENT; and

WHEREAS, COUNTY has agreed to grant to SUBRECIPIENT a portion of COUNTY'S CDBG FUNDS for the PROGRAM as described below to be operated within COUNTY and the Program will benefit low-, very low- and extremely low-income households, as described herein; and

WHEREAS, COUNTY has agreed to the use by CITY, as a SUBRECIPIENT, a portion of COUNTY'S CDBG Entitlement Program funds for a Housing and Community Development Program to be operated within the COUNTY and which shall benefit extremely-low, very-low, and low income households.

NOW, THEREFORE, the parties agree as follows:

SECTION 1. PROGRAM

SECTION 1.1 COUNTY agrees to allocate a portion of its current CDBG FUNDS, and/or program income as defined in Title 2 Code of Federal Regulations (hereinafter "CFR") Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (hereinafter "UNIFORM ADMINISTRATIVE REQUIREMENTS") to SUBRECIPIENT, the total sum of One Hundred Forty Thousand Dollars (\$140,000) for the purpose of reimbursing SUBRECIPIENT for project and activity costs and expenses that are allowed and incurred in the implementation of the SUBRECIPIENT's program (hereinafter "PROGRAM"), as more particularly described in numerous Exhibits marked as noted herein, attached to this Contract, incorporated by this reference. Reimbursement for **Fiscal Year 2023** shall not exceed the total sum of the beginning balance of the Fiscal Year 2021 CDBG Funds allocated to CITY, and any roll-over of unexpended CDBG Funds from previous year's allocations to CITY. Such authority is contingent upon CITY's and its subrecipients' full compliance at all times with all Federal Rules and Regulations governing the CDBG Program, the COUNTY CDBG Reallocation Guidelines, and all other applicable laws.

SECTION 2. TERM

SECTION 2.1 The purpose of this CONTRACT is for the COUNTY to disburse CDBG FUNDS for eligible activities relating to SUBRECIPIENT PROGRAM. Unless amended or terminated prior to its expiration, the term of this CONTRACT for FY2021 disbursement and expenditure purposes will begin on **July 1, 2022** and the CONTRACT will end on June 30, 2023.

SECTION 2.2 RENEWAL TERM. The Parties may mutually agree to renew this AGREEMENT through a contract amendment.

SECTION 3. OBLIGATIONS OF SUBRECIPIENT

SECTION 3.1 SUBRECIPIENT will provide COUNTY with written certification that the following information is on file at the CITY offices, and is subject to monitoring by HUD and/or COUNTY (County's Housing and Community Development Department, "OSH") OSH staff, or their representatives:

- a. Names and addresses of the current CITY Manager and CITY Council members.
- b. Records of all discussions and actions taken at CITY Council meetings pertaining to the CDBG PROGRAM.
- c. Information and housing objectives for the Consolidated Plan required by HUD at the beginning of each program year.

SECTION 3.2 Program Performance by Subrecipient. SUBRECIPIENT warrants and represents that it shall do all of the following:

- a. Conduct the PROGRAM within Santa Clara County for the purpose of benefiting extremely low, low-or-moderate income households as defined in Exhibit A2 attached to this AGREEMENT, and
- b. Ensure PROGRAM activities within Santa Clara County benefitting low –or-moderate- income (LMI) individuals or households require a minimum **45.43%** of clients be of low –or -moderate-income, and
- c. Ensure PROGRAM activities within Santa Clara County benefitting low-and-moderate-income housing (LMH) activities require **100%** of homeowners be of low-or-moderate-income, and
- d. Ensure PROGRAM activities within Santa Clara County benefitting low-and-moderate-income area (LMA) activities require that at least **38.49%** (County CDBG exception percentage) of residents of that area be of low- or -moderate- income.

- e. The SUBRECIPIENT shall be responsible for administering PROGRAM as more fully described in Exhibit “A”, in a manner satisfactory to the COUNTY and consistent with any and all standards required as a condition of providing these Funds.
- f. File Quarterly Progress Reports (hereinafter "QPR") as required by COUNTY on the type and number of services rendered through the operation of the PROGRAM, and a description of the beneficiaries of these services, and the QPR will evaluate the manner in which the PROGRAM is achieving its objectives and goals according to the standards established by COUNTY. The QPR will be due ten days after the close of each quarter and must cover the three months immediately preceding the date on which the QPR is filed, except for the 4th quarter. The 4th and final quarter report shall be due five days after the close of the fiscal year.
- g. Coordinate its services with other existing organizations providing similar services in order to foster community cooperation and to avoid unnecessary duplication of services.
- h. Seek out and apply for other sources of revenue in support of its operation or services from local, state, federal and private sources and, in the event of receipt of such award(s), inform COUNTY in writing within ten days of receipt of such award.
- i. Include an acknowledgement of COUNTY funding and support on SUBRECIPIENT stationery relating to the PROGRAM and on all appropriate PROGRAM-related public or County publications using words to the effect: “funded in whole or in part by the County of Santa Clara through the Housing and Community Development Act of 1974, as amended.”

SECTION 3.3 Fiscal Responsibilities of CITY. CITY shall:

- a. Appoint and submit the name of a fiscal agent who will be responsible for the financial and accounting activities of SUBRECIPIENT, including the receipt and disbursement of SUBRECIPIENT Funds. The COUNTY must be notified immediately in writing of the appointment of any new fiscal agent and that agent’s name.
- b. Comply with the requirements and standards of Title 24 Code of Federal Regulations, Part 570 of the Housing and Urban Development regulations concerning CDBG and all federal regulations and policies issued pursuant to these regulations and 2 CFR Part 200, UNIFORM ADMINISTRATIVE REQUIREMENTS.
- c. Document all PROGRAM costs by maintaining records in accordance with Section 3.4 below.
- d. Submit to the COUNTY, based on an agreed upon schedule, a request for payment, together with all supporting documentation. Invoices requesting disbursements submitted after the expiration of the CONTRACT will be honored only for eligible charges incurred during the CONTRACT term. All invoices must be submitted by the CONTRACT expiration date or within such other time period specified by the COUNTY for this CONTRACT term. Funds not disbursed will be reprogrammed for future reallocation by the County or may be carry forwarded and included into the SUBRECIPIENTS next fiscal year contract.
- e. Certify current and continuous insurance coverage, subject to COUNTY approval and in accordance with requirements as outlined in Exhibit F, “Insurance Requirements.”
- f. Make all reasonable efforts to submit final invoices to COUNTY by April 1, 2023 to draw down the entirety of the allocation of funds herein by April 15, 2023 to ensure COUNTY complies with “timely performance” in accordance with the CDBG regulations 24 CFR 570.902 and to ensure the COUNTY is able to meet the timeliness test 60 days prior to the end of the program year, which is usually on or around April 30.
- g. Items a. through f. above are express conditions precedent to disbursement of any COUNTY funding and failure to comply with these conditions will, at discretion of COUNTY, result in suspension of funding or termination of this CONTRACT.

- h. If SUBRECIPIENT does not use CDBG Funds in accordance with the requirements of this CONTRACT, SUBRECIPIENT is liable for repayment of all disallowed costs. Disallowed costs may be identified through audits, monitoring or other sources. SUBRECIPIENT is required to respond to any adverse findings which may lead to disallowed costs subject to provisions of 2 CFR Part 200 Subpart E, “Cost Principles.”

SECTION 3.4 CDBG Housing Rehabilitation Revolving Loan Fund Conditions. If CITY maintains a Revolving Loan Fund (“RLF”), CITY will maintain the RLF as a separate fund (with a set of accounts that are independent of other program accounts) established for the purpose of carrying out specific activities which, in turn, generate payments to the fund for use in carrying out the same activities. The following are additional CITY RLF conditions and requirements:

- a. The RLF must be capitalized only with housing rehabilitation or housing acquisition repayment funds, which are considered CDBG Program Income for CDBG purposes. CDBG program Funds may not be drawn down to serve as the initial available funding or ongoing funding of the RLF.
- b. The RLF will cover a single, specific activity (i.e. housing rehabilitation). Properties that may be assisted under the RLF include:
 - Single-family properties occupied by low- and moderate-income households with annual gross incomes not to exceed 80% of the median area income threshold by family size, as issued by HUD for each program year; and,
 - Multi-family (rental) properties with at least 51% of the units (or such percentage as published by HUD as an exception area) occupied by tenants with annual gross incomes which meet the same HUD annual income thresholds.
- c. Program income received by the RLF from rehabilitation loan principal and interest repayments must be held in an interest bearing account. Note: Principal repayments and the interest paid by borrowers of CDBG-funded loans made from the RLF are considered CDBG Program Income and subject to the CDBG Program Income requirements.
- d. Any accrued interest on the total funds maintained in the account must be returned to HUD annually, to be remitted through the COUNTY to the U.S. Treasury.
- e. The COUNTY’s Consolidated Plan must be amended following a public review process to reflect the establishment of a RLF as a strategy to address priority-housing needs. The scope of the housing RLF should be described.
- f. In future years, the RLF’s estimated production and program income should be incorporated into each Annual Action Plan, as well as accomplishments and program income reported in the Consolidated Annual Performance and Evaluation Report (CAPER).
- g. An amendment of the applicable Annual Action Plan is required in order to transfer any RLF funds to the grantee’s main account for use with non-RLF but eligible activities. (See Title 24 CFR 570 Subpart J, 570.500 “Definitions,” 570.500(b) “Revolving Fund.”

SECTION 3.5 Establishment and Maintenance of Records: CITY shall

- a. Maintain complete and accurate records of all its transactions including, but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, bank statements, client statistical records, personnel, property and all other pertinent records sufficient to reflect properly (1) all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to

be incurred to perform this CONTRACT or to operate the PROGRAM, and (2) all other matters covered by this CONTRACT.

SECTION 3.6 Preservation of Records. CITY will preserve and make available its records:

- a. Until four years following from the date the activity is reported in the Urban County's Consolidated Annual Performance Evaluation Report (CAPER) to HUD; or
- b. For such longer period, if any as is required by applicable law; or
- c. If this AGREEMENT is completely or partially terminated, the records relating to the work terminated will be preserved and made available for a period of five years from the date of termination.

SECTION 3.7 Examination of Records and Project Site: At any time during normal business hours, and as often as may be deemed necessary, CITY agrees that HUD and the OSH, and/or any duly authorized representatives, may until expiration of (a) five years after final payment under this AGREEMENT, (b) five years from the date of termination of this AGREEMENT, or (c) such longer period as may be described by applicable law, have access to and the right to examine its offices and facilities used in the performance of this AGREEMENT or the operation of the PROJECT, and all its records with respect to the PROJECT and all matters covered by this AGREEMENT. CITY also agrees that the OSH or any duly authorized representatives will have the right to audit, examine, and make excerpts or transactions of and from such records and to make audits of all AGREEMENTS and SUB-AGREEMENTS, invoices, payrolls, records of personnel, conditions of employment, materials and all other data relating to the PROJECT and matters covered by this AGREEMENT. CITY will be notified in advance that an audit will be conducted. CITY will be required to respond to any audit findings and have the responses included in the final audit report. The cost of any such audit will be borne by COUNTY.

The CITY must provide language in its contracts with all subrecipients stipulating that at any time during normal business hours, and as often as may be deemed reasonably necessary, subrecipient agrees that HUD and the COUNTY, and/or any authorized representatives may have access to and the right to examine subrecipient CDBG records and facilities until expiration of:

- a. five years after expiration of this CONTRACT;
- b. five years from the date of termination of this CONTRACT; or
- c. five such longer period as may be prescribed by law.

CITY also agrees that COUNTY and any authorized representatives has the right to audit, examine, and make excerpts or transactions of and from, such records and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials and all other data relating to the PROGRAM and matters covered by this CONTRACT. CITY will be notified in writing of intended audits. CITY will be notified in writing of intended inspections of records and facilities and of intended audits no less than three business days before such inspections or audits. CITY is required to respond in writing to the OSH Director any audit findings within thirty (30) days of receipt of written audit findings. Responses will be included in the final audit report.

SECTION 3.8 Compliance with Law. CITY staff warrants and represents that it will become familiar and comply with and cause all its subcontractors, independent contractors, and employees, if any, to become familiar and comply with all applicable federal, state and local laws, ordinances, codes, regulations and decrees including, but not limited to, those federal rules and regulations, executive orders, and statutes identified in

Exhibit D “Assurances” and must comply with the requirements and standards of 2 CFR PART 200, Subpart E “Cost Principles” as described in Section 2(A)(9) of this CONTRACT.

SECTION 3.9 Suspension and Termination. In accordance with 24 CFR 85.43, suspension or termination of this Contract may occur if the CITY materially fails to comply with any term or condition of this CONTRACT. This CONTRACT may also be terminated for convenience or cause in accordance with 24 CFR 85.44, or in accordance with any other provision of this CONTRACT allowing for contract termination, cancellation or expiration.

SECTION 3.10 Reversion of Assets. Upon expiration or termination of this CONTRACT, or in the event HUD cancels its PROGRAM for any reason, the CITY will transfer to the COUNTY any CDBG Funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG Funds. Any real property under the CITY’s control that was acquired or improved in whole or in part with CDBG Funds (including CDBG Funds provided to CITY in the form of a loan) in excess of \$25,000:

- a. Must be used to meet one of the national objectives stated in Title 24 CFR part 570.208 for a period of five years after expiration of this CONTRACT or for such longer period of time as required by the COUNTY; or,
- b. The CITY must reimburse the COUNTY an amount equal to the current market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property (reimbursement is not required after the period of time specified in Section 3.10 above).

SECTION 3.11 “Section 3” Provisions.

a. Compliance. Compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this CONTRACT, shall be a condition of the federal financial assistance provided under this CONTRACT and binding upon the COUNTY, the CITY, and any subrecipients. Failure to fulfill these requirements shall subject the COUNTY, the CITY, and any subrecipients, their successors and assigns to those remedies specified in the CONTRACT through which federal assistance is provided and any other remedies available under applicable law. The CITY certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements. The CITY further agrees to comply with these “Section 3” requirements and to include the following language in all subrecipient contracts executed under this CONTRACT or using CDBG Funds:

“The work to be performed under the CONTRACT is a project or activity assisted under a PROGRAM providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project or activity area and agreements for work in connection with the project or activity be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project or activity.”

The CITY certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

b. Notifications. The CITY and its subrecipients must send to each labor organization or representative of workers with which it has a collective bargaining agreement or other agreement or understanding, if any, a notice advising said labor organization or workers' representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts. The CITY and its subcontractors will include this Section 3 clause in every contract and will take appropriate action pursuant to the contract upon a finding that the subcontractors is in violation of regulations issued by COUNTY. The CITY will not contract with any subcontractors where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let, authorize, permit or allow any contract unless the subcontractors has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

SECTION 4. OBLIGATIONS OF COUNTY

SECTION 4.1 Method of Payment. During the CONTRACT term, COUNTY shall disburse CDBG Funds to CITY on a reimbursement basis unless otherwise provided herein for all allowable costs and expenses incurred in connection with the PROGRAM, not to exceed the sum of **\$140,000.**

COUNTY may, at any time in its absolute discretion, elect to suspend or terminate payment to, SUBRECIPIENT in whole or in part, pursuant to this CONTRACT based on SUBRECIPIENT's non-compliance, including, but not limited to, incomplete documentation of expenses, failure to substantially meet goals and objectives as required in Exhibits A (Scope of Services, Performance Outcomes and Measurements, and Budget), failure to submit adequate quarterly progress reports as required herein or other incidents of non-compliance as described in Section 6.2 of this CONTRACT or based on the refusal by SUBRECIPIENT to accept any additional conditions that may be imposed by HUD at any time, or based on the suspension or termination of the grant to COUNTY made pursuant to the Housing and Community Development Act of 1974, as amended.

SECTION 4.2 Non-Compliance. In the case of CITY substantial non-compliance prior to exercising any recourse authorized herein, COUNTY will initiate the following procedure:

a. Notify the CITY Coordinator in writing of the alleged substantial non-compliance and request an immediate meeting between CITY Coordinator and COUNTY OSH CDBG Program Manager to resolve issues. If issues are not resolved satisfactorily within thirty (30) days, notify CITY Manager in writing requesting an immediate meeting between CITY Manager, CITY Coordinator and COUNTY OSH CDBG Program Manager to resolve the issues.

b. Determine if any portion of the reimbursement request meets all eligible criteria, and if so, authorize payment for the eligible portion of the reimbursement request;

c. Review the procedure to be followed pursuant to Section 6.b. of this CONTRACT (Contract Compliance, Corrective Action Procedure); and

d. If applicable, forward a written report to HUD's Regional Office detailing the substantial non-compliance issues and the steps being instituted to correct performance with a copy to the CITY Manager.

SECTION 4.3 Compliance with Law. COUNTY shall become familiar and comply with, and require all its subcontractors and employees, if any, to become familiar and comply with, all applicable federal, state and local laws, ordinances, codes, regulations and decrees including, but not limited to, those federal rules and regulations, executive orders, and statutes identified in Exhibit D "Assurances." Specifically, COUNTY shall comply with the requirements of OMB Circular No. A-87, "Principles for Determining Costs Applicable to Grants

and Contracts with State, Local, Federally recognized Indian Tribal Governments,” and OMB Circular A133 “Audits of State and Local Governments.”

In addition, COUNTY will comply with federal regulations as cited in 24 CFR Part 570, Subpart J, and 24 CFR Part 85, and all other local, state or federal laws applicable to this PROGRAM.

SECTION 5. PROGRAM COORDINATION

SECTION 5.1 COUNTY. The County Executive will assign a single DIRECTOR for COUNTY who will render overall supervision of the progress and performance of this CONTRACT by COUNTY. All services agreed to be performed by COUNTY will be at the overall direction of the DIRECTOR.

SECTION 5.2 SUBRECIPIENT. As of the date hereof, SUBRECIPIENT has designated Dan Keller to serve as CDBG Liaison and to assume overall responsibility for the progress and execution of this CONTRACT. The COUNTY will be immediately notified in writing of the appointment of a new CDBG Liaison.

SECTION 5.3 NOTICES. All notices or other correspondence required or contemplated by this CONTRACT shall be sent to the parties at the following addresses:

COUNTY: County of Santa Clara
Office of Supportive Housing
Housing and Community Development
2310 N. First Street, Suite 201
San Jose, CA 95131

CITY: Laurel Prevetti, Town Manager
Town of Los Gatos
41 Miles Avenue
Los Gatos, CA 95030

All notices must either be hand delivered or sent by United States mail, registered or certified, postage prepaid. Notices given in such a manner will be deemed received when hand delivered or seventy-two (72) hours after deposit in the United States mail. Any party may change his or her address for the purpose of this section by giving five (5) days written notice of such change to the other party in the manner provided in this section.

SECTION 6. CONTRACT COMPLIANCE

SECTION 6.1 Monitoring and Evaluation of Services. Evaluation and monitoring of the PROGRAM performance is the mutual responsibility of COUNTY and CITY, with the understanding that HUD looks to COUNTY as the sole responsible party for meeting PROGRAM requirements. CITY will furnish data, statements, records, information and reports to COUNTY as necessary for COUNTY to monitor, review and evaluate the performance of the PROGRAM and its components. COUNTY has the right to request the services of an outside agent to assist in any such evaluation. Such services will be paid for by COUNTY.

SECTION 6.2 CONTRACT NON-COMPLIANCE. If CITY fails to comply with any provision of this CONTRACT, COUNTY has the right to terminate this CONTRACT or to require corrective action to enforce compliance with such provision. Such enforcement authority is pursuant to these CONTRACT terms and in accordance with the provisions of 24 CFR 85.43. Examples of non-compliance include but are not limited to:

- a. If SUBRECIPIENT (with or without knowledge) has made any material misrepresentation of any nature with respect to any information or data furnished to COUNTY in connection with the PROGRAM.
- b. If there is pending litigation with respect to the performance by CITY of any of its duties or obligations under this CONTRACT, which may materially jeopardize or adversely affect the undertaking of or the carrying out of the PROGRAM. The CITY and COUNTY may negotiate a reinstatement of this CONTRACT following termination or conclusion of such litigation.
- c. If CITY has taken any action pertaining or related to the PROGRAM or this CONTRACT, which action required COUNTY approval, and such approval was not obtained before the action was taken.
- d. If CITY is in default under any provision of this CONTRACT.
- e. If CITY makes illegal use of CDBG Funds.
- f. If SUBRECIPIENT submits to COUNTY any report which is incorrect or incomplete in any material respect.
- g. If CITY fails to meet all provisions of the COUNTY CDBG Reallocation Guidelines or the Joint Powers Agreement currently in full force and effect between the parties hereto.

SECTION 6.3. Corrective Action Procedure. COUNTY, in its absolute discretion and in lieu of immediately terminating this CONTRACT, upon occurrence or discovery of noncompliance by CITY pursuant to this CONTRACT, may give CITY notice of COUNTY'S intention to consider corrective action to enforce compliance utilizing the Corrective Action Procedure outlined below. Such notice will indicate the nature of the non-compliance and the procedure whereby CITY will have the opportunity to participate in formulating any corrective action recommendation. The Corrective Action Procedure contemplated herein is as follows:

1. COUNTY OSH Program Manager and CITY Manager will negotiate a time frame and course of action for correcting the non-compliance;
2. CITY will provide COUNTY with a written plan and time frame for correcting the non-compliance issue(s), subject to COUNTY approval. Such plan must be submitted by CITY to COUNTY within thirty (30) days of the initial non-compliance meeting between CITY and COUNTY;
3. CITY must initiate the corrective action procedure within sixty (60) days of the initial non-compliance meeting between the COUNTY OSH Program Manager and the CITY Coordinator (COUNTY, at its sole discretion, may extend this timeline for extenuating circumstances);
4. COUNTY will have the right to require the presence of CITY officers at any hearing or meeting called for the purpose of considering corrective action;
5. CITY has the right to appeal all findings of non-compliance, and subsequent corrective action, with both the COUNTY Board of Supervisors and HUD; and,
6. County reserves the right to seek any and all other remedies (equitable or other) available to it under the law.

In the event that CITY does not implement the corrective action recommendations in accordance with the corrective action timetable as approved by COUNTY, COUNTY may suspend payments hereunder, terminate this CONTRACT and/or exercise any other right or remedy available to it under the law.

SECTION 7. TERMINATION

SECTION 7.1 Termination for Cause. COUNTY may terminate this CONTRACT by providing written notice to SUBRECIPIENT for any of the following reasons:

- a. Uncorrected CONTRACT non-compliance as defined in Section 6.2; SUBRECIPIENT is in bankruptcy or receivership; a member of the SUBRECIPIENT's Board of Directors or the Executive Director is

found to have committed fraud or; there is reliable evidence that SUBRECIPIENT is unable to perform the PROGRAM as described in the attached Exhibits. The date of termination will be as specified in the notice.

- b. If CITY is in bankruptcy or receivership;
- c. If the CITY or a member of CITY'S Executive Management staff is found to have committed fraud in connection with or related to the PROGRAM;
- d. If the COUNTY determines or has reason to believe that there is reliable evidence that CITY is unable to effectively operate the PROGRAM or operate the PROGRAM in accordance with all requirements and obligations; or
- e. If CITY is in violation of any material term or condition of this CONTRACT.

SECTION 7.2 Termination for Convenience. In addition to the COUNTY'S right to terminate for cause set forth in Section 7.1, COUNTY may suspend or terminate this CONTRACT for any reason by giving thirty (30) days prior written notice to the other party. Upon receipt of such notice, performance of the services hereunder will be immediately discontinued. In the event that this CONTRACT is terminated, SUBRECIPIENT may be required to return funds according to HUD regulations. Upon termination of this CONTRACT, SUBRECIPIENT must immediately provide COUNTY access to all documents, records, payroll, minutes of meetings, correspondence and all other data pertaining to the CDBG FUNDS granted to SUBRECIPIENT pursuant to this CONTRACT.

- a. Upon termination, CITY will:
 - 1. If termination is for convenience, be reimbursed for all documented allowable costs and expenses incurred in connection with the PROGRAM up to the date of such termination. COUNTY shall be obligated to compensate CITY only for allowable costs and expenses as determined by an audit or other monitoring method;
 - 2. Turn over to COUNTY immediately any and all copies of studies, reports and other data, whether or not completed, prepared by CITY or its subcontractors, if any, in connection with this CONTRACT. Such materials shall become property of COUNTY. CITY, however, shall not be liable to COUNTY for COUNTY'S use of incomplete materials or for COUNTY'S use of completed documents if used for reasons not otherwise provided for or contemplated under the terms of this CONTRACT; and
 - 3. Transfer to the COUNTY any CDBG Funds on hand and any accounts receivable attributable to the use of the CDBG Funds. All assets acquired with the CDBG Funds shall be returned to the COUNTY unless otherwise negotiated by separate contract per the provisions of the COUNTY CDBG REALLOCATION GUIDELINES.
- b. Upon termination of this CONTRACT, CITY will immediately provide COUNTY access to all documents, records, payroll, minutes of meetings, correspondence, and all other data pertaining to the CDBG Funds.

SECTION 8. PURCHASING REAL OR PERSONAL PROPERTY

SECTION 8.1 SUBRECIPIENT will comply with all applicable Federal Regulations as detailed by 24 CFR Part 570, Subpart J, i.e. 570.500 (Definitions), 570.503 (Agreements with SUBRECIPIENTS), 570.504 (Program Income), and 570.505 (Use of Real Property), with regards to the use and disposal of Real or Personal Property purchased in whole, or in part, with CDBG FUNDS.

SECTION 8.2 Grants. If a grant is provided for the acquisition of real property, SUBRECIPIENT will continually operate its PROGRAM for a minimum period of five (5) years from the effective date of this CONTRACT. This obligation will survive the term of this CONTRACT, the assignment or assumption of this CONTRACT and the sale of the property prior to expiration of the obligation period as set forth in this paragraph. If this obligation is not fully met, SUBRECIPIENT may be required to reimburse the COUNTY. The COUNTY may consider, but will not be limited by, the following factors in calculating the reimbursement obligation: initial

grant sum, the duration of the initial contractual obligation to operate the PROGRAM versus the actual duration of operation, and the appreciated value.

SECTION 8.3 Security Document. As a condition precedent to COUNTY granting funds for the purchase of real property or an option to purchase real property, CITY will prepare and require its subrecipient(s) to execute a Loan Agreement, Promissory Note, Deed of Trust and such other contracts restricting the use of said real property for purposes consistent with this CONTRACT and HUD and CDBG requirements.

SECTION 9. RELOCATION, ACQUISITION, AND DISPLACEMENT. CITY agrees to comply with 24 CFR 570.606 and all other applicable laws and regulations relating to the acquisition and disposition of all real property utilizing CDBG funds, and to the displacement of persons, businesses, and non-profit organizations as a direct or indirect result of any acquisition or disposition of real property utilizing or supported with the use of CDBG funds. CITY agrees to comply with all applicable state and federal laws, County ordinances, resolutions and policies concerning or related to the displacement of individuals from their residences or homes.

SECTION 10. PROGRAM INCOME. Income generated from activities carried out with CDBG Funds is Program Income and shall be regulated by all provisions of Title 24 CFR 570 Subpart J “Grant Administration,” 570.503 “Agreements with Subrecipients,” and 570.504 “Program Income.” In addition, all provisions of the COUNTY REALLOCATION GUIDELINES apply to this CONTRACT. CITY must quarterly report all program income generated by activities carried out with CDBG funds made available under this CONTRACT. By way of further limitations, CITY may use such income during the CONTRACT term for activities permitted by this CONTRACT and shall reduce requests for additional funds by the amount of any such Program Income balances on hand. All unused Program Income will be returned to the COUNTY at the end of the CONTRACT term with the exception of rehabilitation loan payments.

SECTION 11. INDEPENDENT CONTRACTOR

SECTION 11.1. This is a CONTRACT by and between independent contractors and is not intended and will not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association between SUBRECIPIENT and COUNTY. SUBRECIPIENT, including its officers, employees, agents or independent contractors or subcontractors, shall not have any claim under this Contract or otherwise against COUNTY for any Social Security, Worker’s Compensation, or employee benefits extended to employees of COUNTY. If any obligation is performed for or on behalf of SUBRECIPIENT through a contractor or subcontractor, SUBRECIPIENT will remain fully responsible for the performance of all obligations under this Contract and SUBRECIPIENT will be solely responsible for all payments due to its contractors and subcontractors. No contract, subcontract or other agreement entered into by SUBRECIPIENT with any third party in connection with this CONTRACT will provide for any indemnity, guarantee or assumption of liability by, or other obligation of, County with respect to such arrangement. No contractor or subcontractor will be deemed a third party beneficiary for any purposes under or to this AGREEMENT.

SECTION 12. ASSIGNABILITY – THIRD PARTY CONTRACTORS

SECTION 12.1 None of the work or services to be performed hereunder will be assigned, delegated or subcontracted to third parties without the prior written approval of COUNTY. Copies of all third party contracts shall be submitted to COUNTY at least ten days prior to the proposed effective date. In the event COUNTY approves of any such assignment, delegation or sub-contract, the subcontractors, assignees or delegates shall be deemed to be employees of SUBRECIPIENT, and SUBRECIPIENT will be responsible for their performance and any liabilities attaching to their actions or omissions.

SECTION 12.2 This CONTRACT may not be assumed nor assigned to another subrecipient, person, partnership or any other entity without the prior written approval of COUNTY.

SECTION 13. DISCLOSURE OF CONFIDENTIAL CLIENT INFORMATION

SECTION 13.1 COUNTY AND SUBRECIPIENT agree to maintain the confidentiality of any information regarding existing, former or prospective applicants for services offered by the PROGRAM pursuant to this CONTRACT or their immediate families which may be obtained through application forms, interviews, tests, reports from public agencies or counselors, or any other source. Without the written permission of the applicant, such information may be divulged only if permitted by law as necessary for purposes related to the performance or evaluation of the services and work to be provided pursuant to or under this CONTRACT, and then only to persons having responsibilities under this CONTRACT, including those furnishing services under the PROGRAM through approved subcontracts.

SECTION 14. HOLD HARMLESS

SECTION 14.1 In addition to the indemnity obligations set forth in Exhibit F, “Insurance Requirements,” SUBRECIPIENT warrants and represents that it shall indemnify, save, defend and hold harmless the COUNTY, its employees, agents, and officials, members of boards and commissions, from, for and against any and all claims, costs, settlements, litigation expenses, attorney’s fees and court costs, allegations, direct and indirect damages, injuries, illnesses, deaths, actions, suits, charges and judgments whatsoever, arising out of or relating to (a) SUBRECIPIENT’s negligent or intentional acts or omissions; (b) SUBRECIPIENT’S breach or violation of any term or condition of this CONTRACT; (c) SUBRECIPIENT’s failure to comply with any applicable law, decrees, ordinance, code, regulations or other standard, including but not limited to as set forth in Exhibit D, “Assurances,” attached herein and incorporated by reference.

SECTION 15. WAIVER OF RIGHTS AND REMEDIES

SECTION 15.1 In no event will any payment by COUNTY constitute or be construed to be a waiver by COUNTY of any breach or violation of the requirements, obligations, conditions, covenants or other provisions of this CONTRACT or any default which may then exist on the part of CITY, and the making of any such payment while any such breach, violation or default exists will in no way impair or prejudice any right or remedy available to COUNTY with respect to such breach, violation or default. In no event will payment to CITY by COUNTY in any way constitute a waiver by COUNTY of its rights to recover from CITY the amount of money paid to SUBRECIPIENT on any item which is not eligible for payment under or for the PROGRAM or this CONTRACT or any other right. No delay or omission by COUNTY to exercise any right occurring upon any noncompliance or default by CITY with respect to any of the terms of this Contract shall impair any such right or power or be construed to be a waiver thereof. A waiver by COUNTY of any of the covenants, conditions or agreements to be performed by CITY shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.

SECTION 16. COMPLIANCE WITH ALL LAWS, INCLUDING NONDISCRIMINATION, EQUAL OPPORTUNITY, AND WAGE THEFT PREVENTION

a. Compliance with All Laws. CITY shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, “Laws”), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

b. Compliance with Non-Discrimination and Equal Opportunity Laws: CITY shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County’s policies for Contractors on nondiscrimination and equal

opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, CITY shall not discriminate against any subconsultant, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall CITY discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

c. Compliance with Wage and Hour Laws: CITY shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.

d. Definitions: For purposes of this Section 14, the following definitions shall apply. A “Final Judgment” shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual’s sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose’s Office of Equality Assurance.

e. Prior Judgments, Decisions or Orders against CITY: By signing this Agreement, CITY affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that CITY violated an applicable wage and hour law or pay equity law. CITY further affirms that it has satisfied and complied with – or has reached Agreement with the County regarding the manner in which it will satisfy – any such final judgments.

f. Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract: If at any time during the term of this Agreement, CITY receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then CITY shall promptly satisfy and comply with any such Final Judgment. CITY shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. CITY shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

g. Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to CITY’s records, CITY shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County’s request, CITY shall provide the County with access to any and all

facilities and records, including but not limited to financial and employee records, that are related to the purpose of this Subsection H, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during CITY's normal business hours upon no less than 10 business days' advance notice.

h. Pay Equity Notification: CITY shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to CITY for a job in California (collectively, "Employees and Job Applicants") with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of CITY's Employees and Job Applicants.

i. Material Breach: Failure to comply with any part of this Section 14 shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions:

(i) Suspend or terminate any or all parts of this Agreement.

(ii) Withhold payment to CITY until full satisfaction of a Final Judgment concerning violation of inapplicable wage and hour Law or pay equity Law.

(iii) Offer CITY an opportunity to cure the breach.

j. Subcontractors: CITY shall impose all of the requirements set forth in this Section 14 on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

This non-discrimination provision must be included in CITY'S contracts with sub-contractors and vendors when utilizing (directly or indirectly) the CDBG FUNDS disbursed for the PROGRAM.

SECTION 17. AMENDMENTS. Amendments to the terms or conditions of this CONTRACT must be requested in writing by an authorized representative of the party desiring amendments, and any amendment will be effective only upon the mutual agreement in writing of the parties hereto by and through the parties authorized representatives. Amendments will not invalidate this CONTRACT nor relieve or release the COUNTY or the CITY from its obligations under this CONTRACT.

SECTION 18. TRANSFER OF FUNDS. During the CONTRACT term, CITY may choose to transfer funds within the PROGRAM described in Exhibits A through F. Fund transfers exceeding \$30,000 as well as new projects or activities added to CITY's PROGRAM, require City Council and County Board of Supervisors approval. New projects must be the same or similar in kind of the activity that was originally approved by the Board of Supervisors and City Council.

SECTION 19. INTEGRATED DOCUMENT- JOINT POWERS AGREEMENT. This CONTRACT, in conjunction with the Santa Clara County CDBG Joint Powers Agreement (JPA), contains the entire agreement between COUNTY and CITY with respect to the subject matter hereof. No written or oral agreements, other than the Santa Clara County CDBG Joint Powers Agreement, with any officer, agent or employee of COUNTY prior to execution of this Contract will affect or modify any of the terms or obligations contained in any documents comprising this Contract.

SECTION 20. NON-SMOKING POLICY. Contractor and its employees, agents and subcontractors shall comply with the County's No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus

and all County-owned and operated health facilities; (2) within thirty (30) feet surrounding County-owned buildings and leased buildings where the County is the sole occupant; and (3) in all County vehicles.

SECTION 21. FOOD AND BEVERAGE STANDARDS.

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by CITY with County funds for County-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. “Healthier food options” include (1) fruits, vegetables, whole grains, and low fat and low calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, CITY shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the CITY should consider providing a vegan option.

If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans-fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County’s nutritional criteria are (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, provided that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided.

SECTION 22. MISCELLANEOUS

SECTION 22.1 The captions and section headings used in this CONTRACT are for convenience of reference only, and the words contained herein will, in no way, be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this CONTRACT.

SECTION 22.2 All Exhibits attached hereto and referred to in this CONTRACT are incorporated herein by this reference as if set forth fully herein. **Exhibits are as follows:**

- Exhibit “A” (CDBG Scope of Services, Performance Outcomes and Measurements, and Budget),
- Exhibit “A1” (Income Definitions/Requirements)
- Exhibit “A2” (FY20 Income Limits)
- Exhibit “A3” (Exception Percentage Area Benefit)
- Exhibit “B” (Payments to CITY),
- Exhibit “C” (General Block Grant Conditions),
- Exhibit “D” (Assurances),
- Exhibit “E” (Declaration of Contractor),
- Exhibit “F” (Insurance Requirements).

SECTION 22.3 Nothing contained herein is to be construed as an indemnification for any loss, damage, injury or death arising out of or caused, in whole or in part, by the County or its Board of Supervisors, officers,

executives, attorneys, employees, agents, representatives, contractors or subcontractors. Nothing contained herein shall be construed to, and nothing shall, obligate the County to provide any insurance for or on behalf of this Contract, the Program, the PROGRAM, SUBRECIPIENT, anyone, anything, any event, any use, any property, any action or inaction, or any reason or purpose.

SECTION 22.4 The rights and remedies of the parties to this CONTRACT, whether pursuant to this CONTRACT or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.

SECTION 22.5 This CONTRACT may be executed in several counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original. Facsimile or electronic signatures shall have the same legal effect as original or manual signatures if followed by mailing of a fully executed original to both parties.

SECTION 22.6 Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

SECTION 22.7 This CONTRACT shall not be construed more strongly against either party regardless of who is more responsible for its preparation.

SECTION 22.8 This CONTRACT, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this CONTRACT or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of law’s provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this CONTRACT, including arbitration proceedings, shall be brought only in Santa Clara County, California. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.

SECTION 22.9 Those Sections and provisions that by their nature should survive termination, cancellation or expiration of this CONTRACT shall so survive, including but not limited to Sections 3 and Section 5; and, Sections 6 through and including Section 20.

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SECTION 22.10 The persons signing below are duly authorized to execute this CONTRACT.

IN WITNESS WHEREOF, the parties have executed this as indicated below.

TOWN OF LOS GATOS

By: _____
Laurel Prevetti, Town Manager

Date: _____

Wendy Wood, CMC, City Clerk

APPROVED AS TO FORM:

Gabrielle Whelan, Town Attorney
Date: _____

COUNTY OF SANTA CLARA:

By: _____
Jeffrey V. Smith, County Executive

Date: _____

Date

APPROVED AS TO FORM AND LEGALITY:

Aaron Voit, Deputy County Counsel
Date: _____

EXHIBIT A
SCOPE OF SERVICES,
OUTCOMES MEASURES AND BUDGET
FY 2023

Contract No. LG-23-01

Grant Amount: \$140,000

1. SUBRECIPIENT INFORMATION:

Subrecipient Name

Town of Los Gatos

Program Name

Adult Recreation Center – First Floor Restrooms

Program Contact

Dan Keller

Phone

408-395-5310

Email

dkeller@losgatoscagov

2. LOCATION OF PROGRAM: Unless otherwise indicated, the Grant Services specified will be offered at the following location(s):

Site Name and Address:

208 E. Main Street, Town of Los Gatos, California

3. PROGRAM DESCRIPTION: The primary purpose of the Program is to:

Provide a fully accessible restroom and parking lot pathway to building entry that is fully ADA compliant in the Los Gatos Saratoga Recreation (LGSR) Adult Recreation Center. This will include construction of a gender-neutral restroom in accordance with ADA specifications. In addition, improvements to the parking lot will be implemented, including four accessible parking stalls and a concrete pathway that leads into the entry of the building. All aspects of this project will follow ADA requirements in design and construction.

4. SERVICE AREA: Check the areas where the services will be provided:

☒ Town of Los Gatos

5. PROJECT FUNDING & ELIGIBLE ACTIVITY:

☒ Improvement of other eligible community facilities

6. INCOME ELIGIBILITY: Eligible clients under this Contract shall be Extremely Low, Very Low, and/or Low income individuals and/or families of all ethnic groups.

- a. **Extremely low-income** which is defined as household income that is 30% or lower of the HUD median income for the San Jose Metropolitan Statistical Area (MSA),
- b. **Very low-income** which is defined as household income that exceeds 30% but does not exceed 50% of the HUD median income for the San Jose MSA, and
- c. **Low income** is defined as household income at or below 80% of median income for the San Jose MSA.

7. URBAN COUNTY CONSOLIDATED PLAN ACTIVITY: (check one)

- ☐ Affordable Housing (Create or Maintain)
- ☐ Homelessness (Activities to end homelessness)
- ☒ Community Services
- ☐ Strengthen Neighborhoods (Capital Improvements or Public Facilities)
- ☐ Fair Housing Services

8. PERFORMANCE MEASUREMENT

The U.S. Department of Housing and Urban Development (HUD) requires a performance measurement system to better capture data for the activities that are undertaken with CDBG funding. For each proposed activity, an objective, outcome, and performance indicator must be identified.

a. Primary Objectives: (Select One)

- ☒ **Create Suitable Living Environment** – this objective relates to activities that are designed to benefit communities, families, or individuals by addressing issues in their living environment.

b. Primary Outcome (check one)

- ☒ **Availability/Accessibility** (Activity that makes services, infrastructure, housing, and or shelter available and accessible.)

9. SPECIFIC OUTCOME INDICATORS**1. Number of Unduplicated to be assisted by this Program:****a. Of the Total Assisted, how many will**

| Outcome Indicators | Number of Beneficiaries |
|--|-------------------------|
| Have new or continued access to this service or benefit. | 29,962 |
| Have improved access to this service of benefit | |
| Receive a service or benefit that is no longer substandard | |

10. ACCOMPLISHMENTS: *Estimate* the number of unduplicated Urban County persons/households to be served by this capital improvement project during FY23: 29,962

Please include proposed accomplishments for this project that will be reported to the U.S. Department of Housing & Urban Development (HUD) once the project is complete (maximum of 4000 characters).

A gender-neutral restroom will be designed and constructed in the LGSR Adult Recreation Center. In addition, improvements to the Center's parking lot will be implemented. These improvements include four accessible parking stalls and a concrete pathway that leads into the accessible entry of the building. All aspects of this project will be fully ADA compliant in design and construction. This Adult Recreation Center has approximately 60,00 visits annually from participants, some visits are duplicated. The improvements implemented will ensure accessibility to participants that may have a physical disability and will provide a new restroom space with new fixtures and finishes. This will not only provide full access, it will add to the attraction of the facility for participants and attendance from the general public.

11. BUDGET

| FY22-23 BUDGET CATEGORY | CDBG FUNDS | PROPOSED AMOUNTS OF OTHER PROGRAM FUNDS (if any) | TOTAL PROGRAM COSTS |
|-------------------------|------------------|--|------------------------|
| DIRECT COSTS: | | | |
| Architect/Engineering | \$30,000 | | |
| Construction | \$90,000 | | |
| Right-of-way Dedication | | | |
| Project Management | | | |
| Construction Management | 20,000 | | |
| QC Testing | | | |
| TOTAL | \$140,000 | | \$140,000 |

12. PROJECT SCHEDULE

| Milestone | Date |
|-----------|------|
| 1. | |
| 2. | |
| 3. | |
| 4. | |
| | |
| | |
| | |

13. REPORTING REQUIREMENTS

Beneficiary Data. City shall be required to submit beneficiary data for this project. City shall report the CDBG Unduplicated Participants/Beneficiaries, Demographic Information, Income Levels (Extremely-low, low, moderate, non-low/moderate) and the and how the activities being provided under this grant contribute to meeting performance measures stated in the contract.

EXHIBIT AI

INCOME DEFINITIONS/REQUIREMENTS

A low- and moderate- (L/M) income person is defined as a member of a family having an income equal to or less than the Section 8 Housing Assistance Payments Program low-income limits established by HUD applicable to the size of the person's family. A family is defined as all persons living in the same household who are related by blood, marriage, or adoption. An individual living in a housing unit that contains no other person(s) related to him/her is considered to be a one person family for this purpose. Adult children who continue to live at home with their parent(s) are considered to be part of the family for this purpose and their income must be counted in determining the total family income. A dependent child who is living outside of the home (e.g., students living in a dormitory or other student housing) is considered for these purposes to be part of the family upon which he/she is dependent, even though he/she is living in another housing unit.

A low- and moderate-(L/M) income household is defined as a household in which the total income of all of the household members is equal to or less than the Section 8 Housing Assistance Payments Program low-income limit established by HUD for an equivalent sized family. A household is defined as all persons occupying the same housing unit, regardless of their relationship to each other. The occupants could consist of a single family, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

Persons vs Households

It is important to note that, for all but one of the subcategories under this national objective, the test of meeting the objective of Benefit to L/M is to be met based on L/M persons. Only with the subcategory of L/M Housing must the test be met based on L/M households.

There are reasons for this distinction. First, the statute requires that the focus be on the occupants of a CDBG-assisted housing unit when determining whether the national objective of benefit to L/M Income persons can be met. Secondly, there are two underlying assumptions in the CDBG regulations concerning this issue: 1) that all persons who reside in a housing unit that has been provided or improved with CDBG assistance will benefit from that housing unit; and 2) that the resources of all occupants could be brought to bear with respect to paying for the rental, improvement or purchase of the unit.

For housing units receiving CDBG assistance which are occupied by persons of the same family, totaling the income of all occupants of a unit easily determines whether or not the family is a L/M Income family. However, CDBG-assisted housing units can be occupied by persons who are not related to each other in the traditional family sense. Thus, there needs to be a way to determine whether the beneficiaries of such an assisted housing unit should be considered to be L/M Income for purposes of meeting the CDBG national objective. In addressing this problem, the regulations provide first, that the income of all persons occupying a CDBG-assisted housing unit must be counted without regard to their familial relationships, and secondly, by treating them (for this purpose only) as though they were all of the same family. If the "household/family" income qualifies it as L/M Income, then the assisted housing unit would be considered to be occupied by a L/M Income household.

LIMITED CLIENTELE

A *L/M income limited clientele activity* is an activity which provides benefits to a specific group of persons rather than everyone in a general area. It may benefit particular persons without regard to the area in which they reside, or it may be an activity which provides benefit on an area basis but only to a specific group of persons who reside in the area. In either case, at least 51% of the beneficiaries of the activity must be L/M income persons. It should be noted, however, that because of certain statutory limitations, the regulations preclude the following kinds of activities from qualifying under this subcategory: To qualify under this subcategory, a limited clientele activity must exclusively benefit a clientele who are generally presumed by HUD to be principally L/M income persons, which is 100% of beneficiaries are L/M Income.

The following groups are currently presumed by HUD to be made up principally of L/M income persons:

- abused children,
- elderly persons (62+),
- battered spouses,
- homeless persons,
- adults meeting Bureau of Census' definition of severely disabled persons,
- illiterate adults,
- persons living with AIDS, and
- migrant farm workers.

PUBLIC SERVICE ACTIVITIES INCOME DEFINITIONS

For the purpose of determining whether a family or household is low- and moderate-income under this Agreement, Annual Income is defined using the Section 8 Housing Assistance Payments program definition.

A. Income Determination

Annual income as defined at 24 CFR Part 5.6 (except when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family Assets, as defined in 24 CFR Part 5.6); or § 5.609 Annual income.

B. Annual Income means all amounts, monetary or not, which:

1. Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
2. Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
3. Which are not specifically excluded in paragraph C of this section.
4. Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

C. Annual income includes, but is not limited to:

1. The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
2. The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

3. Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (8)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

4. The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount of this section);

5. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

Stated Income, Self-certification, or Intake forms for purposes of this Agreement must require a copy of at least one or more income verification document/s be collected by the Subrecipient in order to verify a client's or household's annual income and saved in the client/s file. The County, will monitor a minimum of 20% of each Subrecipients Stated Income, Self-certification, or Intake forms throughout the program year.

INCOME WORKSHEET EXAMPLE (Annual Income of Applicants and other Household Members over the age of 18)

| Category (Do not complete, for example use) | Applicant 1 | Applicant 2 | Other Household Member 1 |
|---|-------------|-------------|--------------------------|
| One or more documents verifying income from the following Income categories: | | | |
| 1) Gross Regular Earned Income from Employment (Wages, tips, salaries) | | | |
| 2) Net Income from self-owned business or profession: | | | |
| 3) Income Received from Social Security, Death, Disability, Private Disability, and/or Retirement and Pension Fund payments: | | | |
| 4) Unemployment, Workers Compensation, Severance and other pay received in-lieu of payments for earnings: | | | |
| Include the following various Income sources into the total Income: | | | |
| Alimony, child support, gifts, other contributions: | | | |
| Other sources of income, non-documented income earned or received, including income from rental properties: | | | |
| <u>Armed Forces Income:</u> | | | |
| Interest and Dividend income received from trusts, royalties, and investments including stocks and bonds: | | | |
| Public assistance and food stamp payments: | | | |
| TOTAL: | \$ | \$ | \$ |

EXHIBIT A2

HUD Exception Grantee's Percentage for Low-and-Moderate-Income Area (LMA) Benefit
FY 2023

The Community Block Grant Development (CDBG) program requires that each CDBG-funded activity must either principally benefit low and moderate income persons, aid in the prevention or elimination of slums or blight, or meet a community development need having a particular urgency. With respect to activities that benefit all the residents of a given area, at least 51% of the area's residents must be low and moderate income.

Some CDBG assisted activities, such as parks, neighborhoods, facilities, community centers and streets, serve an identified geographic area. These activities generally meet the low- and moderate-income principal benefit requirement if 51 percent of the residents in the activity's service area are low and moderate income.

However, some communities have no or very few areas in which 51 percent of the residents are low and moderate income. For these grantees, the CDBG law authorizes an exception criterion in order for such grantees to be able to undertake area benefit activities. Specifically, section 105(c)(2)(A)(ii) of the Housing and Community Development Act of 1974, as amended, states that an activity shall be considered to principally benefit low and moderate income persons when "the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income." (See Exception Percent Table Below)

Section 105(c)(2)(A)(ii) is implemented in the CDBG regulations at 24 CFR 570.208(a)(1)(ii), which identifies the following methodology to calculate a grantee's "exception" threshold: all block groups within the grantee's jurisdiction in which people are residing are rank ordered from the highest percentage of low- and moderate-income persons to lowest. (For urban counties, the rank ordering covers the entire area of the county, rather than being done separately by participating units of government within the county.) The total number of block groups is divided by four. If the percentage of low- and moderate-income persons in the last block group in the top quartile is less than 51 percent, that percentage becomes the grantee's low- and moderate-income threshold for area benefit activities. NOTE: whenever the total number of block groups does not divide evenly by four, the block group that would be fractionally divided is included in the top quartile.

The table below reflects the CDBG "exception grantee for the County of Santa Clara, Urban County and the exception threshold for the Urban County based on the 2011-2015 American Community Survey (ACS). This percentage represents the minimum percentage of low- and moderate-income persons that must reside in the service area of an area benefit activity for the activity to be assisted with CDBG funds. The Urban County Exception Grantee threshold for FY 2021 L/M Area-basis exception percentage is: **45.43%**

| American Community Survey 5-Year 2011-2015 Low and Moderate Income Summary Data (HUD FY21) | | | | | | |
|--|-------|--------------|---------|--------------|-------------|----------------------------------|
| CDBG NAME | STATE | CDBG TYPE | LOW/MOD | LOW/MOD UNIV | LOW/MOD PCT | FY2021 EXCEPTION AREA PERCENTAGE |
| Santa Clara County | CA | Urban County | 79,545 | 259,845 | 30.61% | 45.43% |

**EXHIBIT B
PAYMENTS TO CITY**

COUNTY agrees to pay SUBRECIPIENT for the performance of the services, work, and duties, subject to and performed in connection with this AGREEMENT, a sum of money not to exceed the amount set forth in this AGREEMENT. Such sum shall be paid by COUNTY to SUBRECIPIENT on a reimbursement basis for services actually performed by SUBRECIPIENT and for eligible costs actually incurred by and paid by, pursuant to this AGREEMENT, for the cost categories appearing in this section.

SECTION 1. Payment Procedures.

A. No sum shall be paid until COUNTY has received from SUBRECIPIENT the following:

1. Reimbursement Request (RR) or Expense Summary (ES) request for the PROGRAM on a quarterly basis, for approved invoices submitted pursuant to this CONTRACT. The RR form must be accompanied by a request for reimbursement on SUBRECIPIENT's letterhead. Requests for reimbursement will be made quarterly via the CityData Grants Management website at www.Citydataservices.net and specify in detail the services performed by and the costs incurred by and paid by SUBRECIPIENT during the period for which payment is requested. Any Program Income received by the SUBRECIPIENT shall reduce total allowable payments by the same amount. "Program Income" is defined as income or earnings received by SUBRECIPIENT which are directly generated from the use of CDBG funds (as defined at 24 CFR 570.500(a)). It shall be reported by SUBRECIPIENT to COUNTY on a monthly basis. Any Program Income on hand when this Agreement expires or terminated or any Program Income received after this Agreement expires or terminates shall be promptly paid to COUNTY.

B. Payment. Payment to SUBRECIPIENT will be made within thirty (30) calendar days of receipt by COUNTY of all such required statements and supporting documents, including but not limited to, paid invoices, provided that the items on such statements and supporting data for which payment is requested can properly be paid under this Agreement, HUD regulations 2 CFR 200 applicable to the program, and the COUNTY-HUD Grant Agreement, as the same may from time to time be amended. In making such determination, COUNTY may rely upon the certification by SUBRECIPIENT that the items appearing on said statement and supporting data are eligible items for payment under this program and Agreement, and such determination by COUNTY shall in no way constitute a waiver by COUNTY of its right to recover from the amount of any money paid on any item which is not eligible for payment under the program and this Agreement. Payment will be delayed if the information provided to the COUNTY is missing or incomplete. COUNTY has the right to ask for additional documentation, which will assist in the determination of cost eligibility and is in accordance with HUD regulations as amended from time to time. In making such determination for payment, COUNTY may rely upon the certification by SUBRECIPIENT that the items appearing on said statement and supporting data are eligible items for payment under this program and Agreement, and such determination by COUNTY shall in no way constitute a waiver by COUNTY of its right to recover from the amount of any money paid toward any item which is not eligible for payment under the program and this Agreement.

C. Disbursement. The total amount of such payments to be made to SUBRECIPIENT shall be distributed in the following manner during the course of the PROGRAM.

1. Construction Costs. Total eligible payments made to SUBRECIPIENT's for time actually worked for all categories listed in EXHIBIT A entitled "CDBG Scope of Services, Performance Outcomes and Measurements, and Budget".
2. Audit. Eligible payments to an independent auditor to perform an audit in accordance with 2 CFR PART 200, Subpart F, if required. "Eligible," as used in this Agreement, means those costs, payments, and disbursements for activities for which community development grant moneys may be used pursuant to Section 570.201 of the Federal Rules and Regulations for the Implementation of Title I of the Housing and Community Development Acts of 1974 and 1977, as amended, (24 CFR 570) and all other applicable rules and regulations.
3. Classification of Costs. There is no universal rule for classifying certain costs as either direct or indirect F&A (Finance and Administration) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect F&A cost in order to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect (F&A) costs charged to Federal awards can be found in 2 CFR 200.412 – Classification of Costs.

SECTION 2. Budget Amendments.

A. Line Item. Any amendments to a line item in the approved budget must receive prior written approval from the OSH. Requests for budget amendments shall be submitted via the CityData Grants Management website at www.Citydataservices.net.

B. Reallocating of Program Funds. The COUNTY shall review the monthly expenditures to ensure it has "timely performance" in accordance with the CDBG regulations 24 CFR 570.902 and to ensure the COUNTY is able to meet the timeliness test 60 days prior to the end of the program year, which is usually on or around April 30. On a monthly basis, COUNTY shall review the monthly expenditures, if any, for services performed and costs incurred by SUBRECIPIENT provided in this Exhibit. If such review reveals that the monthly expenditures in any such month for the PROGRAM as a whole or any cost category thereof are below the total amount allocated under this Agreement for the total PROGRAM or cost category thereof for such month, COUNTY may reallocate the amount of such under spending. In the case of under spending in a cost category, COUNTY may reallocate the unspent amount into another cost category of the PROGRAM. In the case of underspending in the PROGRAM as a whole, COUNTY may reallocate unspent amount to another community development PROGRAM. COUNTY shall, before reallocating, give SUBRECIPIENT ten (10) days' written notice of its intention to reallocate funds. Such notice shall include a copy of COUNTY's monthly expenditure review for the PROGRAM and statement of its reasons for such reallocation. COUNTY shall make its final determination with respect to reallocation only after SUBRECIPIENT has been given an opportunity to present its views and recommendations with respect to such contemplated reallocation. In no event, however, shall COUNTY be bound to accept SUBRECIPIENT's views or recommendations with respect to such contemplated reallocation. If the expenditures by SUBRECIPIENT in any month, for the PROGRAM or any cost category

thereof, exceed the total amount allocated to the PROGRAM or any cost category thereof, COUNTY may terminate non-salary expenditures for the PROGRAM for such period of time as is necessary to bring expenditures into conformance with this Agreement.

C. Reallocation of Program Funds. The DIRECTOR of the Office of Supportive Housing or his or her designated representative may, at the request of SUBRECIPIENT, approve reallocation of funds from any cost category or categories to any other cost category or categories at any time provided that: (1) there is no increase in the total amount specified in this Agreement, and (2) the goals and objectives set forth in Exhibit A are not negatively affected. Approval by the DIRECTOR of the Office of Supportive Housing or his or her designated representative of such reallocation of funds must be in writing. Any unexpended funds at the end of the term of the Agreement shall be retained by the COUNTY. Expenses incurred prior to July 1, 2020, are not eligible for reimbursement under this Agreement.

COUNTY agrees to pay SUBRECIPIENT for the performance of the services, work, and duties, subject to and performed in connection with this AGREEMENT, a sum of money not to exceed the amount set forth in this AGREEMENT. Such sum shall be paid by COUNTY to SUBRECIPIENT on a reimbursement basis for services actually performed by SUBRECIPIENT and for eligible costs actually incurred by and paid by, pursuant to this AGREEMENT, for the cost categories appearing in this section.

EXHIBIT C
GENERAL BLOCK GRANT CONDITIONS

SECTION 1. GENERAL GRANT CONDITIONS

- A. Definitions.** As used herein, "HUD" means United States Department of Housing and Urban Development. "COUNTY" means the Santa Clara County Urban County, which includes the unincorporated community within Santa Clara County in addition to seven small jurisdictions: Campbell, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill and Saratoga.
- B. General Compliance.** SUBRECIPIENT shall comply with the provisions of 24 CFR 570, Subparts J and K, describing other program requirements, and the provisions of 2 CFR 200 relating to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards.

SECTION 2. ADMINISTRATIVE REQUIREMENTS

- A. Establishment and Maintenance of Records.** SUBRECIPIENT shall maintain records, including but not limited to, books, financial records, supporting documents, statistical records, personnel, property, and all other pertinent records sufficient to reflect properly:
- a. All direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred to perform this AGREEMENT, and
 - b. All other matters covered by this AGREEMENT. Such records shall be maintained in accordance with requirements now or hereafter prescribed by the COUNTY.
- 1. Records to be Maintained.** The SUBRECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:
- a. Records providing a full description of each activity undertaken;
 - b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG Program;
 - c. Records required to determine the eligibility of activities;
 - d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
 - e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG Program;
 - f. Financial records as required by 24 CFR 570.502 and 24 CFR 84.21 - 28; and,
 - g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.
- 2. Retention.** SUBRECIPIENT shall preserve and make available its records for the period of four (4) years from the date of final payment to SUBRECIPIENT under this AGREEMENT; or such longer period, if any, as may be required by applicable law; or if this AGREEMENT is completely or partially terminated, for a period of four (4) years from the date of any resulting final settlement.

3. **Client Data.** The SUBRECIPIENT shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to the COUNTY monitors or their designees for review upon request.
4. **HMIS Participation.** All agencies providing homeless services in receipt of funding from the COUNTY's CDBG Program are required to fully participate in the Homeless Management Information System ("HMIS") and work closely with the COUNTY's OSH to ensure the agency has the mechanisms and staffing in place to use the system appropriately and in a timely manner. Funded agencies are required to collect demographic information on all clients served by the funded PROGRAMs, the services provided, and consent to release the information to the COUNTY's OSH. Funded PROGRAMs must utilize all appropriate aspects of HMIS in order to generate the statistical information required for reporting to the COUNTY on all universal and program level elements of the HUD Data Standards. These statistical reports must be generated directly out of HMIS. No adjustments to the HMIS reports will be accepted, and it is therefore incumbent on the agency to ensure that the information they put into HMIS is accurate and up to date. SUBRECIPIENT will measure performance and outcomes relating to these funded PROGRAMs through the use of the HMIS statistical data, based on the HUD data elements, or other reporting requirements as determined by the COUNTY.
5. **Disclosure.** The SUBRECIPIENT understands that client information collected under this AGREEMENT is private and the use or disclosure of such information, when not directly connected with the administration of the SUBRECIPIENT's responsibilities with respect to services provided under this AGREEMENT, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
6. **Property Records.** The SUBRECIPIENT shall maintain real property inventory records that clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the "changes in use" restrictions specified in 24 CFR Section 570.503(b)(8), as applicable.
7. **National Objectives.** The SUBRECIPIENT agrees to maintain documentation that demonstrates that the activities carried out with Funds provided under this AGREEMENT meet the CDBG Program's national objective of benefiting low-and moderate income persons, as defined in 24 CFR Section 570.208.
8. **Close-outs.** The SUBRECIPIENT's obligation to the COUNTY shall not end until all close-out requirements are completed pursuant to 24 CFR 570.509. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the SUBRECIPIENTS), and determining the custodianship of records.

Notwithstanding the foregoing, the terms of this AGREEMENT shall remain in effect during any period that the SUBRECIPIENT has control over CDBG funds, including program income.

9. **Audits and Inspections.** At any time during normal business hours, and as often as may be deemed necessary, SUBRECIPIENT agrees that HUD and/or COUNTY, and/or any of their respective authorized representatives, shall have access to and the right to examine SUBRECIPIENT's offices and facilities engaged in performance of this AGREEMENT and all its records with respect to all matters covered by this AGREEMENT. SUBRECIPIENT also agrees that HUD and/or COUNTY, or any of their respective authorized representatives, shall have the right to audit, examine, and make excerpts or transcripts of and from such records, and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials, and all other data relating to matters covered by this AGREEMENT. Notwithstanding anything in this AGREEMENT to the contrary for monitoring purposes, COUNTY shall not require access to any information of SUBRECIPIENT mutually determined by the parties hereto to be proprietary.
- a. **County Audits.** COUNTY may perform an independent audit. Such audits may cover program as well as fiscal matters. SUBRECIPIENT will be afforded an opportunity to respond to any audit findings and have the responses included in the final audit report. Costs of such audits will be borne by SUBRECIPIENT.
 - b. **Independent Audits.** Funds will be set aside in each SUBRECIPIENT's budget for an independent audit. A separate line item will be established. SUBRECIPIENT shall enter into an agreement with an independent public accountant certified to practice in the State of California no later than sixty (60) days before the end of this AGREEMENT calling for an audit to be done for the entire year. The audit must be in conformance with the applicable funding source. The audit must be completed and sent to COUNTY's OSH staff within the later of one hundred fifty (150) days of the end of this AGREEMENT or ninety (90) days after the end of SUBRECIPIENT's fiscal year. The independent fiscal audit shall conform to Generally Accepted Government Auditing Standards (GAGAS) 2 CFR 200.514(a) and the audit threshold 2 CFR 200.501(a).
 - c. **Requirements.** Such audits shall identify the funds received and disbursed under this AGREEMENT. For SUBRECIPIENTS that expend \$750,000 or more of Federal financial assistance in a fiscal year, in addition to conducting normal financial audit procedures, the SUBRECIPIENT's independent public accountant certified to practice in the State of California shall perform tests to ascertain that:
 - i. Expenditures submitted for reimbursement are allowable under 2 CFR Part 200 Subpart E, "Cost Principles";
 - ii. Expenditures are in compliance with the grant agreements between the COUNTY and SUBRECIPIENT; and,
 - iii. Applicable laws and regulations. Further, the independent public accountant certified to practice in the State of California shall render an opinion as to whether the Expenditures complied with the Single Audit Act of 1984 and 2 CFR 200 Subpart F "Audit Requirements".

- iv. Funds may be set aside in SUBRECIPIENT's budget in an amount equal to COUNTY's fair share of SUBRECIPIENT's cost of an independent audit, if required.
- d. **Components.** The Audit must include the following:
 - i. Balance Sheet or Statement of Financial Position;
 - ii. Statement of Support, Revenue and Expenses and Changes in Fund Balances or Statement Activities;
 - iii. Statement of Functional Expenses;
 - iv. Schedule of Expenditures of Federal Awards;
 - v. Independent Auditor's Report on the Financial Statement and Schedule of Expenditures of Federal Awards;
 - vi. Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters;
 - vii. Auditor's Report on Compliance with Requirements Applicable to Major Programs and on Internal Control over Compliance;
 - viii. Schedule of Findings and Questioned Costs;
 - ix. Summary of Schedule of Prior Audit Findings;
 - x. Corrective Action Plan; and,
 - xi. Data Collection Form.

B. Procedures Concerning Reporting and Payments.

1. **Program Income.** The SUBRECIPIENT shall report all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this AGREEMENT. The use of program income by the SUBRECIPIENT shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the SUBRECIPIENT may use such income during the CONTRACT period for activities permitted under this AGREEMENT and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the COUNTY at the end of the CONTRACT period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the COUNTY.
2. **Indirect Costs.** If indirect costs are charged, SUBRECIPIENT may invoice for indirect costs up to a de minimis rate of 10% per 2 CFR 200.414 (f). If SUBRECIPIENT requests an indirect cost rate above the de minimis rate of 10%, SUBRECIPIENT shall develop an indirect cost allocation plan for determining the appropriate SUBRECIPIENT's share of administrative costs and shall submit such plan to the COUNTY for review. The COUNTY may approve or deny the plan in its sole discretion. Indirect Costs may not be charged or Capital Improvements or Housing Rehabilitation Projects.
3. **Relocation and Real Property Acquisition.** SUBRECIPIENT shall comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (URA) and 24 CFR 570.606(b), and (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan (Plan) under section 104(d) of the HCD Act. Under the URA and the Plan, the SUBRECIPIENT must provide relocation assistance to persons (families,

individuals, businesses, non-profit organizations and farms) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted PROGRAM. All property occupants must be issued certain notices on a timely basis. The Plan also required the one-for-one replacement of any occupied or vacant occupiable low/moderate-income housing that is demolished or converted to another use in connection with a CDBG-assisted PROGRAM. Finally, the Plan requires the identification of the steps that will be taken to minimize displacement.

SECTION 3. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

- 1. General Compliance.** The SUBRECIPIENT agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
- 2. Nondiscrimination.** The SUBRECIPIENT will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, sexual orientation, actual or perceived gender identity, national origin, disability, or other handicap, age, marital status, family status, or status with regard to public assistance. The Subrecipient will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include, but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provision of this nondiscrimination clause.
- 3. Land Covenants.** The SUBRECIPIENT under this AGREEMENT shall be subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and HUD regulations with respect thereto including the regulations under 24 CFR Part 1. In the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this AGREEMENT, SUBRECIPIENT shall require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex, sexual orientation, actual or perceived gender identity, or national origin, in the sale, lease or rental, or in the use of occupancy of such land or any improvements erected or to be erected thereon, and providing that and the United States are beneficiaries of and entitled to enforce such covenant, in providing the services and work it is to provide, pursuant to this AGREEMENT, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.
- 4. Section 504.** The SUBRECIPIENT agrees to comply with Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published which specify that no otherwise qualified individual shall, solely by reason of his or her handicap, be excluded

from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal assistance.

5. **Architectural Barriers Act.** The SUBRECIPIENT shall meet the requirements, where applicable, of the Architectural Barriers Act and the Americans with Disabilities Act, as set forth in 24 CFR 570.614. A building or facility designed, constructed, or altered with funds allocated or reallocated under CDBG program after December 11, 1995 and that meets the definition of a “residential structure” as defined in 24 CFR Part 40.2 or the definition of a “building” as defined in 41 CFR Part 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 USC 4151-4157) and shall comply with the Uniform Federal Accessibility Standards. The Americans with Disabilities Act (“ADA”) (42 USC 12131; 47 USC 155, 210, 218, and 255) requires that the design and construction of facilities for first occupancy after January 26, 1993 must include measures to make them readily accessible and usable by individuals with disabilities. The ADA further requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

B. Affirmative Action

1. **Approved Plan.** The SUBRECIPIENT agrees that it shall be committed to carry out pursuant to the County’s specifications an affirmative action program in keeping with the principles as provided in Executive Order 11246 (as amended).
2. **Women and Minority Business Enterprises.** The requirements relating to Minority-Owned and Women-Owned Business Enterprises set forth in Executive Order No. 11625 of October 13, 1971, 36 Fed. Reg. 19967, as amended by Executive Order No. 12007 of August 22, 1977, 42 Fed. Reg. 42839; and Executive Order No. 12432 of July 14, 1983, 48 Fed. Reg., 32551; and Executive Order No. 12138 of May 18, 1979, 44 Fed. Reg. 29637, a SUBRECIPIENT must exercise affirmative outreach efforts when soliciting bids for service or construction when the Federal funds received by the SUBRECIPIENT or subcontractor exceeds \$10,000 and when the SUBRECIPIENT or subcontractor is a for-profit organization/business.
3. **Access to Records.** The SUBRECIPIENT shall furnish and cause each of its sub-subrecipients to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the COUNTY, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with rules, regulations and provisions stated herein.
4. **Notifications.** The SUBRECIPIENT will send to each labor union or representative of workers with which it may have a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker’s representative of the SUBRECIPIENT’s commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. **EEO/AA Statement.** The SUBRECIPIENT will, in all solicitations or advertisements for employees placed by or on behalf of the SUBRECIPIENT, state that it is an Equal Opportunity and Affirmative Action employer. The SUBRECIPIENT shall comply with Executive Order 11246 as amended by Executive Order 12086 and the regulations issued pursuant thereto (41 CFR Chapter 60), and will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The SUBRECIPIENT will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

The SUBRECIPIENT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

6. **Subcontract Provision.** The SUBRECIPIENT will include the provisions of Section 3. A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. **Prohibited Activities.** No funds provided in this AGREEMENT shall be used for any partisan political activity or to further the election or defeat of any candidate for public office; nor shall they be used to provide services, or for the employment or assignment of personnel in a manner supporting or resulting in the identification of programs conducted pursuant to this AGREEMENT with the following:
- a. Any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office;
 - b. Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or,
 - c. Any voter registration activity.
2. **Labor Standards.** The SUBRECIPIENT agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, the provisions of Contract Work Hours, the Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276a-276a-5; 40 U.S.C. 327 and 40 U.S.C. 276c and all other applicable laws pertaining to labor standards insofar as those acts apply to the performance of this AGREEMENT. The SUBRECIPIENT shall maintain documentation which demonstrates compliance with the hour and age requirements of this part. Such documentation shall be made available to the COUNTY for review upon request.

The David Bacon Act (40 USC, Chapter 3, Section 276a-5; and CFR Parts 1, 3, 5 and 7) is triggered when construction work over \$2,000 is financed in whole or in part with CDBG Funds. It requires that workers receive no less than the prevailing wages being paid for similar work in the same

area. Davis-Bacon does not apply to the rehabilitation of residential structures containing less than eight units or force account labor (construction carried out by employees). HUD has concluded that new construction (as well as rehabilitation) of residential property is exempt from Federal labor standards if the property contains less than eight (8) units. SUBRECIPIENT shall comply with HUD requirements pertaining to such contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 3, 5 and 5a, governing the payment of wages and the ratio of apprentices and trainees to journeymen; provided, that if wage rates higher than those required under such regulations are imposed by state or local law, nothing hereunder is intended to relieve SUBRECIPIENT of its obligation, if any, to require payment of the higher rates. SUBRECIPIENT shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of 29 CFR 5.5 and for such contracts in excess of Twenty Five Thousand Dollars (\$25,000), pursuant to 29 CFR 5a.3.

3. **“Section 3” Clause.** Compliance with the provisions of “Section 3” of the **Housing and Community Development Act of 1968** pertaining to Employment Opportunities for Lower-Income Persons (12 USC 1701u), requiring that, to the greatest extent feasible on PROGRAMs financed by HUD, a SUBRECIPIENT must:

- a. Provide opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction PROGRAM, are given to persons with household income that is at or below 80% of the median income for San Jose Metropolitan Statistical Area defined by the Secretary of HUD residing within the San Jose metropolitan area. Where feasible, priority should be given to residents within the service area of the PROGRAM or the neighborhood in which the PROGRAM is located who have household income that is at or below 80% of the median income for San Jose Metropolitan Statistical Area (MSA as defined by the Secretary of HUD, and to participants in other HUD programs who have household income that is at or below 80% of the median income for the San Jose Metropolitan Statistical Area. The SUBRECIPIENT certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with these requirements;
- b. Award contracts for work undertaken in connection with housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction PROGRAM to business concerns that provide economic opportunities for persons residing within the metropolitan area in which the CDBG-funded PROGRAM is located and have household income that is at or below 80% of the median income for San Jose Metropolitan Statistical Area as defined by the Secretary of HUD. Where feasible, priority should be given to business concerns that provide economic opportunities to residents within the service area or the neighborhood in which the PROGRAM is located who have household income that is at or below 80% of the median income for San Jose Metropolitan Statistical Area as defined by the Secretary of HUD, and to participants in other HUD programs who have household income that is at or below 80% of the median income for that area;

- c. Self-certify whether they are a Section 3 business, employs Section 3 residents, or subcontracts with business that provide opportunities to low-income persons when an award of \$200,000 or more of HUD funding is provided for housing rehabilitation, housing construction, or other public construction PROGRAMs, and/or \$100,000 or more to subcontractors;
- d. At a minimum, provide documentation on federal compliance, reporting and outreach efforts; and,
- e. The SSUBRECIPIENT further agrees to comply with these “Section 3” requirements and to include the following language in all subcontracts executed under this Agreement:

The work to be performed under this agreement is a PROGRAM assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. “Section 3” requires that to the greatest extent feasible opportunities for training and employment be given to low and very low income residents of the PROGRAM area and contracts for work in connection with the PROGRAM be awarded to business concerns that provide economic opportunities for low and very low income persons residing in the metropolitan area in which the PROGRAM is located.

- 4. **Notifications.** The SUBRECIPIENT agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker’s representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- 5. **Subcontracts.** The SUBRECIPIENT will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The SUBRECIPIENT will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct.

- 1. **Assignability.** The SUBRECIPIENT shall not assign or transfer any interest in this AGREEMENT without the prior written consent of the COUNTY provided, however, that claims for money due or to become due to the SUBRECIPIENT from the COUNTY under this AGREEMENT may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the COUNTY.
- 2. **Hatch Act.** The SUBRECIPIENT agrees that no funds provided, nor personnel employed under this AGREEMENT, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C. Participants employed in the administration of the

CDBG Program, and participants whose principal employment is in connection with an activity financed by the CDBG Program or its proceeds are subject to limitation on political activities under the Hatch Act (5 U.S.C. 1502(a), 18 U.S.C. 595). All participants may take part in non-partisan activities outside working hours.

3. **Resident Aliens.** (24 CFR 570.613) Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible to apply for the benefits under covered activities funded by the CDBG Program. "Covered activities" are activities meeting the requirements of 24 CFR 570.208(a) that either (1) have income eligibility requirements limiting benefits exclusively to low- and moderate-income persons, or (2) are targeted geographically or otherwise to primarily benefit low- and moderate-income persons (except for activities that benefit the public at large), and provide benefits on the basis of an application.
4. **Conflict of Interest.** Under 24 CFR Part 570.66, no officer, employee or agent of COUNTY or SUBRECIPIENT who exercises any functions or responsibilities with respect to the CDBG Program or to the services and work to be performed by SUBRECIPIENT pursuant to this AGREEMENT, during such officer's, employee's or agent's tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this AGREEMENT or the proceeds thereof. SUBRECIPIENT shall incorporate or cause to be incorporated in every contract required to be in writing a provision prohibiting such interest pursuant to the purposes of this section.
7. **Subcontracts.** SUBRECIPIENT shall not award any contract or subcontract which is otherwise in compliance with this AGREEMENT to any person or subcontractor who is at the time ineligible under the provisions of any applicable regulations of the Department of Labor to receive an award of such contract.
8. **Lobbying.** The SUBRECIPIENT hereby certifies that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the SUBRECIPIENT, 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 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 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 SUBRECIPIENT shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c. The SUBRECIPIENT shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all SUBRECIPIENTS shall certify and disclose accordingly.
 - d. Lobbying Certification. 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.
- 9. **Copyrights.** If this AGREEMENT results in a book or other copyrightable material, the author is free to copyright the work, but HUD reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted.
- 10. **Patents.** Any discovery or invention arising out of or developed in the course of work aided by this AGREEMENT shall be promptly and fully reported to COUNTY and HUD for determination by HUD as to whether patent protection on such invention or discovery will be sought and how the rights in the invention or discovery, including the rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest.
- 11. **Religious Organizations.** SUBRECIPIENT shall not use any funds to construct, rehabilitate, maintain, or restore religious structures (including those which may be historic properties) currently used for religious purposes in accordance with the federal regulations specified in 24 CFR Section 570.200(j). CDBG FUNDS shall not be used to construct, rehabilitate, maintain, or restore structures or other real property owned by "pervasively sectarian" organizations. Block grant funds shall not be used to assist a religious organization in acquiring property. These prohibitions apply whether or not the property is used for religious services or instruction or is used in any other way for religious activities. CDBG Funds may be used for the provision of public services under the following conditions:
 - a. The public services provided are exclusively non-religious in nature and scope;
 - b. There are no religious services, proselytizing, instruction, or any other religious influences in connection with the public services;
 - c. There is no religious discrimination in terms of employment or benefits under the public services; and,
 - d. The CDBG funds may be used only for the provision of public services and not for the construction, rehabilitation or restoration of any facility owned by the religious organization where the services are to be provided. A narrow exception to this prohibition is that minor repairs may be made where such repairs (a) are directly related to the public

services, (b) are located in a structure used exclusively for non-religious purposes, and (c) constitute in dollar terms a minor portion of the CDBG expenditure for the public services.

SECTION 4. ENVIRONMENTAL CONDITIONS

- A. Environmental Requirements.** (24 CFR 470.604) SUBRECIPIENT is not allowed to incur program expenses until the COUNTY has performed an environmental review of the proposed activities, received the release of funds, and provided the SUBRECIPIENT with formal clearance to initiate them, along with directives for any action necessary to mitigate negative environmental impacts (24 CFR Part 58).
1. SUBRECIPIENT will submit the correct Environmental Review Record for Maintenance and or Minor Rehabilitation activities to the County Housing Rehabilitation Specialist or HCD Program Manager for review.
 2. County will provide SUBRECIPIENT with technical guidance when needed.
 3. County will forward the executed Environmental Review Record to the SUBRECIPIENT once approved (Formal Clearance).
- B. Air and Water.** This AGREEMENT is subject to 42 U.S.C. 1857, and 33 U.S.C. 1251 *et sec.*, and the regulations issued pursuant thereto. Therefore, SUBRECIPIENT agrees as follows:
- a. SUBRECIPIENT stipulates that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20;
 - b. SUBRECIPIENT agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Sections 114 and 308, and all regulations and guidelines issued thereunder;
 - c. SUBRECIPIENT stipulates that as a condition for the award of the contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities;
 - d. SUBRECIPIENT agrees that criteria and requirements in subparagraphs (a) through (d) of this section will be included in every non-exempt subcontract and SUBRECIPIENT shall take such action as the COUNTY or HUD requires as a means of enforcing such provisions
 - e. In no event shall any amount of the assistance provided under this AGREEMENT be utilized with respect to a facility that has given rise to a conviction under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

- C. Flood Disaster Protection.** Notwithstanding any other provision of this Agreement, SUBRECIPIENT shall comply with the Flood Disaster Protection Act of 1973, as amended (P.L. 93-234), and the standards issued thereto. No portion of the moneys to be paid to SUBRECIPIENT pursuant to this AGREEMENT shall be used for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in an area not in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any of said moneys for such acquisition or construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act.

Any contract or agreement for the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain, if such land is located in an area identified by the Secretary of HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001, ~., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of the Flood Disaster Protection Act of 1973, as amended. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this AGREEMENT.

- D. Lead-Based Paint.** Notwithstanding any other provision, SUBRECIPIENT agrees to comply with the regulations issued by the Secretary of HUD set forth in 24 CFR 570.608 and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in residential structures undergoing federally assisted construction or rehabilitation and require the elimination of lead-based paint hazards. Every contract or subcontract, including painting, pursuant to which such federally assisted construction or rehabilitation is performed, shall include appropriate provisions prohibiting the use of lead-based paint.

- E. Historic Preservation.** SUBRECIPIENT shall not violate provisions of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list. Before any commitments are made to make any physical improvements or alterations or demolition of any building, SUBRECIPIENT shall receive assurances from the COUNTY that the SUBRECIPIENT is in compliance.

**EXHIBIT D
ASSURANCES**

The CITY hereby assures and certifies that it will comply with all regulations, policies, guidelines and requirements applicable to the acceptance and use of Federal funds for this Federally-assisted program and will be responsible for implementing and complying with all relevant future changes to Federal Regulations or OMB Circulars. Specifically the CITY gives assurances and certifies with respect to the PROGRAM that it is compliant with the following Regulations as defined by 24 CFR, Part 570, Subpart J; 24 CFR, Part 570, Subpart K; and will be conducted and administered in conformity with "Public Law 88.352 and Public Law 90-284. *Full text of the regulations can be located at: <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>*

1. **570.505. Use of Real Property**
2. **570.506. Records to be Maintained**
3. **570.508. Public Access to Public Records**
4. **570.601. Public Law 88-352 and Public Law 90-284;** affirmatively furthering fair housing; Executive Order 11063, as amended by Executive Order 12259 addresses discrimination. HUD regulations implementing Executive Order 11063 are contained in 24 CFR, Part 107.
5. **570.602. Section 109 of the Act addresses discrimination**
6. **570.603. Labor Standards**
7. **570.604. Environmental Standards**
8. **570.605. National Flood Insurance Program**
9. **570.606. Displacement, Relocation, Acquisition, and Replacement of Housing.**
10. **570.607. Employment and Contracting Opportunities**
11. **570.608. Lead-Based Paint**
12. **570.609. Use of Debarred, Suspended, or Ineligible Contractors or CITYs**
13. **570.610. Uniform Administrative Requirements and Cost Principles.** The COUNTY, its Cities, agencies or instrumentalities, shall comply with the policies, guidelines, and requirements of 24 CFR Part 85 (Common Rule), and OMB Circulars A-110 (Grants and Agreements with Non-Profit Organizations), A-122 (Cost Principles for Non-Profits), A-128 (Audits of State and Local Governments-implemented at 24 CFR, Part 24), and A-133 (Audits of Institutions of Higher Education and Other Non-Profit Institutions), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR, Part 85 and OMB Circular A-100 are set forth at 570.502.
14. **570.611. Conflict of Interest**
15. **570.612. Executive Order 12372** allows States to establish its own process for review and comment on proposed Federal financial assistance programs, specifically the use of CDBG funds for the construction or planning of water or sewer facilities.
16. **570.613. Eligibility Restrictions for Certain Resident Aliens**
17. **570.614. Architectural Barriers Act and the Americans with Disabilities Act.**

EXHIBIT E

DECLARATION OF CONTRACTOR
(To be completed by all Type I Contractors)

This is a Type I service contract under the Board of Supervisor's Resolution of Contracting Principles.

Type I Category: **Section II C.6**
Explanation: **Contract with another Public Government Agency**

I am authorized to complete this form on behalf of the **TOWN OF LOS GATOS**.
I have used due diligence in obtaining this information, and this information contained herein is complete and accurate.

CONTRACT PROVISIONS TO IMPLEMENT THE TERMS OF THE RESOLUTION RE: CONTRACTING PRINCIPLES

This CONTRACT is a Type I service contract, subject to the Resolution of Contracting Principles adopted by the Board of Supervisors on October 28, 1997 and subsequently amended on October 21, 2008. Accordingly, CITY shall comply with all of the following:

- a. CITY shall, during the term of this contract, comply with all applicable federal, state, and local rules, regulations, and laws.
- b. Contractor shall maintain financial records adequate to show that COUNTY funds paid under the contract were used for purposes consistent with the terms of the contracts. These records shall be maintained during the term of this contract and for a period of three (3) years from termination of this contract or until all claims if any, have been resolved, whichever period is longer, or longer if otherwise required under other provisions of this contract.

The failure of Contractor to comply with this Section or any portion thereof may be considered a material breach of this contract and may, at the option of the County, constitute grounds for the termination and/or non-renewal of the contract. Contractor shall be provided reasonable notice of any intended termination or non-renewal on the ground of non-compliance with this Section, and the opportunity to respond and discuss the COUNTY's intended action.

Town Manager Signature: _____ **Date** _____

Print Name: _____

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EXHIBIT F

INSURANCE REQUIREMENTS FOR
STANDARD CONTRACTS ABOVE \$100,000

Indemnity

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

Insurance

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

A. Evidence of Coverage

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

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

B. Qualifying Insurers

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

DRAFT
EXHIBIT F

C. Notice of Cancellation

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

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate - \$2,000,000
 - c. Products/Completed Operations aggregate - \$2,000,000
 - d. Personal Injury - \$1,000,000
2. General liability coverage shall include:
 - a. Premises and Operations
 - b. Products/Completed
 - c. Personal Injury liability
 - d. Severability of interest
3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

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

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

DRAFT
EXHIBIT F

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

4. Automobile Liability Insurance

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

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

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

5. Workers' Compensation and Employer's Liability Insurance

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

E. Special Provisions

The following provisions shall apply to this Agreement:

- 1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
- 2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

DRAFT
EXHIBIT F

3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

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

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2023

ITEM NO: 6

DESK ITEM

DATE: February 7, 2023

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Consider the Following Actions for the Americans with Disabilities Act (ADA) Public Restroom -- Adult Recreation Center Project (CIP No. 821-2601)

- a. Approve Plans and Specifications; and
- b. Authorize Advertising the Project for Bid; and
- c. Authorize the Town Manager to Execute the County of Santa Clara Grant Agreement (Fiscal Year 2022/23) and Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$250,000 to Recognize Receipt and Expenditure for CIP No. 821-2601; and
- d. Authorize the Town Manager to Execute the Santa Clara County Community Development Block Grant (CDBG) City/County Contract for Fiscal Year 2023 and Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$140,000 to Recognize Receipt and Expenditure of the Community Development Block Grant Fund for CIP No 821-2601.

REMARKS:

The following information is provided in response to a question from a Council Member since the posting of the staff report.

Request clarification on the large amount of leftover funding for this project.

The Community Development Block Grant of \$140,000 and a County Supervisor Grant of \$250,000 are awarded as a reimbursement, with the existing GFAR funds being used as front funding for the grants. Neither of the grants require Town match funding.

It is anticipated that a balance of approximately \$250,000 will remain after the completion of the project if there is no additional unforeseen work, such as mold remediation. This \$250,000 could be used to fund ADA improvements in the Adult Recreation Center parking lot which is a project that meets the grant funding requirements, has already been designed and is pending plan and specification approval.

PREPARED BY: Nicolle Burnham
Director of Parks and Public Works

PAGE 2 OF 2

SUBJECT: Americans with Disabilities Act (ADA) Public Restroom - Adult Recreation
Center (CIP No. 821-2601)

DATE: February 7, 2023

ATTACHMENTS:

Previously received with the Staff Report:

1. Santa Clara County Supervisor's Item#8 Grant Fund Agreement
2. Community Development Block Grant Fund Agreement



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2023

ITEM NO: 7

DATE: February 2, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize Budget Adjustments in the Total Amount of \$43,500 to Recognize Receipt and Expenditure of Black Gold Library Consortium Grant Funds

RECOMMENDATION:

Authorize budget adjustments in the total amount of \$43,500 to recognize receipt and expenditure of Black Gold Library Consortium grant funds.

BACKGROUND:

The library has been successful in obtaining a grant in the amount of \$43,500 from the Black Gold Library Consortium. Grant funds will be used to install non-digital activities and learning hubs in the children's room of the library focusing on inclusive learning styles and a wide variety of developmental needs.

FISCAL IMPACT:

Grant revenues totaling \$43,500 will be recorded to account 7801-43343 and be expended from account 7801-61172.

ENVIRONMENTAL ASSESSMENT:

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

PREPARED BY: Ryan Baker
Library Director

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



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2023

ITEM NO: 8

DATE: January 30, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Consider the Following Actions for the Annual Curb, Gutter, and Sidewalk Maintenance Project (CIP No. 813-9921):
a. Approve the Plans and Specifications; and
b. Authorize Advertising the Project for Bid

RECOMMENDATION:

Staff recommends the following actions for the Annual Curb, Gutter, and Sidewalk Maintenance Project (CIP No. 813-9921):

- a. Approve the plans and specifications; and
- b. Authorize advertising the project for bid.

BACKGROUND:

The adopted Fiscal Year (FY) 2022/23-2026/27 Capital Improvement Program (CIP) Budget designates funding for the Curb, Gutter, and Sidewalk Maintenance Project (CIP No. 813-9921). The goal of this annually funded project is to replace and improve damaged or outdated curbs, gutters, sidewalks, driveways, and curb ramps within the Town's jurisdiction to address safety and operational issues and to improve accessibility. Project locations are primarily based on where concrete infrastructure improvements are needed prior to the Annual Street Repair and Resurfacing Project (CIP No. 811-9901). The project is consistent with the Town's goals to improve public safety and the quality of the Town's infrastructure.

DISCUSSION:

For the FY 2022/23 Curb, Gutter, and Sidewalk Maintenance (Concrete) Project, a large portion of the work focuses on replacing or retrofitting curb ramps for compliance with the Americans with Disabilities Act (ADA) and other accessibility requirements. Title II of the ADA

PREPARED BY: James Watson
Interim Town Engineer

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

DISCUSSION (continued):

obligates jurisdictions to upgrade non-conforming curb ramps when streets are resurfaced from one intersection to another. The United States Department of Justice has determined that

surface treatments such as asphalt overlay and rubber cape seal trigger the requirement for ADA compliant curb ramps on associated streets.

Town staff is finalizing the list of streets and street treatments to be performed for the F Y 2022/23 Street Repair and Resurfacing Project (CIP 811-9901). Based on this list, staff identified a total of 57 curb ramps that are anticipated to be replaced or retrofitted with this year's Concrete Project (Attachment 1). The Concrete Project also includes approximately 1,000 square feet of sidewalk and 200 linear feet of curb and gutter to be repaired or replaced. The engineer's estimate for this project is \$509,506, which includes a 10% contingency.

The Plans and Specifications for the FY 2022/23 Curb, Gutter, and Sidewalk Maintenance Project can be viewed on the Town website at <https://www.losgatosca.gov/108/Capital-Improvement-Program>.

Once authorized by the Town Council to advertise for bid, the following is the anticipated schedule for the Concrete Project:

| <u>Milestones</u> | <u>Anticipated Timeline</u> |
|---------------------------------------|-----------------------------|
| Advertise the Project for Bid | February 10, 2023 |
| Bids Due | March 2, 2023 |
| Council to Award to the Lowest Bidder | April 4, 2023 |
| Execute Agreement | April 2023 |
| Start Construction | May 1, 2023 |
| Anticipated Completion | June 12, 2023 |

CONCLUSION:

Approval of the recommendations would allow staff to move forward with bidding for the FY 2022/23 Curb, Gutter, and Sidewalk Maintenance Project. This project would be constructed in advance of this year's Street Repair and Resurfacing Project.

COORDINATION:

This project has been coordinated with the Finance Department.

FISCAL IMPACT:

The FY 2022/23 – 2026/27 CIP Budget for the Curb, Gutter, and Sidewalk Maintenance Project (CIP No. 813-9921) is sufficient for the construction contract, including contingency and project delivery costs.

FISCAL IMPACT (continued):

| Curb, Gutter, and Sidewalk Maintenance Project CIP No. 813-9921 | | |
|--|-------------------|-------------------|
| | Budget | Costs |
| GFAR | \$ 535,515 | |
| Total Budget | \$ 535,515 | |
| | | |
| Construction | | \$ 409,900 |
| Construction Contingency (10%) | | \$ 40,990 |
| Temporary/Part-Time Staff | | \$ 30,000 |
| Material Testing | | \$ 20,000 |
| Other Project Delivery Costs | | \$ 8,616 |
| Total Costs | | \$ 509,506 |
| | | |
| Available Balance | | \$ 26,009 |

Staff costs are tracked for all projects. Tracking of staff costs allows for accountability in the costs of projects, recovery of costs from grant funded projects, and identification of future staffing needs. This project utilizes a combination of full-time budgeted staff and temporary staff that support fluctuating workloads. The costs for temporary staff will be directly associated with this project while full-time staff are accounted for in the department's operating budget.

ENVIRONMENTAL ASSESSMENT:

This is a project as defined under CEQA but is Categorical Exempt (Section 15301(c)). A Notice of Exemption will be filed.

Attachments:

1. Locations of Work

LOCATIONS OF WORK
#22-813-9921 FY 2022/23 Annual Curb, Gutter, and Sidewalk Maintenance

BASE BID:

| No. | Street Name | Location |
|------------|--|-----------------|
| CR_1 | Angel Ct at Short Rd | SE corner |
| CR_2 | Belgatos Ln at Westhill Dr | SW corner |
| CR_3 | Belgatos Rd at Belblossom Wy | NE corner |
| CR_4 | Belgatos Rd at Belblossom Wy | NW corner |
| CR_5 | Belgatos Rd at Belblossom Wy | SE corner |
| CR_6 | Belgatos Rd at Belblossom Wy | SW corner |
| CR_7 | Belgatos Rd at Belvue Dr | NE corner |
| CR_8 | Belgatos Rd at Belvue Dr | NW corner |
| CR_9 | Belgatos Rd at Belvue Dr | SE corner |
| CR_10 | Belgatos Rd at Belvue Dr | SW corner |
| CR_11 | Belgatos Rd at Westhill Dr | NE corner |
| CR_12 | Belgatos Rd at Westhill Dr | SE corner |
| CR_13 | Belgatos Rd at Westhill Dr | SW corner |
| CR_14 | Belwood Gateway at Belblossom Wy | NE corner |
| CR_15 | Belwood Gateway at Belblossom Wy | NW corner |
| CR_16 | Blossom Hill Rd at Blossom Dale Dr | NE corner |
| CR_17 | Cherry Blossom Ln at The Terraces of Los Gatos Alley | NW corner |
| CR_18 | Cherry Blossom Ln at The Terraces of Los Gatos Alley | SW corner |
| CR_19 | Eastridge Dr at Lansberry Ct | NW corner |
| CR_20 | Eastridge Dr at Lansberry Ct | SW corner |
| CR_21 | Farley Rd at Izorah Wy | SE corner |
| CR_22 | Farley Rd at Izorah Wy | SW corner |
| CR_23 | Farley Rd at Los Gatos Bl | NE corner |
| CR_24 | Farley Rd at Los Gatos Bl | SW corner |
| CR_25 | Gemini Ct at Harwood Rd | NE corner |
| CR_26 | Gemini Ct at Harwood Rd | SE corner |
| CR_27 | Highland Oaks Dr at Lark Av | SW corner |
| CR_28 | Highland Oaks Dr at Oak Park Dr | NE corner |
| CR_29 | Highland Oaks Dr at Oak Park Dr | NW corner |
| CR_30 | Highland Oaks Dr at Oak Park Dr | SE corner |
| CR_31 | Highland Oaks Dr at Oak Wood Wy | NE corner |
| CR_32 | Highland Oaks Dr at Oak Wood Wy | SE corner |
| CR_33 | Highland Oaks Dr at Oakdale Dr | NE corner |
| CR_34 | Highland Oaks Dr at Oakdale Dr | SE corner |
| CR_35 | Lansberry Ct at Shannon Rd | NW corner |
| CR_36 | Leroy Av at Los Gatos Bl | NW corner |
| CR_37 | Leroy Av at Los Gatos Bl | SW corner |
| CR_38 | Oak Park Dr at Garden Ln | NW corner |
| CR_39 | Oak Park Dr at Garden Ln | SW corner |
| CR_40 | Sebastian Ct at Harwood Rd | NE corner |
| CR_41 | Sebastian Ct at Harwood Rd | SE corner |
| CR_42 | Union Av at Lasuen Ct | NW corner |

| | | |
|--------------|----------------------------|-----------|
| CR_43 | Union Av at Lasuen Ct | SW corner |
| CR_44 | Union Av at Leewood Ct | NE corner |
| CR_45 | Union Av at Leewood Ct | SE corner |
| CR_46 | Union Av at Lynn Av | NW corner |
| CR_47 | Union Av at Lynn Av | SW corner |
| CR_48 | Wheeler Av at Los Gatos Bl | NE corner |
| CR_49 | Wheeler Av at Los Gatos Bl | SE corner |
| CR_50 | Wheeler Av at Whitney Av | SW corner |
| CR_51 | Whitney Av at Stacia St | SE corner |

ADDITIVE ALTERNATE 1:

| No. | Street Name | Location |
|--------------|-----------------------------|-----------------|
| CR_52 | Carlester Dr at Lester Dr | NE corner |
| CR_53 | Carlester Dr at Lester Dr | NW corner |
| CR_54 | Carlton Av at Carlester Dr | SE corner |
| CR_55 | Carlton Av at Carlester Dr | SW corner |
| CR_56 | Carlton Av at Carlton Ct | NE corner |
| CR_57 | Carlton Av at Carlton Ct | NW corner |
| CR_58 | Carlton Av at Carlton Wy | NE corner |
| CR_59 | Carlton Av at Carlton Wy | NW corner |
| CR_60 | Carlton Av at Jo Dr | SE corner |
| CR_61 | Carlton Av at Jo Dr | SW corner |
| CR_62 | Carlton Av at Lester Ln | North |
| CR_63 | Carlton Av at Lester Ln | NE corner |
| CR_64 | Carlton Av at Lester Ln | NW corner |
| CR_65 | Carlton Av at Lester Ln | South |
| CR_66 | Carlton Av at Lester Ln | SE corner |
| CR_67 | Carlton Av at Lester Ln | SW corner |
| CR_68 | Carlton Av at Mary Alice Dr | SE corner |
| CR_69 | Carlton Av at Mary Alice Dr | SW corner |

Note: Locations and quantities to be verified in the field.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2023

ITEM NO: 9

DATE: February 2, 2023

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Consider the Following Actions for the Property Location: 137 Bersano Lane. APN 424-29-054. Property Owner: Lisa DeGeorge.

- a. Adopt a Resolution Approving a Purchase and Sale Agreement for the Re-Purchase of an Affordable Housing Unit Subject to an Existing Below Market Price (BMP) First Right of Refusal Option; and
- b. Authorize the Town Manager to Negotiate and Execute all Agreements and Documents Necessary and Appropriate to Effectuate the Preservation of the Affordable Housing Unit; and
- c. Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$436,276 from Available BMP Housing In-Lieu Fee Fund to Re-Purchase, Repair, and Pay Past Due Fees and Taxes of the Property.

RECOMMENDATION:

Staff recommends that the Town Council authorize the following actions for the property located at 137 Bersano Lane:

- a. Adopt a Resolution (Attachment 1) approving a Purchase and Sale Agreement in substantially the form presented for the re-purchase of an affordable housing unit subject to an existing Below Market Price (BMP) First Right of Refusal Option for property located at 137 Bersano Lane (APN 424-29-054),
- b. Authorize the Town Manager to negotiate and execute all agreements and documents necessary to preserve of the affordable housing unit, and
- c. Authorize revenue and expenditure budget adjustments in the amount of \$436,276 from available BMP Housing In-Lieu Fee Fund to re-purchase, repair, and pay past due fees and taxes of the property.

PREPARED BY: Bridgette Falconio
Administrative Technician

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

BACKGROUND:

The property, 137 Bersano Lane, is a 2-bedroom 1.5 bath townhome within the Town's BMP Housing Program inventory. The property is subject to an existing first right of refusal option in a Deed Restriction recorded in March of 2014. The unit was purchased for \$250,000.00.

The current owner, Lisa DeGeorge, has notified the Town that she wishes to sell this property back to the Town.

The property has sustained substantial damage and needs to be repaired before reselling. Repair expenses are estimated to be approximately \$80,000. Additionally, there are outstanding Homeowners Association dues (approximately \$1,854) and property taxes (approximately \$10,000) that will be paid at closing. Pursuant to the proposed agreement, the Town will have the repairs done and complete any outstanding payments. The Town will deduct all expenses from the amount due the seller at closing.

The Town's re-purchase price is dictated by the deed restriction. Pursuant to the terms of the proposed purchase and sale agreement, the Town will expend approximately \$344,421.75 from the BMP Housing In-Lieu Fund to repurchase this unit.

After the Town has purchased the unit and made the repairs, the Town will sell the unit to a new income-qualified buyer at the allowable purchase price, which is anticipated to be approximately \$344,421.75.

CONCLUSION AND RECOMMENDATION:

Authorizing the Town's re-purchase of the unit will preserve the unit in the Town's stock of affordable housing. Staff recommends that the Town Council adopt the prepared resolution (Attachment 1) and authorize the Town Manager to execute a real property purchase and sale agreement in substantially the form attached (Attachment 2).

COORDINATION:

The Town Attorney's Office, Community Development Department, and Town Manager's Office coordinated this report.

FISCAL IMPACT:

The cost for the Town to repurchase the unit is \$344,422. An expenditure budget adjustment in the amount of \$436,276 will be needed from the available BMP Housing In-Lieu Fee Fund to repurchase the unit, pay for repairs, and pay past due fees and property taxes. The cost of the repairs, pay past due fees and past due property taxes totaling approximately \$90,854 will be deducted from the proceeds due to the seller. This amount will be held in an escrow account

PAGE 3 OF 3

SUBJECT: Adopt a Resolution Approving the Purchase and Sale Agreement for 137 Bersano Lane

DATE: February 2, 2023

FISCAL IMPACT (continued):

until the unit has been sold and then a revenue adjustment will be made to the BMP Housing In-Lieu Fee Fund.

ENVIRONMENTAL ASSESSMENT:

The proposed real property purchase is not a project defined under CEQA, and no further action is required.

Attachments:

1. Draft Resolution
2. Draft Purchase and Sale Agreement/Addendum

DRAFT RESOLUTION 2023-xx

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
APPROVING A PURCHASE AND SALE AGREEMENT FOR THE RE-PURCHASE OF AN
AFFORDABLE HOUSING UNIT SUBJECT TO AN EXISTING BELOW MARKET PRICE
(BMP) FIRST RIGHT OF REFUSAL OPTION FOR PROPERTY LOCATED AT 137
BERSANO LANE (APN 424-29-054) AND AUTHORIZING THE TOWN MANAGER TO
NEGOTIATE AND EXECUTE ALL AGREEMENTS AND DOCUMENTS NECESSARY TO
PRESERVE THE AFFORDABLE HOUSING UNIT**

WHEREAS, the Town of Los Gatos Zoning Ordinance (Sections 29.10.3000 through 23.10.2040) establishes a Below Market Price (BMP) Housing Program to assist low and moderate income citizens in the purchase homes at prices below market value;

WHEREAS, the residential unit located at 137 Bersano Lane (the “BMP Unit”) was purchased by the property owner through the BMP Housing Program for a reduced sales price affordable to lower income households;

WHEREAS, the BMP Housing Program requires as a condition of participation that a Deed Restriction with a First Right of Refusal Option for the Town to able to repurchase units at a future designated sales price to be recorded on the title record of BMP units; and

WHEREAS, the BMP Unit is subject to a recorded Deed Restriction with a First Right of Refusal Option;

WHEREAS, the Town wishes to purchase the BMP Unit for the designated sales price of \$344,421.75 so that the BMP Unit can be preserved within the Town’s BMP program and resold to an income-qualified buyer; and

WHEREAS, this resolution provides for the acquisition of this BMP Unit by the Town of Los Gatos and authorizes the Town Manager to negotiate and execute all agreements and documents necessary to preserve the BMP Unit.

NOW, THEREFORE, BE IT RESOLVED, that the Town Council of the Town of Los Gatos approves the Purchase and Sale Agreement in substantially the form presented for the purchase of the BMP Unit and authorizes the Town Manager to negotiate and execute all agreements and documents necessary to preserve the BMP Unit.

ATTACHMENT 1

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 7th day of February, 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: _____

RESIDENTIAL REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement ("Agreement") made on the ____ day of _____ 2023 ("Effective Date") between:

Town of Los Gatos ("Buyer") with a mailing address of:

110 E. Main Street, Town of Los Gatos, State of California who agrees to buy

AND

Lisa DeGeorge ("Seller") with a mailing address of:

137 Bersano Lane, Town of Los Gatos, State of California, who agrees to sell and convey real and personal property as described below. Buyer and Seller, each individually, a "Party" and collectively, the "Parties."

1. Legal Description. That certain real property located at 137 Bersano Lane, Los Gatos, CA 95030, as more particularly described on Exhibit A, attached to this Agreement, together with all improvements, fixtures, appurtenances, easements, and rights belonging or relating thereto (the "Property"). The Property is a Below Market Price ("BMP") attached single-family residence.

Street Address: **137 Bersano Lane, Los Gatos CA 95030**

Tax Parcel Information or Assessor's Parcel No: **424-29-054**

Other Description: See Preliminary Title Report

2. Personal Property. In addition to the real property described in Section 1, the Seller shall include no personal property.

3. Purchase Price and Terms. The Buyer agrees to purchase the Property by payment of **\$344,421.75** (Three Hundred Forty Four Thousand Four Hundred and Twenty-One Dollars and Seventy-Five Cents) as follows: (check one)

☒ - **All Cash Offer.** No loan or financing of any kind is required in order to purchase the Property.

☐ - **Bank Financing.** The Buyer's ability to purchase the Property is contingent upon the Buyer's ability to obtain financing under the following conditions: (check one)

☐ - Conventional Loan

☐ - Other: BEGIN Down Payment Assistance Loan

4. Earnest Money. After acceptance by all Parties, the Buyer agrees to make a payment in the amount of _____ as consideration by the ____ day of _____ 2023 at 5:00 ☐ AM ☒ PM ("Earnest Money"). The Earnest Money shall be applied to the Purchase Price at Closing and subject to the Buyer's ability to perform under the terms of this Agreement.



ATTACHMENT 2

Page 1 of 9

Any Earnest Money accepted ☒ is ☐ is not required to be placed in a separate trust or escrow account in accordance with State law.

5. Sale of Another Property. Buyer's performance under this Agreement shall not be contingent upon selling another property.

6. Closing Costs. The costs attributed to the Closing of the Property shall be the responsibility of Both Parties. The fees and costs related to the Closing shall include, but not be limited to a title search (including the abstract and any owner's title policy), preparation of the deed, transfer taxes, recording fees, and any other costs by the title company that is in standard procedure with conducting the sale of a property.

7. Funds at Closing. Buyer and Seller agree that before the recording can take place, funds provided shall be in one (1) of the following forms: cash, interbank electronic transfer, money order, certified check, or cashier's check drawn on a financial institution located in the State, or any above combination that permits the Seller to convert the deposit to cash no later than the next business day.

8. Close of Escrow. This transaction shall be closed on the ____ day of _____ 2023 at **5:00** ☐ AM ☒ PM or earlier at the office of a title company to be agreed upon by the Parties ("Closing"). Any extension of the Closing must be agreed upon, in writing, by Buyer and Seller. Real estate taxes, rents, dues, fees, and expenses relating to the Property for the year in which the sale is closed shall be prorated as of the Closing. Taxes due for prior years shall be paid by Seller. "Close of Escrow", including "COE", means the date the grant deed, or other evidence of transfer of title is recorded

Buyer's Initials ____ / ____

Seller's Initials ____ / ____

9. Prorations of Property Taxes and Other Items. Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close of Escrow: real property taxes and assessments, interest, rents, HOA regular, special, and emergency dues, and assessments imposed prior to Close of Escrow. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: for periods after Close of Escrow, by Buyer; and for periods prior to Close of Escrow, by Seller.

Buyer's Initials ____ / ____

Seller's Initials ____ / ____

10. Mineral Rights. It is agreed and understood that all rights under the soil, including but not limited to water, gas, oil, and mineral rights shall be transferred by the Seller to the Buyer at Closing.

11. Title. Seller shall convey title to the property by warranty deed or equivalent. The Property may be subject to restrictions contained on the plat, deed, covenants, conditions, and restrictions, or other documents noted in a Title Search Report. Upon execution of this Agreement by the Parties, Seller will, at the shared expense of both Buyer and Seller, order a Title Search Report and have delivered to the Buyer.



Upon receipt of the Title Search Report, the Buyer shall have 10 business days to notify the Seller, in writing, of any matters disclosed in the report which are unacceptable to Buyer. Buyer's failure to timely object to the report shall constitute acceptance of the Title Search Report.

If any objections are made by Buyer regarding the Title Search Report, mortgage loan inspection, or other information that discloses a material defect, the Seller shall have 20 business days from the date the objections were received to correct said matters. If Seller does not remedy any defect discovered by the Title Search Report, Buyer shall have the option of canceling this Agreement, in which case the Earnest Money shall be returned to Buyer.

After Closing, Buyer shall receive an owner's standard form policy of title insurance insuring marketable title in the Property to Buyer in the amount of the Purchase Price, free and clear of the objections and all other title exceptions agreed to be removed as part of this transaction.

12. Property Condition. Seller agrees to maintain the Property in its current condition, subject to ordinary wear and tear, from the time this Agreement comes into effect until the Closing. The Property is sold "AS-IS" in its PRESENT physical condition as of the date of Acceptance and subject to Buyer's Investigation rights; the Property, including pool, spa, landscaping, and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and all debris and personal property not included in the sale shall be removed by Close of Escrow, vacant, and in "broom clean" condition.

Therefore, Buyer shall hold the right to hire licensed contractors, or other qualified professionals, to further inspect and investigate the Property until **0/00/2022** at 5:00 ☐ AM ☒ PM or Sooner. If the Buyer fails to have the Property inspected or does not provide the Seller with written notice of the new disclosures on the Property, in accordance with this Agreement, Buyer hereby accepts the Property in its current condition and as described in any disclosure forms presented by the Seller. In the event improvements on the Property are destroyed, compromised, or materially damaged prior to Closing, the Agreement may be terminated at Buyer's option.

Buyer's Initials _____ / _____

Seller's Initials _____ / _____

13. Seller's Indemnification. Except as otherwise stated in this Agreement, after recording, the Buyer shall accept the Property AS IS, WHERE IS, with all defects, latent or otherwise. Seller shall not be bound to any representation or warranty of any kind relating in any way to the Property or its condition, quality, or quantity, except as specifically set forth in this Agreement or any property disclosure, which contains representations of the Seller only, and which is based upon the best of the Seller's personal knowledge.

Buyer's Initials _____ / _____

Seller's Initials _____ / _____

14. Appraisal. Buyer's performance under this Agreement shall not be contingent upon the appraisal of the Property being equal to or greater than the agreed upon Purchase Price.

15. Required Documents. Prior to the Closing, the Parties agree to authorize all necessary documents, in good faith, in order to record the transaction under the conditions required by the recorder, title company, lender, or any other public or private entity.

16. Termination. In the event this Agreement is terminated, as provided in this Agreement, absent of default, any Earnest Money shall be returned to the Buyer, in-full, within 3 business days with all parties being relieved of their obligations as set forth herein.

17. Sex Offenders. Section 2250 of Title 18, United States Code, makes it a federal offense for sex offenders required to register pursuant to the Sex Offender Registration and Notification Act (SORNA), to knowingly fail to register or update a registration as required. State convicted sex offenders may also be prosecuted under this statute if the sex offender knowingly fails to register or update a registration as required, and engages in interstate travel, foreign travel, or enters, leaves, or resides on an Indian reservation.

A sex offender who fails to properly register may face fines and up to ten (10) years in prison. Furthermore, if a sex offender knowingly fails to update or register as required and commits a violent federal crime, he or she may face up to thirty (30) years in prison under this statute. The Buyer may seek more information online by visiting <https://www.nsopw.gov/>.

18. Time. Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete, and exclusive expression of their Agreement with respect to its subject matter and they may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement.

19. Buyer's Default. Seller's remedies shall be limited to liquidated damages in the amount of the Earnest Money set forth in Section IV. It is agreed that such payments and things of value are liquidated damages and are Seller's sole and only remedy for Buyer's failure to perform the obligations of this Agreement. The Parties agree that Seller's actual damages in the event of Buyer's default would be difficult to measure, and the amount of the liquidated damages herein provided for is a reasonable estimate of such damages.

20. Seller's Default. Buyer may elect to treat this Agreement as cancelled, in which case all Earnest Money paid by Buyer hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this Agreement as being in full force and effect and Buyer shall have the right to specific performance or damages, or both.

21. Earnest Money Dispute. Notwithstanding any termination of this Agreement, the Parties agree that in the event of any controversy regarding the release of the Earnest Money that the matter shall be submitted to mediation.



22. Dispute Resolution. Buyer and Seller agree to mediate any dispute or claim arising out of this Agreement, or in any resulting transaction, before resorting to arbitration or court action.

- a.) **Mediation.** If a dispute arises, between or among the Parties, and it is not resolved prior to or after recording, the Parties shall first proceed in good faith to submit the matter to mediation. Costs related to mediation shall be mutually shared between or among the Parties. Unless otherwise agreed in mediation, the Parties retain their rights to proceed to arbitration or litigation.
- b.) **Exclusions.** The following matters shall be excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed, mortgage or installment land sale contract as defined in accordance with State law; (ii) an unlawful detainer action, forcible entry detainer, eviction action, or equivalent; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims, or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver or violation of the mediation and arbitration provisions of this Section.

23. Governing Law. This Agreement shall be interpreted in accordance with the laws in the State of CA. In the event of litigation, the venue will be in the County of Santa Clara. The Town of Los Gatos reserves the right to assign this purchase agreement to a qualified buyer.

24. Terms and Conditions of Offer. This is an offer to purchase the Property in accordance with the above stated terms and conditions of this Agreement. If at least one, but not all, of the Parties initial such pages, a counteroffer is required until an agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of acceptance. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of licensed real estate agent(s) compensation. This Agreement and any supplement, addendum, or modification, including any copy, may be signed in two or more counterparts, all of which shall constitute one and the same writing.

25. Binding Effect. This Agreement shall be for the benefit of, and be binding upon, the Parties, their heirs, successors, legal representatives, and assigns, which therefore, constitutes the entire agreement between the Parties. No modification of this Agreement shall be binding unless signed by both Buyer and Seller.

26. Severability. In the event any provision or part of this Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Agreement, will be inoperative.

27. Acceptance. Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement. Therefore, by the Seller's authorization below, he/she/they accepts the above offer and agrees to sell the Property on the above terms and conditions.

e

Delivery may be in any of the following: (i) hand delivery; (ii) email under the condition that the party transmitting the email receives electronic confirmation that the email was received to the intended recipient; or (iii) by facsimile to the other party or the other party's licensee, but only if the transmitting fax machine prints a confirmation that the transmission was successful.

28. Licensed Real Estate Agent(s). Buyer or Seller each represent that neither party has hired the services of licensed real estate agent(s) to perform representation on their behalf. And no real estate agent shall be entitled to payment for their services.

29. Disclosures. It is acknowledged by the Parties that: (check one)

- ☐ - There are no attached addendums or disclosures to this Agreement.
- ☒ - The following addendums or disclosures are attached to this Agreement:
 - ☒ - Lead-Based Paint Disclosure Form
 - ☒ - California Megan's Law
 - ☒ - Natural and Environmental Hazard Disclosures (NHD)
 - ☒ - California Transfer Disclosure Statement

30. Additional Terms and Conditions

- ☒ - Below Market Price Home Ownership Disclosure Statement
- ☐ - _____

31. Entire Agreement. This Agreement together with any attached addendums or disclosures shall supersede any and all other prior understandings and agreements, either oral or in writing, between the Parties with respect to the subject matter hereof and shall constitute the sole and only agreements between the Parties with respect to the said Property. All prior negotiations and agreements between the Parties with respect to the Property hereof are merged into this Agreement. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any Party or by anyone acting on behalf of any party, which are not embodied in this Agreement and that any agreement, statement, or promise that is not contained in this Agreement shall not be valid or binding or of any force or effect.

32. Signature

SELLER(S):

Date: _____

Lisa DeGeorge



BUYER(S):

Date: _____

Laurel Prevetti
Town Manager

Date: _____

Joel Paulson
Community Development Director

Approved as to Form:

Gabrielle Whelan
Town Attorney

Attest:

Wendy Wood
Town Clerk



ADDENDUM #1

This Real Estate Purchase Agreement ("Agreement") made on the ____ day of _____ 2023, ("Effective Date") between:

Town of Los Gatos ("Buyer") with a mailing address of:

110 E. Main Street, Town of Los Gatos, State of California who agrees to buy

AND

Lisa DeGeorge ("Seller") with a mailing address of:

137 Bersano Lane, Town of Los Gatos, State of California, who agrees to sell and convey real and personal property as described below. Buyer and Seller, each individually, a "Party" and collectively, the "Parties."

- 1. Legal Description.** That certain real property located at 137 Bersano Lane, Los Gatos, CA 95030, as more particularly described on Exhibit A, attached to this Agreement, together with all improvements, fixtures, appurtenances, easements, and rights belonging or relating thereto (the "Property"). The Property is a Below Market Price ("BMP") attached single-family residence.

Street Address: **137 Bersano Lane, Los Gatos CA 95030**

Tax Parcel Information or Assessor's Parcel No: **424-29-054**

2. Terms:

- A. Utilities to remain on until the COE
- B. Seller agrees to do a holdback in escrow in the amount of \$80,000 which shall cover \$75,938.00 for the work to be completed, six months of HOA dues totaling \$1,854.00, 6 months of Utilities \$ 2,208.00
- C. Mutual agreement must be signed by both parties before any money is released.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

[Signatures on Following Page]

3. Signature

SELLER(S):

Date: _____

Lisa DeGeorge

BUYER(S):

Date: _____

Laurel Prevetti
Town Manager

Date: _____

Joel Paulson
Community Development Director

Approved as to Form:

Gabrielle Whelan
Town Attorney

Attest:

Wendy Wood
Town Clerk





**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2023

ITEM NO: 10

DATE: January 23, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion Accepting the Work of Ashron Construction and Restoration, Inc., and Authorize Recording by the Town Clerk for PPW Job No. 817-0708 Parking Lot 4 Repair and Waterproofing

RECOMMENDATION:

Authorize the Town Manager to execute a Certificate of Acceptance and Notice of Completion accepting the work of Ashron Construction and Restoration, Inc, and authorize recording by the Town Clerk for PPW Job No. 817-0708 Parking Lot 4 Repair and Waterproofing.

BACKGROUND:

The Town's adopted Fiscal Year (FY) 2021/22 Capital Improvement Program Budget designates funding for Town projects, including Project 817-0708 Parking Lot 4 Repair and Waterproofing.

At the March 15, 2022 Town Council Meeting, Council authorized the Town Manager to execute an agreement for services with Ashron Construction and Restoration, Inc. for structural repairs and waterproofing of the Lot 4 parking structure in an amount not to exceed \$179,800 plus an additional \$20,000 for unanticipated repairs for a total agreement amount not to exceed \$199,800.

DISCUSSION:

Ashron Construction and Restoration, Inc. has satisfactorily completed all the work for this project and staff recommends project acceptance. The execution and recordation of the Certificate of Acceptance are now required to finalize the Town's acceptance of the project.

PREPARED BY: Jim Harbin
Superintendent

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

PAGE 2 OF 2

SUBJECT: Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion

DATE: January 23, 2023

CONCLUSION:

Authorize the Town Manager to execute a Certificate of Acceptance and Notice of Completion accepting the work of Ashron Construction and Restoration, Inc, and authorize recording by the Town Clerk for PPW Job No. 817-0708 Parking Lot 4 Repair and Waterproofing.

FISCAL IMPACT:

This report is meant to close out the contract with Ashron Construction and Restoration, Inc. associated with the project. The fund balance will remain in the project.

| Parking Lot 4 Repair and Waterproofing Project Project 817-0708 | | |
|--|-------------------|-------------------|
| | Budget | Costs |
| GFAR | \$ 250,000 | |
| Total Budget | \$ 250,000 | |
| | | |
| Construction - Ashron Construction and Restoration, Inc. | | \$ 199,800 |
| Total Expenditures | | \$ 199,800 |
| | | |
| Remaining Budget | | \$ 50,200 |

ENVIRONMENTAL ASSESSMENT:

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

Attachment:

1. Certificate of Acceptance and Notice of Completion

Recording Requested by:

TOWN OF LOS GATOS

WHEN RECORDED MAIL TO:

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

(SPACE ABOVE BAR FOR RECORDER'S USE)

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

TYPE OF RECORDING

CERTIFICATE OF ACCEPTANCE AND NOTICE OF COMPLETION

PPW JOB NO. 411-817-0708 Parking Lot 4 Repair & Waterproofing

TO WHOM IT MAY CONCERN:

I do hereby certify that Ashron Construction and Restoration, Inc. completed the work called for in the agreement with the Town of Los Gatos dated March 1st, 2022. The work is outlined in the Town's bid process prepared by the Town of Los Gatos and generally consisted of furnishing all labor, materials, tools, equipment, and services required for completion of the PPW Job No. 411-817-0708 located in the TOWN OF LOS GATOS, County of Santa Clara, State of California and was completed, approved and accepted **July 17, 2022.**

Bond No.: n/a

Date: n/a

TOWN OF LOS GATOS

By: _____
Laurel Prevetti, Town Manager

Acknowledgment Required



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2023

ITEM NO: 11

DATE: February 1, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute First Amendments to the Master Lease Agreements with Tait Firehouse, LLC and Forbes Mill, LLC

RECOMMENDATION:

Authorize the Town Manager to execute First Amendments to the Master Lease Agreements with Tait Firehouse, LLC and Forbes Mill, LLC.

BACKGROUND:

In March 2019, the Town Council authorized an Exclusive Negotiating Agreement with Imwalle Asset Management, LLC, to help guide the negotiations of a Master Lease Agreement. On August 4, 2020, the Town Council authorized the Town Manager to execute long term lease agreements with Tait Firehouse LLC for the property located at 4 Tait Avenue (Attachment 1) and Forbes Mill LLC for the property located at 75 Church Street (Attachment 2). The decision was predicated on the fact that the proposal would allow the properties to remain in Town control, maintain the historic value of the properties, require no monetary resources from the Town, and ultimately provide an annual revenue stream to the Town.

DISCUSSION:

Since the completion of the lease agreements, the economic impacts on the commercial real estate market associated with the pandemic significantly disrupted initial lease up plans. There are provisions in the leases which stipulate that if lease up has not occurred within certain time periods either party can terminate the leases.

Given the unanticipated complexities of the commercial real estate market, staff recommends amending the lease agreements to extend these terms for an additional year. If at the conclusion of the extension period, the properties have not been leased then Council can

PREPARED BY: Arn Andrews
Assistant Town Manager

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

PAGE 2 OF 2

SUBJECT: First Amendment Forbes Tait Lease Agreements

DATE: February 1, 2023

DISCUSSION (continued):

reconsider options for the two properties at that time. Attachments 3 and 4 contain the proposed First Amendments and the specific language within the lease agreements to be amended. Deleted language is illustrated by ~~strike through~~ and language additions and illustrated in red.

COORDINATION:

This report was coordinated with the Town Manager and Town Attorney.

FISCAL IMPACT:

None.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Tait Firehouse Lease Agreement
2. Forbes Mill Lease Agreement
3. First Amendment to Tait Lease Agreement
4. First Amendment to Forbes Lease Agreement

LEASE AGREEMENT

MASTER LEASE

by and between

TOWN OF LOS GATOS, a California municipal corporation
(**"Landlord"**)

and

Tait Firehouse, LLC, a California limited liability company
(**"Master Tenant"**)

Los Gatos, California

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| <u>Exhibit C</u> | Insurance Requirements for Master Tenant and Subtenants |
| <u>Exhibit D</u> | Memorandum of Lease Agreement |

[Type here]

MASTER LEASE

This Master Lease ("Lease") is made and effective as of this _____ day of _____, 2020 ("Effective Date"), by and between THE TOWN OF LOS GATOS, a California municipal corporation (hereinafter "Landlord" or the "Town"), and Tait Firehouse, LLC, a California limited liability company ("Master Tenant").

RECITALS

A. The Town owns certain improved real property, commonly referred to as the Tait Property located at 4 Tait Avenue, APN 510-44-054, and as shown and described on Exhibit A attached hereto and made a part hereof, suitable for residential, office, restaurant, retail and other commercial operations (the "Property"). The building situated on such real property shall be referred to as the "Tait Building."

B. The Town has solicited proposals to develop the Tait Building and the future development of the Property will require significant capital improvements to make the area usable for commercial operators.

C. Master Tenant has been selected by the Town to develop the Tait Building and to sublease space within the Property to subtenant(s) consented to by the Town.

Now therefore, in consideration of their mutual promises as set forth in this Lease, the Town and Master Tenant agree as follows:

SECTION 1. BASIC LEASE PROVISIONS AND DEFINITIONS.

1.1 Master Tenant's Managing Member. Imwalle Asset Management, LLC, a California Limited Liability Company.

1.2 Premises and Address of Premises: The Premises consist of the Property and the Tait Building situated thereon. The address of the Premises is as follows:

4 Tait Avenue
Los Gatos, CA 95030

1.3 Rentable Area of Tait Building. As depicted in Exhibit A, the Rentable Area of the Tait Building is approximately 3090 square feet.

1.4 Lease Term. As provided in Section 3 below, the Term of the Lease commences on the Commencement Date and terminates, unless earlier terminated 34 years and 11 months from the Commencement Date as provided in Section 3.1 below.

1.5 Lease Contingency. This Lease is contingent on the Master Tenant submitting the necessary applications and documents to the Town for approval of the improvements and use of the property, such as, but not limited to, general plan amendment, a proposed site plan, concept drawings for the site plan, massing diagrams, and renderings identifying the location, general configuration, and proposed design characteristics of the buildings, parking spaces, landscaping, property subdivision, and other aspects of the improvement and uses. The Master Tenant acknowledges that the Project Proposal requires approvals and entitlements from the Town and shall submit a formal application for the Planning Approvals. Costs and fees associated with the Planning Approvals review shall be borne by the Master Tenant. Nothing in this Agreement shall be construed to compel the Town to approve or make any findings with respect to Planning Approvals. If Master tenant is unable to obtain Planning Approvals, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the

other party. Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

This Lease is also contingent on Master Tenant and a Subtenant having executed a binding initial Sublease for any portion of the Premises and occupancy by Subtenants (the "Contingency"). If the Contingency has not been satisfied or waived by Landlord on or before the date twelve (12) months following the Effective Date, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party. Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

1.6 Minimum Monthly Rent. The Minimum Monthly Rent shall be \$0.40 per Rentable Area of Tait Building (which equates to \$1,236 per month) payable to Landlord as provided in Section 4 below.

1.7 Percentage Rent. The Percentage Rent shall be that Rent specified in Section 4.3 below.

1.8 Capital Reserve Fund. For each month that Master Tenant pays to Landlord the Minimum Monthly Rent, Landlord shall deposit on a monthly basis to the account described in Section 8.6 below, the Minimum Monthly Rent received by Landlord.

1.9 Maintenance of Premises. The Master Tenant's obligations for Maintenance of the Premises are as set forth in Section 8 below.

1.10 Rent Commencement Date. The Rent Commencement Date shall be the date the first Subtenant opens for business on the Premises. The Rent Commencement Date shall be memorialized between Landlord and Master Tenant as set forth in Exhibit B (Form of Notice of Lease Terms).

1.11 Subtenant. The individual commercial operator(s) physically occupying the Premises to provide the services required under this Lease, as selected by Master Tenant and accepted by the Town (subject to Section 7.2 and Section 14.2 below). The Master Tenant cannot also be a Subtenant.

1.12 Permitted Uses. The operation of businesses providing residential, office, retail, restaurant, and other services approved by Master Tenant and Town, and any other lawful use, except as otherwise prohibited under this Lease pursuant to Section 5.2.

1.13 Town Manager. The Town Manager of the Town ("Town Manager") or his or her designated representative, shall serve as the Town's principal contact and liaison for coordinating all Town requests of Master Tenant and responses to Master Tenant's requests, and shall assist in the implementation of the Town's obligations hereunder, during the term of this Lease. The Town Manager may change his or her authorized representative at any time by giving written notice of the change to Master Tenant.

1.14 Master Tenant's Work and Tenant Improvement Loan Amortization. "Master Tenant's Work" is defined in Section 6.2. "Tenant Improvement Loan Amortization" is defined in Section 6.3.

SECTION 2. LEASED AREA.

2.1 Premises. Landlord hereby leases to Master Tenant, and Master Tenant hereby leases from Landlord the Premises referred to in Section 1.2 above, located at 4 Tait Avenue, Los Gatos, California 90530, as depicted on Exhibit A.

SECTION 3. TERM.

3.1 Term. The "Term" of this Lease shall commence as of the Effective Date ("Commencement Date") and shall end, unless earlier terminated or extended pursuant to the terms and

conditions of this Lease, on the date 34 years and 11 months after the Commencement Date ("Termination Date").

SECTION 4. RENT.

4.1 General. From and after the Rent Commencement Date, Master Tenant agrees to pay Landlord as rent for the Premises, in the manner and at the times set forth in this Lease, the Minimum Monthly Rent and the Percentage Rent, as further described in this Section 4.

4.1.1 All rent payments shall be sent to the Landlord's address in Section 21.1 and shall be addressed to the attention of the Town Finance Department, and shall be free from all credits, claims, demands, off-sets or counterclaims of any kind against the Town.

4.1.2 Minimum Monthly Rent shall be paid by Master Tenant to Landlord on a monthly basis in advance on or before the first day of each month during the Term.

4.1.3 Percentage Rent shall be paid in arrears on or before April 15 each calendar year for the amount due and owing for the preceding calendar year (or 90 days after any Termination Date).

4.2 Minimum Monthly Rent. The Minimum Monthly Rent shall be the amount indicated in Section 1.6. Minimum Monthly Rent shall be paid in advance on or before the first day of each calendar month during the Lease Term.

4.3 Percentage Rent.

4.3.1 Manner and Time of Payment. Percentage Rent shall equal 60% of the Sublease Income received by Master Tenant during each calendar year, remaining after Distribution of Sublease Income in accordance with Section 4.3.4(a) through Section 4.3.4(d) below.

4.3.2 Definition of Sublease Income. "Sublease Income" shall mean the sum of (a) all base rents actually received by Master Tenant from its Subtenants of the Premises (excluding reimbursements from Subtenants for any operating costs such as, but not limited to, taxes, insurance, utilities, and maintenance and repair costs, to the extent such reimbursements do not exceed Master Tenant's actual costs of such operating costs), (b) any interest earned on security deposits of Subtenants, (c) security deposits forfeited by Subtenants (to the extent applied to delinquent rentals owing by such applicable Subtenant) and any fees paid by Subtenants to Master Tenant for cancellation of their subleases; and (d) proceeds of business interruption or rental loss insurance actually collected by Master Tenant as a result of loss of sublease income. Sublease Income shall not include (i) the proceeds of any casualty insurance or condemnation awards, (ii) any management fee reimbursements received by Master Tenant from a Subtenant of the Premises, or (iii) the proceeds from any financing of any interest in the Premises or any Improvements. Sublease Income shall be determined on a cash basis for each calendar year.

4.3.3 Definition of Sublease Expenses. "Sublease Expenses" shall be determined on a cash basis for each calendar year and shall mean the sum of:

(a) all tenant improvement and remodeling costs paid by Master Tenant (other than costs of Master Tenant's Work or other Improvements, which will be repaid to Master Tenant through Tenant Improvement Loan Amortization Amounts);

(b) all leasing commissions paid by Master Tenant (excluding leasing commissions paid to Master Tenant or to persons or entities affiliated with Master Tenant);

(c) all legal and accounting expenses incurred and paid by Master Tenant in connection with the Premises and/or any Subleases;

(d) all possessory interest taxes and other property taxes paid by Master Tenant (to the extent not reimbursed to Master Tenant by Subtenants);

(e) all insurance costs paid by Master Tenant in connection with the Premises (to the extent not reimbursed to Master Tenant by Subtenants);

(f) all other costs incurred and paid by Master Tenant in connection with operating, maintaining, repairing, replacing, and subleasing the Premises, or applicable portion thereof, including, without limitation, costs incurred and paid by Master Tenant pursuant to Section 20.1 and/or Section 20.2(b) of this Lease (to the extent not reimbursed to Master Tenant by Subtenants).

Sublease Expenses shall not include any management fee of Master Tenant; however, Master Tenant may, through its agent or otherwise, collect a management fee on any sublease.

4.3.4 Distribution of Sublease Income. All Sublease Income shall be used by Master Tenant for the following uses and shall be distributed by Master Tenant in the following priority:

(a) First, to pay to Landlord the Minimum Monthly Rent as set forth in Section 4.2 above, which sum is payable by Master Tenant to Landlord whether or not Master Tenant collects and receives Sublease Income;

(b) Second, to pay Master Tenant its Sublease Expenses as defined in Section 4.3.3 above;

(c) Third, to pay Master Tenant funded Master Tenant Work Improvement Loans as provided by Section 6.3 below.

(d) Forth, to pay to Master Tenant the amount of Minimum Monthly Rent paid in that calendar year.

(e) Fifth, as provided by Section 4.3.1 above, to pay Percentage Rent to Landlord and the balance to Master Tenant.

4.3.5 Annual Statements. On or before April 15 of each calendar year, with the payment of Percentage Rent, Master Tenant shall furnish to the Town a statement (the "Annual Statement") duly certified by the Chief Financial Officer or the Managing Member or the equivalent of the Master Tenant, setting forth in reasonable detail the Sublease Income from the Premises and the amount of the Percentage Rent which was required to be paid to the Town during the preceding calendar year in accordance with the provisions of this Lease. The Annual Statement shall also contain a detailed breakdown showing how Master Tenant calculated Sublease Income and Sublease Expenses. In addition, Master Tenant shall provide to Landlord a copy of Master Tenant's federal income tax return promptly following filing same with the Internal Revenue Service. The amounts reported to Landlord by Master Tenant for Sublease Income and Sublease Expenses shall conform to the amounts reported on Master Tenant's federal income tax return filed with the Internal Revenue Service. Master Tenant's federal income tax return shall cover only income and expenses from the Premises and shall not include income and expenses from any other property.

4.3.6 Books and Records. Master Tenant shall keep and maintain at its headquarters full, complete and appropriate books, records and accounts relating to the Premises, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Master Tenant's calculation of the Percentage Rent. Books, records and accounts relating to Master Tenant's compliance with the terms, provisions, covenants and conditions of this Lease shall be

kept and maintained on a cash basis (except as otherwise expressly provided herein), in accordance with generally accepted accounting principles consistently applied, and shall be consistent with the requirements of this Lease which provide for the calculation of Percentage Rent. All such books, records and accounts shall be open to and available for inspection by the Town, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Master Tenant may be required to furnish any governmental agency which would evidence or substantiate Master Tenant's calculation of the Percentage Rent shall at all reasonable times be open for inspection by the Town at the place that the books, records and accounts of Master Tenant are kept. Master Tenant shall preserve records on which any statement of Percentage Rent is based for a period of not less than four years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to Subsection 4.3.6 hereof then pending.

4.3.7 Town Audits. The receipt by the Town of any statement pursuant to Subsection 4.3.5 above, or any payment by Master Tenant or acceptance by the Town of any Percentage Rent for any period shall not bind the Town as to the correctness of such statement or such payment; provided, however, the Town shall accept the correctness of such statement if it conforms to the amounts shown on Master Tenant's federal income tax return for the period covered by such statement. Within four years after the receipt of any such statement, the Town or any designated agent or employee of the Town at any time and at the Town's cost (except as provided below) shall be entitled to audit the books, records and accounts pertaining to the Premises and the operation thereof. Such audit shall be conducted during normal business hours at the principal place of business of Master Tenant and other places where records are kept. Provided that Master Tenant has fully cooperated, any audit undertaken pursuant to this Subsection shall be completed within 180 days of the commencement thereof, subject to extensions of time for any periods of delay by any third party due to no fault of the Town or its auditors, and in no event later than four years after the Town's receipt of the statement or statements being audited. Immediately after the completion of an audit, the Town shall deliver a copy of the results of such audit to Master Tenant. The Town shall not be entitled to more than one audit for any particular year, unless it shall appear from a subsequent audit that fraud or concealment may have occurred with respect to the Sublease Income of a previously audited year. If it shall be determined as a result of such audit that there has been a deficiency in any Percentage Rent, then such deficiency shall become immediately due and payable with interest at the legal rate of 10% per annum, such payment to be determined as of and accruing from the date that said payment should have been made. In addition, if Master Tenant's statement for any calendar year shall be found to have intentionally understated Sublease Income by more than five percent and the Town is entitled to a supplementary payment as a result of said understatement, then Master Tenant shall pay, in addition to the interest charges referenced hereinabove, all of the Town's reasonable costs and expenses connected with any audit or review of Master Tenant's accounts and records.

4.4 Late Payment Fees. Any rentals, fees or charges required to be paid by Master Tenant pursuant to the terms of this Lease shall be paid on or before the dates specified in Subsection 4.1 above ("due date") without any requirement of notice from the Town and without deduction or offset. Master Tenant hereby acknowledges that late payment to the Town of any fee, charge or other sum due hereunder will cause the Town to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. If any such fee, charge or other sum due from Master Tenant is not received by the Town within 30 days after its due date (10 days for Minimum Monthly Rent), then Master Tenant shall pay to the Town a late payment fee equal to one percent per month of the amount not paid, calculated, for each day or portion thereof, from the due date until the date that payment is received by Town. The parties hereby agree that such late fee represents a fair and reasonable estimate of the cost that the Town will incur by reason of Master Tenant's late payment. The Town's acceptance of such late fees shall not constitute a waiver of Master Tenant's default with respect to such overdue amount or stop the Town from exercising any of the other rights and remedies granted hereunder or at law or in equity. A failure to pay any fee on the due date shall constitute an event of default under this Lease. Notwithstanding any right or remedy of the Town on account of any nonpayment by Master Tenant, the obligation to pay the outstanding amounts due shall survive termination of this Lease.

SECTION 5. USE OF PREMISES.

5.1 Restricted Use. The Premises shall be used and occupied by Master Tenant, and any Subtenants approved by Town in accordance with Section 14 below only for Permitted Uses, and for no other purpose.

5.2 Prohibited Uses. Master Tenant shall not:

5.2.1 use or knowingly allow the use of the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees for any unlawful purpose; or

5.2.2 cause, maintain, or knowingly permit any nuisance in, on, or about the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; commit or suffer to be committed any physical waste in or upon the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.3 display or sell merchandise outside the defined exterior walls and doorways of the Tait Building; however, said restriction shall not apply to outside seating for a restaurant or other permitted use; or

5.2.4 cause or knowingly permit the undue accumulation of garbage, trash, rubbish or any other refuse in or about the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.5 use or knowingly permit the use of any advertising such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, radio or broadcast within the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees in such a manner that any sounds reproduced, transmitted or produced shall be directed primarily beyond the interior of the Tait Building, and will keep all mechanical apparatus free of objectionable vibration and noise which may be transmitted beyond the interior of the Premises; or

5.2.6 Cause or knowingly permit obnoxious odors to emanate or be dispelled from the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.7 Cause or knowingly permit any use of the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees which violates any Town zoning code applicable to the Premises; or

The preceding to the contrary notwithstanding, Landlord agrees that if any Subtenant or any of Subtenant's agents, employees, contractors, other representatives or invitee acts or fails to act in any manner that causes Master Tenant to be in violation of any of the provisions of Section 5.2.1 through Section 5.2.7 above, then Master Tenant shall not be in breach or default under this Lease due to such act(s) or failure(s) to act by such applicable Subtenant or any of its agents, employees, contractors, other representatives or invitees so long as Master Tenant exercises commercially reasonable efforts to prevent such violation(s) from occurring and shall have taken steps in good faith within thirty (30) days after receipt of written notice from Landlord to remedy such failure and is continuing to so act with diligence and continuity and further, where possession of the Premises or portion thereof is necessary to cure a default under this Lease, Master Tenant will not be considered to be in default under this Lease as a result of a breach by a Subtenant or any of Subtenant's agents, employees, contractors, other

representatives or invitee under its sublease so long as Master Tenant has sent notice of default to, and commenced legal action against the Subtenant and is diligently and continuously pursuing an unlawful detainer action or other legal proceedings required to regain possession of the Premises or portion thereof from such Subtenant.

As used in the provisions of Section 5.2.1 through Section 5.2.7, the term "knowingly" includes what Master Tenant reasonably should have known with the exercise of reasonable inquiry and investigation.

5.3 Compliance with Laws. Master Tenant shall carry out, or cause to be carried out, all obligations under this Lease, including without limitation Master Tenant's Work, in conformity with all applicable state, federal, and local laws and regulations, including all applicable state labor laws and standards; Town zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the Town of Los Gatos Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* ("Applicable Laws"). Master Tenant's obligations under this Section 5.3 shall include the obligation to undertake all appropriate inquiries with state and federal governmental enforcement and regulatory agencies as necessary to fully comply with all Applicable Laws, including any applicable prevailing wage requirements in connection with the construction of the Master Tenant's Work. Master Tenant also shall require that its Subtenants (to the extent expressly made applicable to such Subtenants) and their respective agents, employees, contractors and subcontractors, comply with all Applicable Laws in connection with the construction of the Subtenant's Work and Improvements.

SECTION 6. LEASEHOLD IMPROVEMENTS.

6.1 Condition of the Premises. Landlord shall deliver the Premises to Master Tenant on the Effective Date clean and free of debris.

6.2 Leasehold Improvements. Master Tenant agrees to install, or cause to be installed, in the Premises all improvements, fixtures, furniture and equipment within the Premises, as reasonably necessary for Master Tenant to attract and retain high quality Subtenants. Within one hundred eighty (180) calendar days after the Effective Date, Master Tenant shall provide Landlord a detailed description of work it proposes to undertake to ready the Premises for initial lease up to Subtenants ("Initial Master Tenant's Work"). In addition to providing Landlord all relevant information regarding a proposed Subtenant necessary for Landlord to evaluate and provide its consent to a proposed Subtenant pursuant to Section 14.2, Master Tenant shall provide Landlord a detailed description of the additional work, if any, to be undertaken by Master Tenant ("Additional Master Tenant's Work") as well as the work to be undertaken by a Subtenant ("Subtenant's Work") in connection with said applicable sublease.

The Initial Master Tenant's Work and all Additional Master Tenant's Work undertaken in connection with a sublease consented to by Landlord in accordance with 14.2 below, shall collectively be referred to herein as the "Master Tenant's Work". The term "Master Tenant's Work" does not include "Subtenant's Work" to be performed by Subtenants. It is acknowledged and agreed that the Subtenants of Master Tenant will install additional improvements, fixtures, furniture, and equipment as necessary for conduct of their operations, and shall all be responsible for complying with all applicable federal, state, and local statutes, laws, ordinances, rules, and regulations, and obtaining all necessary permits, to perform such work.

6.3 Master Tenant Work Improvement Loans.

6.3.1 As provided in Section 4.3.4 above, Master Tenant may utilize Sublease Income to repay itself for funds it advances or borrows from a third party lender for Master Tenant's Work, and any subsequent Improvements within the Premises that are neither Subtenant's Work nor funded by the Town's Capital Reserve Fund ("Master Tenant Work Improvement Loans"), on the following basis:

(a) Interest. Interest shall be on the basis of actual days elapsed, at a fixed rate of 3% per annum if funded by Master Tenant, or at the actual rate of interest charged by Master Tenant's lender if funded by a third-party lender, as of the date of each advance.

(b) Repayment Term. Whether funded by Master Tenant or a third-party lender, the repayment term shall be no greater than the Lease Term.

(c) Amortization. For each Master Tenant Work Improvement Loan funded by Master Tenant, interest only payments until the later of (i) first day of the month following the final advance under the loan, or (ii) the date subrent is due, and thereafter equal monthly payments of combined principal and interest necessary to fully amortize the loan over the remaining repayment term. If funded by a third-party lender, the loan shall be fully amortized in accordance with the terms of the loan.

6.4 Liens. All Master Tenant's Work and Subtenant's Work shall be completed free of mechanic's liens, with first-class materials and workmanship, and in compliance with all applicable rules, regulations, and laws applicable to the Premises.

6.5 Letter of Credit (LOC). All Master Tenant's Work or Subtenant's Work shall be approved by Landlord (which consent shall not be unreasonably withheld, conditioned or delayed). Such consent shall be deemed given if not denied in writing to Master Tenant within ten (10) business days following Landlord's receipt of such information required for Landlord to evaluate such applicable Master Tenant's Work or Subtenants Work. Master Tenant shall furnish to Town, at no cost or expense to the Town, a letter of credit ("LOC") in the amount not less than the sum of One Hundred Percent of the cost estimate of the Master Tenant's Work, in a form subject to the review and approval by the Town Manager or his or her designee (which approval shall not be unreasonably withheld, conditioned or delayed), which LOC shall secure Master Tenant's obligation to complete, and pay for the cost of completion of, the construction of the Master Tenant's Work within the time reasonably fixed by the Landlord, or such extension thereof as may be allowed. Master Tenant shall refrain from performing, or causing the performance of, any work related to the construction of Master Tenant's Work until Master Tenant furnishes a LOC satisfying this Section 6.5.

In the event Master Tenant fails to complete the Master Tenant's Work within the time fixed by Landlord or such extension period as determined by Landlord, and following Master Tenant's receipt of written notice of such failure from Landlord, Master Tenant fails to promptly commence action to complete the Master Tenant's Work within ten (10) calendar days of receipt of such notice, then Landlord may terminate this Lease for cause as specified in this Lease and Landlord shall be entitled to call on such LOC to the extent necessary to pay or reimburse Landlord for costs reasonably incurred by Landlord to complete the Master Tenant's Work (and the balance of such LOC proceeds or the LOC itself after payment or reimbursement to Landlord as provided immediately above shall be paid or returned to Master Tenant). In the event that Master Tenant fails to complete the Master tenant's Work within the time fixed by Landlord or such extension period as determined by Landlord, and following Master Tenant's receipt of written notice of such failure from Landlord, Master Tenant commences action to complete Master Tenant's Work within ten (10) calendar days of receipt of such notice but thereafter fails to diligently process such cure to completion, then, Landlord shall give a second, written notice to Master Tenant and if Master Tenant does not commence action to complete the Master tenant's Work within fifteen (15) days following Master Tenant's receipt of such second, written notice or thereafter diligently process such cure to completion, then Landlord may terminate this Lease for cause as specified in this Lease and Landlord shall be entitled to call on such LOC to the extent necessary to pay or reimburse Landlord for costs reasonably incurred by Landlord to complete Master Tenant's work (and the balance of such LOC proceeds or the LOC itself after payment or reimbursement to Landlord as provided immediately above shall be paid or returned to Master Tenant).

6.6 Ownership and Removal. All personal property not affixed in any way to the Premises including inventory, kitchen equipment, those nonstructural alterations as the Town approves for removal as were installed under this Lease and do not affect the structure of the Tait Building or the Premises, together with Master Tenant's Trade Fixtures, (collectively, "Master Tenant's Property") shall remain the

property of Master Tenant. Upon the termination or expiration of the Lease Term, if Master Tenant is not then in default under the Lease, Master Tenant may remove Master Tenant's Property from the Premises no later than the termination or expiration date. In addition, Master Tenant may remove from the Premises all items and Alterations installed by Master Tenant that are indicative of Master Tenant's business and may otherwise "de-identify" the Premises, as Master Tenant reasonably believes necessary or appropriate for the protection of Master Tenant's interest in Master Tenant's trademarks, trade names or copyrights. Master Tenant shall repair any damage to the Premises caused by such removal, including patching and filling holes. In no event shall Master Tenant remove or be required to remove any restrooms, flooring, ceilings, utility or electrical components located inside the walls or HVAC systems. All other utility systems will be capped and returned to a condition compatible with code requirements.

6.6.1 Subtenant's Personal Property. Landlord waives any statutory liens and rights of distress with respect to the personal property (non-affixed trade fixtures, equipment, inventory and merchandise) of each Subtenant from time to time located with the Premises, or applicable part thereof ("Subtenant's Personal Property"). This Lease (and each sublease entered into between Master Tenant and a Subtenant) does not grant a contractual lien or any other security interest to Landlord or in favor of Landlord with respect to Subtenant's Personal Property. In the event Landlord becomes the direct sublessor or landlord of a Subtenant, then, respecting any lender of any Subtenant having a security interest in any Subtenant's Personal Property ("Subtenant's Lender"), Landlord agrees: (i) to provide such Subtenant's Lender, upon written request of a Subtenant (accompanied by the name and address of Subtenant's Lender), with a copy of any default notice given to Subtenant under its sublease, concurrently with delivery of such default notice to Subtenant, and (ii) to allow Subtenant's Lender, prior to any termination of the sublease or repossession by Landlord of the applicable premises subleased by such Subtenant, the same period of time, after its receipt of such copy of default notice, to cure such default as is allowed the Subtenant under its sublease, and (iii) to permit Subtenant's Lender to enter the subleased premises for the purpose of removing Subtenant's Personal Property anytime within thirty (30) days after the effective date of any termination of the applicable sublease or any repossession of the subleased premises by Landlord (with Landlord having given Subtenant's Lender prior written notice of such date of termination or possession). Landlord will not be required to allow Subtenant's Lender to enter the subleased premises after entry of judgment in a forcible entry and detainer action, but agree to delay the filing of any such forcible entry and detainer action for thirty (30) days after delivery of written notice of such action to Subtenant's Lender, and will permit Subtenant's Lender to enter the subleased premises for the purpose of removing Subtenant's Personal Property any time within such thirty (30) days. Landlord further agrees to execute and deliver such instruments reasonably requested by Subtenant's Lender from time to time to evidence and effect this waiver and agreement of Landlord.

6.7 Abandonment. Any of Master Tenant's Property not removed from the Premises within sixty (60) business days of the date the Lease terminates or expires shall be deemed abandoned and shall thereupon become the property of Landlord. Landlord may possess and dispose of such property provided that Landlord shall not use or permit anyone holding under Landlord to use on the Premises (a) any trademark, trade name, millwork, copyrighted floor plan, copyrighted color palette, or sign used by Master Tenant in the Premises; or (b) any item similar to any other item protected by Master Tenant's intellectual property rights. This provision shall apply under all circumstances, including default by Master Tenant under this Lease.

SECTION 7. MASTER TENANT OBLIGATIONS – OPERATION OF PREMISES.

7.1 Responsibility of Master Tenant. Master Tenant shall serve as the master developer and sublandlord for the Subtenants and shall be obligated to ensure that the Premises are properly and fully operated, in good condition, for the approved commercial uses. Master Tenant shall be the primary point of contact for the Town with regard to all operational, administrative, and compliance issues under this Lease.

7.2 Leasing Standards. Subject to the provisions of Section 14.1 and 14.2 below, Master Tenant shall use its commercially reasonable efforts, consistent with good property management practices, to obtain first class commercial Subtenants for the Premises. However, if after reasonable

effort, Master Tenant is unable to attract Subtenants of similar type and quality on terms and conditions satisfactory to Master Tenant, Master Tenant may, subject to Section 14.2 below, sublease to Subtenants who may be considered less desirable in terms commercial type and quality. Landlord shall not unreasonably withhold its approval of any potential Subtenant who Master Tenant reasonably determines is the best available Subtenant on terms and conditions satisfactory to Master tenant.

7.3 Continuous Operations. Master Tenant shall use its commercially reasonable efforts, subject to the provisions of Section 7.2 above, to continuously sublet the Premises to approved Subtenants for commercial purposes during the term of this lease. If, for any reason, a Subtenant quits its business operations on the Premises, Master Tenant shall use its commercially reasonable efforts, in accordance with the provisions of Section 7.2 above, to promptly secure another Subtenant reasonably acceptable to Master Tenant and Landlord.

If for any reason during the first three (3) years after the Commencement Date the Premises in their entirety are left unleased for a continuous period of eighteen (18) months or more, then either the Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein.

If for any reason after the first three (3) years following the Rent Commencement Date the Premises are more than fifty percent (50%) unleased for six (6) consecutive months, then Landlord may require Master Tenant to prepare and provide to Landlord, for its review and approval, a marketing plan to lease said unleased space. Master Tenant shall prepare and provide said marketing plan to Landlord within thirty (30) calendar days following written notice from Landlord to prepare said marketing plan. Landlord shall complete its review and approval of the marketing plan within thirty (30) calendar days following its submission by Master Tenant to Landlord. If for any reason the Premises remain more than fifty percent (50%) unleased for six (6) consecutive months following Landlord's approval of the marketing plan, and Master Tenant can document to Landlord's reasonable satisfaction that Master Tenant has diligently, and in good faith, pursued the lease of said unleased space in accordance with the approved marketing plan, then Landlord shall provide Master Tenant no less than an additional six (6) month period of time to lease the unleased space. If following said additional period of time granted by Landlord, the Premises are more than fifty percent (50%) unleased, then either the Landlord or Master tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein.

If Landlord terminates the Lease pursuant to this Section 7.3, then Landlord shall assume the repayment of all outstanding Master Tenant Work Improvement Loans with the right to prepay such loans at Landlord's election without penalty. However, the Town's general fund shall assume no obligation for repayment of the Master Tenant Work Improvement Loans, which shall be repaid solely from future Sublease Income generated from the future operation of the Premises. Landlord's obligations under the immediately preceding sentence shall survive the termination of this Lease pursuant to this Section 7.3. If Master Tenant terminates the Lease pursuant to this Section 7.3, then Master Tenant shall assume the repayment of all outstanding Master Tenant Work Improvement Loans and no portion of Sublease Income or any other revenue generated by the Premises shall be obligated or utilized for repayment of said outstanding.

7.4 Signage and Displays. With respect to signage on the Premises, Landlord and Master Tenant agree as follows:

7.4.1 Landlord may allow Master Tenant may place a sign(s) on the exterior of the Tait Building to the extent such signage is allowed by law, provided that (i) the design and location of any such sign is approved in advance in writing by Landlord, and (ii) Master Tenant secures all necessary permits and approvals from the Town and/or any other applicable governmental authority. Any such signage shall be designed and installed in a manner that maintains the existing building system warranties, if any, applicable to the Tait Building. Upon expiration or earlier termination of this Lease, Master Tenant shall

remove Master Tenant's sign(s) from the exterior of the Tait Building, if applicable, and restore the exterior of the Tait Building to condition existing prior to the placement of such sign(s) on the exterior of the Tait Building, unless otherwise approved by Landlord.

7.5 Utilities. Master Tenant shall pay, or cause to be paid, for any and all costs, fees and expenses of water, gas, electricity, telephone, trash collection and recycling used by Master Tenant or any Subtenant in connection with the Premises during the Term of this Lease.

7.6 Deliveries. All deliveries shall be made at the hours not in violation of municipal ordinances.

7.7 Wireless Communications Equipment or Devices. The location of any equipment or device for the purpose of telecommunication or wireless access to services over the internet, by any party or for Master Tenant's or any Subtenants business operations, shall be coordinated with the Town and shall be subject to Town's reasonable approval.

7.8 PBID. Master Tenant will exercise commercially reasonable efforts to encourage its Subtenants to pay, if applicable, all Los Gatos Downtown Property Based Improvement District ("PBID") assessments for the Premises, which accrue during the term of this lease.

SECTION 8. MAINTENANCE, REPAIRS, AND ALTERATIONS.

8.1 Master Tenant's Obligations. Subject to the provisions of Section 8.2 below, and except for damage caused by fire or other casualty, whether or not insured or insurable, Master Tenant, at Master Tenant's sole cost and expense, shall keep, or cause to be kept, the Premises, in good condition and repair, including maintaining and repairing, or causing to be maintained or repaired, as necessary, all Master Tenant's Work, and all plumbing, HVAC, electrical and lighting facilities and equipment within the Premises, and any Master Tenant signage, and all doors and plate glass windows (both interior and exterior), interior walls, and flooring in the Premises. Master Tenant shall provide a contract for regular maintenance of the HVAC with an HVAC company reasonably approved by Landlord. Master Tenant shall be required to implement a program, reasonably acceptable to Landlord, for control and elimination of rodents and vermin on or around the Premises. Master Tenant shall be required to maintain any Outdoor Use Areas located on the Premises. Master Tenant shall remove graffiti from the exterior of the Premises within a reasonable time and shall always otherwise keep the exterior of the Premises in a clean and well-maintained condition. Notwithstanding any provision to the contrary, Master Tenant's obligations under this Section 8.1 shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of Landlord, its agents, employees or servants; (b) any repair or improvement caused by Landlord's failure to perform its obligations hereunder or under any other agreement between Landlord and Master Tenant or (c) any capital repairs or capital improvements not funded by the Capital Reserve Fund.

8.2 Landlord's Obligations.

8.2.1 Except for repairs and maintenance to the Premises that Master Tenant must make under Section 8.1 above, Landlord shall be responsible, at its sole cost and expense, for the remediation of any Hazardous Materials discovered in, on, or about the Premises during the work performed under Section 6 above or discovered thereafter, provided, said discovery and presence of Hazardous Materials are not directly arising out of or attributable to Master Tenant or any subtenants use and/or occupancy of the Premises. Further, Landlord shall be responsible for, at its sole cost and expenses, the roof structure, roof membrane and supports, HVAC (excluding Master Tenant's maintenance contract), sprinkler system, foundation, exterior walls, and all structural components of the Tait Building. In the event of an emergency, Master Tenant may give Landlord such notice as is practicable under the circumstances (if any), and if Landlord fails to make such repairs immediately, Master Tenant may immediately undertake such repairs and submit an invoice for the reasonable costs thereof to Landlord for reimbursement. Notwithstanding any provision to the contrary, Landlord's obligations under this Section 8.2.1 shall not include making (a) any repair or improvement necessitated

by the negligence or willful misconduct of Master Tenant, Subtenants, or their agents, employees or servants; or (b) any repair or improvement caused by Master Tenant's failure to perform its obligations (including obligations which a Sublease obligates a Sublessee) hereunder or under any other agreement between Landlord and Master Tenant.

8.3 Surrender. Upon the expiration or termination of this Lease, Master Tenant shall surrender the Premises to Landlord in good order and condition, except for ordinary wear and tear, condemnation, and damage caused by fire or other casualty, whether or not insured or insurable, alterations and leasehold improvements made by Master Tenant and Subtenants, and in a broom clean condition.

8.4 Landlord's Rights. If Master Tenant fails to perform Master Tenant's obligations under Section 8.1 above, Landlord may, but shall not be required to, enter upon the Premises, after twenty (20) calendar days prior written notice to Master Tenant, and put the same in good order, condition and repair, and the actual costs thereof and an administrative fee of not more than 10% of the actual costs thereof, shall become due and payable as additional rent to Landlord together with Master Tenant's next Minimum Monthly Rent installment payment falling due after Master Tenant's receipt of an invoice for such costs; provided, however, Landlord shall not be able to exercise such remedies so long as Master Tenant commences to cure its failure within said twenty (20) day period and diligently pursues the cure to completion.

8.5 Improvements. The installation of the leasehold improvements necessary for Master Tenant's operation of its business in the Premises shall be performed in accordance with Section 6. Once such improvements are completed, Master Tenant shall not thereafter make any alterations, improvements, additions, upgrades or utility installations in, on or about the Premises, or install any further fixtures, furniture, or equipment therein (together, "Improvements") without Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that minor interior Improvements that do not exceed the amount of \$50,000, and do not otherwise require permits under Applicable Laws ("Minor Improvements"), shall not require Landlord's consent under this Lease. All other Improvements exceeding \$50,000 for construction, or which require permits under Applicable Laws, or involve alterations to the exterior of the Premises ("Major Improvements") shall be subject to Landlord's review and approval under this Lease. Landlord may review all proposed Improvements for their consistency with the final as-built plans for the Tait Building and may approve variations from such drawings in its reasonable discretion. Town Manager is authorized to make such determination to approve Major Improvements which otherwise comply with Applicable Laws under this Lease. Notwithstanding Landlord's approval of Major Improvements under this Lease, Master Tenant shall be required to obtain all required permits for such Major Improvements under Applicable Law.

8.6 Capital Reserve Fund. On or before the fifteenth day following Landlord's receipt of the Minimum Monthly Rent, Landlord shall deposit the Minimum Monthly Rent to the account described in this Section 8.6 ("Capital Reserve Fund").

8.6.1 Maintenance of Capital Reserve Fund. The Capital Reserve Fund shall be maintained in a state or nationally chartered bank, the Local Agency Investment Fund Pooled Money Investment Account, or other such institution acceptable to Landlord.

8.6.2 Use of Capital Reserve Fund. Landlord may use monies in the Capital Reserve Fund to fund capital improvements to maintain the quality of the Premises or other purposes reasonably related to this Lease, subject to the reasonable consent of Master Tenant. The use of monies in the Capital Reserve Fund shall be controlled and directed by Landlord in its sole discretion, with input by Master Tenant, but will be used primarily for capital improvements to the Premises. Unused amounts in the Capital Reserve Fund on the Termination Date will be retained by the Town.

8.6.3 Master Tenant shall utilize Sublease Income to repay Landlord for funds it advances from the Capital Reserve Fund for uses identified in Section 8.6.2 above ("Capital Reserve Fund Improvement Loans"), on the following basis:

(a) Interest. Interest shall be on the basis of actual days elapsed, at a fixed rate of 4% per annum, as of the date of each advance.

(b) Repayment Term. The repayment term shall be the lesser of ten years or the initial term of the applicable Sublease if the Capital Reserve Fund Improvement Loan is related to Subtenant Work.

(c) Amortization. For each Capital Reserve Fund Improvement Loan, interest only payments until the later of (i) first day of the month following the final advance under the loan, or (ii) the date subrent is due if the Capital Reserve Fund Improvement Loan is related to Subtenant Work, and thereafter equal monthly payments of combined principal and interest necessary to fully amortize the loan over the remaining repayment term.

SECTION 9. INSURANCE.

9.1 General. Prior to commencing any work or operations under this Lease, and for the full term of this Lease and any extensions thereof, Master Tenant and any Subtenants, at each parties' sole cost and expense, shall obtain and maintain or shall cause to be obtained and maintained insurance against claims for injuries to persons or damages to property which may arise from or in connection with the activities of Master Tenant and its Subtenants, agents, employees and contractors, meeting at least the minimum insurance requirements set forth in Exhibit C on terms and conditions and in amounts as reasonably required by Town from time to time and with insurers reasonably acceptable to the Town and within commonly applicable industry standards for the type of operation. The Town shall not be obligated to take out insurance on Master Tenant's or Subtenant's property, including the Master Tenant's Work. Master Tenant shall be responsible for obtaining property insurance to cover the cost of repair or replacement of the Master Tenant's Work. Master Tenant and its Subtenants shall provide the Town with certificates of insurance or copies of all policies and such endorsements as may be reasonably required by the Town. These requirements are subject to reasonable amendment or waiver if so approved in writing by the Town Manager. From time to time at the request of the Finance Department of the Town of Los Gatos, Master Tenant shall provide a written statement of the replacement cost of the Master Tenant's Work.

During the term of the Lease, Landlord shall maintain general liability insurance in an amount of no less than \$2,000,000 per occurrence for bodily injury, property damage and personal injury, as well as property insurance covering the cost of repair or replacement of the Premises (excluding therefrom the Master Tenant's Work).

SECTION 10. INDEMNIFICATION BY MASTER TENANT.

10.1 General. Master Tenant shall defend, indemnify, and hold Landlord and Landlord's agent, officers, directors, employees, and contractors harmless against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) in connection with any and all third party claims to the extent arising out of Master Tenant's use of the Premises ("Claims"), including, but not limited to: (a) injuries occurring within the Premises; (b) any intentional acts or negligence of Master Tenant or Master Tenant's officers, agents, employees, subtenants, or contractors; (c) any breach or default in the performance of any obligation on Master Tenant's part to be performed under this Lease; (d) any violation by Master Tenant or any of its officers, agents, employees, subtenants or contractors of any law, ordinance or regulation governing the use of the Premises; (e) any injuries (including death of any person), claims, or causes of action relating to or involving the sale of alcoholic beverages on the Premises; or (f) the failure of any representation or warranty made by Master Tenant herein to be true when made. This indemnity does not include any Claims caused by or arising out of the intentional or negligent acts or omissions of Landlord or its agents, officers, contractors or employees. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur prior to termination of the Lease.

SECTION 11. ENVIRONMENTAL LIABILITY.

11.1 Environmental Law. The term "Environmental Law" means collectively: (i) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*, (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, *et seq.*, (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*, (iv) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*, (v) the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.*, (vi) the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, *et seq.*, (vii) the Clean Water Act, as amended, 33 U.S. Code § 1251, *et seq.*, (viii) the Oil Pollution Act, as amended, 33 U.S.C. § 2701, *et seq.*, (ix) California Health & Safety Code § 25100, *et seq.* (Hazardous Waste Control), (x) the Hazardous Substance Account Act, as amended, Health & Safety Code § 25300, *et seq.*, (xi) the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, as amended, Health & Safety Code § 25404, *et seq.*, (xii) Health & Safety Code § 25531, *et seq.* (Hazardous Materials Management), (xiii) the California Safe Drinking Water and Toxic Enforcement Act, as amended, Health & Safety Code § 25249.5, *et seq.*, (xiv) Health & Safety Code § 25280, *et seq.* (Underground Storage of Hazardous Substances), (xv) the California Hazardous Waste Management Act, as amended, Health & Safety Code § 25170.1, *et seq.*, (xvi) Health & Safety Code § 25501, *et seq.*, (Hazardous Materials Response Plans and Inventory), (xvii) Health & Safety Code § 18901, *et seq.* (California Building Standards), (xviii) the Porter-Cologne Water Quality Control Act, as amended, California Water Code § 13000, *et seq.*, (xix) California Fish and Game Code §§ 5650-5656, (xx) the Polanco Redevelopment Act, as amended, Health & Safety Code § 33459, *et seq.*, (xxi) Health & Safety Code § 25403, *et seq.* (Hazardous Materials Release Cleanup), and (xxii) any other federal, state or local laws, ordinances, rules, regulations, court orders or common law related in any way to the protection of the environment, health or safety, or industrial hygiene.

11.2 Hazardous Materials. "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government under any Environmental Laws, including any material or substance which is defined as "hazardous," "extremely hazardous," "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance" or "hazardous material" under any Environmental Laws, including, without limitation, chlorinated solvents, petroleum, or any fraction thereof, friable asbestos, and polychlorinated biphenyls.

11.3 Release of Hazardous Materials. Except as provided below in Section 11.4, Master Tenant shall not store, dispose of, transport, generate or otherwise introduce any Hazardous Material in, on or around the Premises. If any Hazardous Material is deposited, released, stored, disposed, transported, generated or otherwise introduced by Master Tenant in, on, or around the Premises, Master Tenant, at Master Tenant's sole cost and expense, shall comply with all applicable laws, rules, regulations and policies of any governmental body with jurisdiction over the same, to remove, transport and dispose of such substances and perform all remediation and cleanup necessary or advisable to remediate any damage to persons, property or the environment as a result of the presence of such Hazardous Materials.

11.4 Master Tenant's Use of Hazardous Materials. Notwithstanding the above and provided that Master Tenant complies with all Applicable Laws and Environmental Laws, Master Tenant shall have the right to use Hazardous Materials on the Premises to the extent such Hazardous Materials (i) are contained in restaurant and/or household products, office supply products or janitorial products customarily used in the maintenance, rehabilitation, operation or management of facilities similar to the Premises; or (ii) are commonly used by a significant portion of the population living within the region of the Premises, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine, so long as Master Tenant provides the appropriate warning, if required to do so under any Applicable Law or Environmental Law.

11.5 Environmental Indemnity. Master Tenant shall protect, indemnify, and hold harmless Landlord and Landlord's officer's employees, agents, representatives, contractors, and subcontractors from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees), and the

costs of repairs and improvements necessary to return the Premises to the physical condition existing prior to Master Tenant's undertaking any activity related to any Hazardous Substance, directly arising out of or attributable to Master Tenant's or Master Tenant's agents', contractors', employees' or Subtenants' use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises. Landlord shall protect, indemnify, and hold harmless Master Tenant and Master Tenant's employees, agents, parents, representatives, subtenants, contractors, subcontractors and subsidiaries from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees) and the costs of repairs and improvements necessary to return the Premises, or applicable portion thereof, to the physical condition existing prior to undertaking any activity related to any Hazardous Substance directly arising out of or attributable to Landlord's or Landlord's agents', contractors', or employees' use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises. The provisions of this Section 11.5 shall survive the termination of this Lease.

SECTION 12. TAXES AND ASSESSMENTS/ POSSESSORY INTEREST TAX.

12.1 General. Master Tenant acknowledges and agrees that this Lease will create a possessory interest subject to property taxation. Master Tenant agrees to pay and discharge, as additional rent for the Premises during the term of this Lease, before delinquency, all taxes (including, without limitation, possessory interest taxes associated with the Premises, this Lease and any so-called value added tax), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the term of this Lease), fees, levies, water and sewer rents, rates and charges, vault license fees or rentals, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "taxes") which are or may be at any time or from time to time during the term of this Lease levied, charged, assessed or imposed upon or against the Premises or any improvements which are now or hereafter located thereon, or against any of Master Tenant's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of Master Tenant acquired pursuant to this Lease on account of any taxable possessory right which Master Tenant may have acquired pursuant to this Lease. Master Tenant shall pay or reimburse Landlord, as the case may be, for any fines, penalties, interest or costs which may be added by the collecting authority for the late payment or nonpayment of any taxes required to be paid by Master Tenant hereunder.

SECTION 13. PROHIBITION AGAINST CHANGE IN MASTER TENANT AND CONTROL OF MASTER TENANT AND THE PREMISES AND TRANSFER OF MASTER TENANT'S RIGHTS UNDER THIS LEASE.

13.1 Qualifications of Master Tenant. Master Tenant acknowledges that the qualifications and identity of Master Tenant, including in particular Master Tenant's Managing Members, are of particular concern to the community and the town, in view of the following:

13.1.1 The importance of the proper subleasing of the Premises to the general welfare of the community;

13.1.2 The reliance by the Town upon Master Tenant to assure the quality of the Premises and its use, operation and maintenance;

13.1.3 The fact that a change in Master Tenant or control of all or a portion of Master Tenant, or any act or transaction involving or resulting in a change in Master Tenant is for practical purposes a Transfer or disposition of the Premises; and

13.1.4 The importance to the Town and the community of the standards for the use, operation and maintenance of the Premises and associated areas.

13.2 Acknowledgment of Importance of Qualifications. Master Tenant further recognizes that it is because of such qualifications and identity that the Landlord is entering into this Lease with Master Tenant. No voluntary or involuntary successor-in-interest of Master Tenant shall acquire any rights or powers under this Lease except as expressly set forth in this Lease.

13.3 Completion of Master Tenants Work. Prior to the completion of Master Tenant's Work, Master Tenant shall not (i) assign all or any part of its rights or obligations under this Lease, (ii) lease or sublease any portion of the Premises (other than subleases of portions of the Premises to permitted Subtenants as otherwise provided in the Lease), (iii) make or permit to be made any changes in the composition of Master Tenant's ownership, limited liability company status, or members, or (iv) effect any transaction which would in any way change the Master Tenant's ownership, management, control or obligations relating to the Premises.

13.4 Permitted Transfers. Following the period described in Section 13.3 above (i.e. completion of Master Tenant's Work), Master Tenant may, with the prior review and approval of the Town Manager (which shall not be unreasonably withheld, conditioned or delayed), make changes in the composition of Master tenant's ownership, corporate or other entity status, shareholders, members or partners (if applicable), provided that Master Tenant's managing Member, retains the power to control Master Tenant's active, day-to-day management responsibilities ("Day-to-Day management"). For purposes of the immediately preceding sentence, "control" shall mean the power to direct or cause the direction of the Day-to-Day Management of the Master tenant. Five years from the Commencement Date, provided Master Tenant has performed all of its obligations under this Lease, Master Tenant may appoint, with the consent of Landlord which shall not be unreasonably withheld, a new Master Tenant Managing Member.

13.5 Notification of Changes in Ownership or Control. During the term of this Lease, the Master Tenant shall promptly notify the Town of any and all changes whatsoever in the Master tenant's ownership, corporate or other status, management or control of the Master tenant and the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information.

13.6 Termination for Transfer. This Lease shall terminate pursuant to Section 18 if there is any voluntary or involuntary assignment or Transfer other than provided in in Section 13.4 or as otherwise expressly provided in this Lease.

SECTION 14. ASSIGNMENT AND SUBLETTING.

14.1 General. Except for those Subtenants approved by Town as provided herein, Master Tenant shall not assign, let or sublet the whole or any portion of the Premises.

14.2 Conditions for Landlord's Consent to Subtenants. Landlord's decision to grant or withhold its consent to a Subtenant may be based upon standards relevant to the type of subtenant and its proposed operation, including but not limited to: (i) experience or lack of experience in operating a retail establishment; (ii) the operating standards of such subtenant and whether it will provide the premium caliber of facilities and services acceptable to Landlord; (iii) the financial capacity to perform the provisions of this Lease and produce a fair return to Landlord; (iv) the experience of the proposed subtenant; (v) the ability of the Master Tenant and subtenants to perform the provisions of this Lease. However, Landlord shall not unreasonably withhold, condition or delay its approval of any potential Subtenant who Master tenant reasonably determines is the best available Subtenant on terms and conditions satisfactory to Master tenant, so long as Master tenant has made reasonable efforts to attract the highest quality potential Subtenants available on terms and conditions satisfactory to Master tenant.

14.3 Conditions for Landlord's Consent to Assignment. Landlord's decision to grant or withhold its consent to any assignment of this Lease by Master tenant shall be at the Landlord's sole and exclusive discretion, but otherwise may be based upon standards of commercial reasonableness, including but not limited to the financial capacity, experience and ability of assignee to perform the provisions of the Lease.

14.4 Approval by Town Manager. Any such consent, if given by Landlord, shall be in writing and may be approved by the Town Manager on behalf of Landlord.

14.5 Recognition Agreement. In connection with each Sublease consented to by Landlord, Landlord shall agree in writing in favor of the applicable Subtenant that if this Lease terminates, then Landlord shall attorn to such applicable Subtenant on the terms and conditions of such Subtenant's sublease. In the event of such attornment, Landlord shall assume all of the Master Tenant's obligations under the applicable sublease accruing from and after the date the Master Lease terminates. Landlord shall indemnify, defend and hold Master Tenant harmless from and against any and all claims, damages, liabilities, demands, actions, causes of action, judgments, injuries, liens, costs and expenses (including, without limitation, reasonable attorneys' fees and costs of suit) arising from any breach or default by Landlord of any of its assumed obligations under the applicable sublease; however, such indemnification, defense and hold harmless obligation shall not be applicable to any claims, damages, liabilities, demands, actions, causes of action, judgments, injuries, liens, costs and expenses (including, without limitation, reasonable attorneys' fees and costs of suit) to the extent arising from any breach by Master Tenant of any obligations of the sublessor under the applicable sublease occurring prior to the date Landlord attorns to the applicable Subtenant under the terms of the applicable Subtenant's sublease. Landlord's obligations under this Section 14.5 shall survive the termination of this Lease.

SECTION 15. MORTGAGE OF LEASEHOLD.

15.1 Prohibited Encumbrances. Except as permitted in Section 0 below, Master Tenant shall not:

15.1.1 Engage in any financing or other transaction placing any mortgage or deed of trust upon the Property, or upon Master Tenant's leasehold estate therein or the improvements constructed thereon; or

15.1.2 Place or suffer to be placed upon Master Tenant's leasehold estate or the improvements thereon any lien, levy, attachment or other encumbrance (other than a lien upon said leasehold estate for taxes and assessments levied but not delinquent or payable with penalty); provided, however, the foregoing notwithstanding, Master Tenant shall have the right to contest or appeal the validity of any such lien, levy, encumbrance or attachment, provided that Master Tenant shall first furnish adequate security to the reasonable satisfaction of Landlord to protect the Premises during the pendency of such contest or appeal.

Any such mortgage, deed of trust, levy, attachment, encumbrance or lien (collectively, "encumbrance") not permitted pursuant to the terms of this Lease and caused or created by Master Tenant shall be deemed to be a violation of this covenant on the date of its execution or filing of record, regardless of whether or when it is foreclosed or otherwise enforced, unless Master Tenant shall, within twenty (20) days of such date of execution or filing of record, remove such encumbrance or provide adequate security to the reasonable satisfaction of Landlord to protect the Premises and the improvements thereon from such encumbrance.

15.2 Permissible Encumbrances.

15.2.1 Anything in this Lease to the contrary notwithstanding, with Landlord's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), Master Tenant's Work may be funded by debt, and accordingly Master Tenant may assign or encumber the estate created by this Lease, by way of leasehold mortgages, leasehold deeds of trust, or otherwise.

15.2.2 With Landlord's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), Master Tenant may assign or encumber the estate created by this Lease by way of not more than two leasehold mortgages and/or leasehold deeds of trusts at any one time encumbering Master Tenant's leasehold interests, provided that such leasehold mortgages and/or

leasehold deeds of trusts comply with the requirements of this Section 15. Landlord shall have no obligation to make any changes to this Lease to accommodate any Permitted Mortgagee but agrees to work with Master Tenant in good faith in Master Tenant's efforts to obtain a Permitted Mortgage.

15.2.3 The fee title to the Premises cannot be encumbered pursuant to this Section 15; only the leasehold interest of the Master Tenant under this Lease (including, without limitation, Master Tenant's interest in the Premises, Master Tenant's Work, Subtenant's Work and Master Tenant's Property and any personal property of any Subtenant) may be so encumbered.

15.2.4 An encumbrance permitted by this Section 15 shall be referred to as a "Permitted Mortgage." The holder of a Permitted Mortgage is herein referred to as a "Permitted Mortgagee."

15.3 Notice to Landlord. Except when Landlord's prior approval or consent shall be required, Master Tenant shall notify Landlord within twenty (20) days of the time of creation of any lien or encumbrance which has been created on or attached to Master Tenant's leasehold estate therein or the Master Tenant improvements thereon, whether by act of Master Tenant or otherwise. If such lien or encumbrance is not created by an act of Master Tenant, Master Tenant shall notify Landlord of such creation as of the time Master Tenant first knows of such creation or attachment.

15.4 Mortgages Subordinate to Lease. Any mortgage permitted under Section 15 hereof shall be subject and subordinate to this Lease and, except as otherwise expressly provided herein or in any separate written agreement between Landlord and a Permitted Mortgagee, the rights of Landlord hereunder.

15.5 Extent of Encumbrance. A Permitted Mortgage shall encumber no interest in property other than Master Tenant's interest in the leasehold and improvements to the Premises, including without limitation, Master Tenant's interest in the Premises, Master Tenant's Work, Subtenant's Work and Master Tenant's Property, and any personal property of any Subtenant.

15.6 Disposition of Insurance Proceeds and Condemnation Awards. A Permitted Mortgage shall contain provisions permitting the disposition and application of the insurance proceeds and condemnation awards in the manner provided in this Lease. In the event that the Premises, or any portion thereof, are damaged or destroyed or condemned by power of eminent domain, in whole or in part, to the extent required by the provisions of the Permitted Mortgage, the proceeds therefrom shall be held by the Permitted Mortgagee, to be applied in the case of damage or destruction pursuant to the terms of the Permitted Mortgage with any excess to be paid to Landlord and Tenant as their interests may appear and to be applied in accordance with Section 17.3 hereof in the case of condemnation.

15.7 Permitted Mortgagee. Except as otherwise approved in writing by Landlord, a Permitted Mortgage may be given only to a responsible bona fide institutional lender. For the purposes hereof, the term "institutional lender" shall mean any one of the following lending institutions: a commercial or savings bank; a state bank or national bank, a trust company; an insurance company; a savings and loan association; a building and loan association; a credit union; an investment banking firm; an educational institution; a pension, retirement or welfare fund; a charity; a real estate investment trust ("REIT") but only if the REIT is publicly traded and registered with the U.S. Securities & Exchange Commission, and the amount of the Permitted Mortgage does not exceed two percent of the value of the REIT's assets; an endowment fund or foundation authorized to make loans in the State of California; or any other responsible financial institution.

15.8 Continuing Terms and Covenants. Except as otherwise expressly provided in this Lease or in a separate document executed by Landlord, all rights acquired by said Permitted Mortgagee under said Permitted Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder, none of which covenants, conditions and restrictions is or shall be waived by Landlord by reason of the giving of such Permitted Mortgage, except as expressly provided in this Lease or in a separate document executed by Landlord. Notwithstanding

any foreclosure of any Permitted Mortgage and so long as this Lease has not been terminated, unless and until a Permitted Mortgagee takes possession of the Premises (subject to any Subleases then in existence, if applicable) and to the extent Master Tenant is receiving the revenues from the Premises, Master Tenant shall remain liable for the payment of Minimum Monthly Rent, Percentage Rent and all other payments payable pursuant to this Lease, and for the performance of all of the terms, covenants and conditions of this Lease which by the terms hereof are to be carried out and performed by Master Tenant.

15.9 Affirmation of Lease in Bankruptcy. In the event of the filing of a petition in bankruptcy by the Master Tenant, and the Master Tenant rejects this Lease under Section 365 of the Bankruptcy Code, the Landlord shall, upon the request of a Permitted Mortgagee, affirm this Lease, and the Landlord will enter into a new Lease on the same terms and conditions with the Permitted Mortgagee immediately upon Master Tenant's rejection of this Lease. In the event of the filing of a petition in bankruptcy by the Landlord, and the Landlord rejects this Lease and the Master Tenant does not affirm it, a Permitted Mortgagee will have the authority to affirm the Lease on behalf of the Master Tenant and to keep the Lease in full force and effect.

15.10 Notice Required. Master Tenant shall submit to Landlord within the times set forth in this Section 15 a written notice of its intention to enter into a Permitted Mortgage, and shall submit to Landlord such information and detail as will enable Landlord to determine the compliance of such intended Permitted Mortgage with the provisions of this Section 15 and this Lease. If Landlord has not objected to the intended Permitted Mortgage on the grounds of noncompliance with provisions of this Lease within 45 days of receipt by Landlord of such notice and information, the intended Permitted Mortgage shall be deemed to comply with the provisions of this Section 15 and this Lease and be deemed approved by Landlord, provided that in no event shall any such deemed approval act or operate to subordinate Landlord's fee title to the Property to the Permitted Mortgage. Master Tenant shall thereafter promptly submit to Landlord final documents in connection with such Permitted Mortgage upon their execution or receipt by Master Tenant, or upon the funding of the loan secured by the Permitted Mortgage, for review by Landlord for compliance with the provisions of this Section 15 and this Lease.

15.11 Landlord's Right to Cure Master Tenant's Defaults on Leasehold Mortgages. Master Tenant agrees that any Permitted Mortgage shall provide:

15.11.1 That the Permitted Mortgagee shall in writing by certified or registered mail (or recognized overnight courier service) give notice to Landlord of the occurrence of any event of default under said Permitted Mortgage; and

15.11.2 That Landlord shall be given at least 30 days' notice of default in debt service payments or any other obligation of Master Tenant under a Permitted Mortgage before such Permitted Mortgagee will initiate any mortgage foreclosure action or accelerate the indebtedness or exercise its power of sale. If any payments required to be made under the provisions of the Permitted Mortgage shall not be paid, or any other act or omission shall occur which constitutes a default under the terms of such Permitted Mortgage, Landlord may cure such default during any period that Master Tenant is in default thereunder, provided that Landlord shall comply with the provisions of Section 18 hereof calling for prior notice to Master Tenant except in cases of emergency where earlier action is required, notifying Master Tenant of Landlord's intention to cure such default on Master Tenant's behalf. Landlord shall not commence to cure such default if (a) Master Tenant shall have cured such default within said 30-day period, or (b) except for defaults in the payment of money, Master Tenant shall have commenced to cure such default and is diligently pursuing such cure in full compliance with the terms of the Permitted Mortgage, or (c) Master Tenant shall have obtained from the Permitted Mortgagee a written extension of time in which to cure such default, together with a separate written extension of time granting Landlord reasonable additional time to cure said default if said default is not cured within said extended time, and executed copies thereof are delivered to Landlord. Any Permitted Mortgage shall further expressly provide that, in the event Master Tenant fails to cure any default thereunder, Landlord shall have a reasonable period of time (considering the nature of the default) to cure such default following the

expiration of all periods (including any extensions of time and periods during which performance is waived) allowed for Master Tenant's cure of such default.

15.11.3 If Landlord shall elect to cure any default under a Permitted Mortgage, Master Tenant shall pay the costs reasonably incurred by Landlord in curing such default to Landlord, together with interest thereon at the "Reference Rate" of the Bank of America plus three percent and not to exceed the maximum rate for which the parties may lawfully contract, as Additional Rent. Master Tenant hereby authorizes Landlord, in Landlord's name, without any obligation or duty to do so, to do any act or thing required of or permitted to Master Tenant to prevent any default under said Permitted Mortgage or any acceleration thereof, or the taking of any portion of the security for the Permitted Mortgage by foreclosure or other action to enforce the collection of the indebtedness, and Master Tenant agrees to indemnify and hold Landlord harmless from any costs, damages, expenses or liabilities (including reasonable attorneys' fees) resulting from Landlord exercising its rights pursuant to this Section 15. Notwithstanding any provisions of this Lease to the contrary, if Landlord shall elect to cure any default under a Permitted Mortgage and such Permitted Mortgage is non-recourse to Master Tenant, Master Tenant shall not be obligated to reimburse Landlord for any costs incurred by Landlord, provided; however, any payments made by Landlord shall be payable to the extent Master Tenant is receiving rental payments under this Lease and such payments to Landlord shall be payable prior to any other payments.

15.12 Notice to Landlord. No Permitted Mortgagee shall have the rights or benefits mentioned in this Section 15 nor shall the provisions of this Section 15 be binding upon Landlord, unless and until the name and address of the Permitted Mortgagee shall have been delivered to Landlord, notwithstanding any other form of notice, actual or constructive.

15.13 Rights and Obligations of Permitted Mortgagees. If Master Tenant, or Master Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section 15, then, so long as any such Permitted Mortgage shall remain unsatisfied of record, the following provisions shall apply:

15.13.1 Landlord, upon serving upon Master Tenant any notice of default pursuant to the provisions of Section 18 hereof, or any other notice under the provisions of or with respect to this Lease, shall also serve a copy of such notice upon any Permitted Mortgagee at the address of such Permitted Mortgagee provided pursuant to Section 15.12 above, and no notice by Landlord to Master Tenant hereunder shall affect any rights of a Permitted Mortgagee unless and until thirty (30) days after a copy thereof has been so served to such Permitted Mortgagee. Notwithstanding any event of default by Master Tenant under this Lease, Landlord shall have no right to terminate this Lease unless Landlord shall have given the Permitted Mortgagee written notice of such default and Permitted Mortgagee shall have failed to remedy such default as provided below or acquire Master Tenant's estate created hereby or commence foreclosure or other appropriate proceedings in the nature thereof, as all set forth in, and within the time specified by this Section 15.13.

15.13.2 In case Master Tenant shall have failed to cure any default hereunder within the period provided for Master Tenant to cure such default, Landlord shall so notify any Permitted Mortgagee of such failure and any Permitted Mortgagee shall, within thirty (30) days of receipt of such notice have the right, but not the obligation, to remedy such default or cause the same to be remedied, and Landlord shall accept such performance by or at the instance of the Permitted Mortgagee as if the same had been made by Master Tenant; provided, however, that if the breach or default is with respect to the Master Tenant's Work, nothing contained in this Section or any other Section or provision of this Lease shall be deemed to permit or authorize such Permitted Mortgagee, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the improvements beyond the extent necessary to conserve or protect the improvements or construction already made without first having expressly assumed the obligation to Landlord to complete, in the manner provided in this Lease, the improvements on the Premises or the part thereof to which the lien or title of such Permitted Mortgagee relates.

15.13.3 For the purposes of this Section 15 no event of default, other than an event of default due to a default in the payment of money, shall be deemed to exist under Section 18 hereof with respect to the performance of work required to be performed, or of acts to be done or of conditions to be remedied, if steps shall, in good faith, have been commenced by Master Tenant or a Permitted Mortgagee within the time permitted therefor to rectify the same and shall be prosecuted to completion with diligence and continuity as Section 18 hereof provides.

15.13.4 Anything herein contained to the contrary notwithstanding, upon the occurrence of an event of default, other than an event of default due to a default in the payment of money (for which the Permitted Mortgagee shall have no more than thirty (30) days following receipt of written notice from Landlord to cure such monetary default), Landlord shall take no action to effect a termination of this Lease without first giving to any Permitted Mortgagee written notice thereof and a reasonable time thereafter which shall not be less than ninety (90) days within which to either (a) obtain possession of the mortgaged property (including possession by a receiver), or (b) institute, prosecute and complete foreclosure proceedings or otherwise diligently acquire Master Tenant's interest under this Lease. A Permitted Mortgagee, upon acquiring Master Tenant's interest under this Lease, shall be required promptly to cure all defaults then reasonably susceptible to being cured by such Permitted Mortgagee; provided, however, that: (1) such Permitted Mortgagee shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults shall have been cured; (2) nothing herein contained shall preclude Landlord, subject to the provisions of this Section 15, from exercising any rights or remedies under this Lease with respect to any other default by Master Tenant (subject to Permitted Mortgagee's cure rights set forth in this Section 15), during the pendency of such foreclosure proceedings; and (3) such Permitted Mortgagee shall agree with Landlord, in writing, to comply during the period of such forbearance with such of the terms, conditions and covenants of this Lease as are reasonably susceptible to being complied with by such Permitted Mortgagee (however, consistent with the provisions of Section 15.13.10 below, the provisions of this clause (3) shall not obligate such Permitted Mortgagee to cure any defaults of the Master Tenant, or to expend any monies or to take any actions to comply with the terms, conditions or covenants of this Master Lease, prior to such Permitted Mortgagee acquiring Master Tenant's interest under this Lease). Any default by Master Tenant not reasonably susceptible to being cured by such Permitted Mortgagee, or the occurrence of any of the events specified in Section 18, shall be deemed waived by Landlord upon completion of such foreclosure proceedings or upon such acquisition of Master Tenant's interest in this Lease, except that any such events of default which are reasonably susceptible to being cured after such completion and acquisition shall then be cured with reasonable diligence. Such Permitted Mortgagee, or its designee or other purchaser in foreclosure proceedings, may become the legal owner of the leasehold estate of this Lease through such foreclosure proceedings or by assignment of this Lease in lieu of foreclosure. A Permitted Mortgagee or its designee or other party which becomes the legal owner of the leasehold estate of this Lease through foreclosure proceedings or by an assignment of this Lease in lieu of foreclosure shall be deemed by such acquisition to have assumed all of Master Tenant's rights and obligations under this Lease accruing during the period of such Permitted Mortgagee's or its designee's ownership of the leasehold estate of this Lease. If a Permitted Mortgagee is prohibited by any process or injunction, or any bankruptcy, insolvency or other judicial proceeding involving Master Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified for commencing or prosecuting such foreclosure or other proceedings in the nature thereof, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that the Permitted Mortgagee shall have fully cured any default in the monetary obligations of Master Tenant under this Lease and shall continue to pay currently such monetary obligations as and when the same fall due, and provided that the Permitted Mortgagee shall diligently attempt to remove any such prohibition.

15.13.5 In the event of the termination of this Lease prior to the natural expiration of the then current Term due to default of Master Tenant or operation of law (except by eminent domain) as provided in Section 18, including, without limitation, due to any rejection of this Lease in any bankruptcy, insolvency or other debtor relief proceeding, Landlord shall immediately serve upon the holder of the senior Permitted Mortgage written notice that the Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all

other defaults, if any, under this Lease then known to Landlord. The senior Permitted Mortgagee or its nominee, purchaser or assignee shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:

(a) Upon the written request of said Permitted Mortgagee, within sixty (60) days after service of such notice that the Lease has been terminated, or within sixty (60) days after the expiration of this Lease if Master Tenant was unable to renew the Term hereof, Landlord shall enter into a new lease of the Property and improvements thereon with such holder, or its designee or assignee, as follows:

(i) Such new lease shall be the same priority as this Lease, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term and at the rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and the use provisions for restaurant and food service purposes specified above. Such new lease shall require that the tenant perform any unfulfilled obligation of Master Tenant under this Lease which is reasonably susceptible to being performed by such tenant. Upon the execution of such new lease, the tenant named therein shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable counsel fees, court costs and disbursements incurred by Landlord in connection with such defaults and termination, the recovery of possession of the Property, and the preparation, execution and delivery of such new lease. Upon the execution and delivery of the new lease, title to all leasehold improvements (including, without limitation, all of the Master Tenant's Work) as well as all Master Tenant's Property, shall automatically vest in the Permitted Mortgagee or its nominee as the new Master Tenant under this Lease until the expiration of the term or sooner termination of the new lease.

(ii) Effective upon the commencement of the term of any new lease executed pursuant to this Subsection 15.13.5, all subleases then in effect shall be assigned and transferred without recourse by Landlord to the tenant under such new lease, and all monies on deposit with Landlord which Master Tenant would have been entitled to use but for the termination or expiration of this Lease may be used by the tenant under such new lease for the purposes of and in accordance with the provisions of such new lease, unless credited against expenses in accordance with Subsection 15.13.5(a)(i) above.

15.13.6 Any notice or other communication which Landlord shall desire or is required to give to or serve upon the holder of a Permitted Mortgage under this Lease shall be in writing and shall be served by certified mail, return receipt requested, addressed to such holder at the address provided for pursuant to Section 15.12 hereof, or at such other address as shall be designated by such holder in writing given to Landlord by certified mail, return receipt requested. Any notice or other communication which the holder of a Permitted Mortgage under this Lease shall desire or is required to give to or serve upon Landlord shall be deemed to have been duly given or served if (a) sent by certified mail, return receipt requested, addressed to Landlord at Landlord's address as set forth in Subsection 21.1 of this Lease or at such other addresses as shall be designated by Landlord by notice in writing given to such holder by certified mail, return receipt requested, and (b) sent by certified mail, return receipt requested, to the Landlord's other mortgages, if any.

15.13.7 Anything herein contained to the contrary notwithstanding, the provisions of this Section 15 shall inure only to the benefit of the holders of Permitted Mortgages. Neither a Permitted Mortgagee nor any other holder or owner of the indebtedness secured by a leasehold mortgage or otherwise shall be liable upon the covenants, agreements or obligations of Master Tenant contained in this Lease, unless and until such Permitted Mortgagee or that holder or owner acquires the interest of Master Tenant.

15.13.8 During such period of time that any Permitted Mortgage is in existence, Landlord shall not agree to any mutual termination or accept any surrender of this Lease (except upon the expiration of the term of this Lease, or upon the earlier termination of this Lease (x) in connection with a casualty or condemnation in accordance with the provisions of this Lease, or (y) by reason of a default by

Master Tenant that is not cured or remedied within the applicable notice and cure period set forth in this Lease in accordance with the provisions of this Lease, in either case subject to the Permitted Mortgagee's rights under this Lease, including, without limitation, the provisions of this Section 15.13), nor shall Landlord consent to any amendment or modification of this Lease, without the prior consent of a Permitted Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed and shall be given within ten (10) business days of written request therefor.

15.13.9 Landlord shall mail or deliver to Permitted Mortgagee at the address of Permitted Mortgagee provided to Landlord a duplicate copy of all notices which Landlord may from time to time give to Master Tenant pursuant to this Lease.

15.13.10 Foreclosure of a Permitted Mortgage or any sale thereunder, whether by judicial proceedings or by virtue of any power of sale contained in the Permitted Mortgage, or any conveyance of the leasehold estate created hereby from Master Tenant to Permitted Mortgagee by virtue or in lieu of foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease. Upon such foreclosure, sale or conveyance, Landlord shall recognize the Permitted Mortgagee, or any other foreclosure sale purchaser, as Master Tenant hereunder and such party shall attorn to Landlord, be subject to the provisions regarding assignment set forth in Section 15.14 below and shall fully perform Master Tenant's obligations hereunder. The preceding to the contrary notwithstanding, a Permitted Mortgagee shall have no liability for Master Tenant's obligations under this Lease unless and until it becomes the Master Tenant under this Lease by means of foreclosure or deed in lieu thereof or pursuant to any new lease obtained pursuant to the terms above, and thereafter the Permitted Mortgagee or its successor or assign or designee shall be liable under this Lease or such new lease only for the period of time that such Permitted Mortgagee or its successor, assign or designee remains tenant hereunder or thereunder. Nothing herein shall be construed to obligate any Permitted Mortgagee to remedy any default of Master Tenant, and any failure of a Permitted Mortgagee to complete any such cure after commencing the same shall not give rise to any liability of the Permitted Mortgagee to Landlord or Master Tenant.

15.14 Assignment by Mortgagee. If any Permitted Mortgagee shall acquire title to Master Tenant's interest in this Lease by foreclosure of a mortgage thereon, or by assignment in lieu of foreclosure or by an assignment from a designee or wholly-owned subsidiary corporation of such mortgagee, or under a new lease pursuant to this Section 15, such Permitted Mortgagee or its successor, assign or designee may assign such lease and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such lease contained on Master Tenant's part to be performed and observed from and after the date of such assignment, provided that Landlord shall receive an executed counterpart copy of such assignment, together with the name and address of the assignee.

SECTION 16. DAMAGE TO PREMISES.

16.1 Landlord's Obligation to Repair. If subsequent to completion of Master Tenant's Work, a material part of the Premises provided by Landlord in Exhibit A, shall, by reason of fire, earthquake, the elements, acts of God or other unavoidable casualty, be destroyed or so damaged as to become unusable in whole or in part and the damage can, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, Landlord shall promptly and diligently repair the damage (subject to the limitations set forth in Section 20.2) and this Lease shall remain in full force and effect. If a material part of the Premises provided by Landlord in Exhibit A, are damaged, and the damage cannot, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, this Lease may be terminated by Landlord by written notice given to Master Tenant within thirty (30) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty.

16.2 Election to Terminate. If subsequent to completion of Master Tenant's Improvements a material part of the Premises provided by Landlord in Exhibit A, are damaged, and the damage cannot,

by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, and Landlord has not terminated this Lease pursuant to Subsection 16.1 above, then this Lease may be terminated by Master Tenant by written notice given to Landlord within sixty (60) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty. If Master Tenant does not make the foregoing election within the required period and Landlord has not terminated the Lease, then Landlord shall promptly and diligently repair the damage and this Lease shall remain in full force and effect (subject to the provisions of Subsection 16.3 below regarding completion of Landlord's repairs). If Landlord is required or elects to repair the Premises under the provisions of Subsection 16.1 and fails to complete such repair within 365 days after the casualty described in Subsection 16.1 above (or at least to complete such repair, within such 365 day period, to the extent that permits substantial resumption of Master Tenant's business (and the businesses of the Subtenants in existence as of the date of the damage or destruction) in the Premises, provided that Landlord thereafter continuously and diligently pursues any remaining required repairs to completion), then thereafter Master Tenant, at Master Tenant's option, may terminate this Lease by giving Landlord written notice of Master Tenant's election to do so at any time prior to the substantial completion of such repair. In such event this Lease shall terminate as of the date of Master Tenant's notice.

16.3 Abatement of Rent. If a material part of the Premises provided by Landlord in Exhibit A, is damaged, and Landlord is required or elects to repair them pursuant to the provisions of Subsection 16.1, the Minimum Monthly Rent and Percentage Rent payable pursuant to Section 4 shall be abated from the date of the casualty until such Premises is sufficiently restored to allow Master Tenant to occupy the Premises and operate within the same manner as existed immediately prior to such damage or destruction. If, however, Master Tenant is able to occupy and operate its business within a portion of the Premises, Minimum Monthly Rent or Percentage Rent shall be abated only for the portion of the Premises that Master Tenant cannot occupy and operate within in the same manner as existed immediately prior to such damage or destruction. Such partial abatement shall be calculated on a square foot basis. The abatement of Minimum Monthly Rent and Percentage Rent (and Master Tenant's right to terminate this Lease as provided in Subsection 16.2 above, shall be Master Tenant's sole remedies due to the occurrence of the casualty. Landlord shall not be liable to Master Tenant or any other person or entity for any direct, indirect or consequential damage due to or arising from the casualty.

16.4 Application of Insurance Proceeds. If any part of the Master Tenant's Work or any other leasehold improvements constructed by or on behalf of Master Tenant is damaged or destroyed, and at the time of such damage or destruction, the leasehold interest of the Master Tenant hereunder, or applicable portion thereof, was encumbered by a Permitted Mortgage, then the proceeds of insurance allocable to such Master Tenant's Work or other leasehold improvements constructed by or on behalf of Master Tenant first shall be applied to pay off or pay down the loan encumbered by the Permitted Mortgage unless the applicable Permitted Mortgagee allows such insurance proceeds to be used to restore such Master Tenant's Work or other leasehold improvements.

SECTION 17. CONDEMNATION.

17.1 Total Condemnation. If, during the term of this Lease, the whole of the Premises shall be taken pursuant to any condemnation proceeding or a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is not suitable for the purposes for which Master Tenant was using the Premises prior to the taking, then this Lease shall terminate as of the date that actual physical possession of the Premises is taken, and after that date, both Landlord and Master Tenant shall be released from any future obligations arising under this Lease.

17.2 Partial Condemnation. If, during the term of this Lease, only a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is suitable for the purposes for which Master Tenant was using the Premises prior to the taking in the sole discretion of Master Tenant, then this Lease shall, as to the part so taken, terminate as of the date that actual physical possession of such portion of the Premises is taken, and after that date, both Landlord and Master Tenant shall be released from any future obligations under this Lease with respect to such portion of the Premises taken.

17.3 Condemnation Award. If the whole or any part of the Premises are taken pursuant to any condemnation proceeding, then Landlord shall be entitled to the entirety of any condemnation award except that portion allocable to the value of Master Tenant's leasehold interest of the unexpired term of this Lease, any Master Tenant's Property, Subtenant's Personal Property and/or any unsalvageable trade fixtures or furnishings owned by Master Tenant, any amounts specifically awarded or agreed upon by the Master Tenant and the condemning authority for the unamortized portion of Master Tenant's leasehold improvements and each Subtenant's leasehold improvements shall be the property of Master Tenant (except that the portion of the condemnation award allocable to each Subtenant's Personal Property and each Subtenant's leasehold improvements shall be awarded to Master Tenant or the applicable Subtenant(s), as their interests may appear, or as provided in the applicable Sublease) ("Master Tenant's Award"). The foregoing notwithstanding, if the whole or a portion of the Premises shall be taken pursuant to any condemnation proceeding and at that time the leasehold interest of the Master Tenant, or applicable portion thereof, was encumbered by a Permitted Mortgage, then Master Tenant's Award first shall be applied to pay off or pay down the loan encumbered by the Permitted Mortgage. Master Tenant shall require in any sublease of the Premises, that any Subtenant waive any and all rights against any public entity and/or the Landlord for any portion of the condemnation award relating to the Subtenant(s) value of the leasehold interest of any unexpired term.

17.4 Effect of Termination. In the event this Lease is canceled or terminated pursuant to any of the provisions of this Section 17 all rentals and other charges payable on the part of Master Tenant to Landlord hereunder shall be paid either as of the date upon which actual physical possession shall be taken by the condemner, or as of the date upon which Master Tenant ceases doing business in, upon or from the Premises, whichever first occurs; and the parties shall thereupon be released from all further liability hereunder, except for any liability arising prior to the date upon which actual physical possession shall be taken by the condemner.

SECTION 18. DEFAULT, REMEDIES, AND TERMINATION.

18.1 Master Tenant's Default. If: (i) Master Tenant shall fail to comply with any of the provisions herein providing for the construction of the Master Tenant's Work, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless Master Tenant shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity; or (ii) Master Tenant shall fail to pay any rent or other monies due under this Lease after the same are due, and such failure shall continue for ten (10) days after receipt of written notice thereof to Master Tenant, or (iii) Master Tenant shall fail to perform any other term, covenant, or condition herein contained, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless Master Tenant shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity and further, where possession of the Premises or portion thereof is necessary to cure a default under this Lease, Master Tenant will not be considered to be in default under this Lease as a result of a breach by a Subtenant under its sublease so long as Master Tenant has sent notice of default to, and commenced legal action against the Subtenant and is diligently and continuously pursuing an unlawful detainer action or other legal proceedings required to regain possession of the Premises or portion thereof from such Subtenant, or (iv) the Master Tenant's interest herein or any part thereof be assigned or transferred, either voluntarily or by operation of law, except pursuant to a Permitted Transfer or Section 14.2 or Section 15, whether by judgment, execution, death or any other means, or (v) the Master Tenant shall file any petition or institute any proceedings under any bankruptcy act, state or federal, or if such petition or proceeding be filed or be instituted or taken against the Master Tenant and such petition remains undischarged for a period of 90 days; or if any receiver of the business or of the property or assets of Master Tenant shall be appointed by any court (except a receiver appointed at the instance or request of the Landlord) and Master Tenant fails to obtain dissolution of the receiver within 90 days after appointment of the receiver; or (vi) Master Tenant shall make a general or any assignment for the benefit of its creditors; or (vii) Master Tenant shall abandon (other than a temporary cessation of operations in connection with renovations of the Premises to which Master Tenant has obtained Landlord's approval, if applicable, as required by the terms hereof) the Premises; or (viii) Master Tenant has made any written or oral representation to the Landlord in connection with this Lease that Master Tenant knows was false in any material respect as of the date

made or submitted, Master Tenant knew or should have known that the Landlord would rely on such false representation, and the Landlord relies on such false representation to its detriment in any material respect, then in any of such events Landlord shall have the following options, subject to the provisions of Section 15:

18.1.1 To collect, by suit or otherwise, each installment of rent or other sum as it becomes due hereunder, or to enforce by suit or otherwise, any other term or provision hereof on the part of Master Tenant required to be kept or performed; and/or

18.1.2 To reenter the Premises, remove all persons therefrom, take possession of the Premises and of all equipment, fixtures and personal property thereon or therein, and either with or without terminating this Lease to make commercially reasonable efforts to relet the Premises or any portion thereof (but nothing contained herein shall be construed as obligating Landlord to relet the whole or any portion of the Premises) for such term or terms (which may be for a term extending beyond the term of the Lease) and at such reasonable rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable. In addition to the foregoing, Landlord shall have the right, but not the obligation to, make such alterations and repairs to the Premises, or to divide or subdivide the Premises, as may be required or occasioned by any such reletting. Provided, however, Landlord's right to make alterations, repairs or improvements to the Premises after Master Tenant's default shall be limited to those alterations, repairs, and/or improvements necessary for the purpose of reletting the Premises. In the event Landlord relets the Premises, or any portion thereof, it shall execute any such lease in its own name, but the Master Tenant in such lease of reletting shall be under no obligation whatsoever to see to the application by Landlord of any rent collected by Landlord for the account of Master Tenant, nor shall Master Tenant hereunder have any right or authority whatsoever to collect any rent as the Master Tenant in the lease of reletting. Upon any such reletting, the rents received on any such reletting shall be applied first to the expenses of reletting and collecting, including necessary renovations and alterations of the Premises and reasonable attorneys' fees and any real estate commissions actually paid, and thereafter toward payment of all sums due or to become due to Landlord hereunder; if a sufficient sum shall not be thus realized to pay such rent and other charges, Master Tenant shall pay to Landlord monthly any deficiency, and Landlord may sue therefor as each such deficiency shall arise, but if the Premises are relet for an amount in excess of that necessary to pay such rent and other charges, Master Tenant shall not be entitled to any such excess; and/or

18.1.3 To terminate this Lease, in which event Master Tenant agrees immediately to surrender possession of the Premises and to pay to the Landlord as the amount of damage sustained by Landlord by reason of Master Tenant's breach of this Lease, the following:

(a) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Master Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Master Tenant proves could be reasonably avoided.

As used in Sections 18.1.3(a) and 18.1.3(a) above, the term "worth at the time of award" is computed by allowing interest from the date such amount becomes due and payable at one percent (1%) per annum above the rate which the Bank of America announces publicly at its San Francisco or Los Angeles executive offices as its "Reference Rate" for unsecured commercial loans.

As used in Section 18.1.3(b) above, the term "worth at the time of the award" is computed by discounting the amount determined pursuant to Section 18.1.3(b) at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

18.1.4 Pursuant to its rights of re-entry, Landlord may remove all persons from the Premises (but not any Subtenants to which Landlord is obligated to attorn) using such force as may be reasonably necessary therefor and may, but shall not be obligated to, remove all property therefrom, including, but not limited to, Master Tenant's property (but not any Subtenant's Personal Property), and may, but shall not be obligated to, enforce any rights Landlord may have against said property, or store the same in any public or private warehouse or elsewhere at the cost and for the account of Master Tenant or the owners or owner thereof, or to treat all or portions of said property as having no value and to dispose of said property accordingly. Anything contained herein to the contrary notwithstanding, Landlord shall not be deemed to have terminated this Lease or the liability of Master Tenant to pay any rent or other sum of money thereafter to accrue hereunder, or Master Tenant's liability for damages under any of the provisions hereof, by any such re-entry, or by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless Landlord shall have notified Master Tenant in writing that Landlord has so elected to terminate this Lease. Master Tenant covenants and agrees that the service by Landlord of any notice in unlawful detainer and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of, or at any time subsequent to, the service of such notice, and Landlord's election be evidenced by written notice thereof to Master Tenant) be deemed to be a termination of this Lease, or the termination of any liability of Master Tenant hereunder to Landlord.

18.2 Landlord's Default. If Landlord fails to comply with or defaults in the performance of any provision of the Lease, Master Tenant shall have the right (but not the obligation) in addition to any and all other rights and remedies available to Master Tenant at law or in equity, to cure such nonconformance or default on behalf of Landlord, upon 30 days prior written notice to Landlord and to any mortgagee of Landlord, if the name and address of such mortgagee has been previously provided to Master Tenant by Landlord, except in an emergency, Master Tenant may cure such nonconformance or default without such written notice so long as Master Tenant makes reasonable efforts to notify Landlord of such emergency. Upon receipt from Master Tenant of notice of such cure and demand for payment, Landlord shall repay any expenditure made by Master Tenant within 30 days of written request therefor. If Landlord fails to make such repayment within such 30 day period, then, anything herein to the contrary notwithstanding, Master Tenant may offset the amount owed it by Landlord pursuant to this Section 18.2 against the Minimum Monthly Rent and/or Percentage Rent payable by Master Tenant to Landlord hereunder until fully offset.

SECTION 19. TOWN REQUIREMENTS.

19.1 Non-discrimination. Master Tenant shall not restrict the rental, use, occupancy, tenure, or enjoyment of the Premises or any portion thereof, on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin of any person. During the term hereof, any contracts or subleases relating to the construction, use or occupancy of the Premises or any portion thereof, shall contain or be subject to substantially the following nondiscrimination and nonsegregation clauses:

"There shall be no discrimination against or segregation of, any person, or group of persons, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee, himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, or vendees of the land."

19.2 Enforcement of Town Requirements. In enforcing Section 19.1, Landlord may require Master Tenant to terminate the sublease of any Subtenant that fails to comply with that Section. Failure of Master Tenant to commence actions to terminate the subleases of noncomplying Subtenants within 90 days of notice from Landlord shall constitute an event of default by the Master Tenant.

SECTION 20. COMPLIANCE WITH LAW.

20.1 General. During the Lease term, Master Tenant, at its sole cost and expense, shall comply promptly with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances ("Laws") pertaining to Master Tenant's use of the Premises or the improvements thereon, including those which require the making of any structural, unforeseen or extraordinary changes to the Premises, whether or not any such Laws which may be hereafter enacted were within the contemplation of the parties at the time of execution of this Lease, or involve a change of policy on the part of the governmental body enacting the same. In connection with the foregoing, Master Tenant acknowledges that Landlord, acting not as Landlord but in its governmental capacity, has certain governmental regulatory authority over the Premises and agrees that "Law" as defined herein includes any legal requirement imposed by Landlord acting not as Landlord but in its capacity as a governmental regulatory body.

20.2 Regulations Requiring Modifications to Premises. If, under its regulatory authority, Town adopts new laws, rules or ordinances that are generally applicable to commercial buildings and which require upgrades, changes, or modifications to the Premises in order to comply with such Town-adopted laws, rules, or regulations, then the cost or expense of compliance shall be as follows:

(a) Town shall bear the cost or expense of compliance to the extent that such laws, rules or regulations require modifications to the structure or shell of the Premises in the condition delivered to Master Tenant in Exhibit A.

(b) During the first ten years following the Rent Commencement Date, Master Tenant shall bear the cost or expense of compliance to the extent that such new laws, rules, or regulations require modifications to Master Tenant's Work and any subsequent alterations thereto. After the tenth year following the Rent Commencement Date, Landlord and Master Tenant shall split equally all such costs.

SECTION 21. GENERAL PROVISIONS.

21.1 Notices, Demands, and Communications Between the Parties. All notices and other communications required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, by facsimile transmission with verification of receipt, by email, by overnight courier service, or by United States mail, postage prepaid and return receipt requested, addressed to the respective parties as follows:

| | |
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| Town: | Town of Los Gatos 110 E. Main Street Los Gatos, CA 95030 Attention: Town Manager Email: manager@losgatosca.gov |
|-------|--|

| | |
|---------------|---|
| With copy to: | Town of Los Gatos 110 E. Main Street Los Gatos, CA 95030 Attention: City Attorney Email: attorney@losgatosca.gov |
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| | |
|------------|--|
| To Tenant: | Tait Firehouse, LLC 223 West Main Street Suite B Los Gatos CA 95030 Attn: Donald Imwalle, Jr. |
|------------|--|

Email: don@imwalledev.com
CC: jimfoley@pennantproperties.com
Jason@farwellrashkis.com

or to such other address as any party may designate by notice in accordance with this Section.

A copy of any notice of a legal nature, including, but not limited to, any claims against Town, its officers or employees shall also be served in the manner specified above to the following address:

Town of Los Gatos
City Attorney's Office
110 E. Main Street
Los Gatos, CA 95030

Notice shall be deemed effective on the date of personal delivery by hand or the date of receipt of facsimile transmission (with verification of receipt) or email, or if sent by overnight courier service, then one business day after delivery of such notice to such courier service or, if mailed, three days after deposit in the mail.

21.2 Warranty Against Payment of Consideration for Agreement. Master Tenant warrants that it has not paid or given, and will not pay or give, any third party (other than Colliers International who introduced Landlord and Master Tenant to one another) any money or other consideration for obtaining this Agreement.

21.3 Non-liability of Town Officials and Employees. No member, official, or employee of the Town shall be personally liable to Master Tenant or any successor in interest of Master Tenant, in the event of any default or breach by the Town or for any amount which may become due to Master Tenant or to its successor, or on any obligations under the terms of this Agreement.

21.4 Enforced Delay; Extension of Time of Performance. The specific provisions of this Agreement to the contrary notwithstanding, except for payment of any monetary payments required under this Agreement, neither party shall be in default under this Agreement if an obligation to perform is delayed due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; inability to obtain or delay in obtaining materials due to lack of supply; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or enjoining to the performance of the terms of this Agreement. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within ten days of the commencement of the cause. The foregoing notwithstanding, the total time period excused under this Section shall not exceed two years.

21.5 Approvals and Town Manager's Authority. Approvals required of the Town (except for approvals expressly identified herein as being in the sole discretion of the Town) or Master Tenant shall not be unreasonably withheld, and approval or disapproval shall be given within a reasonable time. The Town Manager or his/her designee shall have the authority to act on behalf of the Town with regard to any and all actions required of the Town under this Lease. Such actions include but are not limited to the issuance of approvals and disapprovals and execution of all documents, including minor amendments to this Lease.

21.6 Holding Over. If Master Tenant shall hold over the term of this Lease, without Landlord's prior written consent, such holding over shall be construed as a tenancy from month to month, on the same terms and conditions as this Lease, and at 150% of the Minimum Monthly Rent or the monthly Percentage Rent, whichever is higher, in effect during the final full calendar of the term of this Lease.

21.7 Time of the Essence. Time is of the essence hereof, and waiver by the Landlord or Master Tenant of a breach of any term, covenant or condition herein contained, whether express or implied, shall not constitute a waiver of any subsequent breach thereof, or a breach of any other term, covenant, or condition herein contained, and acceptance of rent hereunder shall not be a waiver of any breach, except a breach of covenant to pay the rent so accepted. No acceptance by Landlord of any partial payment of any sum due hereunder shall be deemed an accord and satisfaction or otherwise bar Landlord from recovering the *full* amount due, even if such payment is designated "payment in full," bears any restrictive endorsement, or is otherwise conditionally tendered. The times for Master Tenant's performance of any obligations set forth in this Lease and the Exhibits may be extended by the Landlord's Town Manager, if he finds, at his sole discretion, that Master Tenant has been delayed for reasons not in Master Tenant's control. Any such extension shall be in writing.

21.8 Successors and Assigns. Subject to the provisions of Section 14 hereof, this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of the parties hereto.

21.9 Landlord's Access. Landlord and its agents shall have the right, subject to the rights of the Subtenants then in effect, to enter the Premises upon 72 hours prior written notice for the purpose of inspecting the same, and making such alterations, repairs, improvements or additions to the Premises as are deemed necessary or desirable consistent with this Lease. Notwithstanding the foregoing, in the event of an emergency requiring Landlord's entry into the Premises, Landlord may give Master Tenant shorter notice in any manner that is practicable under the circumstances. When entering or performing any repair or other work in the Premises, Landlord, its agents, employees and/or contractors (a) shall identify themselves to Master Tenant's personnel immediately upon entering the Premises, and (b) shall not, in any way, materially or unreasonably affect, interrupt or interfere with Master Tenant's (or any of its Subtenants') use, business or operations on the Premises or obstruct the visibility of or access to the Premises.

21.10 Legal Relationship. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Master Tenant. Landlord and Master Tenant expressly agree that neither the method of computation of rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Master Tenant other than the relationship of Landlord and Master Tenant.

21.11 Consents. Whenever the right of approval or consent is given to a party pursuant to this Lease, the party shall not unreasonably withhold, condition or delay its consent unless this Lease expressly provides otherwise. All approvals and reviews required of Landlord under this Lease may be undertaken and/or given by Landlord's Town Manager.

21.12 General. The terms "Landlord" and "Master Tenant" herein or any pronouns used in place thereof shall mean and include the masculine or feminine, the singular or plural number, and jointly and severally individuals, firms or corporations, and each of their respective heirs, executors, administrators, successors and permitted assigns, according to the context hereof. The headings of Sections herein are inserted only for convenience and reference and shall in no way define or limit the scope or intent of any provisions of this Lease. This Lease shall be construed under the laws of the State of California, and venue shall be in in the applicable courts located in Santa Clara County, California.

21.13 Quiet Enjoyment. Upon payment of the rent as aforesaid and upon the observance and performance by Master Tenant of all of the terms and provisions to be observed by Master Tenant under this Lease, Master Tenant shall peaceably hold and enjoy the Premises for the term hereof without hindrance or interruption by Landlord or any other person, except as herein expressly provided.

21.14 Regulatory Authority. Master Tenant acknowledges that, at any time when the Town is the Landlord hereunder, Landlord shall have certain governmental regulatory authority over the Premises. Master Tenant agrees and expressly acknowledges that any approval or consent required or permitted

hereunder by the Town, acting in its capacity as Landlord under this Lease, (1) is distinct from any approval or consent of such entity acting in the capacity of governmental regulatory authority, whether or not related to the same matter, and (2) shall not compromise, diminish or in any way limit the authority of such entity to give, deny or condition its approval or consent when acting as a governmental regulatory authority.

21.15 Costs and Expenses. Whenever this Lease provides that either party shall be entitled to recover fees, costs or expenses from the other, such fees, costs or expenses shall be reasonable in nature.

21.16 Entire Agreement. This Lease and the exhibits attached hereto (which are incorporated herein by this reference) represent the entire agreement between the parties concerning the subject matter hereof and supersede any prior written or verbal agreements or understandings with respect thereto.

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

21.18 Joint and Several. If Master Tenant is more than one party, then the parties and entities who comprise Master Tenant under this Agreement from time to time, are jointly and severally liable to the Town for the performance of all of the promises and obligations of Master Tenant under this Agreement. In the event of any default by Master Tenant hereunder, the Town may proceed against any one or more of the aforementioned parties who comprise Master Tenant without waiving its rights to proceed against any of the others.

21.19 Memorandum of Agreement. The parties hereto shall execute, acknowledge and record the Memorandum of Agreement, in the form attached hereto as Exhibit D, within ten days after the Rent Commencement Date.

21.20 CASp Inspection. Pursuant to California Civil Code Section 1938, Landlord hereby discloses, and Tenant hereby acknowledges, that the Premises has not been inspected by a Certified Access Specialist ("CASp"). California Civil Code Section 1938 also requires that this Lease contain the following statement:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs to correct violations of the construction related accessibility standards within the premises."

In accordance with the foregoing, Master Tenant, upon at least thirty (30) days' prior written notice to Landlord, shall have the right to require a CASp inspection of the Premises. If Master Tenant requires a CASp inspection of the Premises, then: (i) Landlord and Tenant shall mutually agree on the arrangements for the time and manner of the CASp inspection during such thirty (30) day period; (ii) Master Tenant shall be solely responsible to pay the cost of the CASp inspection as and when required by the CASp. It is understood by the parties that Landlord shall not be required to perform, or cause to be performed, any and all repairs needed to correct violations of the construction related accessibility standards within or relating to the Premises and Master Tenant can terminate this lease if it is determined, by Master Tenant that any repairs to correct violations would be too costly.

21.21 First Right of Refusal. If Landlord receives from a third party a bona fide offer to purchase the Premises, before Landlord may accept such an offer, Landlord must first give written notice to Master Tenant of said offer. Master Tenant shall have thirty (30) days from the date of receipt of said offer, to provide Landlord with written acceptance of the offer, upon the same terms and conditions as set forth therein (but in addition thereto, such sale shall include all rights of Landlord in and to this Lease). If Master Tenant accepts said offer, closing shall take place within sixty (60) days from the date of acceptance. Master Tenant may elect to assign Master Tenant's rights to purchase the Premises to the parent of or a subsidiary of the Master Tenant, or other entity wholly owned by Master Tenant or its Managing Member. If Master Tenant fails to accept said offer within the thirty (30) days provided herein, Landlord may proceed to sell to said third party in accordance with the terms of the offer. If Landlord has not consummated a sale within one hundred eighty (180) days after the expiration of Master Tenant's option rights hereunder, the restrictions and options herein provided shall be restored and shall continue in full force and effect, and so long as these restrictions and options remain in effect the Landlord shall not thereafter sell or transfer the Premises without first giving Master Tenant notice as herein provided and otherwise complying with the foregoing provisions.

21.22 Force Majeure. This Lease and the obligations of the parties hereunder shall not be affected or impaired because a party is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, epidemics, or any other cause beyond the reasonable control of such party. If Tenant is required to stop construction or is compelled to close its business or cease its business activities pursuant to a government order, recommendation or epidemic (or due to unavailability of labor or materials related to such epidemic), then Tenant shall not be required to pay Base Rent for the period of such closure; provided, however, that the Term of the Lease shall be extended by the number of days or months that Tenant's business is ordered closed and during such extended period Tenant's obligation to pay Base Rent shall continue (such Base Rent being suspended, such that Tenant receives the benefit of any rental abatement). If Tenant's occupancy is reduced by a government order then, for such period that Tenant's occupancy is reduced, the Base Rent shall be reduced pro rata. By way of example, if Tenant is required to limit occupancy to twenty-five percent (25%) pursuant to a government order then, for the period of time that such occupancy is limited to 25%, the Base Rent shall be reduced to 25%. As a condition precedent to availing itself of either a full or partial rental abatement as provided in this Section 21.22, Tenant must provide reasonable evidence to Landlord that Tenant has tendered a claim under all applicable insurance policies that Tenant is required to carry pursuant to Section 9] of this Lease and has pursued any and all state and federal financial assistance offered in response or relation to a government-imposed order to close or reduce occupancy, when and if such assistance is available. If Tenant receives any insurance proceeds or other financial assistance specified to cover any portion of its Base Rent or other monetary obligations under this Lease owed to Landlord (the "Rental Compensation"), then such Rental Compensation shall reduce any full or partial rental abatement that would otherwise be available to Tenant pursuant to this Section 21.22 in the amount of the Rental Compensation (provided that if the Rental Compensation covers rent and other costs, Tenant may first apply the monies to other costs, and the balance to Base Rent, and the abated rent shall be reduced by the portion of the Rental Compensation attributable to Base Rent).

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

LANDLORD:

THE TOWN OF LOS GATOS

DocuSigned by:
By: Laurel Prevetti
Laurel Prevetti
Town Manager

Approved as to form:

DocuSigned by:
Robert W. Schultz
Town Attorney
Robert W. Schultz

Attest:

DocuSigned by:
Shelley Neis
Town Clerk
Shelley Neis

MASTER TENANT:

Tait Firehouse, LLC,
a California Limited Liability Company

By: Imwalle Asset Management, LLC
a California Limited Liability Company

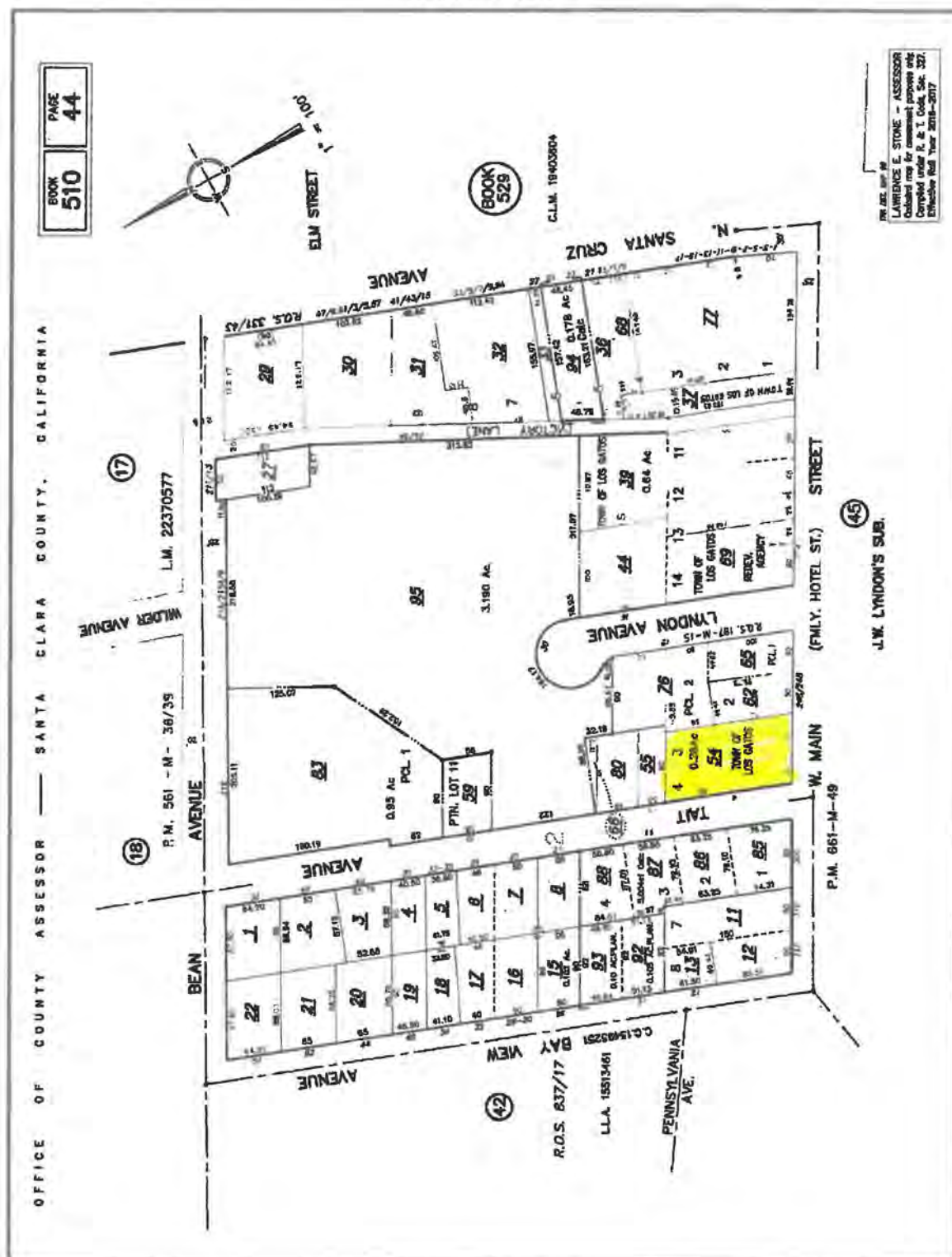
DocuSigned by:
By: Donald Imwalle
Don Imwalle, Jr., Managing Member

Exhibit A

Description and Site Plan Showing Location of Premises

(NEXT PAGE)

Exhibit A

TAX/PLAT MAP

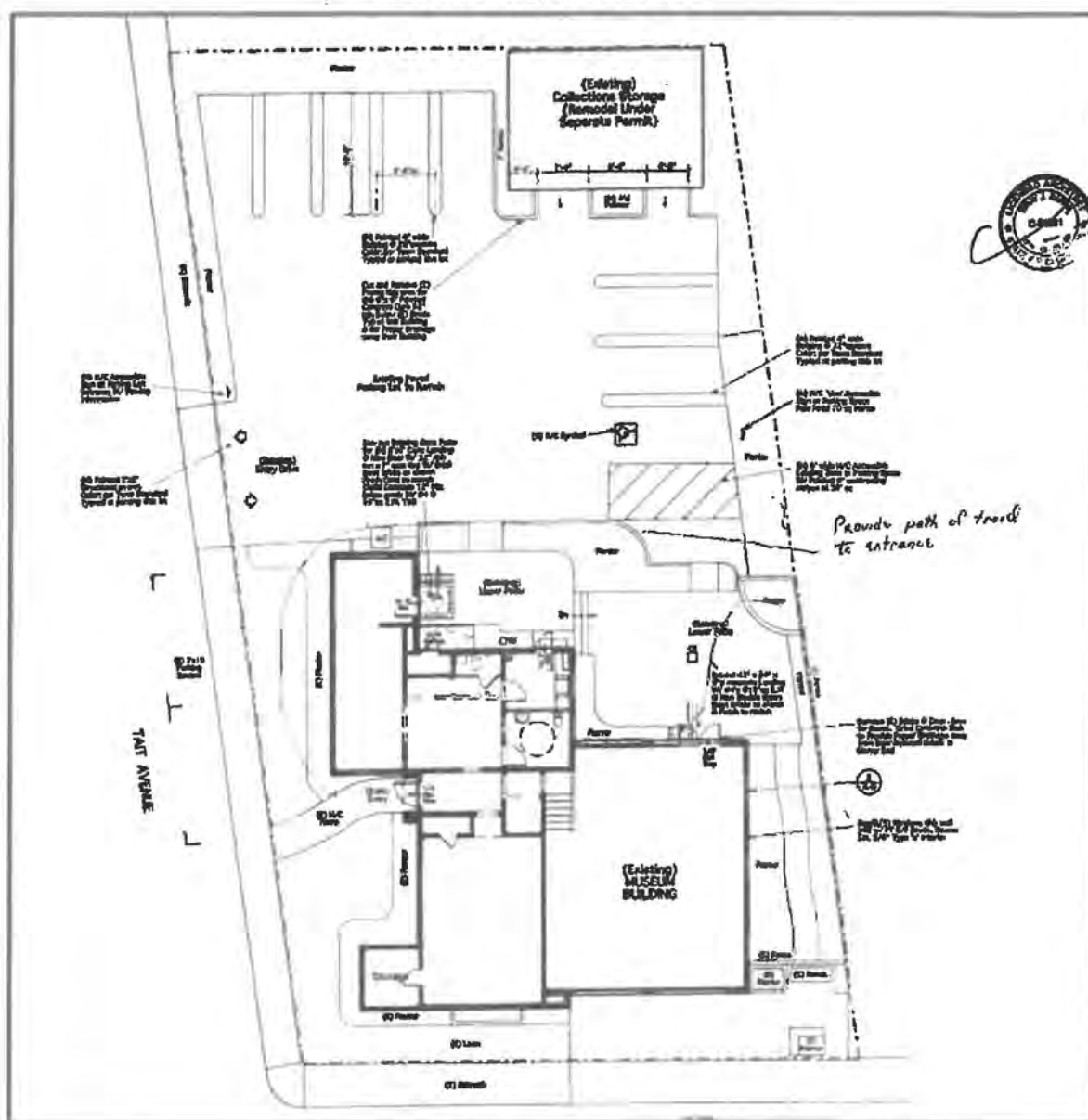


Exhibit B

Form of Notice of Lease Term Dates

[On Town Letterhead]

[Date]

Tait Firehouse, LLC
223 West Main Street Suite B
Los Gatos, CA 95030
Attn: Donald Imwalle, Jr.
Email: don@imwalledev.com
CC: jimfoley@pennantproperties.com
Jason@farwellrashkis.com

Re: Master Lease – 4 Tait Ave, Los Gatos, CA 95030

Dear Mr. Imwalle:

In accordance with that certain Master Lease dated _____, 2020, by and between the Town of Los Gatos and Tait Firehouse, LLC for the above referenced property, this letter is to confirm that the Rent Commencement Date as defined in Section 1.11 of the Master Lease is insert date. Please countersign this letter in the space below to acknowledge your agreement.

Please don't hesitate to contact me should you have any questions.

Sincerely yours,

_____, Town Manager

Acknowledged and Agreed this _____ day of _____, 202____,
on behalf of

Tait Firehouse, LLC,
a California Limited Liability Company

By: Imwalle Asset Management, LLC
a California Limited Liability Company

By: _____
Don Imwalle, Jr., Managing Member

Exhibit B

Exhibit C

Insurance Requirements for Master Tenant and Subtenants

Master Tenant is required to procure and provide proof of the insurance coverage required by Master Tenant as outlined in this Exhibit in the form of certificates and endorsements. Master Tenant shall obtain and maintain insurance against claims which may arise from or in connection with the activities of Master Tenant and its Subtenants, including agents, invitees, employees, and contractors of Master Tenant and its Subtenants, and must remain in full force and effect at all times during the period covered by the Lease Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. If Master Tenant fails to provide any of the required coverage in full compliance with the requirements set forth herein, Town may, at its sole discretion, terminate the Lease for default. Master Tenant further understands that the Town reserves the right to reasonably modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Master Tenant, at any time as deemed necessary to protect the interests of the Town.

(A) **Insurance Types and Limits.** The following insurance types and limits are required unless otherwise specified in the Lease Agreement:

- (1) **Commercial General Liability Insurance ("CGL"):** Master Tenant shall maintain CGL and shall include coverage for liability arising from Master Tenant and its Subtenants, including invitees, employees, agents, or contractors of Master Tenant and its Subtenants, against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least One Million Dollars (\$1,000,000.00) for property damage.
 - i. **Liquor Liability:** Master Tenant shall maintain Liquor Liability, either under its CGL policy or as a separate policy, providing protection in the minimum amount of One Million Dollars (\$1,000,000.00) each claim.
- (2) **Workers' Compensation Insurance and Employer's Liability:** Master Tenant shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of One Million Dollars (\$1,000,000.00) for any one accident or occurrence. If Master Tenant is self-insured, Master Tenant must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- (3) **Automobile Liability:** Master Tenant shall maintain Automobile Liability covering all owned, non-owned and hired automobiles, against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least One Million Dollars (\$1,000,000.00) for property damage.
- (4) **Property:** Master Tenant shall maintain All Risk Property coverage for the appropriate limit to cover all personal property of Master Tenant, in, on, or about the Premises, covering the full replacement cost of such personal property to include furniture, installed fixtures, improvements, equipment, inventory and any other personal property of the Master Tenant. Master Tenant, and not any of the Subtenants, also shall maintain All Risk Property coverage for the full replacement cost of the Master Tenant's Work.

- i. **Business Interruption:** Master Tenant shall maintain adequate protection against business interruption and loss of income, either as part of a comprehensive Business Owner's Policy or under its Property Insurance.

(B) **Required Endorsements.** Master Tenant shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) ALL Policies:

"Waiver of Subrogation" - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against the Town of Los Gatos and the Town's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) General Liability:

- a. "Additionally Insured" - The Town of Los Gatos, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;
- b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing;
- c. "Separation of Insureds" - The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(C) **Subtenants.** Master Tenant must ensure that each Subtenant is required to maintain the equal or greater insurance coverages required in this Exhibit, including those requirements related to the additional insureds and waiver of subrogation. However, Subtenants which do not engage in the sale and/or serving of alcohol in, on, or about the Premises, are not required to maintain Liquor Liability. Also, Subtenants shall not be obligated to insure the Master Tenant's Work.

(D) **Qualification of Insurers.** All insurance required pursuant to this Lease Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A-" or better and a financial size rating of "VII" or better.

(E) **Certificates.** Master Tenant shall furnish the Town with copies of all policies or certificates maintained by Master Tenant as outlined herein, whether new or modified, promptly upon receipt. Further, upon request by the Town, Master Tenant shall furnish the Town with copies of all policies or certificates maintained by Subtenants as outlined herein, whether new or modified. No policy subject to the Master Tenant's Lease with the Town shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to Town, unless due to non-payment of premiums, in which case ten (10) days written notice must be made to Town. Certificates, including renewal certificates, may be mailed electronically to _____ or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

Exhibit D

Memorandum of Lease Agreement

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95037
Attn: Town Manager

THIS DOCUMENT IS EXEMPT FROM
RECORDING FEES PURSUANT TO CALIFORNIA
GOVERNMENT CODE §§ 6103, 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

MEMORANDUM OF LEASE AGREEMENT

This Memorandum of Lease Agreement (this "**Memorandum**") is dated as of _____, 2020, and is between the Town of Los Gatos, a California municipal corporation ("**Landlord**"), and Tait Firehouse, LLC, a California limited liability company ("**Master Tenant**").

Recitals

A. Landlord and Master Tenant entered into that certain Lease Agreement, effective _____, 2020 ("**Lease**"), pursuant to which Landlord leased to Master Tenant and Master Tenant leased from Landlord the space located on the real property described in the attached Exhibit A (the "**Premises**").

B. Landlord and Master Tenant desire to execute this Memorandum to provide constructive notice of Master Tenant's rights under the Lease to all third parties.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Agreement

1. Term. Landlord leases the Premises to Master Tenant for an initial term of thirty-four years and eleven months (34 years 11 months) commencing on the Commencement Date of _____, 202_, and expiring on _____, 205_.

2. Lease Terms. The lease of the Premises to Master Tenant is pursuant to the Lease, which is incorporated in this Memorandum by reference.

3. Assignment. Except as otherwise expressly provided in the Lease, Master Tenant's rights and obligations under the Lease may not be assigned without Landlord's prior written consent, which consent may be granted or withheld by Landlord in its sole and exclusive discretion, and any assignment without this consent will be void.

4. Successors and Assigns. This Memorandum and the Lease are binding and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease on assignment.

5. Governing Law. This Memorandum and the Lease are governed by California law.

Executed as of the date first above written.

LANDLORD:

Town of Los Gatos,
a California municipal corporation

By: _____
Print Name: _____
Title: _____

MASTER TENANT:

Tait Firehouse, LLC,
a California Limited Liability Company

By: Imwalle Asset Management, LLC
a California Limited Liability Company

By: _____
Don Imwalle, Jr., Managing Member

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

STATE OF CALIFORNIA

COUNTY OF _____

ss.

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

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

WITNESS my hand and official seal.

(Signature) (Seal)

Exhibit D

LEASE AGREEMENT

MASTER LEASE

by and between

**TOWN OF LOS GATOS, a California municipal corporation
("Landlord")**

and

**Forbes Mill, LLC, a California limited liability company
("Master Tenant")**

Los Gatos, California

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MASTER LEASE

This Master Lease ("Lease") is made and effective as of this ____ day of _____, 2020 ("Effective Date"), by and between THE TOWN OF LOS GATOS, a California municipal corporation (hereinafter "Landlord" or the "Town"), and Forbes Mill, LLC, a California limited liability company ("Master Tenant").

RECITALS

A. The Town owns certain improved real property, commonly referred to as the Forbes Mill Property, located at 75 Church Street, APN: 529-54-050, and as shown and described on Exhibit A attached hereto and made a part hereof, suitable for residential, office, restaurant, retail and other commercial operations (the "Property"). The building situated on such real property shall be referred to as the "Forbes Mill Building."

B. The Town has solicited proposals to develop the Forbes Mill Building and the future development of the Property will require significant capital improvements to make the area usable for commercial operators.

C. Master Tenant has been selected by the Town to develop the Forbes Mill Building and to sublease space within the Property to subtenant(s) consented to by the Town.

Now therefore, in consideration of their mutual promises as set forth in this Lease, the Town and Master Tenant agree as follows:

SECTION 1. BASIC LEASE PROVISIONS AND DEFINITIONS.

1.1 Master Tenant's Managing Member. Imwalle Asset Management, LLC, a California Limited Liability Company.

1.2 Premises and Address of Premises: The Premises consist of the Property and the Forbes Mill Building situated thereon. The address of the Premises is as follows:

75 Church Street,
Los Gatos, CA 95030

1.3 Rentable Area of Forbes Mill Building. As depicted in Exhibit A, the Rentable Area of the Forbes Mill Building is approximately 2450 square feet.

1.4 Lease Term. As provided in Section 3 below, the Term of the Lease commences on the Commencement Date and terminates, unless earlier terminated 34 years and 11 months from the Commencement Date as provided in Section 3.1 below.

1.5 Lease Contingency. This Lease is contingent on the Master Tenant submitting the necessary applications and documents to the Town for approval of the improvements and use of the property, such as, but not limited to, general plan amendment, a proposed site plan, concept drawings for the site plan, massing diagrams, and renderings identifying the location, general configuration, and proposed design characteristics of the buildings, parking spaces, landscaping, property subdivision, and other aspects of the improvement and uses. The Master Tenant acknowledges that the Project Proposal requires approvals and entitlements from the Town and shall submit a formal application for the Planning Approvals. Costs and fees associated with the Planning Approvals review shall be borne by the Master Tenant. Nothing in this Agreement shall be construed to compel the Town to approve or make any findings with respect to Planning Approvals. If Master tenant is unable to obtain Planning Approvals, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the

other party Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

This Lease is also contingent on Master Tenant and a Subtenant having executed a binding initial Sublease for any portion of the Premises and occupancy by Subtenants (the "Contingency"). If the Contingency has not been satisfied or waived by Landlord on or before the date twelve (12) months following the Effective Date, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

1.6 Minimum Monthly Rent. The Minimum Monthly Rent shall be \$0.40 per Rentable Area of Forbes Mill Building (which equates to \$980 per month) payable to Landlord as provided in Section 4 below.

1.7 Percentage Rent. The Percentage Rent shall be that Rent specified in Section 4.3 below.

1.8 Capital Reserve Fund. For each month that Master Tenant pays to Landlord the Minimum Monthly Rent, Landlord shall deposit on a monthly basis to the account described in Section 8.6 below, the Minimum Monthly Rent received by Landlord.

1.9 Maintenance of Premises. The Master Tenant's obligations for Maintenance of the Premises are as set forth in Section 8 below.

1.10 Rent Commencement Date. The Rent Commencement Date shall be the date the first Subtenant opens for business on the Premises. The Rent Commencement Date shall be memorialized between Landlord and Master Tenant as set forth in Exhibit B (Form of Notice of Lease Terms).

1.11 Subtenant. The individual commercial operator(s) physically occupying the Premises to provide the services required under this Lease, as selected by Master Tenant and accepted by the Town (subject to Section 7.2 and Section 14.2 below). The Master Tenant cannot also be a Subtenant.

1.12 Permitted Uses. The operation of businesses providing residential, office, retail, restaurant, and other services approved by Master Tenant and Town, and any other lawful use, except as otherwise prohibited under this Lease pursuant to Section 5.2.

1.13 Town Manager. The Town Manager of the Town ("Town Manager") or his or her designated representative, shall serve as the Town's principal contact and liaison for coordinating all Town requests of Master Tenant and responses to Master Tenant's requests, and shall assist in the implementation of the Town's obligations hereunder, during the term of this Lease. The Town Manager may change his or her authorized representative at any time by giving written notice of the change to Master Tenant.

1.14 Master Tenant's Work and Tenant Improvement Loan Amortization. "Master Tenant's Work" is defined in Section 6.2. "Tenant Improvement Loan Amortization" is defined in Section 6.3.

SECTION 2. LEASED AREA.

2.1 Premises. Landlord hereby leases to Master Tenant, and Master Tenant hereby leases from Landlord the Premises referred to in Section 1.2 above, located at 75 Church Street, Los Gatos, California 90530, as depicted on Exhibit A.

SECTION 3. TERM.

3.1 Term. The "Term" of this Lease shall commence as of the Effective Date ("Commencement Date") and shall end, unless earlier terminated or extended pursuant to the terms and conditions of this Lease, on the date 34 years and 11 months after the Commencement Date ("Termination Date").

SECTION 4. RENT.

4.1 General. From and after the Rent Commencement Date, Master Tenant agrees to pay Landlord as rent for the Premises, in the manner and at the times set forth in this Lease, the Minimum Monthly Rent and the Percentage Rent, as further described in this Section 4.

4.1.1 All rent payments shall be sent to the Landlord's address in Section 21.1 and shall be addressed to the attention of the Town Finance Department, and shall be free from all credits, claims, demands, off-sets or counterclaims of any kind against the Town.

4.1.2 Minimum Monthly Rent shall be paid by Master Tenant to Landlord on a monthly basis in advance on or before the first day of each month during the Term.

4.1.3 Percentage Rent shall be paid in arrears on or before April 15 each calendar year for the amount due and owing for the preceding calendar year (or 90 days after any Termination Date).

4.2 Minimum Monthly Rent. The Minimum Monthly Rent shall be the amount indicated in Section 1.6. Minimum Monthly Rent shall be paid in advance on or before the first day of each calendar month during the Lease Term.

4.3 Percentage Rent.

4.3.1 Manner and Time of Payment. Percentage Rent shall equal 60% of the Sublease Income received by Master Tenant during each calendar year, remaining after Distribution of Sublease Income in accordance with Section 4.3.4(a) through Section 4.3.4(d) below.

4.3.2 Definition of Sublease Income. "Sublease Income" shall mean the sum of (a) all base rents actually received by Master Tenant from its Subtenants of the Premises (excluding reimbursements from Subtenants for any operating costs such as, but not limited to, taxes, insurance, utilities, and maintenance and repair costs, to the extent such reimbursements do not exceed Master Tenant's actual costs of such operating costs), (b) any interest earned on security deposits of Subtenants, (c) security deposits forfeited by Subtenants (to the extent applied to delinquent rentals owing by such applicable Subtenant) and any fees paid by Subtenants to Master Tenant for cancellation of their subleases; and (d) proceeds of business interruption or rental loss insurance actually collected by Master Tenant as a result of loss of sublease income. Sublease Income shall not include (i) the proceeds of any casualty insurance or condemnation awards, (ii) any management fee reimbursements received by Master Tenant from a Subtenant of the Premises, or (iii) the proceeds from any financing of any interest in the Premises or any Improvements. Sublease Income shall be determined on a cash basis for each calendar year.

4.3.3 Definition of Sublease Expenses. "Sublease Expenses" shall be determined on a cash basis for each calendar year and shall mean the sum of:

(a) all tenant improvement and remodeling costs paid by Master Tenant (other than costs of Master Tenant's Work or other Improvements, which will be repaid to Master Tenant through Tenant Improvement Loan Amortization Amounts);

(b) all leasing commissions paid by Master Tenant (excluding leasing commissions paid to Master Tenant or to persons or entities affiliated with Master Tenant);

(c) all legal and accounting expenses incurred and paid by Master Tenant in connection with the Premises and/or any Subleases;

(d) all possessory interest taxes and other property taxes paid by Master Tenant (to the extent not reimbursed to Master Tenant by Subtenants);

(e) all insurance costs paid by Master Tenant in connection with the Premises (to the extent not reimbursed to Master Tenant by Subtenants);

(f) all other costs incurred and paid by Master Tenant in connection with operating, maintaining, repairing, replacing, and subleasing the Premises, or applicable portion thereof, including, without limitation, costs incurred and paid by Master Tenant pursuant to Section 20.1 and/or Section 20.2(b) of this Lease (to the extent not reimbursed to Master Tenant by Subtenants).

Sublease Expenses shall not include any management fee of Master Tenant; however, Master Tenant may, through its agent or otherwise, collect a management fee on any sublease.

4.3.4 Distribution of Sublease Income. All Sublease Income shall be used by Master Tenant for the following uses and shall be distributed by Master Tenant in the following priority:

(a) First, to pay to Landlord the Minimum Monthly Rent as set forth in Section 4.2 above, which sum is payable by Master Tenant to Landlord whether or not Master Tenant collects and receives Sublease Income;

(b) Second, to pay Master Tenant its Sublease Expenses as defined in Section 4.3.3 above;

(c) Third, to pay Master Tenant funded Master Tenant Work Improvement Loans as provided by Section 6.3 below.

(d) Forth, to pay to Master Tenant the amount of Minimum Monthly Rent paid in that calendar year.

(e) Fifth, as provided by Section 4.3.1 above, to pay Percentage Rent to Landlord and the balance to Master Tenant.

4.3.5 Annual Statements. On or before April 15 of each calendar year, with the payment of Percentage Rent, Master Tenant shall furnish to the Town a statement (the "Annual Statement") duly certified by the Chief Financial Officer or the Managing Member or the equivalent of the Master Tenant, setting forth in reasonable detail the Sublease Income from the Premises and the amount of the Percentage Rent which was required to be paid to the Town during the preceding calendar year in accordance with the provisions of this Lease. The Annual Statement shall also contain a detailed breakdown showing how Master Tenant calculated Sublease Income and Sublease Expenses. In addition, Master Tenant shall provide to Landlord a copy of Master Tenant's federal income tax return promptly following filing same with the Internal Revenue Service. The amounts reported to Landlord by Master Tenant for Sublease Income and Sublease Expenses shall conform to the amounts reported on Master Tenant's federal income tax return filed with the Internal Revenue Service. Master Tenant's federal income tax return shall cover only income and expenses from the Premises and shall not include income and expenses from any other property.

4.3.6 Books and Records. Master Tenant shall keep and maintain at its headquarters full, complete and appropriate books, records and accounts relating to the Premises,

including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Master Tenant's calculation of the Percentage Rent. Books, records and accounts relating to Master Tenant's compliance with the terms, provisions, covenants and conditions of this Lease shall be kept and maintained on a cash basis (except as otherwise expressly provided herein), in accordance with generally accepted accounting principles consistently applied, and shall be consistent with the requirements of this Lease which provide for the calculation of Percentage Rent. All such books, records and accounts shall be open to and available for inspection by the Town, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Master Tenant may be required to furnish any governmental agency which would evidence or substantiate Master Tenant's calculation of the Percentage Rent shall at all reasonable times be open for inspection by the Town at the place that the books, records and accounts of Master Tenant are kept. Master Tenant shall preserve records on which any statement of Percentage Rent is based for a period of not less than four years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to Subsection 4.3.6 hereof then pending.

4.3.7 Town Audits. The receipt by the Town of any statement pursuant to Subsection 4.3.5 above, or any payment by Master Tenant or acceptance by the Town of any Percentage Rent for any period shall not bind the Town as to the correctness of such statement or such payment; provided, however, the Town shall accept the correctness of such statement if it conforms to the amounts shown on Master Tenant's federal income tax return for the period covered by such statement. Within four years after the receipt of any such statement, the Town or any designated agent or employee of the Town at any time and at the Town's cost (except as provided below) shall be entitled to audit the books, records and accounts pertaining to the Premises and the operation thereof. Such audit shall be conducted during normal business hours at the principal place of business of Master Tenant and other places where records are kept. Provided that Master Tenant has fully cooperated, any audit undertaken pursuant to this Subsection shall be completed within 180 days of the commencement thereof, subject to extensions of time for any periods of delay by any third party due to no fault of the Town or its auditors, and in no event later than four years after the Town's receipt of the statement or statements being audited. Immediately after the completion of an audit, the Town shall deliver a copy of the results of such audit to Master Tenant. The Town shall not be entitled to more than one audit for any particular year, unless it shall appear from a subsequent audit that fraud or concealment may have occurred with respect to the Sublease Income of a previously audited year. If it shall be determined as a result of such audit that there has been a deficiency in any Percentage Rent, then such deficiency shall become immediately due and payable with interest at the legal rate of 10% per annum, such payment to be determined as of and accruing from the date that said payment should have been made. In addition, if Master Tenant's statement for any calendar year shall be found to have intentionally understated Sublease Income by more than five percent and the Town is entitled to a supplementary payment as a result of said understatement, then Master Tenant shall pay, in addition to the interest charges referenced hereinabove, all of the Town's reasonable costs and expenses connected with any audit or review of Master Tenant's accounts and records.

4.4 Late Payment Fees. Any rentals, fees or charges required to be paid by Master Tenant pursuant to the terms of this Lease shall be paid on or before the dates specified in Subsection 4.1 above ("due date") without any requirement of notice from the Town and without deduction or offset. Master Tenant hereby acknowledges that late payment to the Town of any fee, charge or other sum due hereunder will cause the Town to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. If any such fee, charge or other sum due from Master Tenant is not received by the Town within 30 days after its due date (10 days for Minimum Monthly Rent), then Master Tenant shall pay to the Town a late payment fee equal to one percent per month of the amount not paid, calculated, for each day or portion thereof, from the due date until the date that payment is received by Town. The parties hereby agree that such late fee represents a fair and reasonable estimate of the cost that the Town will incur by reason of Master Tenant's late payment. The Town's acceptance of such late fees shall not constitute a waiver of Master Tenant's default with respect to such overdue amount or stop the Town from exercising any of the other rights and remedies granted hereunder or at law or in equity. A failure to pay any fee on the due date shall constitute an event of default under this Lease.

Notwithstanding any right or remedy of the Town on account of any nonpayment by Master Tenant, the obligation to pay the outstanding amounts due shall survive termination of this Lease.

SECTION 5. USE OF PREMISES.

5.1 Restricted Use. The Premises shall be used and occupied by Master Tenant, and any Subtenants approved by Town in accordance with Section 14 below only for Permitted Uses, and for no other purpose.

5.2 Prohibited Uses. Master Tenant shall not:

5.2.1 use or knowingly allow the use of the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees for any unlawful purpose; or

5.2.2 cause, maintain, or knowingly permit any nuisance in, on, or about the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; commit or suffer to be committed any physical waste in or upon the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.3 display or sell merchandise outside the defined exterior walls and doorways of the Forbes Mill Building; however, said restriction shall not apply to outside seating for a restaurant or other permitted use; or

5.2.4 cause or knowingly permit the undue accumulation of garbage, trash, rubbish or any other refuse in or about the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.5 use or knowingly permit the use of any advertising such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, radio or broadcast within the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees in such a manner that any sounds reproduced, transmitted or produced shall be directed primarily beyond the interior of the Tati Building, and will keep all mechanical apparatus free of objectionable vibration and noise which may be transmitted beyond the interior of the Premises; or

5.2.6 Cause or knowingly permit obnoxious odors to emanate or be dispelled from the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.7 Cause or knowingly permit any use of the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees which violates any Town zoning code applicable to the Premises; or

The preceding notwithstanding, Landlord agrees that if any Subtenant or any of Subtenant's agents, employees, contractors, other representatives or invitee acts or fails to act in any manner that causes Master Tenant to be in violation of any of the provisions of Section 5.2.1 through Section 5.2.7 above, then Master Tenant shall not be in breach or default under this Lease due to such act(s) or failure(s) to act by such applicable Subtenant or any of its agents, employees, contractors, other representatives or invitees so long as Master Tenant exercises commercially reasonable efforts to prevent such violation(s) from occurring and shall have taken steps in good faith within thirty (30) days after receipt of written notice from Landlord to remedy such failure and is continuing to so act with diligence and continuity and further, where possession of the Premises or portion thereof is necessary to cure a default under this Lease, Master Tenant will not be considered to be in default under this Lease as

a result of a breach by a Subtenant or any of Subtenant's agents, employees, contractors, other representatives or invitee under its sublease so long as Master Tenant has sent notice of default to, and commenced legal action against the Subtenant and is diligently and continuously pursuing an unlawful detainer action or other legal proceedings required to regain possession of the Premises or portion thereof from such Subtenant.

As used in the provisions of Section 5.2.1 through Section 5.2.7, the term "knowingly" includes what Master Tenant reasonably should have known with the exercise of reasonable inquiry and investigation.

5.3 Compliance with Laws. Master Tenant shall carry out, or cause to be carried out, all obligations under this Lease, including without limitation Master Tenant's Work, in conformity with all applicable state, federal, and local laws and regulations, including all applicable state labor laws and standards; Town zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the Town of Los Gatos Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* ("Applicable Laws"). Master Tenant's obligations under this Section 5.3 shall include the obligation to undertake all appropriate inquiries with state and federal governmental enforcement and regulatory agencies as necessary to fully comply with all Applicable Laws, including any applicable prevailing wage requirements in connection with the construction of the Master Tenant's Work. Master Tenant also shall require that its Subtenants (to the extent expressly made applicable to such Subtenants) and their respective agents, employees, contractors and subcontractors, comply with all Applicable Laws in connection with the construction of the Subtenant's Work and Improvements.

SECTION 6. LEASEHOLD IMPROVEMENTS.

6.1 Condition of the Premises. Landlord shall deliver the Premises to Master Tenant on the Effective Date clean and free of debris.

6.2 Leasehold Improvements. Master Tenant agrees to install, or cause to be installed, in the Premises all improvements, fixtures, furniture and equipment within the Premises, as reasonably necessary for Master Tenant to attract and retain high quality Subtenants. Within one hundred eighty (180) calendar days after the Effective Date, Master Tenant shall provide Landlord a detailed description of work it proposes to undertake to ready the Premises for initial lease up to Subtenants ("Initial Master Tenant's Work"). In addition to providing Landlord all relevant information regarding a proposed Subtenant necessary for Landlord to evaluate and provide its consent to a proposed Subtenant pursuant to Section 14.2, Master Tenant shall provide Landlord a detailed description of the additional work, if any, to be undertaken by Master Tenant ("Additional Master Tenant's Work") as well as the work to be undertaken by a Subtenant ("Subtenant's Work") in connection with said applicable sublease.

The Initial Master Tenant's Work and all Additional Master Tenant's Work undertaken in connection with a sublease consented to by Landlord in accordance with 14.2 below, shall collectively be referred to herein as the "Master Tenant's Work". The term "Master Tenant's Work" does not include "Subtenant's Work" to be performed by Subtenants. It is acknowledged and agreed that the Subtenants of Master Tenant will install additional improvements, fixtures, furniture, and equipment as necessary for conduct of their operations, and shall all be responsible for complying with all applicable federal, state, and local statutes, laws, ordinances, rules, and regulations, and obtaining all necessary permits, to perform such work.

6.3 Master Tenant Work Improvement Loans.

6.3.1 As provided in Section 4.3.4 above, Master Tenant may utilize Sublease Income to repay itself for funds it advances or borrows from a third party lender for Master Tenant's Work,

and any subsequent Improvements within the Premises that are neither Subtenant's Work nor funded by the Town's Capital Reserve Fund ("Master Tenant Work Improvement Loans"), on the following basis:

(a) Interest. Interest shall be on the basis of actual days elapsed, at a fixed rate of 3% per annum if funded by Master Tenant, or at the actual rate of interest charged by Master Tenant's lender if funded by an independent, armlengths third-party lender, as of the date of each advance.

(b) Repayment Term. Whether funded by Master Tenant or a third-party lender, the repayment term shall be no greater than the Lease Term.

(c) Amortization. For each Master Tenant Work Improvement Loan funded by Master Tenant, interest only payments until the later of (i) first day of the month following the final advance under the loan, or (ii) the date subrent is due, and thereafter equal monthly payments of combined principal and interest necessary to fully amortize the loan over the remaining repayment term. If funded by a third-party lender, the loan shall be fully amortized in accordance with the terms of the loan.

6.4 Liens. All Master Tenant's Work and Subtenant's Work shall be completed free of mechanic's liens, with first-class materials and workmanship, and in compliance with all applicable rules, regulations, and laws applicable to the Premises.

6.5 Letter of Credit (LOC). All Master Tenant's Work or Subtenant's Work shall be approved by Landlord (which consent shall not be unreasonably withheld, conditioned or delayed). Such consent shall be deemed given if not denied in writing to Master Tenant within ten (10) business days following Landlord's receipt of such information required for Landlord to evaluate such applicable Master Tenant's Work or Subtenants Work. Master Tenant shall furnish to Town, at no cost or expense to the Town, a letter of credit ("LOC") in the amount not less than the sum of One Hundred Percent of the cost estimate of the Master Tenant's Work, in a form subject to the review and approval by the Town Manager or his or her designee (which approval shall not be unreasonably withheld, conditioned or delayed), which LOC shall secure Master Tenant's obligation to complete, and pay for the cost of completion of, the construction of the Master Tenant's Work within the time reasonably fixed by the Landlord, or such extension thereof as may be allowed. Master Tenant shall refrain from performing, or causing the performance of, any work related to the construction of Master Tenant's Work until Master Tenant furnishes a LOC satisfying this Section 6.5.

In the event Master Tenant fails to complete the Master Tenant's Work within the time fixed by Landlord or such extension period as determined by Landlord, and following Master Tenant's receipt of written notice of such failure from Landlord, Master Tenant fails to promptly commence action to complete the Master Tenant's Work within ten (10) calendar days of receipt of such notice, then Landlord may terminate this Lease for cause as specified in this Lease and Landlord shall be entitled to call on such LOC to the extent necessary to pay or reimburse Landlord for costs reasonably incurred by Landlord to complete the Master Tenant's Work (and the balance of such LOC proceeds or the LOC itself after payment or reimbursement to Landlord as provided immediately above shall be paid or returned to Master Tenant). In the event that Master Tenant fails to complete the Master tenant's Work within the time fixed by Landlord or such extension period as determined by Landlord, and following Master Tenant's receipt of written notice of such failure from Landlord, Master Tenant commences action to complete Master Tenant's Work within ten (10) calendar days of receipt of such notice but thereafter fails to diligently process such cure to completion, then, Landlord shall give a second, written notice to Master Tenant and if Master Tenant does not commence action to complete the Master tenant's Work within fifteen (15) days following Master Tenant's receipt of such second, written notice or thereafter diligently process such cure to completion, then Landlord may terminate this Lease for cause as specified in this Lease and Landlord shall be entitled to call on such LOC to the extent necessary to pay or reimburse Landlord for costs reasonably incurred by Landlord to complete Master Tenant's work (and the balance of such LOC proceeds or the LOC itself after payment or reimbursement to Landlord as provided immediately above shall be paid or returned to Master Tenant).

6.6 Ownership and Removal. All personal property not affixed in any way to the Premises including inventory, kitchen equipment, those nonstructural alterations as the Town approves for removal as were installed under this Lease and do not affect the structure of the Forbes Mill Building or the Premises, together with Master Tenant's Trade Fixtures, (collectively, "Master Tenant's Property") shall remain the property of Master Tenant. Upon the termination or expiration of the Lease Term, if Master Tenant is not then in default under the Lease, Master Tenant may remove Master Tenant's Property from the Premises no later than the termination or expiration date. In addition, Master Tenant may remove from the Premises all items and Alterations installed by Master Tenant that are indicative of Master Tenant's business and may otherwise "de-identify" the Premises, as Master Tenant reasonably believes necessary or appropriate for the protection of Master Tenant's interest in Master Tenant's trademarks, trade names or copyrights. Master Tenant shall repair any damage to the Premises caused by such removal, including patching and filling holes. In no event shall Master Tenant remove or be required to remove any restrooms, flooring, ceilings, utility or electrical components located inside the walls or HVAC systems. All other utility systems will be capped and returned to a condition compatible with code requirements.

6.6.1 Subtenant's Personal Property. Landlord waives any statutory liens and rights of distress with respect to the personal property (non-affixed trade fixtures, equipment, inventory and merchandise) of each Subtenant from time to time located with the Premises, or applicable part thereof ("Subtenant's Personal Property"). This Lease (and each sublease entered into between Master Tenant and a Subtenant) does not grant a contractual lien or any other security interest to Landlord or in favor of Landlord with respect to Subtenant's Personal Property. In the event Landlord becomes the direct sublessor or landlord of a Subtenant, then, respecting any lender of any Subtenant having a security interest in any Subtenant's Personal Property ("Subtenant's Lender"), Landlord agrees: (i) to provide such Subtenant's Lender, upon written request of a Subtenant (accompanied by the name and address of Subtenant's Lender), with a copy of any default notice given to Subtenant under its sublease, concurrently with delivery of such default notice to Subtenant, and (ii) to allow Subtenant's Lender, prior to any termination of the sublease or repossession by Landlord of the applicable premises subleased by such Subtenant, the same period of time, after its receipt of such copy of default notice, to cure such default as is allowed the Subtenant under its sublease, and (iii) to permit Subtenant's Lender to enter the subleased premises for the purpose of removing Subtenant's Personal Property anytime within thirty (30) days after the effective date of any termination of the applicable sublease or any repossession of the subleased premises by Landlord (with Landlord having given Subtenant's Lender prior written notice of such date of termination or possession). Landlord will not be required to allow Subtenant's Lender to enter the subleased premises after entry of judgment in a forcible entry and detainer action, but agree to delay the filing of any such forcible entry and detainer action for thirty (30) days after delivery of written notice of such action to Subtenant's Lender, and will permit Subtenant's Lender to enter the subleased premises for the purpose of removing Subtenant's Personal Property any time within such thirty (30) days. Landlord further agrees to execute and deliver such instruments reasonably requested by Subtenant's Lender from time to time to evidence and effect this waiver and agreement of Landlord.

6.7 Abandonment. Any of Master Tenant's Property not removed from the Premises within sixty (60) business days of the date the Lease terminates or expires shall be deemed abandoned and shall thereupon become the property of Landlord. Landlord may possess and dispose of such property provided that Landlord shall not use or permit anyone holding under Landlord to use on the Premises (a) any trademark, trade name, millwork, copyrighted floor plan, copyrighted color palette, or sign used by Master Tenant in the Premises; or (b) any item similar to any other item protected by Master Tenant's intellectual property rights. This provision shall apply under all circumstances, including default by Master Tenant under this Lease.

SECTION 7. MASTER TENANT OBLIGATIONS – OPERATION OF PREMISES.

7.1 Responsibility of Master Tenant. Master Tenant shall serve as the master developer and sublandlord for the Subtenants and shall be obligated to ensure that the Premises are properly and fully operated, in good condition, for the approved commercial uses. Master Tenant shall be the primary point

of contact for the Town with regard to all operational, administrative, and compliance issues under this Lease.

7.2 Leasing Standards. Subject to the provisions of Section 14.1 and 14.2 below, Master Tenant shall use its commercially reasonable efforts, consistent with good property management practices, to obtain first class commercial Subtenants for the Premises. However, if after reasonable effort, Master Tenant is unable to attract Subtenants of similar type and quality on terms and conditions satisfactory to Master Tenant, Master Tenant may, subject to Section 14.2 below, sublease to Subtenants who may be considered less desirable in terms commercial type and quality. Landlord shall not unreasonably withhold its approval of any potential Subtenant who Master Tenant reasonably determines is the best available Subtenant on terms and conditions satisfactory to Master tenant.

7.3 Continuous Operations. Master Tenant shall use its commercially reasonable efforts, subject to the provisions of Section 7.2 above, to continuously sublet the Premises to approved Subtenants for commercial purposes during the term of this lease. If, for any reason, a Subtenant quits its business operations on the Premises, Master Tenant shall use its commercially reasonable efforts, in accordance with the provisions of Section 7.2 above, to promptly secure another Subtenant reasonably acceptable to Master Tenant and Landlord.

If for any reason during the first three (3) years after the Commencement Date the Premises in their entirety are left unleased for a continuous period of eighteen (18) months or more, then either the Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein.

If for any reason after the first three (3) years following the Rent Commencement Date the Premises are more than fifty percent (50%) unleased for six (6) consecutive months, then Landlord may require Master Tenant to prepare and provide to Landlord, for its review and approval, a marketing plan to lease said unleased space. Master Tenant shall prepare and provide said marketing plan to Landlord within thirty (30) calendar days following written notice from Landlord to prepare said marketing plan. Landlord shall complete its review and approval of the marketing plan within thirty (30) calendar days following its submission by Master Tenant to Landlord. If for any reason the Premises remain more than fifty percent (50%) unleased for six (6) consecutive months following Landlord's approval of the marketing plan, and Master Tenant can document to Landlord's reasonable satisfaction that Master Tenant has diligently, and in good faith, pursued the lease of said unleased space in accordance with the approved marketing plan, then Landlord shall provide Master Tenant no less than an additional six (6) month period of time to lease the unleased space. If following said additional period of time granted by Landlord, the Premises are more than fifty percent (50%) unleased, then either the Landlord or Master tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein.

If Landlord terminates the Lease pursuant to this Section 7.3, then Landlord shall assume the repayment of all outstanding Master Tenant Work Improvement Loans with the right to prepay such loans at Landlord's election without penalty. However, the Town's general fund shall assume no obligation for repayment of the Master Tenant Work Improvement Loans, which shall be repaid solely from future Sublease Income generated from the future operation of the Premises. Landlord's obligations under the immediately preceding sentence shall survive the termination of this Lease pursuant to this Section 7.3. If Master Tenant terminates the Lease pursuant to this Section 7.3, then Master Tenant shall assume the repayment of all outstanding Master Tenant Work Improvement Loans and no portion of Sublease Income or any other revenue generated by the Premises shall be obligated or utilized for repayment of said outstanding.

7.4 Signage and Displays. With respect to signage on the Premises, Landlord and Master Tenant agree as follows:

7.4.1 Landlord may allow Master Tenant may place a sign(s) on the exterior of the Forbes Mill Building to the extent such signage is allowed by law, provided that (i) the design and location of any such sign is approved in advance in writing by Landlord, and (ii) Master Tenant secures all necessary permits and approvals from the Town and/or any other applicable governmental authority. Any such signage shall be designed and installed in a manner that maintains the existing building system warranties, if any, applicable to the Forbes Mill Building. Upon expiration or earlier termination of this Lease, Master Tenant shall remove Master Tenant's sign(s) from the exterior of the Forbes Mill Building, if applicable, and restore the exterior of the Forbes Mill Building to condition existing prior to the placement of such sign(s) on the exterior of the Forbes Mill Building, unless otherwise approved by Landlord.

7.5 Utilities. Master Tenant shall pay, or cause to be paid, for any and all costs, fees and expenses of water, gas, electricity, telephone, trash collection and recycling used by Master Tenant or any Subtenant in connection with the Premises during the Term of this Lease.

7.6 Deliveries. All deliveries shall be made at the hours not in violation of municipal ordinances.

7.7 Wireless Communications Equipment or Devices. The location of any equipment or device for the purpose of telecommunication or wireless access to services over the internet, by any party or for Master Tenant's or any Subtenants business operations, shall be coordinated with the Town and shall be subject to Town's reasonable approval.

7.8 PBID. Master Tenant will exercise commercially reasonable efforts to encourage its Subtenants to pay, if applicable, all Los Gatos Downtown Property Based Improvement District ("PBID") assessments for the Premises, which accrue during the term of this lease.

SECTION 8. MAINTENANCE, REPAIRS, AND ALTERATIONS.

8.1 Master Tenant's Obligations. Subject to the provisions of Section 8.2 below, and except for damage caused by fire or other casualty, whether or not insured or insurable, Master Tenant, at Master Tenant's sole cost and expense, shall keep, or cause to be kept, the Premises, in good condition and repair, including maintaining and repairing, or causing to be maintained or repaired, as necessary, all Master Tenant's Work, and all plumbing, HVAC, electrical and lighting facilities and equipment within the Premises, and any Master Tenant signage, and all doors and plate glass windows (both interior and exterior), interior walls, and flooring in the Premises. Master Tenant shall provide a contract for regular maintenance of the HVAC with an HVAC company reasonably approved by Landlord. Master Tenant shall be required to implement a program, reasonably acceptable to Landlord, for control and elimination of rodents and vermin on or around the Premises. Master Tenant shall be required to maintain any Outdoor Use Areas located on the Premises. Master Tenant shall remove graffiti from the exterior of the Premises within a reasonable time and shall always otherwise keep the exterior of the Premises in a clean and well-maintained condition. Notwithstanding any provision to the contrary, Master Tenant's obligations under this Section 8.1 shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of Landlord, its agents, employees or servants; (b) any repair or improvement caused by Landlord's failure to perform its obligations hereunder or under any other agreement between Landlord and Master Tenant or (c) any capital repairs or capital improvements not funded by the Capital Reserve Fund.

8.2 Landlord's Obligations.

8.2.1 Except for repairs and maintenance to the Premises that Master Tenant must make under Section 8.1 above, Landlord shall be responsible, at its sole cost and expense, for the remediation of any Hazardous Materials discovered in, on, or about the Premises during the work performed under Section 6 above or discovered thereafter, provided, said discovery and presence of Hazardous Materials are not directly arising out of or attributable to Master Tenant or any subtenants use and/or occupancy of the Premises. Further, Landlord shall be responsible for, at its sole cost and expenses, the roof structure, roof membrane and supports, HVAC (excluding Master Tenant's

maintenance contract), sprinkler system, foundation, exterior walls, and all structural components of the Forbes Mill Building. In the event of an emergency, Master Tenant may give Landlord such notice as is practicable under the circumstances (if any), and if Landlord fails to make such repairs immediately, Master Tenant may immediately undertake such repairs and submit an invoice for the reasonable costs thereof to Landlord for reimbursement. Notwithstanding any provision to the contrary, Landlord's obligations under this Section 8.2.1 shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of Master Tenant, Subtenants, or their agents, employees or servants; or (b) any repair or improvement caused by Master Tenant's failure to perform its obligations (including obligations which a Sublease obligates a Sublessee) hereunder or under any other agreement between Landlord and Master Tenant.

8.3 Surrender. Upon the expiration or termination of this Lease, Master Tenant shall surrender the Premises to Landlord in good order and condition, except for ordinary wear and tear, condemnation, and damage caused by fire or other casualty, whether or not insured or insurable, alterations and leasehold improvements made by Master Tenant and Subtenants, and in a broom clean condition.

8.4 Landlord's Rights. If Master Tenant fails to perform Master Tenant's obligations under Section 8.1 above, Landlord may, but shall not be required to, enter upon the Premises, after twenty (20) calendar days prior written notice to Master Tenant, and put the same in good order, condition and repair, and the actual costs thereof and an administrative fee of not more than 10% of the actual costs thereof, shall become due and payable as additional rent to Landlord together with Master Tenant's next Minimum Monthly Rent installment payment falling due after Master Tenant's receipt of an invoice for such costs; provided, however, Landlord shall not be able to exercise such remedies so long as Master Tenant commences to cure its failure within said twenty (20) day period and diligently pursues the cure to completion.

8.5 Improvements. The installation of the leasehold improvements necessary for Master Tenant's operation of its business in the Premises shall be performed in accordance with Section 6. Once such improvements are completed, Master Tenant shall not thereafter make any alterations, improvements, additions, upgrades or utility installations in, on or about the Premises, or install any further fixtures, furniture, or equipment therein (together, "Improvements") without Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that minor interior Improvements that do not exceed the amount of \$50,000, and do not otherwise require permits under Applicable Laws ("Minor Improvements"), shall not require Landlord's consent under this Lease. All other Improvements exceeding \$50,000 for construction, or which require permits under Applicable Laws, or involve alterations to the exterior of the Premises ("Major Improvements") shall be subject to Landlord's review and approval under this Lease. Landlord may review all proposed Improvements for their consistency with the final as-built plans for the Forbes Mill Building and may approve variations from such drawings in its reasonable discretion. Town Manager is authorized to make such determination to approve Major Improvements which otherwise comply with Applicable Laws under this Lease. Notwithstanding Landlord's approval of Major Improvements under this Lease, Master Tenant shall be required to obtain all required permits for such Major Improvements under Applicable Law.

8.6 Capital Reserve Fund. On or before the fifteenth day following Landlord's receipt of the Minimum Monthly Rent, Landlord shall deposit the Minimum Monthly Rent to the account described in this Section 8.6 ("Capital Reserve Fund").

8.6.1 Maintenance of Capital Reserve Fund. The Capital Reserve Fund shall be maintained in a state or nationally chartered bank, the Local Agency Investment Fund Pooled Money Investment Account, or other such institution acceptable to Landlord.

8.6.2 Use of Capital Reserve Fund. Landlord may use monies in the Capital Reserve Fund to fund capital improvements to maintain the quality of the Premises or other purposes reasonably related to this Lease, subject to the reasonable consent of Master Tenant. The use of monies in the Capital Reserve Fund shall be controlled and directed by Landlord in its sole discretion, with input

by Master Tenant, but will be used primarily for capital improvements to the Premises. Unused amounts in the Capital Reserve Fund on the Termination Date will be retained by the Town.

8.6.3 Master Tenant shall utilize Sublease Income to repay Landlord for funds it advances from the Capital Reserve Fund for uses identified in Section 8.6.2 above ("Capital Reserve Fund Improvement Loans"), on the following basis:

(a) Interest. Interest shall be on the basis of actual days elapsed, at a fixed rate of 4% per annum, as of the date of each advance.

(b) Repayment Term. The repayment term shall be the lesser of ten years or the initial term of the applicable Sublease if the Capital Reserve Fund Improvement Loan is related to Subtenant Work.

(c) Amortization. For each Capital Reserve Fund Improvement Loan, interest only payments until the later of (i) first day of the month following the final advance under the loan, or (ii) the date subrent is due if the Capital Reserve Fund Improvement Loan is related to Subtenant Work, and thereafter equal monthly payments of combined principal and interest necessary to fully amortize the loan over the remaining repayment term.

SECTION 9. INSURANCE.

9.1 General. Prior to commencing any work or operations under this Lease, and for the full term of this Lease and any extensions thereof, Master Tenant and any Subtenants, at each parties' sole cost and expense, shall obtain and maintain or shall cause to be obtained and maintained insurance against claims for injuries to persons or damages to property which may arise from or in connection with the activities of Master Tenant and its Subtenants, agents, employees and contractors, meeting at least the minimum insurance requirements set forth in Exhibit C on terms and conditions and in amounts as reasonably required by Town from time to time and with insurers reasonably acceptable to the Town and within commonly applicable industry standards for the type of operation. The Town shall not be obligated to take out insurance on Master Tenant's or Subtenant's property, including the Master Tenant's Work. Master Tenant shall be responsible for obtaining property insurance to cover the cost of repair or replacement of the Master Tenant's Work. Master Tenant and its Subtenants shall provide the Town with certificates of insurance or copies of all policies and such endorsements as may be reasonably required by the Town. These requirements are subject to reasonable amendment or waiver if so approved in writing by the Town Manager. From time to time at the request of the Finance Department of the Town of Los Gatos, Master Tenant shall provide a written statement of the replacement cost of the Master Tenant's Work.

During the term of the Lease, Landlord shall maintain general liability insurance in an amount of no less than \$2,000,000 per occurrence for bodily injury, property damage and personal injury, as well as property insurance covering the cost of repair or replacement of the Premises (excluding therefrom the Master Tenant's Work).

SECTION 10. INDEMNIFICATION BY MASTER TENANT.

10.1 General. Master Tenant shall defend, indemnify, and hold Landlord and Landlord's agent, officers, directors, employees, and contractors harmless against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) in connection with any and all third party claims to the extent arising out of Master Tenant's use of the Premises ("Claims"), including, but not limited to: (a) injuries occurring within the Premises; (b) any intentional acts or negligence of Master Tenant or Master Tenant's officers, agents, employees, subtenants, or contractors; (c) any breach or default in the performance of any obligation on Master Tenant's part to be performed under this Lease; (d) any violation by Master Tenant or any of its officers, agents, employees, subtenants or contractors of any law,

ordinance or regulation governing the use of the Premises, (e) any injuries (including death of any person), claims, or causes of action relating to or involving the sale of alcoholic beverages on the Premises; or (f) the failure of any representation or warranty made by Master Tenant herein to be true when made. This indemnity does not include any Claims caused by or arising out of the intentional or negligent acts or omissions of Landlord or its agents, officers, contractors or employees. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur prior to termination of the Lease.

SECTION 11. ENVIRONMENTAL LIABILITY.

11.1 Environmental Law. The term "Environmental Law" means collectively: (i) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*, (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, *et seq.*, (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*, (iv) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*, (v) the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.*, (vi) the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, *et seq.*, (vii) the Clean Water Act, as amended, 33 U.S.C. § 1251, *et seq.*, (viii) the Oil Pollution Act, as amended, 33 U.S.C. § 2701, *et seq.*, (ix) California Health & Safety Code § 25100, *et seq.* (Hazardous Waste Control), (x) the Hazardous Substance Account Act, as amended, Health & Safety Code § 25300, *et seq.*, (xi) the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, as amended, Health & Safety Code § 25404, *et seq.*, (xii) Health & Safety Code § 25531, *et seq.* (Hazardous Materials Management), (xiii) the California Safe Drinking Water and Toxic Enforcement Act, as amended, Health & Safety Code § 25249.5, *et seq.*, (xiv) Health & Safety Code § 25280, *et seq.* (Underground Storage of Hazardous Substances), (xv) the California Hazardous Waste Management Act, as amended, Health & Safety Code § 25170.1, *et seq.*, (xvi) Health & Safety Code § 25501, *et seq.*, (Hazardous Materials Response Plans and Inventory), (xvii) Health & Safety Code § 18901, *et seq.* (California Building Standards), (xviii) the Porter-Cologne Water Quality Control Act, as amended, California Water Code § 13000, *et seq.*, (xix) California Fish and Game Code §§ 5650-5656, (xx) the Polanco Redevelopment Act, as amended, Health & Safety Code § 33459, *et seq.*, (xxi) Health & Safety Code § 25403, *et seq.* (Hazardous Materials Release Cleanup), and (xxii) any other federal, state or local laws, ordinances, rules, regulations, court orders or common law related in any way to the protection of the environment, health or safety, or industrial hygiene.

11.2 Hazardous Materials. "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government under any Environmental Laws, including any material or substance which is defined as "hazardous," "extremely hazardous," "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance" or "hazardous material" under any Environmental Laws, including, without limitation, chlorinated solvents, petroleum, or any fraction thereof, friable asbestos, and polychlorinated biphenyls.

11.3 Release of Hazardous Materials. Except as provided below in Section 11.4, Master Tenant shall not store, dispose of, transport, generate or otherwise introduce any Hazardous Material in, on or around the Premises. If any Hazardous Material is deposited, released, stored, disposed, transported, generated or otherwise introduced by Master Tenant in, on, or around the Premises, Master Tenant, at Master Tenant's sole cost and expense, shall comply with all applicable laws, rules, regulations and policies of any governmental body with jurisdiction over the same, to remove, transport and dispose of such substances and perform all remediation and cleanup necessary or advisable to remediate any damage to persons, property or the environment as a result of the presence of such Hazardous Materials.

11.4 Master Tenant's Use of Hazardous Materials. Notwithstanding the above and provided that Master Tenant complies with all Applicable Laws and Environmental Laws, Master Tenant shall have the right to use Hazardous Materials on the Premises to the extent such Hazardous Materials (i) are contained in restaurant and/or household products, office supply products or janitorial products customarily used in the maintenance, rehabilitation, operation or management of facilities similar to the Premises; or (ii)

are commonly used by a significant portion of the population living within the region of the Premises, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine, so long as Master Tenant provides the appropriate warning, if required to do so under any Applicable Law or Environmental Law.

11.5 Environmental Indemnity. Master Tenant shall protect, indemnify, and hold harmless Landlord and Landlord's officer's employees, agents, representatives, contractors, and subcontractors from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees), and the costs of repairs and improvements necessary to return the Premises to the physical condition existing prior to Master Tenant's undertaking any activity related to any Hazardous Substance, directly arising out of or attributable to Master Tenant's or Master Tenant's agents', contractors', employees' or Subtenants' use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises. Landlord shall protect, indemnify, and hold harmless Master Tenant and Master Tenant's employees, agents, parents, representatives, subtenants, contractors, subcontractors and subsidiaries from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees) and the costs of repairs and improvements necessary to return the Premises, or applicable portion thereof, to the physical condition existing prior to undertaking any activity related to any Hazardous Substance directly arising out of or attributable to Landlord's or Landlord's agents', contractors', or employees' use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises. The provisions of this Section 11.5 shall survive the termination of this Lease.

SECTION 12. TAXES AND ASSESSMENTS/ POSSESSORY INTEREST TAX.

12.1 General. Master Tenant acknowledges and agrees that this Lease will create a possessory interest subject to property taxation. Master Tenant agrees to pay and discharge, as additional rent for the Premises during the term of this Lease, before delinquency, all taxes (including, without limitation, possessory interest taxes associated with the Premises, this Lease and any so-called value added tax), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the term of this Lease), fees, levies, water and sewer rents, rates and charges, vault license fees or rentals, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "taxes") which are or may be at any time or from time to time during the term of this Lease levied, charged, assessed or imposed upon or against the Premises or any improvements which are now or hereafter located thereon, or against any of Master Tenant's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of Master Tenant acquired pursuant to this Lease on account of any taxable possessory right which Master Tenant may have acquired pursuant to this Lease. Master Tenant shall pay or reimburse Landlord, as the case may be, for any fines, penalties, interest or costs which may be added by the collecting authority for the late payment or nonpayment of any taxes required to be paid by Master Tenant hereunder.

SECTION 13. PROHIBITION AGAINST CHANGE IN MASTER TENANT AND CONTROL OF MASTER TENANT AND THE PREMISES, AND TRANSFER OF MASTER TENANT'S RIGHTS UNDER THIS LEASE.

13.1 Qualifications of Master Tenant. Master Tenant acknowledges that the qualifications and identity of Master Tenant, including in particular Master Tenant's Managing Members, are of particular concern to the community and the town, in view of the following:

13.1.1 The importance of the proper subleasing of the Premises to the general welfare of the community;

13.1.2 The reliance by the Town upon Master Tenant to assure the quality of the Premises and its use, operation and maintenance;

13.1.3 The fact that a change in Master Tenant or control of all or a portion of Master Tenant, or any act or transaction involving or resulting in a change in Master Tenant is for practical purposes a Transfer or disposition of the Premises; and

13.1.4 The importance to the Town and the community of the standards for the use, operation and maintenance of the Premises and associated areas.

13.2 Acknowledgment of Importance of Qualifications. Master Tenant further recognizes that it is because of such qualifications and identity that the Landlord is entering into this Lease with Master Tenant. No voluntary or involuntary successor-in-interest of Master Tenant shall acquire any rights or powers under this Lease except as expressly set forth in this Lease.

13.3 Completion of Master Tenants Work. Prior to the completion of Master Tenant's Work, Master Tenant shall not (i) assign all or any part of its rights or obligations under this Lease, (ii) lease or sublease any portion of the Premises (other than subleases of portions of the Premises to permitted Subtenants as otherwise provided in the Lease), (iii) make or permit to be made any changes in the composition of Master Tenant's ownership, limited liability company status, or members, or (iv) effect any transaction which would in any way change the Master Tenant's ownership, management, control or obligations relating to the Premises.

13.4 Permitted Transfers. Following the period described in Section 13.3 above (i.e. completion of Master Tenant's Work), Master Tenant may, with the prior review and approval of the Town Manager (which shall not be unreasonably withheld, conditioned or delayed), make changes in the composition of Master tenant's ownership, corporate or other entity status, shareholders, members or partners (if applicable), provided that Master Tenant's managing Member, retains the power to control Master Tenant's active, day-to-day management responsibilities ("Day-to-Day management"). For purposes of the immediately preceding sentence, "control" shall mean the power to direct or cause the direction of the Day-to-Day Management of the Master tenant. Five years from the Commencement Date, provided Master Tenant has performed all of its obligations under this Lease, Master Tenant may appoint, with the consent of Landlord which shall not be unreasonably withheld, a new Master Tenant Managing Member.

13.5 Notification of Changes in Ownership or Control. During the term of this Lease, the Master Tenant shall promptly notify the Town of any and all changes whatsoever in the Master tenant's ownership, corporate or other status, management or control of the Master tenant and the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information.

13.6 Termination for Transfer. This Lease shall terminate pursuant to Section 18 if there is any voluntary or involuntary assignment or Transfer other than provided in in Section 13.4 or as otherwise expressly provided in this Lease.

SECTION 14. ASSIGNMENT AND SUBLETTING.

14.1 General. Except for those Subtenants approved by Town as provided herein, Master Tenant shall not assign, let or sublet the whole or any portion of the Premises.

14.2 Conditions for Landlord's Consent to Subtenants. Landlord's decision to grant or withhold its consent to a Subtenant may be based upon standards relevant to the type of subtenant and its proposed operation, including but not limited to: (i) experience or lack of experience in operating a retail establishment; (ii) the operating standards of such subtenant and whether it will provide the premium caliber of facilities and services acceptable to Landlord; (iii) the financial capacity to perform the provisions of this Lease and produce a fair return to Landlord; (iv) the experience of the proposed subtenant; (v) the ability of the Master Tenant and subtenants to perform the provisions of this Lease. However, Landlord shall not unreasonably withhold, condition or delay its approval of any potential Subtenant who Master tenant reasonably determines is the best available Subtenant on terms and

conditions satisfactory to Master tenant, so long as Master tenant has made reasonable efforts to attract the highest quality potential Subtenants available on terms and conditions satisfactory to Master tenant.

14.3 Conditions for Landlord's Consent to Assignment. Landlord's decision to grant or withhold its consent to any assignment of this Lease by Master tenant shall be at the Landlord's sole and exclusive discretion, but otherwise may be based upon standards of commercial reasonableness, including but not limited to the financial capacity, experience and ability of assignee to perform the provisions of the Lease.

14.4 Approval by Town Manager. Any such consent, if given by Landlord, shall be in writing and may be approved by the Town Manager on behalf of Landlord.

14.5 Recognition Agreement. In connection with each Sublease consented to by Landlord, Landlord shall agree in writing in favor of the applicable Subtenant that if this Lease terminates, then Landlord shall attorn to such applicable Subtenant on the terms and conditions of such Subtenant's sublease. In the event of such attornment, Landlord shall assume all of the Master Tenant's obligations under the applicable sublease accruing from and after the date the Master Lease terminates. Landlord shall indemnify, defend and hold Master Tenant harmless from and against any and all claims, damages, liabilities, demands, actions, causes of action, judgments, injuries, liens, costs and expenses (including, without limitation, reasonable attorneys' fees and costs of suit) arising from any breach or default by Landlord of any of its assumed obligations under the applicable sublease; however, such indemnification, defense and hold harmless obligation shall not be applicable to any claims, damages, liabilities, demands, actions, causes of action, judgments, injuries, liens, costs and expenses (including, without limitation, reasonable attorneys' fees and costs of suit) to the extent arising from any breach by Master Tenant of any obligations of the sublessor under the applicable sublease occurring prior to the date Landlord attorns to the applicable Subtenant under the terms of the applicable Subtenant's sublease. Landlord's obligations under this Section 14.5 shall survive the termination of this Lease.

SECTION 15. MORTGAGE OF LEASEHOLD.

15.1 Prohibited Encumbrances. Except as permitted in Section 0 below, Master Tenant shall not:

15.1.1 Engage in any financing or other transaction placing any mortgage or deed of trust upon the Property, or upon Master Tenant's leasehold estate therein or the improvements constructed thereon; or

15.1.2 Place or suffer to be placed upon Master Tenant's leasehold estate or the improvements thereon any lien, levy, attachment or other encumbrance (other than a lien upon said leasehold estate for taxes and assessments levied but not delinquent or payable with penalty); provided, however, the foregoing notwithstanding, Master Tenant shall have the right to contest or appeal the validity of any such lien, levy, encumbrance or attachment, provided that Master Tenant shall first furnish adequate security to the reasonable satisfaction of Landlord to protect the Premises during the pendency of such contest or appeal.

Any such mortgage, deed of trust, levy, attachment, encumbrance or lien (collectively, "encumbrance") not permitted pursuant to the terms of this Lease and caused or created by Master Tenant shall be deemed to be a violation of this covenant on the date of its execution or filing of record, regardless of whether or when it is foreclosed or otherwise enforced, unless Master Tenant shall, within twenty (20) days of such date of execution or filing of record, remove such encumbrance or provide adequate security to the reasonable satisfaction of Landlord to protect the Premises and the improvements thereon from such encumbrance.

15.2 Permissible Encumbrances.

15.2.1 Anything in this Lease to the contrary notwithstanding, with Landlord's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), Master Tenant's Work may be funded by debt, and accordingly Master Tenant may assign or encumber the estate created by this Lease, by way of leasehold mortgages, leasehold deeds of trust, or otherwise.

15.2.2 With Landlord's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), Master Tenant may assign or encumber the estate created by this Lease by way of not more than two leasehold mortgages and/or leasehold deeds of trusts at any one time encumbering Master Tenant's leasehold interests, provided that such leasehold mortgages and/or leasehold deeds of trusts comply with the requirements of this Section 15. Landlord shall have no obligation to make any changes to this Lease to accommodate any Permitted Mortgagee but agrees to work with Master Tenant in good faith in Master Tenant's efforts to obtain a Permitted Mortgage.

15.2.3 The fee title to the Premises cannot be encumbered pursuant to this Section 15; only the leasehold interest of the Master Tenant under this Lease (including, without limitation, Master Tenant's interest in the Premises, Master Tenant's Work, Subtenant's Work and Master Tenant's Property and any personal property of any Subtenant) may be so encumbered.

15.2.4 An encumbrance permitted by this Section 15 shall be referred to as a "Permitted Mortgage." The holder of a Permitted Mortgage is herein referred to as a "Permitted Mortgagee."

15.3 Notice to Landlord. Except when Landlord's prior approval or consent shall be required, Master Tenant shall notify Landlord within twenty (20) days of the time of creation of any lien or encumbrance which has been created on or attached to Master Tenant's leasehold estate therein or the Master Tenant improvements thereon, whether by act of Master Tenant or otherwise. If such lien or encumbrance is not created by an act of Master Tenant, Master Tenant shall notify Landlord of such creation as of the time Master Tenant first knows of such creation or attachment.

15.4 Mortgages Subordinate to Lease. Any mortgage permitted under Section 15 hereof shall be subject and subordinate to this Lease and, except as otherwise expressly provided herein or in any separate written agreement between Landlord and a Permitted Mortgagee, the rights of Landlord hereunder.

15.5 Extent of Encumbrance. A Permitted Mortgage shall encumber no interest in property other than Master Tenant's interest in the leasehold and improvements to the Premises, including without limitation, Master Tenant's interest in the Premises, Master Tenant's Work, Subtenant's Work and Master Tenant's Property, and any personal property of any Subtenant.

15.6 Disposition of Insurance Proceeds and Condemnation Awards. A Permitted Mortgage shall contain provisions permitting the disposition and application of the insurance proceeds and condemnation awards in the manner provided in this Lease. In the event that the Premises, or any portion thereof, are damaged or destroyed or condemned by power of eminent domain, in whole or in part, to the extent required by the provisions of the Permitted Mortgage, the proceeds therefrom shall be held by the Permitted Mortgagee, to be applied in the case of damage or destruction pursuant to the terms of the Permitted Mortgage with any excess to be paid to Landlord and Tenant as their interests may appear and to be applied in accordance with Section 17.3 hereof in the case of condemnation.

15.7 Permitted Mortgagee. Except as otherwise approved in writing by Landlord, a Permitted Mortgage may be given only to a responsible bona fide institutional lender. For the purposes hereof, the term "institutional lender" shall mean any one of the following lending institutions: a commercial or savings bank; a state bank or national bank, a trust company; an insurance company; a savings and loan association; a building and loan association; a credit union; an investment banking firm; an educational institution; a pension, retirement or welfare fund; a charity; a real estate investment trust ("REIT") but only if the REIT is publicly traded and registered with the U.S. Securities & Exchange Commission, and the amount of the Permitted Mortgage does not exceed two percent of the value of the REIT's assets; an

endowment fund or foundation authorized to make loans in the State of California; or any other responsible financial institution.

15.8 Continuing Terms and Covenants. Except as otherwise expressly provided in this Lease or in a separate document executed by Landlord, all rights acquired by said Permitted Mortgagee under said Permitted Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder, none of which covenants, conditions and restrictions is or shall be waived by Landlord by reason of the giving of such Permitted Mortgage, except as expressly provided in this Lease or in a separate document executed by Landlord. Notwithstanding any foreclosure of any Permitted Mortgage and so long as this Lease has not been terminated, unless and until a Permitted Mortgagee takes possession of the Premises (subject to any Subleases then in existence, if applicable) and to the extent Master Tenant is receiving the revenues from the Premises, Master Tenant shall remain liable for the payment of Minimum Monthly Rent, Percentage Rent and all other payments payable pursuant to this Lease, and for the performance of all of the terms, covenants and conditions of this Lease which by the terms hereof are to be carried out and performed by Master Tenant.

15.9 Affirmation of Lease in Bankruptcy. In the event of the filing of a petition in bankruptcy by the Master Tenant, and the Master Tenant rejects this Lease under Section 365 of the Bankruptcy Code, the Landlord shall, upon the request of a Permitted Mortgagee, affirm this Lease, and the Landlord will enter into a new Lease on the same terms and conditions with the Permitted Mortgagee immediately upon Master Tenant's rejection of this Lease. In the event of the filing of a petition in bankruptcy by the Landlord, and the Landlord rejects this Lease and the Master Tenant does not affirm it, a Permitted Mortgagee will have the authority to affirm the Lease on behalf of the Master Tenant and to keep the Lease in full force and effect.

15.10 Notice Required. Master Tenant shall submit to Landlord within the times set forth in this Section 15 a written notice of its intention to enter into a Permitted Mortgage, and shall submit to Landlord such information and detail as will enable Landlord to determine the compliance of such intended Permitted Mortgage with the provisions of this Section 15 and this Lease. If Landlord has not objected to the intended Permitted Mortgage on the grounds of noncompliance with provisions of this Lease within 45 days of receipt by Landlord of such notice and information, the intended Permitted Mortgage shall be deemed to comply with the provisions of this Section 15 and this Lease and be deemed approved by Landlord, provided that in no event shall any such deemed approval act or operate to subordinate Landlord's fee title to the Property to the Permitted Mortgage. Master Tenant shall thereafter promptly submit to Landlord final documents in connection with such Permitted Mortgage upon their execution or receipt by Master Tenant, or upon the funding of the loan secured by the Permitted Mortgage, for review by Landlord for compliance with the provisions of this Section 15 and this Lease.

15.11 Landlord's Right to Cure Master Tenant's Defaults on Leasehold Mortgages. Master Tenant agrees that any Permitted Mortgage shall provide:

15.11.1 That the Permitted Mortgagee shall in writing by certified or registered mail (or recognized overnight courier service) give notice to Landlord of the occurrence of any event of default under said Permitted Mortgage; and

15.11.2 That Landlord shall be given at least 30 days' notice of default in debt service payments or any other obligation of Master Tenant under a Permitted Mortgage before such Permitted Mortgagee will initiate any mortgage foreclosure action or accelerate the indebtedness or exercise its power of sale. If any payments required to be made under the provisions of the Permitted Mortgage shall not be paid, or any other act or omission shall occur which constitutes a default under the terms of such Permitted Mortgage, Landlord may cure such default during any period that Master Tenant is in default thereunder, provided that Landlord shall comply with the provisions of Section 18 hereof calling for prior notice to Master Tenant except in cases of emergency where earlier action is required, notifying Master Tenant of Landlord's intention to cure such default on Master Tenant's behalf. Landlord shall not commence to cure such default if (a) Master Tenant shall have cured such default within said 30-day

period, or (b) except for defaults in the payment of money, Master Tenant shall have commenced to cure such default and is diligently pursuing such cure in full compliance with the terms of the Permitted Mortgage, or (c) Master Tenant shall have obtained from the Permitted Mortgagee a written extension of time in which to cure such default, together with a separate written extension of time granting Landlord reasonable additional time to cure said default if said default is not cured within said extended time, and executed copies thereof are delivered to Landlord. Any Permitted Mortgage shall further expressly provide that, in the event Master Tenant fails to cure any default thereunder, Landlord shall have a reasonable period of time (considering the nature of the default) to cure such default following the expiration of all periods (including any extensions of time and periods during which performance is waived) allowed for Master Tenant's cure of such default.

15.11.3 If Landlord shall elect to cure any default under a Permitted Mortgage, Master Tenant shall pay the costs reasonably incurred by Landlord in curing such default to Landlord, together with interest thereon at the "Reference Rate" of the Bank of America plus three percent and not to exceed the maximum rate for which the parties may lawfully contract, as Additional Rent. Master Tenant hereby authorizes Landlord, in Landlord's name, without any obligation or duty to do so, to do any act or thing required of or permitted to Master Tenant to prevent any default under said Permitted Mortgage or any acceleration thereof, or the taking of any portion of the security for the Permitted Mortgage by foreclosure or other action to enforce the collection of the indebtedness, and Master Tenant agrees to indemnify and hold Landlord harmless from any costs, damages, expenses or liabilities (including reasonable attorneys' fees) resulting from Landlord exercising its rights pursuant to this Section 15. Notwithstanding any provisions of this Lease to the contrary, if Landlord shall elect to cure any default under a Permitted Mortgage and such Permitted Mortgage is non-recourse to Master Tenant, Master Tenant shall not be obligated to reimburse Landlord for any costs incurred by Landlord, provided; however, any payments made by Landlord shall be payable to the extent Master Tenant is receiving rental payments under this Lease and such payments to Landlord shall be payable prior to any other payments.

15.12 Notice to Landlord. No Permitted Mortgagee shall have the rights or benefits mentioned in this Section 15 nor shall the provisions of this Section 15 be binding upon Landlord, unless and until the name and address of the Permitted Mortgagee shall have been delivered to Landlord, notwithstanding any other form of notice, actual or constructive.

15.13 Rights and Obligations of Permitted Mortgagees. If Master Tenant, or Master Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section 15, then, so long as any such Permitted Mortgage shall remain unsatisfied of record, the following provisions shall apply:

15.13.1 Landlord, upon serving upon Master Tenant any notice of default pursuant to the provisions of Section 18 hereof, or any other notice under the provisions of or with respect to this Lease, shall also serve a copy of such notice upon any Permitted Mortgagee at the address of such Permitted Mortgagee provided pursuant to Section 15.12 above, and no notice by Landlord to Master Tenant hereunder shall affect any rights of a Permitted Mortgagee unless and until thirty (30) days after a copy thereof has been so served to such Permitted Mortgagee. Notwithstanding any event of default by Master Tenant under this Lease, Landlord shall have no right to terminate this Lease unless Landlord shall have given the Permitted Mortgagee written notice of such default and Permitted Mortgagee shall have failed to remedy such default as provided below or acquire Master Tenant's estate created hereby or commence foreclosure or other appropriate proceedings in the nature thereof, as all set forth in, and within the time specified by this Section 15.13.

15.13.2 In case Master Tenant shall have failed to cure any default hereunder within the period provided for Master Tenant to cure such default, Landlord shall so notify any Permitted Mortgagee of such failure and any Permitted Mortgagee shall, within thirty (30) days of receipt of such notice have the right, but not the obligation, to remedy such default or cause the same to be remedied, and Landlord shall accept such performance by or at the instance of the Permitted Mortgagee as if the same had been made by Master Tenant; provided, however, that if the breach or default is with respect to the Master Tenant's Work, nothing contained in this Section or any other Section or provision of this

Lease shall be deemed to permit or authorize such Permitted Mortgagee, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the improvements beyond the extent necessary to conserve or protect the improvements or construction already made without first having expressly assumed the obligation to Landlord to complete, in the manner provided in this Lease, the improvements on the Premises or the part thereof to which the lien or title of such Permitted Mortgagee relates.

15.13.3 For the purposes of this Section 15 no event of default, other than an event of default due to a default in the payment of money, shall be deemed to exist under Section 18 hereof with respect to the performance of work required to be performed, or of acts to be done or of conditions to be remedied, if steps shall, in good faith, have been commenced by Master Tenant or a Permitted Mortgagee within the time permitted therefor to rectify the same and shall be prosecuted to completion with diligence and continuity as Section 18 hereof provides.

15.13.4 Anything herein contained to the contrary notwithstanding, upon the occurrence of an event of default, other than an event of default due to a default in the payment of money (for which the Permitted Mortgagee shall have no more than thirty (30) days following receipt of written notice from Landlord to cure such monetary default), Landlord shall take no action to effect a termination of this Lease without first giving to any Permitted Mortgagee written notice thereof and a reasonable time thereafter which shall not be less than ninety (90) days within which to either (a) obtain possession of the mortgaged property (including possession by a receiver), or (b) institute, prosecute and complete foreclosure proceedings or otherwise diligently acquire Master Tenant's interest under this Lease. A Permitted Mortgagee, upon acquiring Master Tenant's interest under this Lease, shall be required promptly to cure all defaults then reasonably susceptible to being cured by such Permitted Mortgagee; provided, however, that: (1) such Permitted Mortgagee shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults shall have been cured; (2) nothing herein contained shall preclude Landlord, subject to the provisions of this Section 15, from exercising any rights or remedies under this Lease with respect to any other default by Master Tenant (subject to Permitted Mortgagee's cure rights set forth in this Section 15), during the pendency of such foreclosure proceedings; and (3) such Permitted Mortgagee shall agree with Landlord, in writing, to comply during the period of such forbearance with such of the terms, conditions and covenants of this Lease as are reasonably susceptible to being complied with by such Permitted Mortgagee (however, consistent with the provisions of Section 15.13.10 below, the provisions of this clause (3) shall not obligate such Permitted Mortgagee to cure any defaults of the Master Tenant, or to expend any monies or to take any actions to comply with the terms, conditions or covenants of this Master Lease, prior to such Permitted Mortgagee acquiring Master Tenant's interest under this Lease). Any default by Master Tenant not reasonably susceptible to being cured by such Permitted Mortgagee, or the occurrence of any of the events specified in Section 18, shall be deemed waived by Landlord upon completion of such foreclosure proceedings or upon such acquisition of Master Tenant's interest in this Lease, except that any such events of default which are reasonably susceptible to being cured after such completion and acquisition shall then be cured with reasonable diligence. Such Permitted Mortgagee, or its designee or other purchaser in foreclosure proceedings, may become the legal owner of the leasehold estate of this Lease through such foreclosure proceedings or by assignment of this Lease in lieu of foreclosure. A Permitted Mortgagee or its designee or other party which becomes the legal owner of the leasehold estate of this Lease through foreclosure proceedings or by an assignment of this Lease in lieu of foreclosure shall be deemed by such acquisition to have assumed all of Master Tenant's rights and obligations under this Lease accruing during the period of such Permitted Mortgagee's or its designee's ownership of the leasehold estate of this Lease. If a Permitted Mortgagee is prohibited by any process or injunction, or any bankruptcy, insolvency or other judicial proceeding involving Master Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified for commencing or prosecuting such foreclosure or other proceedings in the nature thereof, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that the Permitted Mortgagee shall have fully cured any default in the monetary obligations of Master Tenant under this Lease and shall continue to pay currently such monetary obligations as and when the same fall due, and provided that the Permitted Mortgagee shall diligently attempt to remove any such prohibition.

15.13.5 In the event of the termination of this Lease prior to the natural expiration of the then current Term due to default of Master Tenant or operation of law (except by eminent domain) as provided in Section 18, including, without limitation, due to any rejection of this Lease in any bankruptcy, insolvency or other debtor relief proceeding, Landlord shall immediately serve upon the holder of the senior Permitted Mortgage written notice that the Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. The senior Permitted Mortgagee or its nominee, purchaser or assignee shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:

(a) Upon the written request of said Permitted Mortgagee, within sixty (60) days after service of such notice that the Lease has been terminated, or within sixty (60) days after the expiration of this Lease if Master Tenant was unable to renew the Term hereof, Landlord shall enter into a new lease of the Property and improvements thereon with such holder, or its designee or assignee, as follows:

(i) Such new lease shall be the same priority as this Lease, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term and at the rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and the use provisions for restaurant and food service purposes specified above. Such new lease shall require that the tenant perform any unfulfilled obligation of Master Tenant under this Lease which is reasonably susceptible to being performed by such tenant. Upon the execution of such new lease, the tenant named therein shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable counsel fees, court costs and disbursements incurred by Landlord in connection with such defaults and termination, the recovery of possession of the Property, and the preparation, execution and delivery of such new lease. Upon the execution and delivery of the new lease, title to all leasehold improvements (including, without limitation, all of the Master Tenant's Work) as well as all Master Tenant's Property, shall automatically vest in the Permitted Mortgagee or its nominee as the new Master Tenant under this Lease until the expiration of the term or sooner termination of the new lease.

(ii) Effective upon the commencement of the term of any new lease executed pursuant to this Subsection 15.13.5, all subleases then in effect shall be assigned and transferred without recourse by Landlord to the tenant under such new lease, and all monies on deposit with Landlord which Master Tenant would have been entitled to use but for the termination or expiration of this Lease may be used by the tenant under such new lease for the purposes of and in accordance with the provisions of such new lease, unless credited against expenses in accordance with Subsection 15.13.5(a)(i) above.

15.13.6 Any notice or other communication which Landlord shall desire or is required to give to or serve upon the holder of a Permitted Mortgage under this Lease shall be in writing and shall be served by certified mail, return receipt requested, addressed to such holder at the address provided for pursuant to Section 15.12 hereof, or at such other address as shall be designated by such holder in writing given to Landlord by certified mail, return receipt requested. Any notice or other communication which the holder of a Permitted Mortgage under this Lease shall desire or is required to give to or serve upon Landlord shall be deemed to have been duly given or served if (a) sent by certified mail, return receipt requested, addressed to Landlord at Landlord's address as set forth in Subsection 21.1 of this Lease or at such other addresses as shall be designated by Landlord by notice in writing given to such holder by certified mail, return receipt requested, and (b) sent by certified mail, return receipt requested, to the Landlord's other mortgages, if any.

15.13.7 Anything herein contained to the contrary notwithstanding, the provisions of this Section 15 shall inure only to the benefit of the holders of Permitted Mortgages. Neither a Permitted Mortgagee nor any other holder or owner of the indebtedness secured by a leasehold mortgage or otherwise shall be liable upon the covenants, agreements or obligations of Master Tenant contained in

this Lease, unless and until such Permitted Mortgagee or that holder or owner acquires the interest of Master Tenant.

15.13.8 During such period of time that any Permitted Mortgage is in existence, Landlord shall not agree to any mutual termination or accept any surrender of this Lease (except upon the expiration of the term of this Lease, or upon the earlier termination of this Lease (x) in connection with a casualty or condemnation in accordance with the provisions of this Lease, or (y) by reason of a default by Master Tenant that is not cured or remedied within the applicable notice and cure period set forth in this Lease in accordance with the provisions of this Lease, in either case subject to the Permitted Mortgagee's rights under this Lease, including, without limitation, the provisions of this Section 15.13), nor shall Landlord consent to any amendment or modification of this Lease, without the prior consent of a Permitted Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed and shall be given within ten (10) business days of written request therefor.

15.13.9 Landlord shall mail or deliver to Permitted Mortgagee at the address of Permitted Mortgagee provided to Landlord a duplicate copy of all notices which Landlord may from time to time give to Master Tenant pursuant to this Lease.

15.13.10 Foreclosure of a Permitted Mortgage or any sale thereunder, whether by judicial proceedings or by virtue of any power of sale contained in the Permitted Mortgage, or any conveyance of the leasehold estate created hereby from Master Tenant to Permitted Mortgagee by virtue or in lieu of foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease. Upon such foreclosure, sale or conveyance, Landlord shall recognize the Permitted Mortgagee, or any other foreclosure sale purchaser, as Master Tenant hereunder and such party shall attorn to Landlord, be subject to the provisions regarding assignment set forth in Section 15.14 below and shall fully perform Master Tenant's obligations hereunder. The preceding to the contrary notwithstanding, a Permitted Mortgagee shall have no liability for Master Tenant's obligations under this Lease unless and until it becomes the Master Tenant under this Lease by means of foreclosure or deed in lieu thereof or pursuant to any new lease obtained pursuant to the terms above, and thereafter the Permitted Mortgagee or its successor or assign or designee shall be liable under this Lease or such new lease only for the period of time that such Permitted Mortgagee or its successor, assign or designee remains tenant hereunder or thereunder. Nothing herein shall be construed to obligate any Permitted Mortgagee to remedy any default of Master Tenant, and any failure of a Permitted Mortgagee to complete any such cure after commencing the same shall not give rise to any liability of the Permitted Mortgagee to Landlord or Master Tenant.

15.14 Assignment by Mortgagee. If any Permitted Mortgagee shall acquire title to Master Tenant's interest in this Lease by foreclosure of a mortgage thereon, or by assignment in lieu of foreclosure or by an assignment from a designee or wholly-owned subsidiary corporation of such mortgagee, or under a new lease pursuant to this Section 15, such Permitted Mortgagee or its successor, assign or designee may assign such lease and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such lease contained on Master Tenant's part to be performed and observed from and after the date of such assignment, provided that Landlord shall receive an executed counterpart copy of such assignment, together with the name and address of the assignee.

SECTION 16. DAMAGE TO PREMISES.

16.1 Landlord's Obligation to Repair. If subsequent to completion of Master Tenant's Work, a material part of the Premises provided by Landlord in Exhibit A, shall, by reason of fire, earthquake, the elements, acts of God or other unavoidable casualty, be destroyed or so damaged as to become unusable in whole or in part and the damage can, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, Landlord shall promptly and diligently repair the damage (subject to the limitations set forth in Section 20.2) and this Lease shall remain in full force and effect. If a material part of the Premises provided by Landlord in Exhibit A, are damaged, and the

damage cannot, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, this Lease may be terminated by Landlord by written notice given to Master Tenant within thirty (30) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty.

16.2 Election to Terminate. If subsequent to completion of Master Tenant's Improvements a material part of the Premises provided by Landlord in Exhibit A, are damaged, and the damage cannot, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, and Landlord has not terminated this Lease pursuant to Subsection 16.1 above, then this Lease may be terminated by Master Tenant by written notice given to Landlord within sixty (60) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty. If Master Tenant does not make the foregoing election within the required period and Landlord has not terminated the Lease, then Landlord shall promptly and diligently repair the damage and this Lease shall remain in full force and effect (subject to the provisions of Subsection 16.3 below regarding completion of Landlord's repairs). If Landlord is required or elects to repair the Premises under the provisions of Subsection 16.1 and fails to complete such repair within 365 days after the casualty described in Subsection 16.1 above (or at least to complete such repair, within such 365 day period, to the extent that permits substantial resumption of Master Tenant's business (and the businesses of the Subtenants in existence as of the date of the damage or destruction) in the Premises, provided that Landlord thereafter continuously and diligently pursues any remaining required repairs to completion), then thereafter Master Tenant, at Master Tenant's option, may terminate this Lease by giving Landlord written notice of Master Tenant's election to do so at any time prior to the substantial completion of such repair. In such event this Lease shall terminate as of the date of Master Tenant's notice.

16.3 Abatement of Rent. If a material part of the Premises provided by Landlord in Exhibit A is damaged, and Landlord is required or elects to repair them pursuant to the provisions of Subsection 16.1, the Minimum Monthly Rent and Percentage Rent payable pursuant to Section 4 shall be abated from the date of the casualty until such Premises is sufficiently restored to allow Master Tenant to occupy the Premises and operate within the same manner as existed immediately prior to such damage or destruction. If, however, Master Tenant is able to occupy and operate its business within a portion of the Premises, Minimum Monthly Rent or Percentage Rent shall be abated only for the portion of the Premises that Master Tenant cannot occupy and operate within in the same manner as existed immediately prior to such damage or destruction. Such partial abatement shall be calculated on a square foot basis. The abatement of Minimum Monthly Rent and Percentage Rent (and Master Tenant's right to terminate this Lease as provided in Subsection 16.2 above, shall be Master Tenant's sole remedies due to the occurrence of the casualty. Landlord shall not be liable to Master Tenant or any other person or entity for any direct, indirect or consequential damage due to or arising from the casualty.

16.4 Application of Insurance Proceeds. If any part of the Master Tenant's Work or any other leasehold improvements constructed by or on behalf of Master Tenant is damaged or destroyed, and at the time of such damage or destruction, the leasehold interest of the Master Tenant hereunder, or applicable portion thereof, was encumbered by a Permitted Mortgage, then the proceeds of insurance allocable to such Master Tenant's Work or other leasehold improvements constructed by or on behalf of Master Tenant first shall be applied to pay off or pay down the loan encumbered by the Permitted Mortgage unless the applicable Permitted Mortgagee allows such insurance proceeds to be used to restore such Master Tenant's Work or other leasehold improvements.

SECTION 17. CONDEMNATION.

17.1 Total Condemnation. If, during the term of this Lease, the whole of the Premises shall be taken pursuant to any condemnation proceeding or a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is not suitable for the purposes for which Master Tenant was using the Premises prior to the taking, then this Lease shall terminate as of the date that actual physical possession of the Premises is taken, and after that date, both Landlord and Master Tenant shall be released from any future obligations arising under this Lease.

17.2 Partial Condemnation. If, during the term of this Lease, only a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is suitable for the purposes for which Master Tenant was using the Premises prior to the taking in the sole discretion of Master Tenant, then this Lease shall, as to the part so taken, terminate as of the date that actual physical possession of such portion of the Premises is taken, and after that date, both Landlord and Master Tenant shall be released from any future obligations under this Lease with respect to such portion of the Premises taken.

17.3 Condemnation Award. If the whole or any part of the Premises are taken pursuant to any condemnation proceeding, then Landlord shall be entitled to the entirety of any condemnation award except that portion allocable to the value of Master Tenant's leasehold interest of the unexpired term of this Lease, any Master Tenant's Property, Subtenant's Personal Property and/or any unsalvageable trade fixtures or furnishings owned by Master Tenant, any amounts specifically awarded or agreed upon by the Master Tenant and the condemning authority for the unamortized portion of Master Tenant's leasehold improvements and each Subtenant's leasehold improvements shall be the property of Master Tenant (except that the portion of the condemnation award allocable to each Subtenant's Personal Property and each Subtenant's leasehold improvements shall be awarded to Master Tenant or the applicable Subtenant(s), as their interests may appear, or as provided in the applicable Sublease) ("Master Tenant's Award"). The foregoing notwithstanding, if the whole or a portion of the Premises shall be taken pursuant to any condemnation proceeding and at that time the leasehold interest of the Master Tenant, or applicable portion thereof, was encumbered by a Permitted Mortgage, then Master Tenant's Award first shall be applied to pay off or pay down the loan encumbered by the Permitted Mortgage. Master Tenant shall require in any sublease of the Premises, that any Subtenant waive any and all rights against any public entity and/or the Landlord for any portion of the condemnation award relating to the Subtenant(s) value of the leasehold interest of any unexpired term.

17.4 Effect of Termination. In the event this Lease is canceled or terminated pursuant to any of the provisions of this Section 17 all rentals and other charges payable on the part of Master Tenant to Landlord hereunder shall be paid either as of the date upon which actual physical possession shall be taken by the condemner, or as of the date upon which Master Tenant ceases doing business in, upon or from the Premises, whichever first occurs; and the parties shall thereupon be released from all further liability hereunder, except for any liability arising prior to the date upon which actual physical possession shall be taken by the condemner.

SECTION 18. DEFAULT, REMEDIES, AND TERMINATION.

18.1 Master Tenant's Default. If: (i) Master Tenant shall fail to comply with any of the provisions herein providing for the construction of the Master Tenant's Work, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless Master Tenant shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity; or (ii) Master Tenant shall fail to pay any rent or other monies due under this Lease after the same are due, and such failure shall continue for ten (10) days after receipt of written notice thereof to Master Tenant, or (iii) Master Tenant shall fail to perform any other term, covenant, or condition herein contained, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless Master Tenant shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity and further, where possession of the Premises or portion thereof is necessary to cure a default under this Lease, Master Tenant will not be considered to be in default under this Lease as a result of a breach by a Subtenant under its sublease so long as Master Tenant has sent notice of default to, and commenced legal action against the Subtenant and is diligently and continuously pursuing an unlawful detainer action or other legal proceedings required to regain possession of the Premises or portion thereof from such Subtenant, or (iv) the Master Tenant's interest herein or any part thereof be assigned or transferred, either voluntarily or by operation of law, except pursuant to a Permitted Transfer or Section 14.2 or Section 15, whether by judgment, execution, death or any other means, or (v) the Master Tenant shall file any petition or institute any proceedings under any bankruptcy act, state or federal, or if such petition or proceeding be filed or be instituted or taken against the Master Tenant and such petition remains undischarged for a period of 90 days; or if any receiver of the business or of the property or assets of Master Tenant shall be appointed by any court (except a

receiver appointed at the instance or request of the Landlord) and Master Tenant fails to obtain dissolution of the receiver within 90 days after appointment of the receiver; or (vi) Master Tenant shall make a general or any assignment for the benefit of its creditors; or (vii) Master Tenant shall abandon (other than a temporary cessation of operations in connection with renovations of the Premises to which Master Tenant has obtained Landlord's approval, if applicable, as required by the terms hereof) the Premises; or (viii) Master Tenant has made any written or oral representation to the Landlord in connection with this Lease that Master Tenant knows was false in any material respect as of the date made or submitted, Master Tenant knew or should have known that the Landlord would rely on such false representation, and the Landlord relies on such false representation to its detriment in any material respect, then in any of such events Landlord shall have the following options, subject to the provisions of Section 15:

18.1.1 To collect, by suit or otherwise, each installment of rent or other sum as it becomes due hereunder, or to enforce by suit or otherwise, any other term or provision hereof on the part of Master Tenant required to be kept or performed; and/or

18.1.2 To reenter the Premises, remove all persons therefrom, take possession of the Premises and of all equipment, fixtures and personal property thereon or therein, and either with or without terminating this Lease to make commercially reasonable efforts to relet the Premises or any portion thereof (but nothing contained herein shall be construed as obligating Landlord to relet the whole or any portion of the Premises) for such term or terms (which may be for a term extending beyond the term of the Lease) and at such reasonable rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable. In addition to the foregoing, Landlord shall have the right, but not the obligation to, make such alterations and repairs to the Premises, or to divide or subdivide the Premises, as may be required or occasioned by any such reletting. Provided, however, Landlord's right to make alterations, repairs or improvements to the Premises after Master Tenant's default shall be limited to those alterations, repairs, and/or improvements necessary for the purpose of reletting the Premises. In the event Landlord relets the Premises, or any portion thereof, it shall execute any such lease in its own name, but the Master Tenant in such lease of reletting shall be under no obligation whatsoever to see to the application by Landlord of any rent collected by Landlord for the account of Master Tenant, nor shall Master Tenant hereunder have any right or authority whatsoever to collect any rent as the Master Tenant in the lease of reletting. Upon any such reletting, the rents received on any such reletting shall be applied first to the expenses of reletting and collecting, including necessary renovations and alterations of the Premises and reasonable attorneys' fees and any real estate commissions actually paid, and thereafter toward payment of all sums due or to become due to Landlord hereunder; if a sufficient sum shall not be thus realized to pay such rent and other charges, Master Tenant shall pay to Landlord monthly any deficiency, and Landlord may sue therefor as each such deficiency shall arise, but if the Premises are relet for an amount in excess of that necessary to pay such rent and other charges, Master Tenant shall not be entitled to any such excess; and/or

18.1.3 To terminate this Lease, in which event Master Tenant agrees immediately to surrender possession of the Premises and to pay to the Landlord as the amount of damage sustained by Landlord by reason of Master Tenant's breach of this Lease, the following:

(a) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Master Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Master Tenant proves could be reasonably avoided.

As used in Sections 18.1.3(a) and 18.1.3(a) above, the term "worth at the time of

award" is computed by allowing interest from the date such amount becomes due and payable at one percent (1%) per annum above the rate which the Bank of America announces publicly at its San Francisco or Los Angeles executive offices as its "Reference Rate" for unsecured commercial loans.

As used in Section 18.1.3(b) above, the term "worth at the time of the award" is computed by discounting the amount determined pursuant to Section 18.1.3(b) at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

18.1.4 Pursuant to its rights of re-entry, Landlord may remove all persons from the Premises (but not any Subtenants to which Landlord is obligated to attorn) using such force as may be reasonably necessary therefor and may, but shall not be obligated to, remove all property therefrom, including, but not limited to, Master Tenant's property (but not any Subtenant's Personal Property), and may, but shall not be obligated to, enforce any rights Landlord may have against said property, or store the same in any public or private warehouse or elsewhere at the cost and for the account of Master Tenant or the owners or owner thereof, or to treat all or portions of said property as having no value and to dispose of said property accordingly. Anything contained herein to the contrary notwithstanding, Landlord shall not be deemed to have terminated this Lease or the liability of Master Tenant to pay any rent or other sum of money thereafter to accrue hereunder, or Master Tenant's liability for damages under any of the provisions hereof, by any such re-entry, or by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless Landlord shall have notified Master Tenant in writing that Landlord has so elected to terminate this Lease. Master Tenant covenants and agrees that the service by Landlord of any notice in unlawful detainer and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of, or at any time subsequent to, the service of such notice, and Landlord's election be evidenced by written notice thereof to Master Tenant) be deemed to be a termination of this Lease, or the termination of any liability of Master Tenant hereunder to Landlord.

18.2 Landlord's Default. If Landlord fails to comply with or defaults in the performance of any provision of the Lease, Master Tenant shall have the right (but not the obligation) in addition to any and all other rights and remedies available to Master Tenant at law or in equity, to cure such nonconformance or default on behalf of Landlord, upon 30 days prior written notice to Landlord and to any mortgagee of Landlord, if the name and address of such mortgagee has been previously provided to Master Tenant by Landlord, except in an emergency, Master Tenant may cure such nonconformance or default without such written notice so long as Master Tenant makes reasonable efforts to notify Landlord of such emergency. Upon receipt from Master Tenant of notice of such cure and demand for payment, Landlord shall repay any expenditure made by Master Tenant within 30 days of written request therefor. If Landlord fails to make such repayment within such 30 day period, then, anything herein to the contrary notwithstanding, Master Tenant may offset the amount owed it by Landlord pursuant to this Section 18.2 against the Minimum Monthly Rent and/or Percentage Rent payable by Master Tenant to Landlord hereunder until fully offset.

SECTION 19. TOWN REQUIREMENTS.

19.1 Non-discrimination. Master Tenant shall not restrict the rental, use, occupancy, tenure, or enjoyment of the Premises or any portion thereof, on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin of any person. During the term hereof, any contracts or subleases relating to the construction, use or occupancy of the Premises or any portion thereof, shall contain or be subject to substantially the following nondiscrimination and nonsegregation clauses:

"There shall be no discrimination against or segregation of, any person, or group of persons, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee, himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, or vendees of the land."

19.2 Enforcement of Town Requirements. In enforcing Section 19.1, Landlord may require Master Tenant to terminate the sublease of any Subtenant that fails to comply with that Section. Failure of Master Tenant to commence actions to terminate the subleases of noncomplying Subtenants within 90 days of notice from Landlord shall constitute an event of default by the Master Tenant.

SECTION 20. COMPLIANCE WITH LAW.

20.1 General. During the Lease term, Master Tenant, at its sole cost and expense, shall comply promptly with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances ("Laws") pertaining to Master Tenant's use of the Premises or the improvements thereon, including those which require the making of any structural, unforeseen or extraordinary changes to the Premises, whether or not any such Laws which may be hereafter enacted were within the contemplation of the parties at the time of execution of this Lease, or involve a change of policy on the part of the governmental body enacting the same. In connection with the foregoing, Master Tenant acknowledges that Landlord, acting not as Landlord but in its governmental capacity, has certain governmental regulatory authority over the Premises and agrees that "Law" as defined herein includes any legal requirement imposed by Landlord acting not as Landlord but in its capacity as a governmental regulatory body.

20.2 Regulations Requiring Modifications to Premises. If, under its regulatory authority, Town adopts new laws, rules or ordinances that are generally applicable to commercial buildings and which require upgrades, changes, or modifications to the Premises in order to comply with such Town-adopted laws, rules, or regulations, then the cost or expense of compliance shall be as follows:

(a) Town shall bear the cost or expense of compliance to the extent that such laws, rules or regulations require modifications to the structure or shell of the Premises in the condition delivered to Master Tenant in Exhibit A.

(b) During the first ten years following the Rent Commencement Date, Master Tenant shall bear the cost or expense of compliance to the extent that such new laws, rules, or regulations require modifications to Master Tenant's Work and any subsequent alterations thereto. After the tenth year following the Rent Commencement Date, Landlord and Master Tenant shall split equally all such costs.

SECTION 21. GENERAL PROVISIONS.

21.1 Notices, Demands, and Communications Between the Parties. All notices and other communications required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, by facsimile transmission with verification of receipt, by email, by overnight courier service, or by United States mail, postage prepaid and return receipt requested, addressed to the respective parties as follows:

Town:

Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
Attention: Town Manager

Email: manager@losgatosca.gov

With copy to:

Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
Attention: Town Attorney
Email: attorney@losgatosca.gov

To Tenant:

Forbes Mill, LLC

223 West Main Street Suite B
Los Gatos CA 95030
Attn: Donald Imwalle, Jr.
Email: don@imwalledev.com
CC: jimfoley@pennantproperties.com
Jason@farwellrashkis.com

or to such other address as any party may designate by notice in accordance with this Section.

A copy of any notice of a legal nature, including, but not limited to, any claims against Town, its officers or employees shall also be served in the manner specified above to the following address:

Town of Los Gatos
Town Attorney's Office
110 E. Main Street
Los Gatos, CA 95030

Notice shall be deemed effective on the date of personal delivery by hand or the date of receipt of facsimile transmission (with verification of receipt) or email, or if sent by overnight courier service, then one business day after delivery of such notice to such courier service or, if mailed, three days after deposit in the mail.

21.2 Warranty Against Payment of Consideration for Agreement. Master Tenant warrants that it has not paid or given, and will not pay or give, any third party (other than Colliers International who introduced Landlord and Master Tenant to one another) any money or other consideration for obtaining this Agreement.

21.3 Non-liability of Town Officials and Employees. No member, official, or employee of the Town shall be personally liable to Master Tenant or any successor in interest of Master Tenant, in the event of any default or breach by the Town or for any amount which may become due to Master Tenant or to its successor, or on any obligations under the terms of this Agreement.

21.4 Enforced Delay; Extension of Time of Performance. The specific provisions of this Agreement to the contrary notwithstanding, except for payment of any monetary payments required under this Agreement, neither party shall be in default under this Agreement if an obligation to perform is delayed due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; inability to obtain or delay in obtaining materials due to lack of supply; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or enjoining to the performance of the terms of this Agreement. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within ten days of the

commencement of the cause. The foregoing notwithstanding, the total time period excused under this Section shall not exceed two years.

21.5 Approvals and Town Manager's Authority. Approvals required of the Town (except for approvals expressly identified herein as being in the sole discretion of the Town) or Master Tenant shall not be unreasonably withheld, and approval or disapproval shall be given within a reasonable time. The Town Manager or his/her designee shall have the authority to act on behalf of the Town with regard to any and all actions required of the Town under this Lease. Such actions include but are not limited to the issuance of approvals and disapprovals and execution of all documents, including minor amendments to this Lease.

21.6 Holding Over. If Master Tenant shall hold over the term of this Lease, without Landlord's prior written consent, such holding over shall be construed as a tenancy from month to month, on the same terms and conditions as this Lease, and at 150% of the Minimum Monthly Rent or the monthly Percentage Rent, whichever is higher, in effect during the final full calendar of the term of this Lease.

21.7 Time of the Essence. Time is of the essence hereof, and waiver by the Landlord or Master Tenant of a breach of any term, covenant or condition herein contained, whether express or implied, shall not constitute a waiver of any subsequent breach thereof, or a breach of any other term, covenant, or condition herein contained, and acceptance of rent hereunder shall not be a waiver of any breach, except a breach of covenant to pay the rent so accepted. No acceptance by Landlord of any partial payment of any sum due hereunder shall be deemed an accord and satisfaction or otherwise bar Landlord from recovering the full amount due, even if such payment is designated "payment in full," bears any restrictive endorsement, or is otherwise conditionally tendered. The times for Master Tenant's performance of any obligations set forth in this Lease and the Exhibits may be extended by the Landlord's Town Manager, if he finds, at his sole discretion, that Master Tenant has been delayed for reasons not in Master Tenant's control. Any such extension shall be in writing.

21.8 Successors and Assigns. Subject to the provisions of Section 14 hereof, this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of the parties hereto.

21.9 Landlord's Access. Landlord and its agents shall have the right, subject to the rights of the Subtenants then in effect, to enter the Premises upon 72 hours prior written notice for the purpose of inspecting the same, and making such alterations, repairs, improvements or additions to the Premises as are deemed necessary or desirable consistent with this Lease. Notwithstanding the foregoing, in the event of an emergency requiring Landlord's entry into the Premises, Landlord may give Master Tenant shorter notice in any manner that is practicable under the circumstances. When entering or performing any repair or other work in the Premises, Landlord, its agents, employees and/or contractors (a) shall identify themselves to Master Tenant's personnel immediately upon entering the Premises, and (b) shall not, in any way, materially or unreasonably affect, interrupt or interfere with Master Tenant's (or any of its Subtenants') use, business or operations on the Premises or obstruct the visibility of or access to the Premises.

21.10 Legal Relationship. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Master Tenant. Landlord and Master Tenant expressly agree that neither the method of computation of rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Master Tenant other than the relationship of Landlord and Master Tenant.

21.11 Consents. Whenever the right of approval or consent is given to a party pursuant to this Lease, the party shall not unreasonably withhold, condition or delay its consent unless this Lease expressly provides otherwise. All approvals and reviews required of Landlord under this Lease may be undertaken and/or given by Landlord's Town Manager.

21.12 General. The terms "Landlord" and "Master Tenant" herein or any pronouns used in place thereof shall mean and include the masculine or feminine, the singular or plural number, and jointly and severally individuals, firms or corporations, and each of their respective heirs, executors, administrators, successors and permitted assigns, according to the context hereof. The headings of Sections herein are inserted only for convenience and reference and shall in no way define or limit the scope or intent of any provisions of this Lease. This Lease shall be construed under the laws of the State of California, and venue shall be in the applicable courts located in Santa Clara County, California.

21.13 Quiet Enjoyment. Upon payment of the rent as aforesaid and upon the observance and performance by Master Tenant of all of the terms and provisions to be observed by Master Tenant under this Lease, Master Tenant shall peaceably hold and enjoy the Premises for the term hereof without hindrance or interruption by Landlord or any other person, except as herein expressly provided.

21.14 Regulatory Authority. Master Tenant acknowledges that, at any time when the Town is the Landlord hereunder, Landlord shall have certain governmental regulatory authority over the Premises. Master Tenant agrees and expressly acknowledges that any approval or consent required or permitted hereunder by the Town, acting in its capacity as Landlord under this Lease, (1) is distinct from any approval or consent of such entity acting in the capacity of governmental regulatory authority, whether or not related to the same matter, and (2) shall not compromise, diminish or in any way limit the authority of such entity to give, deny or condition its approval or consent when acting as a governmental regulatory authority.

21.15 Costs and Expenses. Whenever this Lease provides that either party shall be entitled to recover fees, costs or expenses from the other, such fees, costs or expenses shall be reasonable in nature.

21.16 Entire Agreement. This Lease and the exhibits attached hereto (which are incorporated herein by this reference) represent the entire agreement between the parties concerning the subject matter hereof and supersede any prior written or verbal agreements or understandings with respect thereto.

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

21.18 Joint and Several. If Master Tenant is more than one party, then the parties and entities who comprise Master Tenant under this Agreement from time to time, are jointly and severally liable to the Town for the performance of all of the promises and obligations of Master Tenant under this Agreement. In the event of any default by Master Tenant hereunder, the Town may proceed against any one or more of the aforementioned parties who comprise Master Tenant without waiving its rights to proceed against any of the others.

21.19 Memorandum of Agreement. The parties hereto shall execute, acknowledge and record the Memorandum of Agreement, in the form attached hereto as Exhibit D, within ten days after the Rent Commencement Date.

21.20 CASp Inspection. Pursuant to California Civil Code Section 1938, Landlord hereby discloses, and Tenant hereby acknowledges, that the Premises has not been inspected by a Certified Access Specialist ("CASp"). California Civil Code Section 1938 also requires that this Lease contain the following statement:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction related accessibility standards under

state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs to correct violations of the construction related accessibility standards within the premises."

In accordance with the foregoing, Master Tenant, upon at least thirty (30) days' prior written notice to Landlord, shall have the right to require a CASp inspection of the Premises. If Master Tenant requires a CASp inspection of the Premises, then: (i) Landlord and Tenant shall mutually agree on the arrangements for the time and manner of the CASp inspection during such thirty (30) day period; (ii) Master Tenant shall be solely responsible to pay the cost of the CASp inspection as and when required by the CASp. It is understood by the parties that Landlord shall not be required to perform, or cause to be performed, any and all repairs needed to correct violations of the construction related accessibility standards within or relating to the Premises and Master Tenant can terminate this lease if it is determined, by Master Tenant that any repairs to correct violations would be too costly. .

21.21 First Right of Refusal. If Landlord receives from a third party a bona fide offer to purchase the Premises, before Landlord may accept such an offer, Landlord must first give written notice to Master Tenant of said offer. Master Tenant shall have thirty (30) days from the date of receipt of said offer, to provide Landlord with written acceptance of the offer, upon the same terms and conditions as set forth therein (but in addition thereto, such sale shall include all rights of Landlord in and to this Lease). If Master Tenant accepts said offer, closing shall take place within sixty (60) days from the date of acceptance. Master Tenant may elect to assign Master Tenant's rights to purchase the Premises to the parent of or a subsidiary of the Master Tenant, or other entity wholly owned by Master Tenant or its Managing Member. If Master Tenant fails to accept said offer within the thirty (30) days provided herein, Landlord may proceed to sell to said third party in accordance with the terms of the offer. If Landlord has not consummated a sale within one hundred eighty (180) days after the expiration of Master Tenant's option rights hereunder, the restrictions and options herein provided shall be restored and shall continue in full force and effect, and so long as these restrictions and options remain in effect the Landlord shall not thereafter sell or transfer the Premises without first giving Master Tenant notice as herein provided and otherwise complying with the foregoing provisions.

21.22 Force Majeure. This Lease and the obligations of the parties hereunder shall not be affected or impaired because a party is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, epidemics, or any other cause beyond the reasonable control of such party. If Tenant is required to stop construction or is compelled to close its business or cease its business activities pursuant to a government order, recommendation or epidemic (or due to unavailability of labor or materials related to such epidemic), then Tenant shall not be required to pay Base Rent for the period of such closure; provided, however, that the Term of the Lease shall be extended by the number of days or months that Tenant's business is ordered closed and during such extended period Tenant's obligation to pay Base Rent shall continue (such Base Rent being suspended, such that Tenant receives the benefit of any rental abatement). If Tenant's occupancy is reduced by a government order then, for such period that Tenant's occupancy is reduced, the Base Rent shall be reduced pro rata. By way of example, if Tenant is required to limit occupancy to twenty-five percent (25%) pursuant to a government order then, for the period of time that such occupancy is limited to 25%, the Base Rent shall be reduced to 25%. As a condition precedent to availing itself of either a full or partial rental abatement as provided in this Section 21.22, Tenant must provide reasonable evidence to Landlord that Tenant has tendered a claim under all applicable insurance policies that Tenant is required to carry pursuant to Section 9 of this Lease and has pursued any and all state and federal financial assistance offered in response or relation to a government-imposed order to close or reduce occupancy, when and if such assistance is available. If Tenant receives any insurance proceeds or other financial assistance specified to cover any portion of its Base Rent or other monetary obligations under this Lease owed to Landlord (the "Rental Compensation"), then such Rental Compensation shall reduce any full or partial rental abatement that would otherwise be available to Tenant pursuant to this Section 21.22 in the amount of the Rental Compensation (provided that if the Rental Compensation

covers rent and other costs, Tenant may first apply the monies to other costs, and the balance to Base Rent, and the abated rent shall be reduced by the portion of the Rental Compensation attributable to Base Rent).

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

LANDLORD:

THE TOWN OF LOS GATOS

DocuSigned by:
By: Laurel Prevetti
Laurel Prevetti
Town Manager

Approved as to form:

DocuSigned by:
Robert W. Schultz
Town Attorney
Robert W. Schultz

Attest:

DocuSigned by:
Shelley Neis
Town Clerk
Shelley Neis

MASTER TENANT:

Forbes Mill, LLC,
a California Limited Liability Company

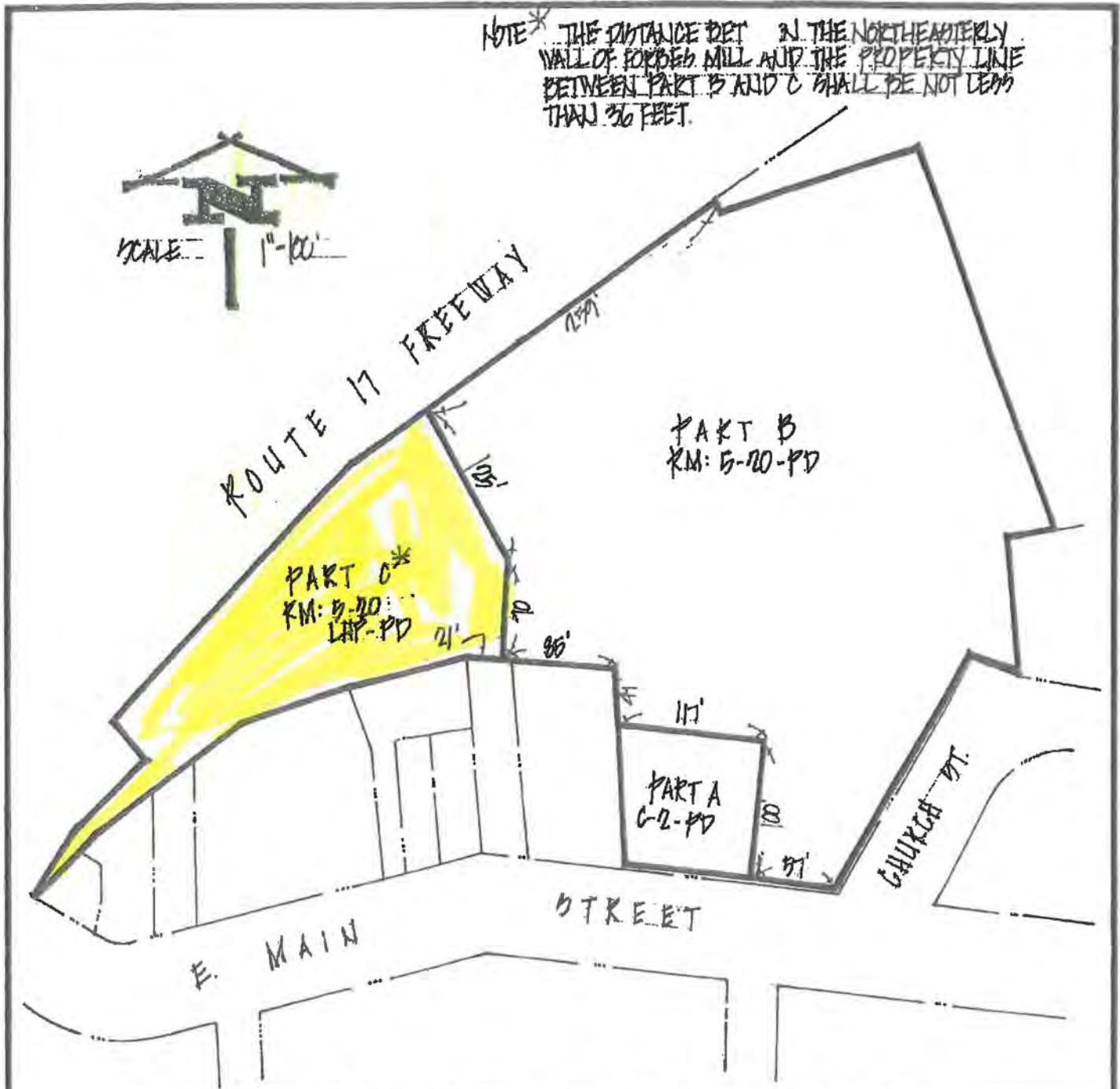
By: Imwalle Asset Management, LLC
a California Limited Liability Company

DocuSigned by:
By: Donald Imwalle
Don Imwalle, Jr., Managing Member

Exhibit A

Description and Site Plan Showing Location of Premises

(NEXT PAGE)



TOWN OF LOS GATOS

Application No. Z-78-6

Amending

Change of zoning map

Town Zoning Ordinance

☒ Zone Change

☐ Prezoning

from C-2 & RM: 5-20 & RM: 5-20 LHP to C-2 PD & RM: 5-20-PD & RM: 5-20-LHP-PD

Approved by Planning Commission

date _____

Approved by Town Council

date

March 19, 1979. Ord. 1421

Town Clerk Karl E. Alday

Mayor John B. Lechner

EXHIBIT A

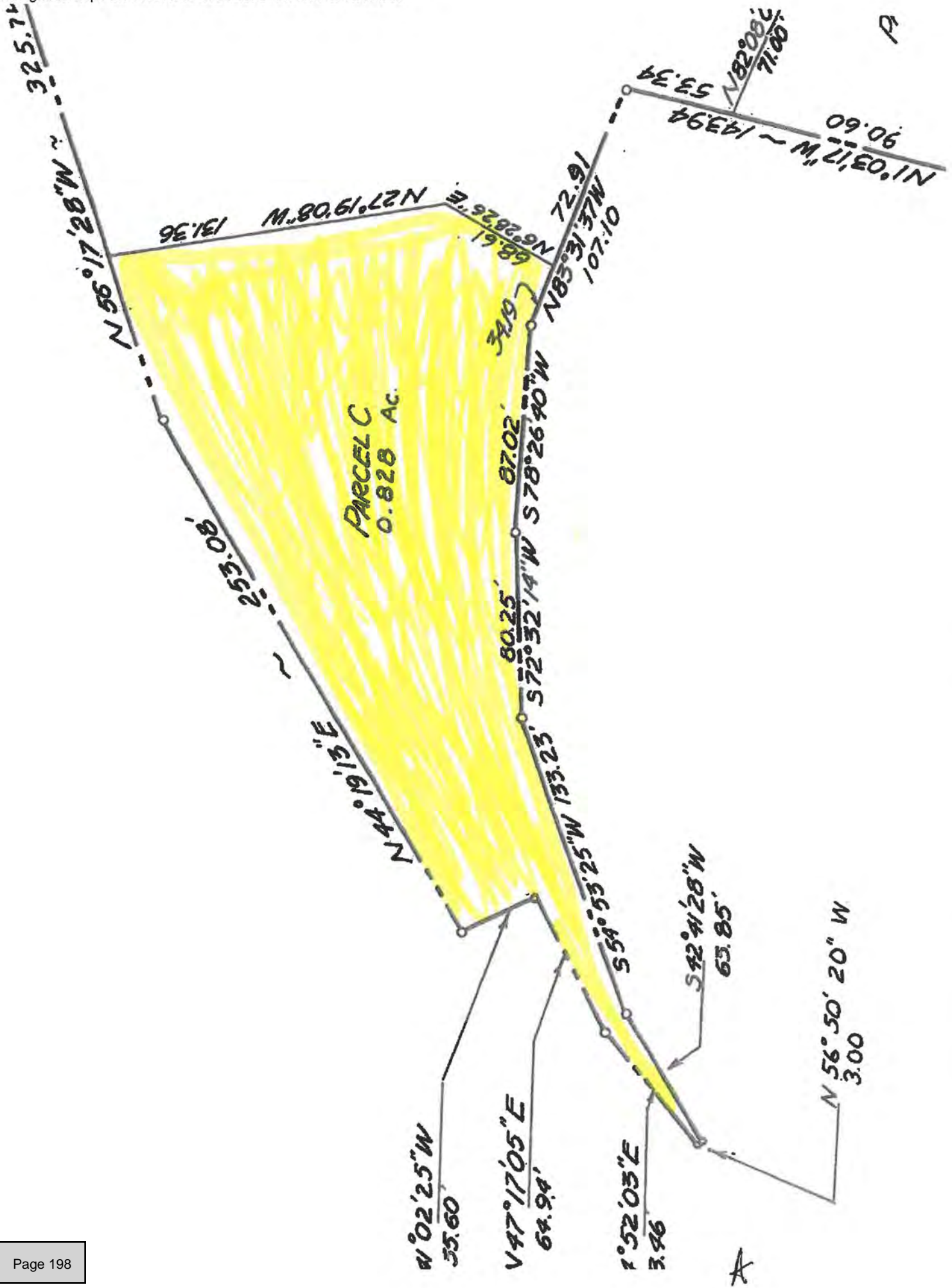


Exhibit B

Form of Notice of Lease Term Dates

[On Town Letterhead]

[Date]

Forbes Mill, LLC
223 West Main Street Suite B
Los Gatos, CA 95030
Attn: Donald Imwalle, Jr.
Email: don@imwalledev.com
CC: jimfoley@pennantproperties.com
Jason@farwellrashkis.com
Re: Master Lease – 75 Church Street, Los Gatos, CA 95030

Dear Mr. Imwalle:

In accordance with that certain Master Lease dated _____, 2020, by and between the Town of Los Gatos and Forbes Mill, LLC for the above referenced property, this letter is to confirm that the Rent Commencement Date as defined in Section 1.11 of the Master Lease is [insert date]. Please countersign this letter in the space below to acknowledge your agreement.

Please don't hesitate to contact me should you have any questions.

Sincerely yours,

_____, Town Manager

Acknowledged and Agreed this _____ day of _____, 202____,
on behalf of

Forbes Mill, LLC,
a California Limited Liability Company

By: Imwalle Asset Management, LLC
a California Limited Liability Company

By: _____
Don Imwalle, Jr., Managing Member

Exhibit C

Insurance Requirements for Master Tenant and Subtenants

Master Tenant is required to procure and provide proof of the insurance coverage required by Master Tenant as outlined in this Exhibit in the form of certificates and endorsements. Master Tenant shall obtain and maintain insurance against claims which may arise from or in connection with the activities of Master Tenant and its Subtenants, including agents, invitees, employees, and contractors of Master Tenant and its Subtenants, and must remain in full force and effect at all times during the period covered by the Lease Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. If Master Tenant fails to provide any of the required coverage in full compliance with the requirements set forth herein, Town may, at its sole discretion, terminate the Lease for default. Master Tenant further understands that the Town reserves the right to reasonably modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Master Tenant, at any time as deemed necessary to protect the interests of the Town.

(A) **Insurance Types and Limits.** The following insurance types and limits are required unless otherwise specified in the Lease Agreement:

- (1) **Commercial General Liability Insurance ("CGL"):** Master Tenant shall maintain CGL and shall include coverage for liability arising from Master Tenant and its Subtenants, including invitees, employees, agents, or contractors of Master Tenant and its Subtenants, against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least One Million Dollars (\$1,000,000.00) for property damage.
 - i. **Liquor Liability:** Master Tenant shall maintain Liquor Liability, either under its CGL policy or as a separate policy, providing protection in the minimum amount of One Million Dollars (\$1,000,000.00) each claim.
- (2) **Workers' Compensation Insurance and Employer's Liability:** Master Tenant shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of One Million Dollars (\$1,000,000.00) for any one accident or occurrence. If Master Tenant is self-insured, Master Tenant must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- (3) **Automobile Liability:** Master Tenant shall maintain Automobile Liability covering all owned, non-owned and hired automobiles, against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least One Million Dollars (\$1,000,000.00) for property damage.
- (4) **Property:** Master Tenant shall maintain All Risk Property coverage for the appropriate limit to cover all personal property of Master Tenant, in, on, or about the Premises, covering the full replacement cost of such personal property to include furniture, installed fixtures, improvements, equipment, inventory and any other personal property of the Master Tenant. Master Tenant, and not any of the Subtenants, also shall maintain All Risk Property coverage for the full replacement cost of the Master Tenant's Work.

- i. **Business Interruption:** Master Tenant shall maintain adequate protection against business interruption and loss of income, either as part of a comprehensive Business Owner's Policy or under its Property Insurance.

(B) **Required Endorsements.** Master Tenant shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) ALL Policies:

"Waiver of Subrogation" - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against the Town of Los Gatos and the Town's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) General Liability:

- a. "Additionally Insured" - The Town of Los Gatos, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;
- b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing;
- c. "Separation of Insureds" - The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(C) **Subtenants.** Master Tenant must ensure that each Subtenant is required to maintain the equal or greater insurance coverages required in this Exhibit, including those requirements related to the additional insureds and waiver of subrogation. However, Subtenants which do not engage in the sale and/or serving of alcohol in, on, or about the Premises, are not required to maintain Liquor Liability. Also, Subtenants shall not be obligated to insure the Master Tenant's Work.

(D) **Qualification of Insurers.** All insurance required pursuant to this Lease Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A-" or better and a financial size rating of "VII" or better.

(E) **Certificates.** Master Tenant shall furnish the Town with copies of all policies or certificates maintained by Master Tenant as outlined herein, whether new or modified, promptly upon receipt. Further, upon request by the Town, Master Tenant shall furnish the Town with copies of all policies or certificates maintained by Subtenants as outlined herein, whether new or modified. No policy subject to the Master Tenant's Lease with the Town shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to Town, unless due to non-payment of premiums, in which case ten (10) days written notice must be made to Town. Certificates, including renewal certificates, may be mailed electronically to _____ or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

Exhibit D

Memorandum of Lease Agreement

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95037
Attn: Town Manager

THIS DOCUMENT IS EXEMPT FROM
RECORDING FEES PURSUANT TO CALIFORNIA
GOVERNMENT CODE §§ 6103, 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

MEMORANDUM OF LEASE AGREEMENT

This Memorandum of Lease Agreement (this "**Memorandum**") is dated as of _____, 202__, and is between the Town of Los Gatos, a California municipal corporation ("**Landlord**"), and Forbes Mill, LLC, a California limited liability company ("**Master Tenant**").

Recitals

A. Landlord and Master Tenant entered into that certain Lease Agreement, effective _____, 2020 ("**Lease**"), pursuant to which Landlord leased to Master Tenant and Master Tenant leased from Landlord the space located on the real property described in the attached Exhibit A (the "**Premises**").

B. Landlord and Master Tenant desire to execute this Memorandum to provide constructive notice of Master Tenant's rights under the Lease to all third parties.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Agreement

1. Term. Landlord leases the Premises to Master Tenant for an initial term of thirty-four years and eleven months (34 years 11 months) commencing on the Commencement Date of _____, 202__, and expiring on _____, 205__.

2. Lease Terms. The lease of the Premises to Master Tenant is pursuant to the Lease, which is incorporated in this Memorandum by reference.

3. Assignment. Except as otherwise expressly provided in the Lease, Master Tenant's rights and obligations under the Lease may not be assigned without Landlord's prior written consent, which consent may be granted or withheld by Landlord in its sole and exclusive discretion, and any assignment without this consent will be void.

4. Successors and Assigns. This Memorandum and the Lease are binding and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease on assignment.

5. Governing Law. This Memorandum and the Lease are governed by California law.

Executed as of the date first above written.

LANDLORD:

Town of Los Gatos,
a California municipal corporation

By: _____
Print Name: _____
Title: _____

MASTER TENANT:

Forbes Mill, LLC,
a California Limited Liability Company

By: Imwalle Asset Management, LLC
a California Limited Liability Company

By: _____
Don Imwalle, Jr., Managing Member

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

STATE OF CALIFORNIA

COUNTY OF _____ SS.

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

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

WITNESS my hand and official seal.

(Signature) (Seal)

Exhibit D

FIRST AMENDMENT TO AGREEMENT

This FIRST AMENDMENT TO AGREEMENT is dated for identification this 7th day of February 2023 and amends that certain Lease Agreement for Property Management Services dated October 29, 2020, made by and between the Town of Los Gatos ("Landlord" or the "Town"), and Tait Firehouse, LLC, a California Limited Liability Company ("Master Tenant").

RECITALS

A. Town and Master Tenant entered into a Lease Agreement for Property Management Services for the management and leasing of 4 Tait Avenue dated October 29, 2020 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.

Whereas, now the Town and Master Tenant mutually agree to amend the terms of the Agreement as follows:

FIRST AMENDMENT

1. The parties agree that the "Effective Date" referenced on Page 1 of the Master Lease ("Lease") shall be October 29th 2020.
2. **Section 1.4 Lease Term.** As provided in Section 3 below, the Term of the Lease commences on the ~~Commencement~~ Effective Date and terminates, unless earlier terminated 34 years and 11 months from the ~~Commencement~~ Effective Date as provided in Section 3.1 below.
3. **Section 1.5 Lease Contingency.** This Lease is contingent on the Master Tenant submitting the necessary applications and documents to the Town for approval of the improvements and use of the property, such as, but not limited to, general plan amendment, a proposed site plan, concept drawings for the site plan, massing diagrams, and renderings identifying the location, general configuration, and proposed design characteristics of the buildings, parking spaces, landscaping, property subdivision, and other aspects of the improvement and uses. The Master Tenant acknowledges that the Project Proposal requires approvals and entitlements from the Town and shall submit a formal application for the Planning Approvals. Costs and fees associated with the Planning Approvals review shall be borne by the Master tenant. Nothing in this Agreement shall be construed to compel the Town to approve or make any findings with respect to Planning Approvals. If Master Tenant is unable to obtain Planning Approvals, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party. Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

This Lease is also contingent on Master Tenant and a Subtenant having executed a binding initial Sublease for any portion of the Premises and occupancy by Subtenants (the "Contingency"). If the Contingency has not been satisfied or waived by Landlord on or before the date twelve (12) months following the Effective Date **January 1, 2024**, either

Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party.

4. **Section 3.1 Term.** The "Term" of this Lease shall commence as of the Effective Date ("~~Commencement~~ **Effective** Date") and shall end, unless earlier terminated or extended pursuant to the terms and conditions of this Lease, on the date 34 years and 11 months after the ~~Commencement~~ **Effective** Date ("Termination Date").
5. **Section 7.3 Continuous Operations.** Master Tenant shall use its commercially reasonable efforts, subject to the provisions of Section 7.2 above, to continuously sublet the Premises to approved Subtenants for commercial purposes during the term of this lease. If, for any reason, a Subtenant quits its business operations on the Premises, Master Tenant shall use its commercially reasonable efforts, in accordance with the provisions of Section 7.2 above, to promptly secure another Subtenant reasonably acceptable to Master Tenant and Landlord.

If for any reason ~~during the first three (3) years following the Commencement Date~~ **after January 1, 2024**, the Premises in their entirety are left unleased for a continuous period of eighteen (18) months or more, then either the Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein.

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

IN WITNESS WHEREOF, the Landlord and Master Tenant have executed this Amendment.

LANDLORD:

THE TOWN OF LOS GATOS

By: _____

Laurel Prevetti, Town Manager

Approved as to Form:

Gabrielle Whelan, Town Attorney

MASTER TENANT:

Tait Firehouse, LLC, a California Limited Liability Co.

By: Imwalle Asset Management, LLC

a California Limited Liability Co.

By: _____

Don Imwalle, Jr., Managing Member

Attest:

Wendy Wood, CMC, Town Clerk

FIRST AMENDMENT TO AGREEMENT

This FIRST AMENDMENT TO AGREEMENT is dated for identification this 7th day of February 2023 and amends that certain Lease Agreement for Property Management Services dated October 29, 2020, made by and between the Town of Los Gatos ("Landlord" or the "Town"), and Forbes Mill, LLC, a California Limited Liability Company ("Master Tenant").

RECITALS

A. Town and Master Tenant entered into a Lease Agreement for Property Management Services for the management and leasing of the Forbes Mill Property, located at 75 Church Street, dated October 29, 2020 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.

Whereas, now the Town and Master Tenant mutually agree to amend the terms of the Agreement as follows:

FIRST AMENDMENT

1. The parties agree that the "Effective Date" referenced on Page 1 of the Master Lease ("Lease") shall be October 29th 2020.
2. **Section 1.4 Lease Term.** As provided in Section 3 below, the Term of the Lease commences on the ~~Commencement~~ **Effective** Date and terminates, unless earlier terminated 34 years and 11 months from the ~~Commencement~~ **Effective** Date as provided in Section 3.1 below.
3. **Section 1.5 Lease Contingency.** This Lease is contingent on the Master Tenant submitting the necessary applications and documents to the Town for approval of the improvements and use of the property, such as, but not limited to, general plan amendment, a proposed site plan, concept drawings for the site plan, massing diagrams, and renderings identifying the location, general configuration, and proposed design characteristics of the buildings, parking spaces, landscaping, property subdivision, and other aspects of the improvement and uses. The Master Tenant acknowledges that the Project Proposal requires approvals and entitlements from the Town and shall submit a formal application for the Planning Approvals. Costs and fees associated with the Planning Approvals review shall be borne by the Master tenant. Nothing in this Agreement shall be construed to compel the Town to approve or make any findings with respect to Planning Approvals. If Master Tenant is unable to obtain Planning Approvals, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party. Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

This Lease is also contingent on Master Tenant and a Subtenant having executed a binding initial Sublease for any portion of the Premises and occupancy by Subtenants (the "Contingency"). If the Contingency has not been satisfied or waived by Landlord on or before the date ~~twelve (12) months following the Effective Date~~ **January 1, 2024**, either

Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party.

4. **Section 3.1 Term.** The "Term" of this Lease shall commence as of the Effective Date ("~~Commencement~~ Effective Date") and shall end, unless earlier terminated or extended pursuant to the terms and conditions of this Lease, on the date 34 years and 11 months after the ~~Commencement~~ Effective Date ("Termination Date").
5. **Section 7.3 Continuous Operations.** Master Tenant shall use its commercially reasonable efforts, subject to the provisions of Section 7.2 above, to continuously sublet the Premises to approved Subtenants for commercial purposes during the term of this lease. If, for any reason, a Subtenant quits its business operations on the Premises, Master Tenant shall use its commercially reasonable efforts, in accordance with the provisions of Section 7.2 above, to promptly secure another Subtenant reasonably acceptable to Master Tenant and Landlord.

If for any reason ~~during the first three (3) years following the Commencement Date~~ after January 1, 2024, the Premises in their entirety are left unleased for a continuous period of eighteen (18) months or more, then either the Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein.

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

IN WITNESS WHEREOF, the Landlord and Master Tenant have executed this Amendment.

LANDLORD:

THE TOWN OF LOS GATOS

By: _____

Laurel Prevetti, Town Manager

Approved as to Form:

Gabrielle Whelan, Town Attorney

MASTER TENANT:

Tait Firehouse, LLC, a California Limited Liability Co.

By: Imwalle Asset Management, LLC

a California Limited Liability Co.

By: _____

Don Imwalle, Jr., Managing Member

Attest:

Wendy Wood, Town Clerk



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2023

ITEM NO: 12

DATE: January 25, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute an Agreement with Sustainable Waze to Continue the Coordination of Music in the Park (MIP) Summer Concert Series for 2023, with Options for Annual Extensions for Two Additional Years.

RECOMMENDATION:

Authorize the Town Manager to execute an agreement with Sustainable Waze to continue the coordination of the Town's Music in the Park (MIP) summer concert series for 2023, with options for annual extensions for two additional years.

BACKGROUND:

On January 31, 2020, the Town issued a request for proposals (RFP) for a third-party vendor to coordinate and execute the 2020 Music in the Park (MIP) season. On March 3, 2020, the Town Council considered the results of the RFP, and approved staff's recommendation to work with the organizer group of Mark Secchia (no longer affiliated), Neal Turley, and Perry Thorwaldson for the 2020 series. This team operated under the vendor name, Sustainable Waze (Organizer). As a part of the approval, the Town Council also approved the Organizer's request for \$20,000 in sponsorship dollars, along with several in-kind staff services and subsidized permit fees to support the concert series.

Due to the COVID-19 Pandemic and the community health and safety provisions in place at the time, both the 2020 and 2021 MIP Concert Series were postponed. In the FY 2022/23 budget, the Town Council again allocated the \$20,000 sponsorship, and in-kind services and permit fees to support MIP, thus the series returned in the summer of 2022 with Sustainable Waze working as the event Organizer.

PREPARED BY: Monica Renn
Economic Vitality Manager

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

BACKGROUND (continued):

Per the agreement with the Organizer, the \$20,000 Title Sponsorship secures the naming rights of the concert series as “Los Gatos Music in the Park.”

DISCUSSION:

With the lead time necessary to produce the MIP concert series and the Organizers’ success with the 2022 series, staff reached out to the Organizers to understand if there is interest in continuing to coordinate MIP for the summer of 2023 with the same in-kind services and financial sponsorship structure that was in place for 2022. Given the successful history with the Organizer for MIP, it is recommended that the Town moves forward with an agreement with Sustainable Waze, as the Town’s Single Source vendor.

The Organizers confirmed their interest in continuing to plan and produce the MIP concert series for 2023, thus, staff is seeking to reconfirm the Town Council’s interest and approval of the previously adopted and budgeted sponsorship and other in-kind and monetary considerations are outlined in the chart below.

It should be noted that the *Naming Rights, Title Sponsorship* monetary amount of \$20,000 is a not to exceed amount. Event organizers have noted that if they are able to re-secure a specific donor at the level of \$10,000, then the Town’s Title Sponsorship contribution would be reduced to \$10,000 for 2023.

| Title Sponsorship Paid to Organizers | |
|--|--------------|
| Naming Rights, Title Sponsor: <i>Los Gatos Music in the Park</i> | NTE \$20,000 |

| In-kind Services and Additional Town Contributions Provided at No Cost to Organizer | |
|---|----------|
| Special Event Permit Application Fee (For-Profit) | \$680 |
| Parks Hourly Fee | \$4,400 |
| Use of Council Lobby as staging area and green room | \$1,600 |
| Use of Town Stage including staff time for setup and removal | \$2,200 |
| Staff time to hang MIP banners at Civic Center | \$472 |
| Temporary Sign Fee | \$99.00 |
| No Parking Signs Fee | \$135 |
| 2 LGMS Police Officers at each concert | \$10,240 |

ALTERNATIVES:

Alternatively, the Town Council may wish to provide other direction or pursue other alternatives for MIP 2023. Staff is not recommending any changes to the terms as these were carefully considered to create a balanced package agreeable to both the Town and the Organizers.

Another option is to forgo a 2023 MIP concert series and reconsider the future of the MIP at a later date. Staff is not recommending this option either given the success of the 2022 MIP concert series with the current Organizer, and the community interest in the continuation of the annual MIP summer concert series.

CONCLUSION:

It is recommended that the Town Council move forward with authorizing the Town Manager to execute an agreement with Sustainable Waze for the planning, coordination, and implementation of the 2023 MIP concert series.

In addition, the Town Council may wish to consider allowing for the agreement with the Organizers to have the option to be renewed at the same terms agreed upon for 2023, for two additional years with the same Organizer, including the MIP summer concert series for 2024 and 2025 without additional Town Council consideration in these years.

COORDINATION:

This staff report has been coordinated with the Town Managers Office, Town Attorney, and Finance Department.

FISCAL IMPACT:

The \$20,000 sponsorship has been budgeted each year as a part of the Town's Special Events Budget and would remain status quo for FY 2022/23. The continuation of the in-kind services and permit fees will continue to be absorbed within the work of each Department.

ENVIRONMENTAL ASSESSMENT:

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

ATTACHMENT:

1. Draft Single Source Agreement with Sustainable Waze

AGREEMENT BY AND BETWEEN THE TOWN OF LOS GATOS AND SUSTAINABLE WAZE FOR SPONSORSHIP OF THE LOS GATOS MUSIC IN THE PARK SUMMER CONCERT SERIES

THIS AGREEMENT is made and entered into on February xx, 2023 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and SUSTAINABLE WAZE, whose address is 104 A Edelen Avenue, Los Gatos, California. This Agreement is made with reference to the following facts.

I. RECITALS

WHEREAS, on March 3, 2020, the Town Council selected Sustainable Waze to produce, manage, and promote the Music in the Park Summer Music Concert Series; and

WHEREAS, on February 7, 2022, the Town Council reconfirmed their selection of Sustainable Waze to produce, manage, and promote the Music in the Park Summer Music Concert Series; and

WHEREAS, Town has agreed to purchase the naming rights sponsorship for Music in the Park for the amount not to exceed \$20,000 to remain: "Los Gatos Music in the Park" with no additional sponsor name in the title; and,

WHEREAS, Town appropriated funds in its Fiscal Year 2023/24 Budget for allocation of funds; and

WHEREAS, the Town has agreed to provide additional sponsorship in the form of in-kind services and the relief of Town fees to support for the following items, as resources and scheduling is available: installation, usage and removal of the Town owned stage, installation and removal of Music in the Park banner at the Civic Center, special event permit, banner permit, park use, chamber lobby use, and no parking sign fees, and two Los Gatos-Monte Sereno Police Officers at each concert as resources are deemed necessary and available, as directed by the Chief of Police or his or her designee.

- 1.1 Sustainable Waze represents and affirms that it is willing to comply with the terms pursuant to this Agreement.

II. AGREEMENTS

- 2.1 Term of Agreement. The term shall commence upon the execution of this Agreement and shall terminate on September 30, 2023; with two options to renew annually, if mutually agreed upon between the Town and Sustainable Waze for 2024 and 2025.
- 2.2. Scope of Agreement. This agreement pertains to the \$20,000 sponsorship dollars from the Town to Sustainable Ways, and the in-kind services and relief of specific

Town fees associated with Music in the Park as outlined I. Recitals, approved by Town Council at the February 7, 2023 Town Council Meeting.

2.3 Special Event Permit. As part of the terms of the original Request for Proposal (RFP) presented by the Town to Sustainable Waze, Sustainable Waze is required to apply for, and follow the special event permit application process. As such, all conditions, including the scope of work, use of premises, timelines, requirements, and Town commitments will be included in the special event permit conditional letter of approval.

2.4 Terms of Sponsorship.

2.4.a. The Town shall remain the sole naming rights sponsor for Music in the Park to remain "Los Gatos Music in the Park" with no additional sponsor name in the title.

2.4.b. The Town will be recognized as a Premier Sponsor in all print, web, and social media marketing, including large logo on main sign located behind main stage.

2.4.c. The Town shall have a sponsor tent at all concerts in premier location on the Civic Center Lawn.

2.4.d. Large feather banners, exclusively with the Town logo prominently displayed at each concert.

2.5 Compensation. Compensation for naming rights sponsorship **shall not exceed \$20,000.** Sustainable Waze has estimated that the sponsorship may be reduced, but not less than \$10,000, if a sponsorship of \$10,000 is secured from a local hospital.

An initial payment of \$10,000 shall be made prior to the first concert. A second payment of up to \$10,000 shall be made at the conclusion of the concert series, upon documentation being provided by Sustainable Waze, to the Town, indicating the sponsorship level of said local hospital.

2.6 Billing. Sustainable Waze must provide the Town with a detailed invoice in order for payment to be made. All invoices and statements to the Town shall be addressed as follows:

Email to: AP@losgatosca.gov

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

- 2.7 Use of Funds. Sustainable Waze shall not use any monies received under this agreement for anything other than items related to the direct marketing or production of the Music in the Park summer concert series.

III. GENERAL TERMS

- 3.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 3.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 3.3 Entire Agreement. This Agreement constitutes the complete and exclusive statement of the Agreement between the Town and Sustainable Waze. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

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

Town of Los Gatos by:

Service Provider, by:

Laurel Prevetti, Town Manager

Title

Approved as to Form:

Gabrielle Whelan, Town Attorney
Attest:

Wendy Wood, CMC, Town Clerk

DRAFT



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2022

ITEM NO: 13

DATE: February 2, 2022
TO: Mayor and Town Council
FROM: Gabrielle Whelan, Town Attorney
SUBJECT: Introduce a Proposed Ordinance Amending Chapter 24 (Subdivision Regulations) and Chapter 29 (Zoning Regulations) of the Town Code Regarding Town-Initiated Parcel Mergers

RECOMMENDATION:

Introduce a proposed Ordinance amending Chapter 24 (Subdivision Regulations) and Chapter 29 (Zoning Regulations) of the Town Code regarding Town-initiated parcel mergers.

BACKGROUND:

Town Code Section 29.10.070 currently addresses lot mergers for lots that do not conform with the Town's requirements. Subsection (b) currently provides that "any parcels under the same or substantially the same ownership that do not meet the [Town's] criteria . . . shall be considered merged."

The State Subdivision Map Act (Map Act) governs in the area of subdivisions and preempts local ordinances with regard to lot mergers. The applicable Map Act provisions are codified in Government Code Sections 66451.10 and following. The Map Act requires the following steps before a lot merger can take effect:

- 1) The owner of the affected parcels must be notified of the lot merger proposal;
- 2) The Town must file with the County Recorder a notice of merger; and
- 3) Prior to recording the notice of merger, the Town must mail the record owner a notice of intention and give the owner an opportunity to request a hearing.

PREPARED BY: Bridgette Falconio
Administrative Technician

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

DISCUSSION:

This item relates to the merger of existing lots that do not conform with the Town's standards. Currently, the Town Code states that nonconforming lots are merged automatically. This provision conflicts with, and is preempted by, State law. Therefore, staff is proposing an ordinance to bring the Town Code into conformance with State law regarding lot merger.

The proposed amendments were reviewed by the Planning Commission on December 12, 2022, and referred to Council by unanimous vote (Attachments 2 and 3). Staff has prepared the following revised language to be included in the ordinance with new language shown underlined and deleted language shown ~~strike through~~:

Section 24.10.080. Town-Initiated Parcel Merger.

- (a) The Town may initiate a merger of a parcel with a contiguous parcel held by the same owner if any one of the contiguous parcels held by the same owner does not conform to standards for minimum parcel size, under the zoning ordinance applicable to the parcel and if, in accordance with Government Code Section 66451.11, all of the following requirements are satisfied:
- (1) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel.
 - (2) With respect to any affected parcel, one or more of the following conditions exists:
 - a. Comprises less than 5,000 square feet in area at the time of the determination of merger;
 - b. Was not created in compliance with applicable laws and ordinances in effect at the time of its creation;
 - c. Does not meet current standards for sewage disposal and domestic water supply;
 - d. Does not meet slope stability standards;
 - e. Has no legal access which is adequate for vehicular and safety equipment access and maneuverability;
 - f. Its development would create health or safety hazards; or
 - g. Is inconsistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.
- (b) Before initiating a parcel merger, the Town will notify the owner of the affected parcels and provide the owner with the opportunity for a public hearing. The public hearing will be conducted by the Planning Commission. The decision of the Planning Commission may be appealed to the Town Council within ten days of the decision of the Planning Commission. The decision of the Town Council shall be final.

DISCUSSION (continued):

Sec. 29.10.070. Lot merger.

- ~~(a) — A parcel of land does lawfully exist separately from other land and is a lot when the parcel meets each of the following criteria:~~
- ~~(1) — Comprises at least five thousand (5,000) square feet in area.~~
 - ~~(2) — Was created in compliance with applicable laws and ordinances in effect at the time of its creation.~~
 - ~~(3) — Meets current standards for sewage disposal and domestic water supply.~~
 - ~~(4) — Meets slope stability standards.~~
 - ~~(5) — Has legal access which is adequate for vehicular and safety equipment access and maneuverability.~~
 - ~~(6) — Development of the parcel would create no health or safety hazards.~~
 - ~~(7) — The parcel would be consistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.~~
 - ~~(8) — No structures are built over a common property line which is shared with another parcel under the same or substantially the same ownership.~~
- ~~(b) — Any parcels under the same or substantially the same ownership that do not meet the criteria listed above shall be considered merged. In addition, no parcel shall be modified through a lot line adjustment procedure in order to meet the criteria listed above.~~

CONCLUSION:

A. Summary

The attached amendments to Town Code Chapters 24 and 29 are recommended to bring Town Code into conformance with State law regarding lot mergers.

B. Recommendation

For the reasons mentioned in this report, staff recommends that the Town Council introduce the proposed Ordinance. The Council should also include any comments or recommended changes to the proposed Ordinance. Once introduced, the Ordinance will return to the Town Council for adoption on February 21, 2023.

COORDINATION:

The Town Attorney's Office, Town Manager's Office, and the Community Development Department coordinated this report.

FISCAL IMPACT:

The proposed Ordinance will not affect the Town's Budget.

PAGE 4 OF 4

SUBJECT: Town Code Amendment Regarding Town-Initiated Parcel Mergers/A-22-003

DATE: February 2, 2023

ENVIRONMENTAL ASSESSMENT:

Because the proposed Ordinance reflects State law, will not result in a change in the physical environment, and is not a project defined under CEQA, no further action is required (Public Resources Code Section 21065).

Attachments:

1. Lot Merger Ordinance
2. December 14, 2022, Planning Commission Staff Report
3. December 14, 2022, Planning Commission Verbatim Minutes

DRAFT ORDINANCE

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING CHAPTER 24, "SUBDIVISION REGULATIONS," AND CHAPTER 29, "ZONING REGULATIONS," OF THE TOWN CODE REGARDING TOWN-INITIATED PARCEL MERGERS

WHEREAS, Town Code Section 29.10.070 currently addresses lot mergers for lots that do not conform with the Town's requirements;

WHEREAS, Section 29.10.070(b) currently provides that "any parcels under the same or substantially the same ownership that do not meet the [Town's] criteria . . . shall be considered merged;"

WHEREAS, The State Subdivision Map Act (Map Act) governs in the area of subdivisions and preempts local ordinances with regard to lot mergers;

WHEREAS, The Town Code currently conflicts with, and is preempted by, State law; and

WHEREAS, Staff is proposing an ordinance to amend the Town's subdivision ordinance to conform with State law regarding lot mergers.

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

SECTION I. Town Code Section 29.10.070, "Lot Merger," is repealed.

SECTION II. A New Section 24.10.080, "Town-Initiated Parcel Merger," is added to Chapter 24, "Subdivision Regulations," of the Town Code to read as follows:

- "(a) The Town may initiate a merger of a parcel with a contiguous parcel held by the same owner if any one of the contiguous parcels held by the same owner does not conform to standards for minimum parcel size, under the zoning ordinance applicable to the parcel and if, in accordance with Government Code Section 66451.11, all of the following requirements are satisfied:
- (1) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel.
 - (2) With respect to any affected parcel, one or more of the following conditions exists:

ATTACHMENT 1

- a. Comprises less than 5,000 square feet in area at the time of the determination of merger;
 - b. Was not created in compliance with applicable laws and ordinances in effect at the time of its creation;
 - c. Does not meet current standards for sewage disposal and domestic water supply;
 - d. Does not meet slope stability standards;
 - e. Has no legal access which is adequate for vehicular and safety equipment access and maneuverability;
 - f. Its development would create health or safety hazards; or
 - g. Is inconsistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.
- (b) Before initiating a parcel merger, the Town will notify the owner of the affected parcels and provide the owner with the opportunity for a public hearing. The public hearing will be conducted by the Planning Commission. The decision of the Planning Commission may be appealed to the Town Council within ten days of the decision of the Planning Commission. The decision of the Town Council shall be final.”

SECTION III. 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 IV. Publication.

The Town Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the Town of Los Gatos and to cause publication once in the Los Gatos Weekly, the official publication of legal notices of the Town of Los Gatos, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

SECTION V. CEQA.

Adopting this ordinance addressing Town initiated lot mergers 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 VI. Effective Date.

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 7th day of February 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
PLANNING COMMISSION
REPORT**

MEETING DATE: 12/14/2022

ITEM NO: 5

DATE: December 9, 2022
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider Amendments to Chapter 24 (Subdivision Regulations) and Chapter 29 (Zoning Regulations) of the Town Code Regarding Town-Initiated Parcel Mergers. Town Code Amendment Application A-22-003. PROJECT LOCATION: Town Wide. APPLICANT: Town of Los Gatos.

RECOMMENDATION:

Consider amendments to Chapter 24 (Subdivision Regulations) and Chapter 29 (Zoning Regulations) of the Town Code regarding Town-initiated parcel mergers.

CEQA:

Because the proposed ordinance reflects State law, it will not result in a change in the physical environment and is not a project defined under CEQA, and no further action is required (Public Resources Code Section 21065).

FINDINGS:

- Find that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act [Section 15061 (b)(3)] (Exhibit 1).
- Find that the Town Code amendments are consistent with the General Plan.

ACTION:

Recommendation to Town Council.

PREPARED BY: Gabrielle Whelan
Town Attorney

Reviewed by: Planning Manager and Community Development Director

BACKGROUND:

Town Code Section 29.10.070 currently addresses lot mergers for lots that do not conform with the Town's requirements. Subsection (b) currently provides that "any parcels under the same or substantially the same ownership that do not meet the [Town's] criteria . . . shall be considered merged."

The State Subdivision Map Act (Map Act) governs in the area of subdivisions and preempts local ordinances with regard to lot mergers. The applicable Map Act provisions are codified in Government Code Sections 66451.10 and following. The Map Act requires the following steps before a lot merger can take effect:

- 1) The owner of the affected parcels must be notified of the lot merger proposal;
- 2) The Town must file with the County Recorder a notice of merger; and
- 3) Prior to recording the notice of merger, the Town must mail the record owner a notice of intention and give the owner an opportunity to request a hearing.

DISCUSSION:

This item relates to the merger of existing lots that do not conform with the Town's standards. Currently, the Town Code states that nonconforming lots are merged automatically. This provision conflicts with, and is preempted by, State law. Therefore, staff is proposing an ordinance to bring the Town Code into conformance with State law regarding lot merger. Staff has prepared the following revised language to be included in the ordinance with new language shown underlined and deleted language shown ~~strike-through~~:

Section 24.10.080. Town-Initiated Parcel Merger.

(a) The Town may initiate a merger of a parcel with a contiguous parcel held by the same owner if any one of the contiguous parcels held by the same owner does not conform to standards for minimum parcel size, under the zoning ordinance applicable to the parcel and if, in accordance with Government Code Section 66451.11, all of the following requirements are satisfied:

- (1) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel.
- (2) With respect to any affected parcel, one or more of the following conditions exists:
 - a. Comprises less than 5,000 square feet in area at the time of the determination of merger;
 - b. Was not created in compliance with applicable laws and ordinances in effect at the time of its creation;

DISCUSSION (continued):

- c. Does not meet current standards for sewage disposal and domestic water supply;
 - d. Does not meet slope stability standards;
 - e. Has no legal access which is adequate for vehicular and safety equipment access and maneuverability;
 - f. Its development would create health or safety hazards; or
 - g. Is inconsistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.
- (b) Before initiating a parcel merger, the Town will notify the owner of the affected parcels and provide the owner with the opportunity for a public hearing. The public hearing will be conducted by the Planning Commission. The decision of the Planning Commission may be appealed to the Town Council within ten days of the decision of the Planning Commission. The decision of the Town Council shall be final.

Sec. 29.10.070. Lot merger.

- (a) ~~A parcel of land does lawfully exist separately from other land and is a lot when the parcel meets each of the following criteria:~~
 - (1) ~~Comprises at least five thousand (5,000) square feet in area.~~
 - (2) ~~Was created in compliance with applicable laws and ordinances in effect at the time of its creation.~~
 - (3) ~~Meets current standards for sewage disposal and domestic water supply.~~
 - (4) ~~Meets slope stability standards.~~
 - (5) ~~Has legal access which is adequate for vehicular and safety equipment access and maneuverability.~~
 - (6) ~~Development of the parcel would create no health or safety hazards.~~
 - (7) ~~The parcel would be consistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.~~
 - (8) ~~No structures are built over a common property line which is shared with another parcel under the same or substantially the same ownership.~~
- (b) ~~Any parcels under the same or substantially the same ownership that do not meet the criteria listed above shall be considered merged. In addition, no parcel shall be modified through a lot line adjustment procedure in order to meet the criteria listed above.~~

CEQA DETERMINATION:

Because the proposed ordinance reflects State law, it will not result in a change in the physical environment and is not a project defined under CEQA, and no further action is required (Public Resources Code Section 21065).

PUBLIC COMMENTS:

At the time of this report's preparation, the Town has not received any public comment.

CONCLUSION:

A. Summary

The attached amendments to Town Code Chapters 24 and 29 are recommended to bring Town Code into conformance with State law regarding lot merger.

B. Recommendation

For the reasons mentioned in this report, staff recommends that the Planning Commission forward the Draft Ordinance amendments to the Town Council with a recommendation for adoption. The Commission should also include any comments or recommended changes to the Draft Ordinance in taking the following actions:

1. Find that because the proposed ordinance reflects State law, it will not result in a change in the physical environment and is not a project defined under CEQA, and no further action is required (Public Resources Code Section 21065); and
2. Make the required finding that the Ordinance amendments are consistent with the General Plan; and
3. Forward a recommendation to the Town Council for adoption of the Ordinance amendments to the Town Code.

C. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction; or
2. Recommend the Ordinance Amendments with additional modifications; or
3. Recommend that the Town Council not adopt the Ordinance Amendments.

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A P P E A R A N C E S:

| | |
|-----------------------------------|--|
| Los Gatos Planning Commissioners: | Melanie Hanssen, Chair Jeffrey Barnett, Vice Chair Kathryn Janoff Steve Raspe Emily Thomas |
| Town Manager: | Laurel Prevetti |
| Community Development Director: | Joel Paulson |
| Town Attorney: | Gabrielle Whelan |
| Transcribed by: | Vicki L. Blandin (619) 541-3405 |

ATTACHMENT 3

1 through to merge the two parcels, and the State law
2 preempts any regulations.

3 So this is a cleanup that is intended to remove a
4 conflict that we have with State law in the current Town
5 Code, and then also remove the provision out of the Zoning
6 Code and into the Subdivision Ordinance, because Staff
7 feels that it will be easier for applicants to find if it's
8 located in the Subdivision Ordinance.

9 We've proposed an amendment and we're asking for
10 the Planning Commission's recommendation of this amendment
11 to the Town Council, and if the Commission agrees with
12 Staff's proposal it would probably go to the Town Council
13 at some time in January.

14 CHAIR HANSSEN: Thank you for that. I'm going to
15 ask if any Commissioners have questions for Staff, but my
16 understanding after going over this in the pre-meeting is
17 that the Commission isn't being asked to modify any of the
18 language or determine if that's adequate or not, that's
19 been done by our Town Attorney, so this is only a yes or no
20 in terms of recommending it to Town Council, but we can
21 certainly ask questions.

22 Commissioner Raspe.
23
24
25

1 COMMISSIONER RASPE: Thank you, Chair. I
2 understand why we're making this change, and it makes
3 complete sense to me.

4 One point of clarification: My understanding is
5 our prior process was an automatic merger of lots without
6 any action required necessarily, and the way the new
7 language is drafted, it indicates that the Town may
8 initiate the mergers?

9 ATTORNEY WHELAN: Right.

10 COMMISSIONER RASPE: It doesn't make it
11 mandatory, nor does it say under what criteria the Town may
12 do that. Is there a process that we'll go through to make
13 those determinations?
14

15 ATTORNEY WHELAN: The language we've proposed
16 matches what's in the Subdivision Map Act right now, and so
17 the criteria under which the Town could decide to initiate
18 a merger would be if any of the parcels are under the
19 minimum size, if they don't meet our current standards for
20 sewage disposal and water supply, they don't meet our
21 current slope stability standards, they don't have legal
22 access, there are health and safety standards, or the lot
23 is inconsistent with an applicable General Plan or Specific
24 Plan provision. Those have been written to match the
25

1 circumstances that the State says a town or city could
2 initiate a parcel merger.

3 COMMISSIONER RASPE: I just wanted to make sure
4 we weren't introducing some uncertainty where we had an
5 automatic provision previously, but it sounds like as
6 drafted it works with the remainder of the Subdivision Map
7 Act to kind of take care of that, so thanks for answering
8 my questions.

9
10 CHAIR HANSSEN: Are there any other questions
11 from other Commissioners? If there aren't any questions,
12 can I get a motion to recommend this code change to the
13 Town Council? Commissioner Raspe.

14 COMMISSIONER RASPE: Thank you, Chair. I move to
15 recommend the amendment to Chapter 24 (Subdivision
16 Regulations), and Chapter 29 (Zoning Regulations), of the
17 Town Code regarding Town-initiated parcel mergers as
18 presented in the Staff Report to Town Council.

19 CHAIR HANSSEN: Very good, thank you for that. Is
20 there a second? Commissioner Thomas.

21 COMMISSIONER THOMAS: I second Commissioner
22 Raspe's motion.

23 CHAIR HANSSEN: Very good. Any other discussion?
24 Vice Chair Barnett.
25

1 VICE CHAIR BARNETT: Are we required to make the
2 findings that are listed on page 1 of Item 5 in the agenda?

3 ATTORNEY WHELAN: It's legislation, so findings
4 aren't technically required, but I suppose it couldn't hurt
5 to explain that it is exempt from CEQA and that the
6 amendments are consistent with the General Plan.

7 COMMISSIONER RASPE: I'd be happy to revise my
8 motion to include the findings that there is no possibility
9 the project will have significant impact on the
10 environment, therefore the project is not subject to CEQA,
11 and with the finding that Town Code amendments are
12 consistent with the General Plan.
13

14 CHAIR HANSSEN: Very good, and does the seconder
15 agree? I note that Ms. Armer has her hand up, so let's see
16 what she has to say.

17 JENNIFER ARMER: Thank you, Chair. Since this is
18 a public hearing, I do believe we need to ask for public
19 comment.

20 CHAIR HANSSEN: Oh, yes, of course. Thank you for
21 that. We've talked about this item and we made a motion,
22 but we can still make public comment, and if there's a need
23 to revisit the motion, we can do that. I will put out there
24 that this would be the time for any member of the public to
25 speak on this item, and you would have up to three minutes.

LOS GATOS PLANNING COMMISSION 12/14/2022
Item #5, Amendments to Town Code Regarding
Town-Initiated Parcel Mergers

1 Is there anyone that would like to speak, and if so please
2 raise your hand on Zoom or follow the procedure in the
3 agenda if you're on a phone.

4 JENNIFER ARMER: If anybody would like to speak
5 on this item, please raise your hand now. I'm not seeing
6 any hands raised.

7 CHAIR HANSSEN: Thank you for reminding me that
8 we needed to do that, and we need to do that on the next
9 item as well, right? Okay.

10 If there are no further comments I will call the
11 question, and start with Commissioner Thomas.

12 COMMISSIONER THOMAS: Yes.

13 CHAIR HANSSEN: Commissioner Raspe.

14 COMMISSIONER RASPE: Yes.

15 CHAIR HANSSEN: Commissioner Janoff.

16 COMMISSIONER JANOFF: Yes.

17 CHAIR HANSSEN: Vice Chair Barnett.

18 VICE CHAIR BARNETT: Yes.

19 CHAIR HANSSEN: And I vote yes as well. And this
20 is a recommendation, so I don't believe there are any
21 appeal rights, and then it will go on to Town Council for
22 their consideration later on.

23 (END)



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2023

ITEM NO: 14

DATE: January 23, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Discuss Valley Transportation Authority (VTA) Proposed Changes to Route 27 Weekend Bus Service

RECOMMENDATION:

Discuss Valley Transportation Authority (VTA) proposed changes to route 27 weekend bus service.

BACKGROUND:

VTA Bus Route 27 operates seven days a week from the Winchester Transit Center in Campbell to Los Gatos and then runs east on Blossom Hill to the Santa Teresa area of south San José. It is the only route that operates through downtown Los Gatos and serves between two to seven weekend passengers a day from the Town. See Attachment 1 for a route map.

DISCUSSION:

Increasing weekend traffic in downtown Los Gatos causes delays to the entire service route, particularly during the summer months and in the westbound direction. The buses can no longer keep to the schedule regardless of time allotted and often run over 30 minutes late due to congestion on Los Gatos Boulevard, Main Street, and Santa Cruz Avenue. The bus is also forced to make route detours during the Farmers' Market on Sundays. While the Route 27 bus sees average ridership levels of 473 on Saturdays and 256 on Sundays, only two to seven of these weekend passengers a day are from the downtown Los Gatos area.

Considering the low ridership from Los Gatos and to increase service reliability to hundreds of weekend riders of Route 27, VTA will be rerouting their bus to run on Saratoga-Los Gatos Road

PREPARED BY: Tracy Wang
Transportation and Mobility Manager

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

DISCUSSION (continued):

on weekends only, instead of operating on the congested downtown streets of Santa Cruz, Main, and University. VTA will also add one weekend bus stop on eastbound Saratoga-Los Gatos Road between Santa Cruz, and University Avenue. See Attachment 2 for a route map of the proposed route change.

This change is expected to impact between two to seven weekend riders from Los Gatos, who will need to board the bus at different locations. This change is expected to offer more reliable service that operates efficiently according to schedule. There will be no change to weekday service and no impact is anticipated for Los Gatos High School riders. This change is scheduled to be implemented on April 29, 2023. VTA will alert riders in advance by posting flyers at the affected bus stops in advance, communicating the service changes through brochure and posters on vehicles, VTA website service change notice, social media blog, Transit App alerts, and other communication channels.

CONCLUSION:

Reliable bus service is a critical factor to rider experience and retention. The service changes described in this report are scheduled to take affect at the end of April. VTA implements transit service changes four times per year in January, April, August and October. Major service changes (defined [here](#)) are typically implemented in January, while minor service changes are typically implemented in April, August, and October. Major service changes must be submitted to the VTA Board of Directors for review and approval. VTA staff considered this service change to be minor in compliance with VTA's Title VI Policy and it did not involve a decision from VTA's Board of Directors. To staff's knowledge, the Town has no say in this service modification.

COORDINATION:

This agenda item was coordinated with the Complete Streets Transportation Commission (CSTC) and VTA. The CSTC questioned whether the changes could be for a specific season instead of year-round and why changes must happen four times a year. The Commission also had concerns about the elimination of service accessibility through downtown on weekends. VTA staff answered these questions and concerns.

FISCAL IMPACT:

The discussion of the VTA service changes has no fiscal impact.

ENVIRONMENTAL ASSESSMENT:

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

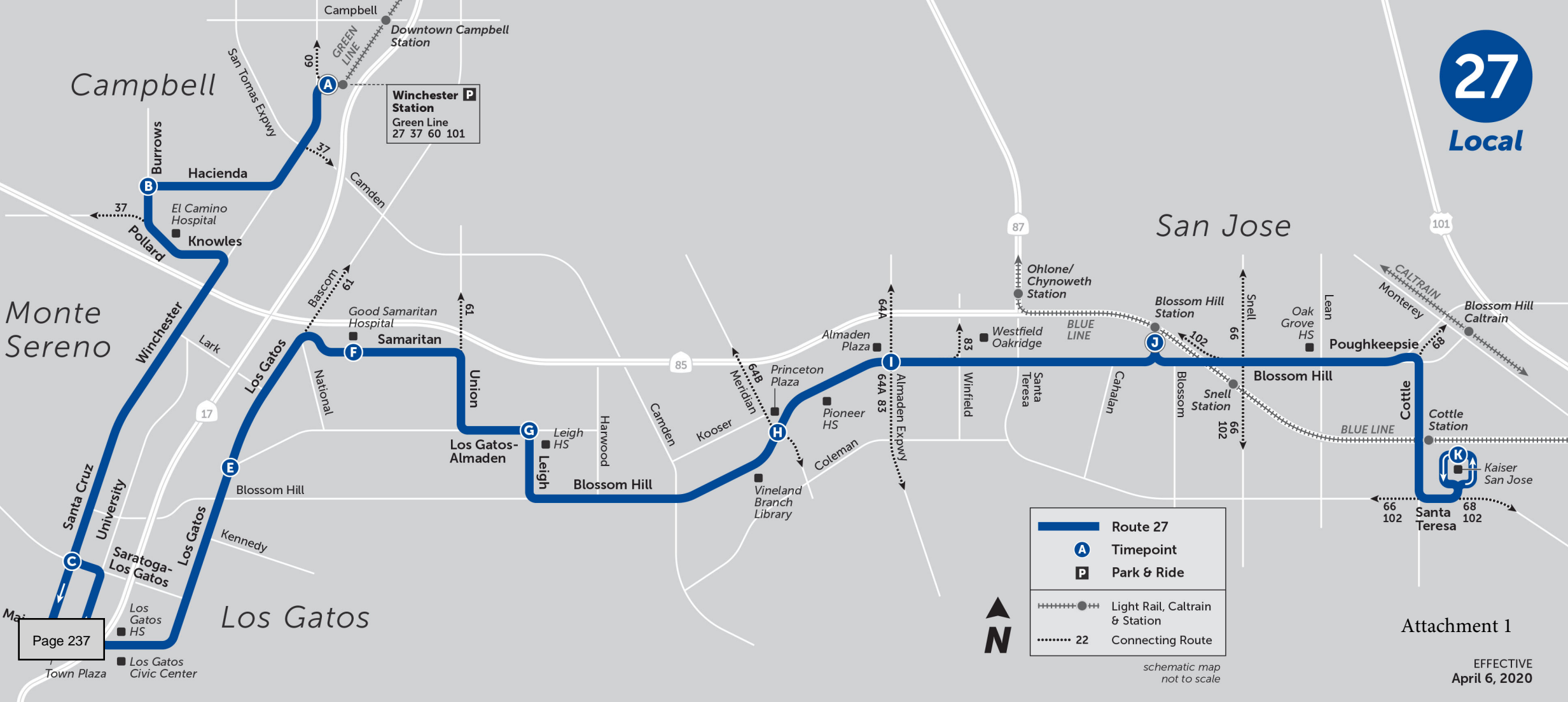
PAGE 3 OF 3

SUBJECT: Changes to VTA Bus Route 27

DATE: January 23, 2023

Attachments:

1. Existing VTA Route 27 Map
2. Proposed VTA Route 27 Map Through Los Gatos



Route 27
Proposed weekend route

Route 27
Weekday route

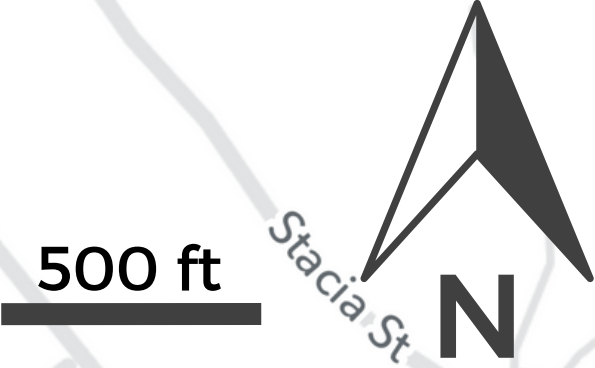
Stops served only on weekdays

Stops served 7 days/week

New Eastbound stop at Los-Gatos Saratoga Rd and University (Weekends Only)

Route 27: Winchester Station - Kaiser San Jose

Proposed Weekend Service





**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2023

ITEM NO: 15

DATE: February 1, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Consider Modifications to Town Council Policy 2-01: Town Agenda Format and Rules Regarding Remote Attendance for Town Boards, Commissions, and Committees as Discussed by the Council Policy Committee

RECOMMENDATION:

Consider modifications to Town Council Policy 2-01: Town Agenda Format and Rules regarding remote attendance for Town Boards, Commissions, and Committees as discussed by the Council Policy Committee.

BACKGROUND:

Effective December 29, 2022, the Santa Clara County Public Health Officer's recommendation regarding continued remote public meetings of governmental entities has been rescinded. In addition, Jurisdictions throughout California are preparing for the Governor to end the State of Emergency pertaining to COVID-19. It has been announced that this is scheduled to take place on February 28, 2023. Among other implications, the flexibility for remote participation provided in Assembly Bill 361 will no longer be in effect.

In September 2022, the Town Council modified Town Council Policy 2-01: Town Agenda Format and Rules regarding remote attendance for Town Boards, Commissions, and Committees (hereafter referred to as Commissions). The Policy currently provides an opportunity for Council Members to participate remotely under certain circumstances. Commissioners have greater latitude to participate remotely. The Policy also provides for the public to have the choice to participate either remotely or in-person at all Council and Commission meetings.

DISCUSSION:

The use of hybrid meetings, in which there is both the option of in-person and remote participation, has been and continues to be a topic of discussion amongst City Managers and Clerks throughout our County. Attachment 1 contains the most current information

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

DISCUSSION (continued):

regarding how the County and 14 other cities are handling this. Some jurisdictions have found that extra staff resources are needed to offer a remote option when in-person meetings resume.

While the Town of Los Gatos has been preparing for the return of in-person meetings for all Commissions beginning March 1, 2023, it has become clear that the Town only has the staff resources to provide a Zoom option for Town Council meetings. Unlike other Commissions, the Town Council is supported by the Town Clerk who manages the remote participants. Specifically, this involves ensuring speakers are moved to and from the panelist position, managing the recording, and troubleshooting issues as they arise.

For the other Commissions, there is only the staff who provide the subject expertise at the meetings. It would be infeasible for the subject matter experts to be simultaneously supporting the Commission in its work, answering questions, and supporting the Chair with meeting facilitation while also managing the Zoom participation of the public and/or Commissioners.

For this reason, staff recommended to the Council Policy Committee modifications to the Policy to indicate that the remote public participation option will not be available to Commissions (see Attachment 2). Remote participation would remain an option for the public at all Town Council meetings.

Council Members would have the ability to participate remotely (either via Zoom or telephone) under the provisions of this Policy and the Brown Act. For Commissioners, the Town would return to a telephone option only if a Commissioner could not attend in person consistent with this Policy and the Brown Act.

At its January 23, 2023 meeting, the Council Policy Committee recognized that hybrid meetings can provide transparency, accessibility, and engagement with the public. The Committee was interested in the costs associated with obtaining the necessary technology and other equipment as well as the staff costs for an additional staff member(s) to manage the remote participants. Staff did not have this information readily available at the meeting.

The Committee heard testimony from a Complete Streets and Transportation Commissioner who preferred hybrid Commission meetings. A Planning Commissioner also spoke, commenting in favor of hybrid meetings with video and not audio only.

After deliberation, the Committee was split with Vice Chair Hudes recommending the Council approve the proposed changes with the exception of conducting hybrid meetings for the Planning Commission and Finance Commission (see Attachment 3). Chair Moore requested

DISCUSSION (continued):

that Council consider the staff recommendation (Attachment 2) as well as additional information regarding the feasibility and cost of options for audio only and audio with video hybrid meetings for all Board, Commission, and Committee meetings.

Staff researched audio only options and found that Zoom or Teams remain the most viable to allow for the public to participate remotely even with an audio only selection. While this might help with the camera challenges associated with recording video for Commission meetings, the audio issues remain since each Commissioner does not have an individual microphone. In addition, a staff member would need to manage the remote participants via Zoom or Teams as well as providing technical guidance to the Commission as described above.

With the original staff recommendation, the proposed Policy would provide for Commissioners to participate by telephone as was done prior to the COVID-19 pandemic. This option requires that the remote location address be included on the agenda, an agenda be posted at the remote location, and that the remote location be open to the public. With this option, a telephone would be on "speakerphone mode" so the in-person participants could engage with the remote Commissioner. A tape recorder would record the proceedings and the audio recording would be posted to the Town's website for public access.

In regards to Council Policy Committee members having different recommendations, the Council should consider both recommendations, public comments, and other information when making its final decision.

CONCLUSION:

Staff appreciates the Town Council's consideration of this issue to provide time to prepare for the return of in-person Commission meetings. This preparation includes communication to the public and all Town Boards, Commissions, and Committees regarding any modifications to this Policy made by the Town Council.

In addition, the Council may consider other changes to this Policy, such as the remote participation requirements for Town Council members.

COORDINATION:

The preparation of this report was coordinated with all Town Departments.

PAGE 4 OF 4

SUBJECT: Town Council Policy 2-01: Town Agenda Format and Rules Regarding Remote Participation

DATE: February 1, 2023

FISCAL IMPACT:

The fiscal impact depends upon the option Council decides to enact. If the Council requires hybrid meetings for one or more Commissions, there will be additional staff costs to attend and manage the remote participation portion of the meeting for certain Commissions.

For example, Planning Commission meetings are at night, lasting from one to four or five hours in length. The staff person managing the Zoom elements would be paid overtime for the evening work, necessitating an increased budget to cover these costs. In the future, a portion of these costs might be recovered by the Council modifying Planning fees associated with Commission meetings.

Monthly Finance Commission meetings are after business hours and typically last two hours. Assuming a Deputy Clerk is assisting with the hybrid portion of the meeting, the extra cost per meeting would be approximately \$160.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Remote Participation in Cities within Santa Clara County
2. Town Council Policy 2-01: Town Agenda Format and Rules (redline 1-23-23)
3. Town Council Policy 2-01: Town Agenda Format and Rules (redline 2-1-23)
4. Public Comments received before 11:00 a.m. on February 2, 2023

Participation in Cities within Santa Clara County

| <u>Jurisdiction</u> | <u>Hybrid</u> | <u>In-Person Only</u> | <u>Notes</u> |
|----------------------------|----------------------|------------------------------|---|
| Campbell | Yes | | |
| Cupertino | | | Not yet decided |
| Gilroy | | Yes | |
| Los Altos | | | Not yet decided |
| Los Altos Hills | Yes | | |
| Palo Alto | Yes | | |
| Monte Sereno | Yes | | |
| Milpitas | | Yes | Only Council and Planning Commission are hybrid |
| Morgan Hill | | Yes | Only Council and Planning Commission are hybrid |
| Mountain View | | Yes | Only Council, Planning, and Rental Housing Committee (quasi-judicial bodies) are hybrid |
| San Jose | Yes | | |
| Santa Clara | | Yes | Only Council and Planning Commission are hybrid |
| Santa Clara County | | Yes | Only Board of Supervisors is hybrid |
| Saratoga | Yes | | |
| Sunnyvale | Yes | | |



| | | |
|---|--|---|
| TITLE: Town Agenda Format and Rules | | POLICY NUMBER: 2-01 |
| EFFECTIVE DATE: 12/15/1986 | | PAGES: 7 |
| ENABLING ACTIONS: 1986-183; 1987-024; 1988-124; 1993-181; 1994-057; 1996-108; 2001-077; 2004-033; 2009-002; 2021-047 | | REVISED DATES: 12/15/1986; 3/2/1987; 6/6/1988; 6/15/1992; 12/6/1993; 4/4/1994; 8/5/1996; 7/2/2001; 4/5/2004; 1/20/2009; 3/16/2009; 12/6/2010; 8/5/2013; 3/3/2015; 9/20/2016; 6/20/2017; 8/1/2017; 12/4/18/; 8/20/19; 12/3/19; 6/1/2021; 11/2/2021; 9/20/22 |

APPROVED:

PURPOSE

To establish procedures which standardize Town agendas and insure an orderly meeting. This Policy applies to Town Council and all Town Boards, Commissions, and Committees.

POLICY

The following policies have been established:

- A. Order of the Agenda
 Subject to the Mayor's, or Chair's, discretion to change the order of consideration of any agenda item during any individual meeting:
 - Meeting Call to Order
 - Roll Call
 - Pledge of Allegiance
 - Appointments
 - Presentations
 - Closed Session Report
 - Council Matters
 - Manager Matters
 - Consent Calendar
 - Verbal Communications
 - Public Hearings
 - Other Business
 - Adjournment (No later than midnight without vote)

| | | |
|--|------------------------|-------------------------------|
| TITLE: Town Agenda Format and Rules | PAGE: 2 of 8 | POLICY NUMBER: 2-01 |
|--|------------------------|-------------------------------|

B. Closed Session Report

At the first Council meeting following any Closed Session, the Town Attorney will report on the Closed Session describing what occurred, but without reporting any information which could damage the Town's position on a) potential or existing litigation, b) the acquisition or disposition of property, or c) any employee's privacy interests. In addition, the Closed Session agenda shall clearly identify the subject of each agenda item consistent with the requirements of the *Brown Act*.

C. Communications by Members of the Public

Speakers at public meetings will be asked to provide their full name and to state whether they are a resident of the Town of Los Gatos. This information is optional but not required.

1. *Verbal Communications.* Comments by members of the public during the initial Verbal Communications portion of the agenda on items not on the Council agenda shall be limited to 30 minutes and no more than three (3) minutes per speaker. As an item not listed on the agenda, no response is required from Town staff or the Council and no action can be taken. However, the Council may instruct the Town Manager to place the item on a future agenda. At the conclusion of the first Verbal Communications, the agenda will proceed onto the Public Hearings and Other Business sections of the agenda. In the event additional speakers were not able to be heard during the initial Verbal Communications portion of the agenda, an additional Verbal Communications section can be opened prior to Adjournment.
2. *Public Hearings.* Presentations during the Public Hearings portion of the agenda by appellants and applicants, including any expert or consultant assisting with the presentation, shall be limited to a total of no more than five (5) minutes for all speakers. Appellants and applicants shall be provided no more than three (3) minutes to rebut at the end of the public hearing. Other members of the public testifying at public hearings shall be limited to no more than three (3) minutes.
3. *Submittal of written materials by Applicant and Appellant.* To allow Town Council, Boards, Commissions, Committees, Town Staff, and the public the opportunity to review material in advance of a hearing, all materials submitted by the Applicant or Appellant must be received by the Town Clerk fourteen (14) days prior to the scheduled public hearing. Documents and materials received from the Applicant or Appellant after the deadline will be accepted; however, the Town Staff may not have the time to analyze the documents and material, and Town Council may not have the time to consider materials submitted after the deadline. The submittal of any additional material by the Applicant or Appellant shall not be considered prima facie evidence (sufficient to establish a fact or raise a presumption) under Town Code Section 29.20.300.
4. *Other Agenda Items.* Comments by members of the public concerning any other item on an agenda shall be limited to no more than three (3) minutes per item.

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|--|------------------------|-------------------------------|
| TITLE: Town Agenda Format and Rules | PAGE: 3 of 8 | POLICY NUMBER: 2-01 |
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5. *Mayor's Discretion.* All time limits noted above shall be subject to change at the Mayor's discretion. If a member of the public speaks on the wrong item, the time used would be deducted from the speaker's overall public comment time allowance on the correct item.

D. Consent Calendar

Items on the Council agenda that are considered to be of a routine and non-controversial nature are placed on the Consent Calendar. Typical items include meeting minutes, final reading and adoption of ordinances, resolutions approving agreements, awards of contracts, status staff reports, etc.

Consent items shall be approved by a single Council motion unless a member of the Council requests that an item be removed for separate Council action. Members of the public may speak on an item on the Consent Calendar during the public comment portion before the Council votes on the Consent Calendar. Items removed from the Consent Calendar may be considered at that meeting at the Mayor's discretion. If an item is removed for discussion, members of the public may speak to that item even if they previously spoke on the item during public comment.

E. Presentations

The Presentations portion of the agenda is intended to allow organized groups to make formal presentations to the Council and to recognize and honor deserving individuals and organizations. All matters included on the Presentations portion of the agenda require the prior approval of the Mayor and shall be limited to no more than ten (10) minutes, unless the Mayor grants additional time.

F. Council Matters

Members of Council may report on the activities of the committees to which they belong or the meetings they attend, question staff briefly on matters upon which the Council has taken action or given direction, make brief announcements, or discuss whether to place particular items on future agendas for action by the Council. Future agenda items to be briefly discussed here shall be identified consistent with Section G of this policy, or may be raised for the first time under this item.

G. Adjournment

Council meetings will be adjourned at midnight unless a majority of the Council Members present vote to extend the adjournment time.

H. Americans with Disabilities Notice on Town Agendas

As part of the requirements under the Americans with Disabilities Act, the Town is required to provide notice of whom to contact in advance of a public meeting for assistance to disabled individuals who might wish to participate. The following notice shall be provided in at least one location on each Town agenda for Council, Boards, Commissions, or Committees.

| | | |
|--|------------------------|-------------------------------|
| TITLE: Town Agenda Format and Rules | PAGE: 4 of 8 | POLICY NUMBER: 2-01 |
|--|------------------------|-------------------------------|

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Clerk Administrator 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]

I. Preparation of the Agenda

The agenda is prepared by staff in consultation with the Mayor for the Mayor's final approval. If there is a disagreement between the Mayor and staff, the Mayor makes the ultimate call on the Agenda and its items. Any member of the Council may submit a request through the Town Manager or directly to the Mayor to make a change or addition to the agenda. In no event may the subject of whether to amend the agenda be discussed outside of a public meeting by more than two (2) members of the Council.

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2. Some other rules of order, or
3. Allow the Mayor to conduct the meeting as deemed appropriate so long as all members of the Town Council concur.

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- ~~3. When a Council Member or Commissioner is participating remotely, they shall have their camera on and be visible for the duration of the meeting.~~
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Reconsideration of prior Council actions is discouraged and may only occur in special circumstances subject to the procedural restrictions outlined herein. Reconsideration does not include, and this Policy does not prohibit, the repeal of a resolution or ordinance in response to a lawsuit or a referendum challenging that adoption.

Step 1 – Motion to Place Reconsideration of a Prior Action on a Future Council Agenda

- a) The motion must be made by a Council Member who previously voted on the prevailing side of the prior action;
- b) The maker of the motion shall specifically articulate the new information, analysis and/or circumstances that warrant(s) reconsideration of the prior action;
- c) The motion must be adopted by a majority of the full Council; and

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- a) The full reconsideration of the prior action will be placed on the next available Council agenda following the agenda-setting and required public notification process.
- b) The agenda, public notification and staff report for the full reconsideration of the prior action shall clearly state that the item has been previously acted upon by the Council and is being reconsidered by the Council.
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The Chairperson of the meeting may make or second motions. The Chairperson may also restate, or ask that the maker restate, all motions immediately prior to any vote.

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2. The Town embraces diversity and strongly condemns hate speech and offensive, hateful language or racial intolerance of any kind at Council meetings.
3. Town Council and staff are well aware of the public's right to disagree with their professional opinion on various Town issues. However, anti-social behavior, slander, hatred, and bigotry statements are completely unacceptable and will not be tolerated in any way, shape, or form at Town Council meetings.
4. All public comments at the Town Council meeting must pertain to items within the subject matter jurisdiction of the Town and shall not contain slanderous statements, hatred, and bigotry against non-public officials.

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5. The Town will go through the following steps if a disturbance results from a member of the public not following these rules:
 - a. If participating remotely, Town staff may mute the individual with an explanation for the record of why muting occurred consistent with this Policy.
 - b. If participating in-person, the Mayor may call a recess for violation of this Policy, resulting in the immediate cessation of the audio and video recording and the Council exiting the Chamber. Staff will determine if the individual should be removed or if all members of the public should leave depending on the extent of the disturbance. In the event that all public members exit, only the press would be allowed back in the meeting. Once the individual(s) leave, the Council would return to the Chamber and the Mayor would resume the meeting.
 - c. Persons disrupting a Council meeting may be cited for violation of the California Penal Code Section 403.

APPROVED AS TO FORM:

Gabrielle Whelan, Town Attorney



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| TITLE: Town Agenda Format and Rules | | POLICY NUMBER: 2-01 |
| EFFECTIVE DATE: 12/15/1986 | | PAGES: 7 |
| ENABLING ACTIONS: 1986-183; 1987-024; 1988-124; 1993-181; 1994-057; 1996-108; 2001-077; 2004-033; 2009-002; 2021-047 | | REVISED DATES: 12/15/1986; 3/2/1987; 6/6/1988; 6/15/1992; 12/6/1993; 4/4/1994; 8/5/1996; 7/2/2001; 4/5/2004; 1/20/2009; 3/16/2009; 12/6/2010; 8/5/2013; 3/3/2015; 9/20/2016; 6/20/2017; 8/1/2017; 12/4/18/; 8/20/19; 12/3/19; 6/1/2021; 11/2/2021; 9/20/22 |

APPROVED:

PURPOSE

To establish procedures which standardize Town agendas and insure an orderly meeting. This Policy applies to Town Council and all Town Boards, Commissions, and Committees.

POLICY

The following policies have been established:

- A. Order of the Agenda
 Subject to the Mayor's, or Chair's, discretion to change the order of consideration of any agenda item during any individual meeting:
 - Meeting Call to Order
 - Roll Call
 - Pledge of Allegiance
 - Appointments
 - Presentations
 - Closed Session Report
 - Council Matters
 - Manager Matters
 - Consent Calendar
 - Verbal Communications
 - Public Hearings
 - Other Business
 - Adjournment (No later than midnight without vote)

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B. Closed Session Report

At the first Council meeting following any Closed Session, the Town Attorney will report on the Closed Session describing what occurred, but without reporting any information which could damage the Town's position on a) potential or existing litigation, b) the acquisition or disposition of property, or c) any employee's privacy interests. In addition, the Closed Session agenda shall clearly identify the subject of each agenda item consistent with the requirements of the *Brown Act*.

C. Communications by Members of the Public

Speakers at public meetings will be asked to provide their full name and to state whether they are a resident of the Town of Los Gatos. This information is optional but not required.

1. *Verbal Communications.* Comments by members of the public during the initial Verbal Communications portion of the agenda on items not on the Council agenda shall be limited to 30 minutes and no more than three (3) minutes per speaker. As an item not listed on the agenda, no response is required from Town staff or the Council and no action can be taken. However, the Council may instruct the Town Manager to place the item on a future agenda. At the conclusion of the first Verbal Communications, the agenda will proceed onto the Public Hearings and Other Business sections of the agenda. In the event additional speakers were not able to be heard during the initial Verbal Communications portion of the agenda, an additional Verbal Communications section can be opened prior to Adjournment.
2. *Public Hearings.* Presentations during the Public Hearings portion of the agenda by appellants and applicants, including any expert or consultant assisting with the presentation, shall be limited to a total of no more than five (5) minutes for all speakers. Appellants and applicants shall be provided no more than three (3) minutes to rebut at the end of the public hearing. Other members of the public testifying at public hearings shall be limited to no more than three (3) minutes.
3. *Submittal of written materials by Applicant and Appellant.* To allow Town Council, Boards, Commissions, Committees, Town Staff, and the public the opportunity to review material in advance of a hearing, all materials submitted by the Applicant or Appellant must be received by the Town Clerk fourteen (14) days prior to the scheduled public hearing. Documents and materials received from the Applicant or Appellant after the deadline will be accepted; however, the Town Staff may not have the time to analyze the documents and material, and Town Council may not have the time to consider materials submitted after the deadline. The submittal of any additional material by the Applicant or Appellant shall not be considered prima facie evidence (sufficient to establish a fact or raise a presumption) under Town Code Section 29.20.300.
4. *Other Agenda Items.* Comments by members of the public concerning any other item on an agenda shall be limited to no more than three (3) minutes per item.

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5. *Mayor's Discretion.* All time limits noted above shall be subject to change at the Mayor's discretion. If a member of the public speaks on the wrong item, the time used would be deducted from the speaker's overall public comment time allowance on the correct item.

D. Consent Calendar

Items on the Council agenda that are considered to be of a routine and non-controversial nature are placed on the Consent Calendar. Typical items include meeting minutes, final reading and adoption of ordinances, resolutions approving agreements, awards of contracts, status staff reports, etc.

Consent items shall be approved by a single Council motion unless a member of the Council requests that an item be removed for separate Council action. Members of the public may speak on an item on the Consent Calendar during the public comment portion before the Council votes on the Consent Calendar. Items removed from the Consent Calendar may be considered at that meeting at the Mayor's discretion. If an item is removed for discussion, members of the public may speak to that item even if they previously spoke on the item during public comment.

E. Presentations

The Presentations portion of the agenda is intended to allow organized groups to make formal presentations to the Council and to recognize and honor deserving individuals and organizations. All matters included on the Presentations portion of the agenda require the prior approval of the Mayor and shall be limited to no more than ten (10) minutes, unless the Mayor grants additional time.

F. Council Matters

Members of Council may report on the activities of the committees to which they belong or the meetings they attend, question staff briefly on matters upon which the Council has taken action or given direction, make brief announcements, or discuss whether to place particular items on future agendas for action by the Council. Future agenda items to be briefly discussed here shall be identified consistent with Section G of this policy, or may be raised for the first time under this item.

G. Adjournment

Council meetings will be adjourned at midnight unless a majority of the Council Members present vote to extend the adjournment time.

H. Americans with Disabilities Notice on Town Agendas

As part of the requirements under the Americans with Disabilities Act, the Town is required to provide notice of whom to contact in advance of a public meeting for assistance to disabled individuals who might wish to participate. The following notice shall be provided in at least one location on each Town agenda for Council, Boards, Commissions, or Committees.

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In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Clerk Administrator 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]

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 - c. Persons disrupting a Council meeting may be cited for violation of the California Penal Code Section 403.

APPROVED AS TO FORM:

Gabrielle Whelan, Town Attorney

Wendy Wood

Subject: FW: Town Council Policy Regarding Remote Attendance for Boards, Commissions and Committees

From: Rick Tinsley [REDACTED]

Sent: Saturday, January 21, 2023 5:28 PM

To: Council <Council@losgatosca.gov>

Subject: Town Council Policy Regarding Remote Attendance for Boards, Commissions and Committees

EXTERNAL SENDER

Councilmembers,

In the latest Council Policy Committee packet Staff proposes to eliminate remote public participation and the use of Zoom in the above referenced meetings.

I urge the Council to reject Staff's proposal and maintain the use of Zoom (or similar hybrid options) for these meetings.

Over the past two years of using Zoom, it has been clear that the use of this technology has provided several benefits:

1. Increased Public participation in and observation/attendance of meetings
2. Increased Staff observation of meetings that are of interest even if they are not Participants.
3. More Council members can observe meetings of interest (as Attendees not Participants)
4. Enhanced ability for Commissioners/Board Members/Committee Members to Participate remotely as necessary consistent with existing rules(video conferencing allows a more uniform ability than telephone-only participation).
5. Finally, and perhaps most importantly, archived recordings of these meeting are EXTREMELY valuable to all stakeholders for catching up with meetings they were unable to attend in real time or to simply review/verify content from a prior meeting. Many people have grown to rely on these recordings to become better informed on Town business.

Prior to using Zoom as prompted by the pandemic, Staff made audio recordings of some meetings but to my knowledge such audio files were never published or archived.

In the Council Policy Committee packet, Staff states "It would be infeasible for the subject matter experts to be simultaneously supporting the Commission.....while also managing the Zoom participation of public and/or Commissioners." On the contrary I observed our Staff doing a very good job of this and becoming more and more adept over time with increased experience as most people have during the pandemic. Perhaps it is more of a challenge for some people than others and if so there are some simple solutions such as having one of the Commissioners/Board Members serve as Zoom manager, or having a high school or college intern manage this function. I am sure there are many other workable solutions that would allow us to maintain the valuable transparency this technology enables.

The use of this technology is one of the silver linings of the pandemic as it allowed all stakeholders to better inform themselves and increase their level of engagement in our governance. We should value and embrace this, not eliminate it.

Thank you,

Rick Tinsley



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2023

ITEM NO: 16

DATE: February 1, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Receive the Senior Service Committee Roadmap for Senior Services and
Provide Any Additional Direction to the Committee and/or Staff

RECOMMENDATION:

Receive the Senior Service Committee Roadmap for Senior Services and provide any additional direction to the Committee and/or staff.

BACKGROUND:

On March 2, 2021, the Town Council held a joint session with the Community Health and Senior Service Commission (CHSSC) to hear the Commission's goals for the coming year. The Council indicated its strong interest in the work of the Commission in light of the inclusion of senior services as a new Council Strategic Priority for Fiscal Years 2021-2023.

Councilmembers requested that the Commission review the current senior service provision in Town and help identify any gaps that exist in senior services. On June 15, 2021, the Town Council received the Community Health and Senior Service Commission's (CHSSC) assessment report on senior service provision in Los Gatos. At the conclusion of the discussion, Council provided direction to staff to return to Council with recommendations for establishing a Senior Service Committee.

On August 3, 2021, the Town Council adopted a Resolution 2021-035 establishing a Senior Service Committee for the development of a long-term vision and plan for senior service provision in Los Gatos. The Committee was tasked with developing a long-term vision and strategic plan through extensive community outreach, including workshops, that would culminate in a comprehensive report of how best to serve the needs of the Town's older adult community.

PREPARED BY: Arn Andrews
Assistant Town Manager/Committee Liaison

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

PAGE 2 OF 2

SUBJECT: Senior Service Roadmap

DATE: February 1, 2023

DISCUSSION:

On January 30, 2023, the Senior Service Committee approved the final Senior Service Roadmap for presentation to the Town Council (Attachment 1).

Attachment 2 contains a Power Point presentation outlining the seven Roadmap goals and associated projects.

CONCLUSION:

Council should receive the Senior Service Committee Roadmap for Senior Services and provide any additional direction to the Committee and/or staff.

COORDINATION:

This report has been coordinated with the Town Manager, Town Attorney, and Senior Service Committee.

FISCAL IMPACT:

None currently; however, there is a recommendation for 0.2 of a full time equivalent (FTE) staff position that Council may wish to direct for incorporation into the Proposed Fiscal Year 2023/24 Operating Budget.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Senior Service Roadmap
2. PPT of the Roadmap



Senior Services Roadmap for Los Gatos

A Report Prepared for the Town of Los Gatos
by request of the Town Council



January 30, 2023

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Senior Services Roadmap for Los Gatos

A Report Prepared for the Town of Los Gatos
by request of the Town Council

Senior Services Committee

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Maureen Heath, Senior Community Leader, Vice Chair
Matthew Hudes, Council Member
Rob Rennie, Council Member & Mayor (Sept. 2021 - Apr. 2022)
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January 30, 2023



Executive Summary

The Senior Services Committee was created by the Town Council to study the needs of the older adult community. Issues laid bare by the pandemic and identified by the Community Health and Senior Services Commission (CHSSC) motivated this initiative. This Committee of stakeholders, including two Councilors and chair of CHSSC, was asked to prepare a roadmap for senior services, including a long-term vision and strategic plan. Over the past 15 months the Committee conducted extensive data gathering and outreach, including a survey of older households, stakeholder workshops, benchmarking of peer cities, and extensive engagement.

This Roadmap provides a 10-year plan for revitalizing senior services for the community at-large in an age-friendly Los Gatos. Our vision is to create a community where older adults are engaged, valued and provided equitable opportunities to thrive in an environment that protects against isolation and promotes inclusion. Based on data, community input, and analysis, seven goals were chosen to achieve this vision:

- 1) Appealing & Inviting Facility (renovate or build);
- 2) Core Senior Services;
- 3) Communication & Engagement;
- 4) Volunteer Support & Engagement,
- 5) Enhanced Transportation Options for Older Adults;
- 6) Senior Housing – Information on Approaches & Options;
- 7) Integrated Governance, Funding, & Accountability.

One, three, and 10-year activities were developed for each area as well as specific projects with milestones. By addressing these in priority order the goals can be achieved with sustainable Town investment and by engaging dedicated, talented members of our community. Significant leverage will be gained through community fundraising, volunteer engagement and government/foundation grants. At the end of 10 years our population of 55+ adults is anticipated to be nearly 1/3 of our Town. Our goal is to move from a Town with one of the regionally lowest, least-coordinated efforts for senior services to a thriving age-friendly Town where older adults provide substantial contributions and support. First steps to achieve these long-term objectives are:

- Engage Town commissions and boards to support Roadmap goals:
 - CHSSC (Communications & Engagement, Roadmap Tracking, Annual Assessment)
 - CSTC (Transportation Options for Older Adults)
 - Parks (Community Garden)
 - Other Commissions or Boards as appropriate
- Sustainably support core senior services:
 - Town: social, educational, healthy living activities provided by LGS Recreation;
 - Community: grants to services (Live Oak Nutrition, WVCS, re-establish Adult Day Care, etc.);

- Create an Age-Friendly Coordinator position (0.2 FTE) as the central point of contact for coordination of Town and community older adult services, initiatives, and accountability.
- Recognize and encourage community-lead efforts to enhance support for senior services, including a planned 501(c)3 nonprofit Foundation (Friends of Los Gatos Seniors) to raise funds for senior programs and for a community facility with space for senior activities.
- Transition from planning to action by engaging the Senior Services Committee to assist the Town in publicizing and jump-starting year 1 projects and then sunset the Committee in 2023.

Other first year objectives include to engage volunteers and community organizations, and to enhance accountability by an annual assessment, and inventory senior housing opportunities.

Our study of peer cities indicates that this community Roadmap for senior services can bring substantial benefit to the Town of Los Gatos. The experience of Saratoga, Palo Alto, and Morgan Hill demonstrates that developing a robust senior services program through a city-community partnership can significantly increase resources for older adult programs without substantially increasing the cost to the city and with the benefits extending to all residents.

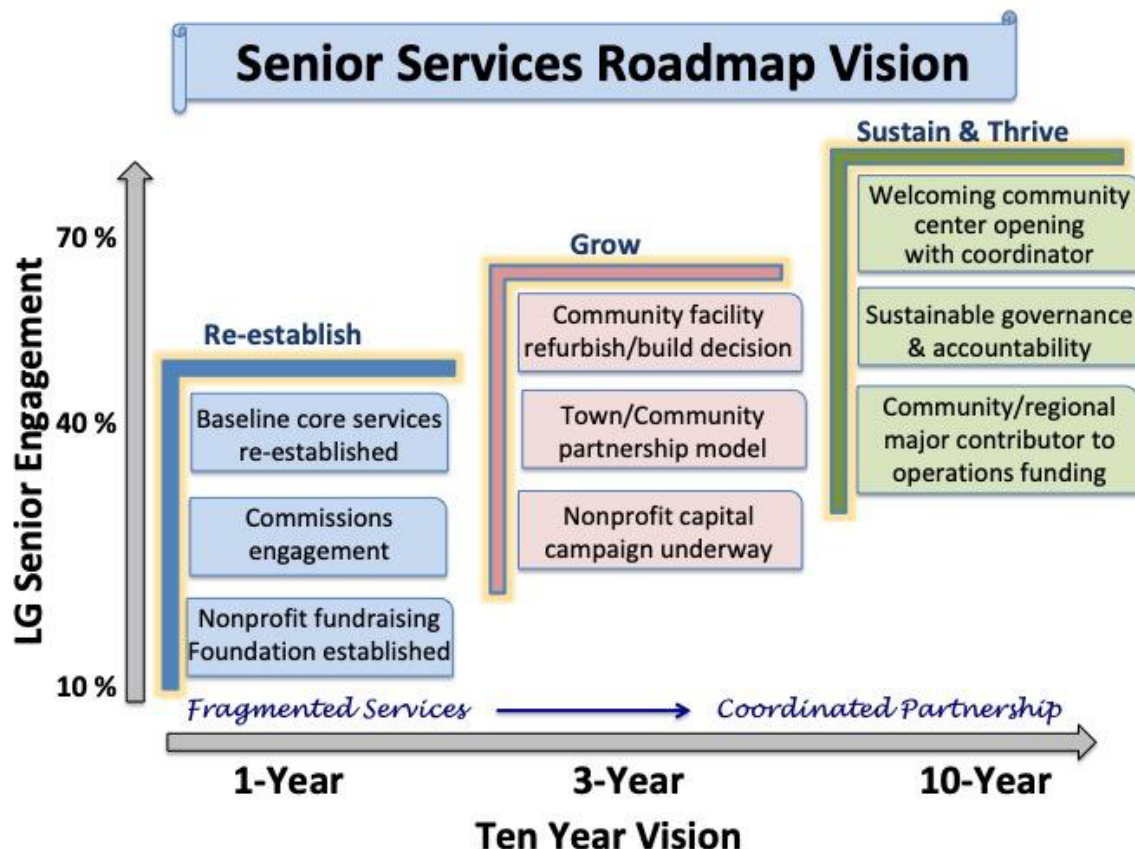
Overview

This section provides a high level overview of the Senior Services Roadmap for the Los Gatos community at large and the essential first steps required in year one to achieve the Roadmap's 10 year vision. It is a community plan, recognizing that the Town cannot provide all services.

Roadmap 1-3-10 Year Vision

The 1-3-10 year goals of the Roadmap supports the vision for Los Gatos fully participating as an age-friendly community.

Our Roadmap for Senior Services vision includes a transition from fragmented services to a coordinated partnership, including greater older adult community engagement over the one-three-ten year period.



Year One Implementation

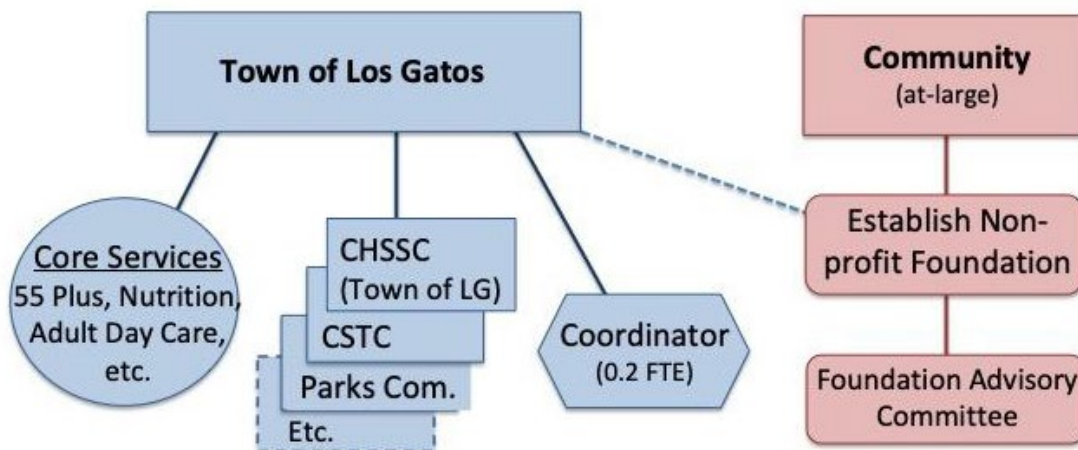
Much progress has been made over the last 15 months in planning, engaging the older adult population, and in gaining the enthusiastic support of community leaders. For this progress to not be lost there are several steps that the Committee recommends the Town Council take. Consistent with the Town's current financial environment these near term steps have been tailored to require limited financial investment to sustain the effort while beginning to put in place the community structure needed for future senior services support at the local, regional,

and state level. Our benchmarking studies have shown that resources supporting senior programs and facilities can be greatly increased through such community efforts that serve to supplement limited municipal resources. These resource additions will be essential to achieve the 10 year vision of the Roadmap. Key steps requested of the Town Council to achieve this progress are:

- 1) Engage commissions and ad hoc committees in support of the Roadmap goals (e.g., CHSSC for increased communication and engagement, CSTC for senior transportation, Parks Commission for Community Garden, etc.);
- 2) Sustainably support core senior services:
 - Town: social, educational, healthy living activities provided by LGS Recreation,
 - Community: grants to services (Live Oak Nutrition, WVCS, re-establish Adult Day Care, etc.);
- 3) Create an Age-Friendly Coordinator position (0.2 FTE) as the central point of contact for coordination of Town and community older adult services, initiatives, and accountability;
- 4) Recognize and encourage community-lead efforts to enhance senior services support, including a planned 501(c)3 nonprofit Foundation, Friends of Los Gatos Seniors, to raise funds for senior programs and a community facility with space for senior activities.;
- 5) Transition from planning to action by engaging the Senior Services Committee to jump-start year 1 projects and then sunset the Committee.

The figure below provides a visual representation of these critical steps by the Town Council and the Community.

Year 1 - Re-establish Baseline



Actions to Date

Background

As part of the ongoing strategic priorities of the Los Gatos Town Council to enhance the lives of older adults, the Council committed \$500,000 in grants from ARPA (American Rescue Plan Act) funds in April 2021 to non-profits for revitalizing older adult programs. Part of these

proceeds were used for a first statistically valid survey of older adults, senior recreation and activity programs, and to support a community health fair.

On August 3, 2021 the Los Gatos Town Council established a Senior Services Committee (SSC) to examine in depth the longer-term senior services issues initially presented by the Community Health and Senior Service Commission (CHSSC) and develop a road map for revitalizing senior services in Los Gatos. Council Resolution 2021-035 provided the SSC's charter:

"The Committee should develop a long-term vision and strategic plan through extensive community outreach, including workshops, that would culminate in a comprehensive report of how best to serve the needs of the Town's older adult community. The Committee should leverage the breadth of Committee membership and existing coalitions in the identification and prioritization of needs and develop recommended solutions. The Committee should take into consideration the value proposition of recommendations, estimated level of effort, potential providers and service provision models, availability and timing of service delivery, and future funding requirements;"

The SSC members were subsequently appointed by the Council to represent the following areas:

- Community Health and Senior Service Commission – Two (2) members Chair and Youth Commissioner
- Councilmembers – Two (2) Councilmembers
- Service Club Representation – One (1) member
- Chamber Representation – One (1) member
- Service Provider Representation – Two (2) members
- Senior Community Leaders – Two (2) members
- County Department of Aging Representation – One (1) member
- Healthcare Provider Representation – One (1) member

In September the membership was expanded from 12 to 16 to include all members of the CHSSC. A list of the members and the groups they represent is given in Appendix A.

The SSC held its first meeting in September 2021 and has subsequently met on a monthly basis (except for December 2021). Tom Picraux was elected as chair and Maureen Heath as vice chair. Subcommittees were established by the SSC in compliance with the Brown Act on an as-needed basis to carry out its specific tasks. A list of the subcommittees appointed and their membership is given in Appendix B.

The Committee's initial action was to develop a plan to accomplish its tasks with an associated timeline. It then gathered the data necessary to make an assessment of the state of senior services in Los Gatos. This activity included supporting the first statistically valid survey of older adults in Los Gatos, holding workshops with community groups to hear input on unmet needs of older adults, and benchmarking senior services in Los Gatos relative to comparable towns and cities elsewhere. The resulting findings were then used to establish a set of seven goals for enhancing future senior services in Los Gatos. Activities needed to support these goals were subsequently identified and used to develop detailed projects for each goal, as well as the

requirements and resources needed to meet these goals. This information was then assembled into this Senior Services Roadmap for delivery to the Town Council in February 2023.

In all of the work of the Committee its considerations and recommendations have been guided by the Town's diversity, equity and inclusivity goals. The Committee is committed to all of these objectives in all our Roadmap goals, valuing all community members, regardless of religion, immigration status, ethnicity, race, disability, gender, sexual orientation or gender identity. The Committee strives to ensure all community members feel safe, respected and comfortable to be themselves and express all aspects of their identities and oppose any attempts to undermine the safety, security and rights of any members of our community. In addition the Committee has embraced the previous goals of Los Gatos in becoming an Age-Friendly City and the Committee has developed its recommendations consistent with the WHO and AARP Age-Friendly Cities initiative that encourages promoting opportunities for older people to participate fully in town life (active aging), to continue to live independently for as long as possible in their community, and to live in a community where people of all ages are engaged, valued and afforded equitable opportunities to thrive.

Throughout the work of the Committee, the Town Council has approved key milestones developed by the Committee to assure alignment with the Council's objectives. The following Section III.B. provides an overview of the key milestones accomplished by the Committee in developing the data needed to establish a long-term road map. In the course of the work of the Committee to develop long-term goals it became apparent that there were some short-term actions that could be taken immediately. These actions not only benefited older adults but also served to provide valuable insights in the development of the longer-term goals. They are summarized in Section III.B.6 below.

Key Milestones

During the fall of 2022 the Committee developed the following Vision and Mission for a Senior Services Roadmap. The Town Council approved these guiding principles in February 2022.

Vision

"CREATING A COMMUNITY WHERE OLDER ADULTS THRIVE

Our vision is to create a community where older adults are engaged, valued and provided equitable opportunities to thrive in an environment that protects against isolation and promotes inclusion."

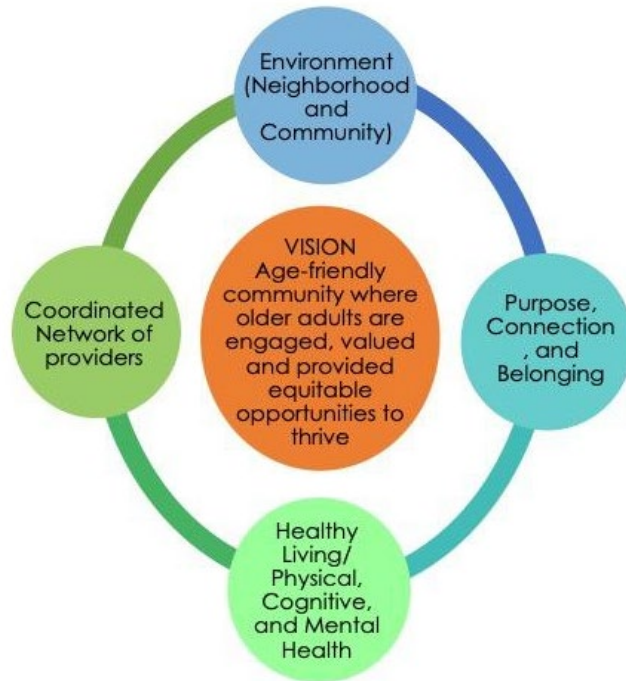
The Committee Vision is illustrated visually in the graphic on the following page.

Mission

Our mission is to provide an age-friendly community that:

- Provides resources and facilities for older adults to live full and healthy lives with volunteer and leadership opportunities that provide a sense of purpose, connection and belonging.

- Promotes physical activity and physical, cognitive, mental and spiritual health for socially enriching lives.
- Promotes adequate and healthy nutrition through community programs.
- Embraces walkable spaces with safe, accessible and affordable transportation.
- Promotes increased participation and communication with the older adult community.
- Partners with local agencies that provide services and assistance for older adults, creating a network that supports public information that delivers services in a coordinated and collaborative manner.
- Ensures accountability by measuring and monitoring the results of efforts to provide services for older adults.



The Committee also developed a Work Plan for development of the road map, which is given in Appendix C.

Benchmarked Survey

The Saratoga Area Senior Coordinating Committee (SASCC) was funded to implement and manage the administration of this Community Assessment Survey for Older Adults (CASOA) by POLCO in partnership with the National Resource Center (NRC), and the Committee participated in that effort. SASCC previously worked with POLCO to conduct the CASOA survey in Saratoga. CASOA provides a statistically valid survey of the strengths and needs of older adults as reported by older adults themselves. Aspects of livability are explored within six community dimensions: Community Design, Employment and Finances, Equity and Inclusivity, Health and Wellness, Information and Assistance, and Productive Activities. Overall community quality is assessed also. The report is intended to enable local governments, community-based organizations, the private sector, and other community members to understand more thoroughly and predict more accurately the services and resources required to serve an aging population.

The Committee worked with SASCC to develop the CASOA survey for Los Gatos and the survey was launched in early February 2022. The survey concluded in mid-March 2022. A total of 2,400 households with an adult member 60 years or older were randomly selected to receive the survey. Completed surveys from 529 older adults were obtained, providing an overall response rate of 22.0 % and a margin of error +/- 4.26%. An open participation survey was also

offered and a total of 102 additional surveys were received and found to be consistent with the statistically validated random survey.

The objectives of the survey were to determine Town strengths that support older adults, to determine needs or gaps in services and to determine potential future needs. Goals of this study were:

- **Immediate:** planning, resource allocation, advocacy, increased engagement.
- **Intermediate:** implement programs to meet needs, increase the number of quality programs, and implement effective policies.
- **Long Term:** foster a community of older adults that are healthier, engaged, empowered, independent, productive, and vibrant.

The Survey Report of Results consisting of 173 pages was received in April 2022. How older residents of Los Gatos viewed their community overall and how likely they are to recommend and remain in Los Gatos provides a high-level overview of the quality and livability of the community:

- Over 9 in 10 of older residents living in Los Gatos rated their overall quality of life as excellent or good. Most of the older residents surveyed scored the community positively as a place to live and would recommend the community to others. More than three-fourths said they planned to stay in the community throughout their retirement.
- Older residents tended to give lower scores to the community as a place to retire than they did to the overall quality of life in the community. About 7 in 10 respondents provided assessments of excellent or good to the community as a place to retire.

Overall Community Quality



Place to Live and Retire

88 / 100



Recommend and Remain in Community

78 / 100

Community readiness was assessed through a series of older resident ratings in the six different livability domains and the summarized ratings are given below. The areas of community livability found to be strongest in Los Gatos were Safety, Physical Health, Community Inclusivity, and Social Engagement, while the areas showing the largest need for improvement were Housing (affordability, options, and accessibility issues), Employment (opportunities and quality), Information on Older Adult Services (more than 50% reported lack of available information on older adult services, programs, and activities), Independent Living (ability to continue living in one's home), and Mental Health (depression, isolation, anxiety and memory loss). Also, there was a lower rating for “new urbanism”, where older adults desire to live close to places where they can eat, shop, work and receive services. One more important gap was noted related to caregiving, where over 1/3 of respondents reported providing care for someone 55+: Los Gatos does

not have an adult day care service, and it was found that long-term care services information is lacking, and a future crunch is predicted for caregiving support.

Community Design



Employment and Finances



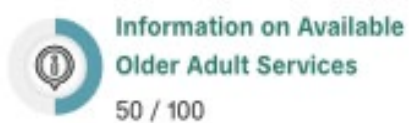
Equity and Inclusivity



Health and Wellness



Information and Assistance



Productive Activities



Caregiving

Scoring not applicable



Civic Engagement

75 / 100



Social Engagement

79 / 100

The survey also assessed the economic contribution older adults make through employment and caregiving. It estimated that older residents in Los Gatos contribute \$188 million annually to their community through paid and unpaid work.

The complete survey can be found at <https://drive.google.com/file/d/1W8-VVqgF2FJckT8tQcC8lArka4e1L04M/view>. An index detailing the areas covered by the survey is given in Appendix D.

Community Workshops

During its formation the Senior Services Committee was encouraged to engage and ‘energize’ the Town regarding the future of Senior Services as it learned about the needs of older adults in Los Gatos. Community outreach subcommittee members determined that a series of Community Workshops to reach out to various older adult communities in Los Gatos would be a valuable form of engagement and learning about needs. The workshops were organized to increase awareness in the community of the efforts of the Committee and the official survey to boost response and at the same time to gain additional insights into specific local interests and concerns of our older adult residents. The responses to an open discussion of what people liked and what they felt was missing in a focus-group like setting helped add ideas and insights to the higher-level knowledge gained from our official survey findings. It was recognized that holding the workshops with existing groups meant that the sampling represented a particular demographic of an active and engaged older population. However, these participants are also more likely to be early adopters and engage in new programs as we seek to build senior services.

Members Nancy Pearson and Catherine Somers conducted the workshops. Using a theme of re-imagining senior services, the participants were asked to think about what things would enrich their lives and those of their friends, family, and neighbors. The Town’s effort to revitalize senior services and to encourage participation in the survey was described. They were then asked to talk about the top three things that they would like to see the Town offer older adults and the three things that the Town needed to do better. Responses were noted and are summarized below. The workshops typically lasted 30 minutes.

Workshops were conducted between January and April with the following groups: Lions Club, Kiwanis Club, Los Gatos/Saratoga Service Providers, Democracy Tent, History Club, Live

Oak Nutrition, El Sombroso Oaks (walking the community), Rotary (noon), Rotary (morning), 55 Plus Adult Rec., Terraces, and the Los Gatos Interfaith Council.

Key findings from the Workshops are:

Communication: with complaints ranging from having no communication during the pandemic to simply not knowing where to go or who to reach out to, it became apparent that communications to the older adult community was one of the biggest gaps. In addition, there were many requests for a 'one-stop-shop' hub of information. Needs ranged from how to find transportation, how to get a meal delivered, how to find a reliable handyman etc., to how to find out what is going on in Town and how to participate in group activities. Interest was also noted in the mountain communities with such residents asking that they be included in communications.

Transportation: older adults who no longer drive had many questions and concerns about transportation. These concerns were related to timing (e.g., last minute appointments needs) to coverage (e.g., does RYDE serve the mountain communities?) to cost (e.g., for just a needed short ride). One woman at the Terraces couldn't get a ride to her church in Saratoga, as it was outside the range served for their vehicles and she didn't know who to reach out to for help (which goes back to communication)

Technology: whenever we asked about email/internet ability, the response varied, generally based on age. Younger seniors were fine with being on email lists, while older seniors preferred print and regular mail. Many said that they would like to be taught how to use their mobile phones properly, as well as social media (especially Facebook) and devices for reading, such as Kindles. They expressed a desire for the younger generations to help them.

Socialization: older adults generally want a place to go, perhaps to share a meal, play a game, listen to music, or otherwise socialize. Many also expressed a desire to volunteer. Some notable quotes were:

"Everyone enjoys...everyone needs...a sense of belonging."

"Volunteering is better than working...and has other effects too, such as building friendships and keeping busy in mind and body..."

Cities Benchmarking

To better understand the status of senior services in Los Gatos, services and spending (mostly pre-pandemic) for Los Gatos older adults were benchmarked against seven other peer communities by a benchmarking subcommittee. The peer communities were the cities of:

- Campbell,
- Cupertino,
- Los Altos/Los Altos Hills,
- Morgan Hill,
- Palo Alto,
- Princeton (NJ),
- Saratoga.

A summary overview of the cities benchmarking results is given below where green, yellow, and red indicate qualitative high, medium, and low scoring by the subcommittee. Total community older adult funding and the municipal component of that funding are given across the top of the chart for each city, as well as the senior 60+ total and percentage populations (based on census numbers). The AARP Senior Livability Index is also given. Results for Los Gatos are given with and without abatements provided during the pandemic. Services highlighted in pink (column on the left) are judged to be particularly important areas for older adults. Detailed benchmarking results for each of the cities studied are given in Appendix E.

Table III.1a. Summary overview of cities benchmarking comparison for the categories of Environment and Purpose and for Connection and Belonging.

| | | Los Gatos* | w/o abatement | Los Altos** | Palo Alto | Princeton NJ | Cupertino | Morgan Hill | Saratoga | Campbell | Peer Avg |
|---|---|--|---------------|-------------|--------------|--------------|--------------|-------------|--------------|------------|----------|
| | Total Community Budget | \$ 610,000 | \$ 360,000 | | \$ 1,664,645 | \$ 778,000 | \$ 1,439,451 | \$ 591,000 | \$ 1,370,000 | \$ 498,000 | |
| | Per Senior | \$87 | \$52 | \$0 | \$125 | \$149 | \$162 | \$93 | \$192 | \$91 | \$116 |
| | Municipal Portion of Budget | \$ 335,000 | \$ 85,000 | \$ 650 | \$ 1,084,058 | \$ 270,511 | \$ 1,289,451 | \$ 340,000 | \$ 70,000 | \$ 283,000 | |
| | Per Senior | \$48 | \$12 | \$0 | \$81 | \$52 | \$145 | \$53 | \$10 | \$52 | \$56 |
| | Senior Population | 6,974 | 6,974 | 6,101 | 13,303 | 5,208 | 8,876 | 6,368 | 7,142 | 5,489 | |
| | Percentage | 21% | 21% | 20% | 19% | 17% | 15% | 14% | 23% | 13% | 17% |
| Category | Service | * Includes \$250K Rent Abatement and does not include \$500K one-time ARPA funding | | | | | | | | | |
| Healthy Living/Physical, Cognitive, and Mental Health | Nutrition, meals, meals on wheels, etc. | | Hi | Hi | Hi | Med | Low | Hi | Med | Med | |
| | Mental and Behavioral Health Programs | | Med | Low | Hi | Hi | Hi | Low | Med | Med | |
| | Adult Day Care and Caregivers (Dementia Care) | | Med | Med | Hi | Med | Hi | Low | Hi | Low | |
| | Fitness/Recreational Facilities & Programs (exercise, meditation, wellness, healthy living, etc.) | | Med | Med | Hi | Hi | Hi | Med | Hi | Hi | |
| | Affordable Quality Housing - Seniors | | Med | Med | Med | Low | Med | Med | Low | Low | |
| | Continuing Living Facilities, different residence models | | Med | Hi | Hi | Low | Med | Med | Med | Med | |
| | Accountability and Measurement, annual report on senior services, surveys, etc., transparency in plans and results, metrics | | Low | Hi | Hi | Hi | Low | Med | Med | Hi | |
| | Participation in Publicly Available Senior Programs outside the city | | Med | Med | Med | Low | Med | Med | Med | Low | |
| | Volunteer coordinator | | Low | Hi | Hi | Hi | Hi | Med | Hi | Med | |
| | Affordability of Membership/Event Cost | | Low | Med | Med | Hi | Med | Hi | Hi | Med | |
| Coordinated Network of providers | | | | | | | | | | | |
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Table III.1b. Summary overview of cities benchmarking comparison for the categories of Healthy Living and for Coordinated Network of Providers.

Observations based on these results and some of the key gaps they reveal for Los Gatos will be given in Section IV.G. Also, as part of the benchmarking studies and the subcommittees work on the Roadmap goals related to facilities and governance, several other city community centers with senior services facilities were visited.

Comparing Other City Community Centers and Governance Models

Facility and Governance subcommittee members made visits to community centers in Los Altos, Palo Alto (Avenidas), and Morgan Hill. The visits provided an opportunity to examine the uses of senior services space and to hold detailed discussions with local leaders on their governance, funding, and accountability processes. The discussions afforded an excellent opportunity to better understand facility utilization and to review the history, successes and issues in creating and managing new facilities and supporting senior services. The visits revealed three distinct operating models. The Los Altos facility is a newly completed community center with dedicated space for senior programs. It is a city-operated model with community input. The Palo Alto facility, Avenidas, is in a remodeled 1960s police station that has undergone three major renovations and has a substantial endowment seeded by two legacy donations of homes. It is a non-profit-operated model with city input and coordination. The Morgan Hill facility is a community center with dedicated space for senior programs that was built in the mid-2000's. It is a mixed model for operation and funding

involving a partnership between nonprofits and the city. “Visiting these facilities really opened our eyes to what was possible and what it took to achieve new or remodeled facilities.” M. Hudes.

Explore Selected New Initiatives and Community Engagement

As part of the Work Plan finalized in January 2022, the Committee planned to conduct several exploratory activities in the community to gain further insight into how to increase engagement. One long-standing need was for more convenient and better information on local senior services, one of the goals in Los Gatos’ Age-Friendly Cities initiative. The Committee worked with the CHSSC to help support its 2022 goal to create an online information hub for senior services. The CHSSC and LGS Rec 55 Plus worked together and now have a first version of the online HUB. These results have demonstrated the clear benefit of continuing to refine the HUB as a valuable source of information for older adults and the entire community.

A second exploratory initiative was partnering with the service clubs in Town to work as a coordinated group of clubs to initiate events. One example was to explore opportunities to increase social activities of interest to older adults. Working with the Committee a monthly “First Fridays” social meet-up was initiated with the Palms restaurant on their patio in October 2022. The response was beyond expectations with about 50 seniors in attendance each month. The events also provided an opportunity for service club representatives to promote community volunteering.

A third successful effort to engage the community in a social setting for older adults was the Committee’s reception held in partnership with the LGS Recreation in April 2022. The reception celebrated the completion of the benchmark survey, workshops and cities benchmarking and served as an outreach to inform the community about the Committee and the results of its data collection activities. “The ARC Bar” reception served to transform the Adult Recreation Center and make it a special evening of social engagement. The attendance was far larger than anticipated with nearly 150 people attending. Independent of the Committee but with its members supportive engagement LGS Recreation re-launched the 55 Plus program which had been shut down due to the pandemic with a Town Council 2022 ARPA grant. With the effective efforts of the new 55 Plus manager the program rapidly grew participation over the course of 2022 to 730 members, approximately twice pre-pandemic levels.

Another exploratory activity is The Producers program at KCAT TV, also funded by a Town Council 2022 ARPA grant. This program for 55+ volunteers trains participants in all aspects of TV and radio production and has had good response.

These exploratory efforts demonstrated that there is a tremendous appetite for social engagement, as well as recreational and learning activities, in the Los Gatos older adult community. Outreach also revealed a range of different socialization interests, with different groups seeking different venues and types of activities (“one size does not fit all”). Multiple future ideas came from this community engagement, including new social events, bringing service clubs into the mix, and finding new opportunities for volunteering and promoting senior

services. The results of the exploratory engagement efforts strongly confirmed the data collected from the surveys, workshops and cities benchmarking efforts.

Roadmap Goals

After gathering data from the array of sources summarized above, the Committee analyzed results and conducted a study session to discuss and reach a consensus on the critical goals the Roadmap needs to address to revitalize senior services and achieve its vision. These goals are:

- Goal 1. Appealing and Inviting Facility (Renovate or Build)
- Goal 2. Core Senior Services
- Goal 3. Communications and Engagement
- Goal 4. Volunteer Support and Engagement
- Goal 5. Enhanced Transportation Options for Older Adults
- Goal 6. Senior Housing - Information on Approaches and Options
- Goal 7. Integrated Governance, Funding, and Accountability for Senior Services

Studies by the Committee indicate a new community facility will enable the enhancing and energizing of all senior services. Second, core senior services are essential to senior programs. Third, the studies show that communications of needed information and engagement of the older adult community is essential to a successful senior services program. Fourth, a robust volunteering element provides for a vibrant community and greatly enhances engagement. Next, transportation and housing are of the utmost importance to older adults and the ability to age in place for an Age-Friendly City. Finally, governance, funding, accountability are necessary for a sustainable program.

The selected Roadmap goals were presented to Town Council and approved in June 2022. At that time Goal 2 and 3 were two separate goals, Communications and Information Access and Increased Engagement in Social, Educational and Healthy Living Activities. However, as the goals were studied further and Roadmap timelines and projects developed it was determined that there was considerable synergy and overlap between community and engagement, while core senior services were not well represented in a single goal. Thus the first two areas were merged and the latter area developed into a single goal. These goals will be described later in detail in Section V along with the projects proposed to implement the goals and the 1-3-10 year vision for their success.

Development of Roadmap 1-3-10 Year Goals, Milestones and Timeline

As a culmination of all the data gathering and analysis work the Committee completed its work in the second half of 2022 by developing and documenting the Senior Services Roadmap. Subcommittees were appointed for each Roadmap goal area and expert guest participants were invited to participate; guests included representation from the Complete Streets and Transportation and the Planning Commissions, the 55 Plus program, and Jewish Family Services. Each subcommittee developed detailed 1, 3, and 10-year milestones for their area. Bullet points were included for each milestone to provide clarifying background. These documents were then used to develop specific projects for each milestone objective to provide key elements that would need to be addressed for that milestone and the timescale for each of the elements. The work of the goals subcommittees was then integrated together by the roadmap writing

committee. The intent of including specific milestones and projects for each goal was to provide a starting point for any future commission, committee, or ad hoc group to understand the Committee's thinking and to use as a starting point as they develop a plan for that goal area. The detailed 1-3-10 year milestones and project documents along with the timeline are presented in a subsequent section of the report.

Participation

The Committee acknowledges and expresses appreciation to the many people and commissions who have contributed valuable information to this report.

| | |
|---|---|
| Tylor Taylor, Saratoga Area Senior Coordin. Comm. | Ellen Schwartz, Princeton, NJ |
| Lisanne Kennedy, LGS Recreation 55 Plus Manager | Lee Fagot, Democracy Tent |
| Bob Buxton, CST Commission | Vikki Pearce, History Club of Los Gatos |
| Jeff Thompson, CST Commission | Debbie Vasquez, Morgan Hill |
| Ali Miano, CST Commission | Cricket Rubino, Morgan Hill |
| Jeffrey Barnett, Planning Commission | John Sink, Avenidas, Palo Alto |
| Ann Peterson, Live Oak Adult Day Services | Bridget Matheson, Los Altos |
| | Mary Jo Price, Los Altos |
| Arn Andrews, Los Gatos, Committee Liaison | Laurel Prevetti, Los Gatos Town Manager |

Senior Services Ecosystem in Los Gatos

Population

According to the US Census Bureau there were 6685 adults 65 or older in 2020 representing about 20.2 % of the Los Gatos population. For comparison there were only 15.2% 65+ in the state of California. The 65+ in Los Gatos was approximately 15% in 2000, 18% in 2010, 20% in 2020. The population of older adults is growing in Los Gatos and there have been projections that this demographic will reach 30% by 2030. This growth in the percentage of older adults suggests that by the end of this 10-year Roadmap plan for senior services the number of people over 55 could represent nearly 1/3 of the population of the Town.

Key Services and Communities

The Goal 2, Core Senior Services, of this Roadmap is focused on maintaining essential services in the Town for older adults. These services are provided by a community of providers that extend beyond the boundaries of Los Gatos. The Town's older adult community ranges from those who are in the upper income level to those who struggle to meet basic needs. Essential services are especially critical for those in the lower economic income range. Services address needs in the areas of nutrition and food security, transportation, housing, adult day care and caregiver support, information on available resources and social work support, and the availability of social, recreation, education, and healthy living activities.

Service Providers Directory

A listing of nonprofit and community organizations located locally and providing services that include older adults is given in Table 4. These groups provide essential core services to many of our older adults in Los Gatos. In many cases these local organizations work with and

significantly extend the important benefits provided by county, state, and federal programs such as Meals on Wheels, Sourcewise (Santa Clara County Area Agency on Aging), county Nutrition Program, etc. During 2022 the Town of Los Gatos provided grant support to supplement the operations of: Live Oak Senior Nutrition Service Center, Next Door Solutions to Domestic Violence, and West Valley Community Services. The Town also provided contracts to SASCC (Outlook monthly newspaper and health fair), LGS Recreation (55 Plus senior program and rent relief) and KCAT TV (The Producers senior program) from federal ARPA funds during 2022.

| Organization | Address | Website | Services |
|---|---|------------------------------------|--|
| Addison-Penzak Jewish Community Center | 14855 Oka Rd. Los Gatos | apjcc.org | Exercise, recreation, healthy living & wellness, arts & culture, community engagement |
| CADRE (Collaborating Agencies Disaster Relief Effort) | 2731 North First St. San Jose | cadresv.org | Network of organizations that provide community emergency preparedness information |
| El Camino Health | 815 Pollard Rd, Los Gatos & 2500 Grant Rd, Mountain View | www.elcaminohealth.org | Hospital community programs, transportation services, mental health and addiction services |
| Embodied Recovery | 20 S Santa Cruz Ave # 319, Los Gatos | embodiedrecovery.com | Outpatient mental health and addiction treatment services |
| Good Samaritan Hospital | 2425 Samaritan Dr. Los Gatos, CA | goodsamsanjose.com | Hospital community programs, addiction services, mental health |
| House of Hope – Calvary Church | 16330 Los Gatos Blvd. Los Gatos. CA | www.calvarylg.com/local | Food bank, hot meals, legal counseling, financial aid, grief counseling |
| Jewish Family Services of Silicon Valley | 14855 Oka Road #202 Los Gatos, CA | www.jfssv.org/services.html | Food bank, financial aid, legal counseling, grief support, holocaust, refugee assistance, senior care |
| LDS Church | 15985 Rose Ave. Los Gatos, CA | jehovahs-witnesses.org/ward/13755/ | Refugee settlement, employment services, addiction programs, Bishop Storehouse food & grants, emergency preparedness |

| | | | |
|---|--------------------------------------|--|--|
| LGS Recreation | 208 E. Main St. Los Gatos, CA | www.lgsrecreation.org | Community social, educational, and recreational activities through 55 Plus senior program |
| Live Oak Adult Day Care [currently closed] | 111 Church St. Los Gatos, CA | liveoakadultdaycare.org | Senior adults day programs, social, games, exercises |
| Live Oak Senior Nutrition Service Center | 111 Church St. Los Gatos, CA | lgumc.org/live-oak-senior-nutrition-center/ | 60+ age, Lunches, Excess food availability, and social/emotional/healthy living supplemental support |
| Los Gatos Chamber of Commerce | 10 Station Way Los Gatos, CA | www.losgatoschamber.com | Programs/events to strengthen, promote businesses, enhance quality of life |
| Los Gatos Community Health and Senior Services Commission | 110 East Main St. Los Gatos CA | www.losgatosca.gov/278/Community-Health-Senior-Services-Commission | Supporting and coordinating community health and senior services needs |
| Next Door Solutions to Domestic Violence | 234 E. Gish Rd. #200, San Jose | www.nextdoorsolutions.org | Supports victims of domestic violence and their families |
| S.A.I.L. Health Concierge | | sailhealthconcierge.com | Aging in place services, concierge medicine, planning |
| Saratoga Area Senior Coord. Council (SASCC) | 19655 Allendale Ave. Saratoga, CA | www.sascc.org | Senior center, RYDE transportation program, adult day program, Outlook community newspaper for seniors |
| St. Luke's Outreach Program | 20 University Ave. Los Gatos, CA | stlukeslg.org/pantry/ | Soup kitchen, spiritual, social, homeless showers, ministry |
| St. Mary's Immaculate Conception Church | 219 Bean Ave. Los Gatos, CA | stmaryslg.org/los-gatos-homeless-st-luke | Spiritual, financial aid, home/hospital visitation |
| West Valley Community Services | 10104 Vista Dr. Cupertino, CA | www.wvcommunityservices.org | Food bank, case management, housing support, financial aid, social engagement |

Table 2. Los Gatos Senior Service Providers Directory. (Courtesy of the West Valley Service Providers network, T. Picraux, coordinator, December 2022)

Town Grants to Non-Profit Service Providers

The Town has maintained a grant process for many years in support of local arts enrichment and core community services. The core services grants provide supplemental support to help maintain essential services in the community to residents in need by local non-

profit organizations. This program accepts grant opportunities for review and recommendation by the Arts Commission and Community Health and Senior Services Commission with final selection and approval by Town Council. During the FY 2022-23-year support was provided for non-profits with services which include in part older adults:

- Live Oak Senior Nutrition: \$22,000/yr
- West Valley Community Services: \$20,000/yr
- Next Door Solutions To Domestic Violence: \$10,000/yr
- NAMI Santa Clara County (mental health services): \$7,500/yr
- Bay Area Housing Corp (home modifications for disabilities): \$7,500/yr

During the FY 2021-22 support was also provided to the Live Oak Adult Day Services at \$13,000 but was not provided during FY 2022-23 due to continuing post-pandemic closure of the center. Also in FY 2021-22 one-time grants were provided to Parents Helping Parents (\$10,000), Methodist Church showers (\$10,000), and also to West Valley Community Services for \$10,000..

Special one-time ARPA Supplement grants for senior services post-pandemic recovery were provided by the Town Council during FY 2021-22 to:

- LGS Recreation 55 Plus: \$328,500
- KCAT TV: \$100,000
- SASCC: \$71,500.

Provider to Service Matrix

The table below provides a matrix of main services to service providers for a partial listing of community service providers in Los Gatos. Note that Live Oak Day Services is listed but has not yet reopened. This matrix can serve to initiate a comprehensive directory of services and providers that our older adult community can access.

| | Town of Los Gatos | LGS Recreation | SAS CC | County of Santa Clara | Live Oak Nutrition | Live Oak Day Care | Meals on Wheels | Chamber of Commerce | KC AT | West Valley Community Services |
|-----------------|-------------------|----------------|--------|-----------------------|--------------------|-------------------|-----------------|---------------------|-------|--------------------------------|
| Case Management | | | | | | | | | | ☐ |
| Communication | ☐ | ☐ | ☐ | ☐ | | | | ☐ | ☐ | |
| Recreation | | ☐ | | | ☐ | | | ☐ | | |
| Education | | ☐ | | | | | | | ☐ | |
| Nutrition | | | | ☐ | ☐ | | ☐ | | | ☐ |
| Housing | | | | | | | | | | ☐ |

| | | | | | | | | | | |
|--------------------|--|--|---|--|--|---|--|--|--|--|
| Transportation | | | □ | | | | | | | |
| Adult Day Services | | | | | | □ | | | | |

Service Assessment

Cities strive to provide a set of core services to meet essential needs of older adults. For some residents these greatly enhance their quality of life while for others services may provide an essential safety net. While many services are provided or supplemented by regional, state, or federal sources, the extent and quality of these services often depend on local initiative. This qualitative assessment of our Town services has been based on our benchmarking of other cities in comparison to Los Gatos.

A particularly high area of services are our meals programs. These programs include the non-profit Live Oak Nutrition weekday lunches which also often include opportunities for socialization and exercise activities. The county-wide Meals on Wheels program is also available to all qualifying older adults and disabled residents. Other areas with strong Town engagement are emergency preparedness for meeting disaster events and personal safety for all residents. In addition, the Town Council has taken an active role in addressing senior services needs over the past year, however Town support of senior services or coordination staffing is lower than in peer cities.

In 2009, the Town restructured support for senior services through a Lease Agreement in which LGS Recreation was given rent relief in return for providing some specific services for older adults (Appendix G). LGS Recreation serves a broad community and range of age groups within Los Gatos and Saratoga. While LGS Recreation is currently providing a set of services for the Town's older adults, the actual services provided have evolved since the original agreement, and at times services have deteriorated when the financials of LGS Recreation have been insufficient to support those services. The three school boards that established LGS Recreation through a Joint Powers Authority, do not have an older adult constituency, rather a youth-oriented student constituency. Because of this structure, the relationship does not represent a strong alignment between the interests of the Town's older adult community and the governance of LGS Recreation. Transportation is an area that is at the mid-level of senior service provision, with the RYDE program providing scheduled weekday senior transportation at a sliding scale. Committee investigations indicate there is a need for weekend and evening ride programs, possibly served by an on-demand shuttle service. Areas that rank at a lower level include educational/technology/life skills training and employment opportunities. Caregiver support and adult day services also rank lower with adult day services not yet opened after the pandemic. Also, while mental health services for residents are provided primarily by local hospitals and non-profits, regional studies are showing that the community, including older adults, would greatly benefit from a nearby regional health clinic (for example in the West Valley) that provides additional services and a nearby source of support.

One area that ranked low at the beginning of our study but has been rapidly improving due to the use of \$500,000 investment in ARPA funds by the Town Council is social and recreational opportunities. As a result of this support the adult recreational program of LGS Recreation has increased its participation by over 100% compared to pre-pandemic levels. Combined with exploratory social events initiated by this Committee, such as First Fridays, it is estimated that engagement in social and recreational programs has reached over 10 % of the older adult population, demonstrating the possibilities of growth for senior engagement. Also, a new ARPA-supported program was initiated to teach TV and radio production by older adults. Another area which has shown improvement is that of information and communication targeted to older adults. The Outlook monthly newspaper provided by SASCC provides specific Los Gatos information. A Los Gatos weekly, the Los Gatan, provides community information. Also, efforts by the CHSSC in partnership with LGS Recreation 55 Plus and this Committee has resulted in the creation of an information HUB that is providing increased awareness of senior services, demonstrating the successes that can be achieved by revitalizing senior services in Los Gatos.

Gaps and Unmet Needs

Observations of key points learned for the peer cities from the Committee's city benchmarking work as given in Section III.B.5. are summarized below.

Los Altos/Los Altos Hills

- New \$35m facility funded by the City
- No membership fee
- Paid transportation
- **Medium participation rate**

Palo Alto

- Modern senior facility
- Wide range of choices of activities
- Organized and transparent about finances
- **High participation rate**

Princeton, NJ

- Provided by non-profit: 70% from contributions, 19% from City revenues and 11% fees
- City makes annual contribution
- **High participation rate**, including from surrounding communities

Cupertino

- Services differ because of higher homogeneity of ethnic population
- City budget is considerably higher within the peer group
- **Medium participation rate**

Morgan Hill

- Good integration of senior services and senior center into the city's community center
- Well organized community programs that supplement senior services
- City and charitable foundation funded through senior center with volunteers
- **High participation rate**

Saratoga

- Coordinated governance & management of programs with central accountability by local entity (SASCC)

- Services are funded primarily from outside grants and contributions
- Independent non-profit operates with small (5%) support from the City. Funding tripled since 2016
- City is actively informed & Council participates on Board of Directors of non-profit
Strong board
- **High participation rate**

Campbell

- City converted high school into Community Center with pool & outdoor fitness area - used by many LG residents
- Goals are set and measured on city website
- City funded and run through rec department with 3.5 employees supporting senior programs
- **High participation rate**

These observations can be contrasted to those for Los Gatos below.

Los Gatos

- Among the **highest** quality, walkability, parks, personal safety, emergency preparedness, and meals program for peer group
- Active engagement of Council in effort to improve senior services
- Unique arrangement: Services primarily provided by community education organization funded by in-kind facility use fee-relief from Town
- Secondly provided by volunteers and nonprofits with some funding by Town grants
- Informal coordination of services through community grants with minimal direct governance
- Among the lowest senior staffing, participation rate, information availability, accountability, and volunteer coordination among peer group
- **Least attractive** and functional senior activity center of peer group
- **Lowest per senior budget** of peer group on both a total community basis and municipal spend basis
- Relatively high cost of individual events/programs combined with moderate cost annual fee
- **Low participation rate**

Some key gaps apparent from these observations have been the low participation rate of older adults in Los Gatos, low budget expenditures, inadequacy of the senior center, and lack of coordination or accountability of senior service programs. The Los Gatos 55+ program has achieved rapid improvement in enrollment during 2022 (from approximately 390 pre-pandemic levels to 730 participants at the conclusion of 2022). There is significant room for further improvement in senior program participation in Los Gatos, for example by increases in the current 55 Plus membership which now represents approximately 10% of older adults. Community response to the short term efforts of the Committee and CHSSC (the information Hub, First Fridays, engagement of groups) suggest that there is a large untapped potential in Los Gatos to enhance and expand opportunities for and participation by older adults.

Los Gatos One-Three-Ten Year Roadmap Goals, Projects, and Milestones

The Committee organized its seven goals into 1 year, 3 years, and 10 years activities and then used these activities to develop specific projects for each goal area with associated timelines and milestones. The projects are intended to serve as descriptive information and insight into learning by the Committee. These projects provide a starting point for consideration by commissions, committees and community non-profits in implementing the goals of the Roadmap. An overview of the seven goals, an overview for the 1-3-10 year activities, and the projects with milestones to accomplish these goals are presented below. The 1-3-10 year vision activities detail is presented in Appendix F.

Goal 1. Appealing and Inviting Facility (Renovate or Build)

Subcommittee - Heath (chair), Blum, Hudes, Lenoci, Picraux

This goal is to renovate or build a community facility including older adult space/services. develop plans, fund, and implement a revitalized community center with dedicated space for older adult programs. Currently, the ground floor of the building at 208 E. Main Street is being used for the older adult recreational/social programs by LGS Recreation. The facility and the space available are insufficient, as judged by the Committee and based on the feedback received in peer city reviews. The decision to renovate or build a new community facility that includes older adult space/services will be decided as part of this goal.

Age-friendly communities have spaces that are welcoming where residents can come together to engage in social, educational, and enriching activities. Community centers which either include or are dedicated to the needs of older adults provide an important focal point for residents and are found in all our benchmarked cities. Approaches to building or refurbishing facilities are many, but in every case the approaches have required a concerted, long-term effort with deliberate planning. This area would address:

- More welcoming building with adequate multipurpose space than currently exists. A portion of the facility dedicated to meet the needs of older adults
- A funding strategy, fund-raising mechanisms and a 501(c)(3) Friends of Seniors entity to provide long-term support
- Coordinated community strategy and support for development of senior facilities
- Intergenerational space for meetings, clubs, community events, recreational, cultural, educational, learning, health education and information services
- Deliberate evaluation of effectiveness and value of investment in existing facilities
- Evaluation of multiple use options and how Town assets might be utilized in the creation of a community facility

Goal 1. The 1-3-10 Year Activities Overview

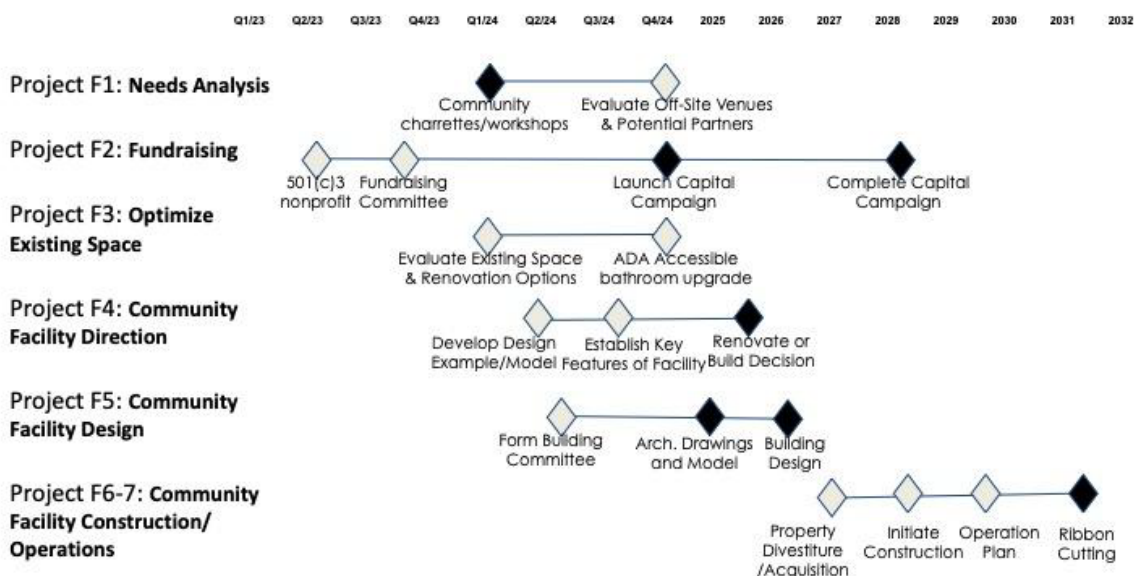
One Year - Form facilities advisory committee, explore fundraising options, establish a 501(c)3 non-profit for facilities and services, and optimize interim repairs to existing facility

Three Year - Develop 3 models for community center, perform feasibility study, make, fix or build decision (selecting from 3 models), form building committee, and begin substantial fundraising

Ten Year - Ensure ample quality space for older adult services and programs, provide a staffed welcome desk, and perform ribbon cutting of welcoming facility

Goal 1. Projects Overview

1. Appealing and Inviting Facility (Renovate or Build)



Goal 1. Projects

PROJECT F1 Needs Analysis

- Form an ad hoc group to conduct needs analysis. Q2/23
- Community input on needs and concepts. Q1/24
- Community charrettes/workshops (needs & conceptual plan). Q1/24
- Evaluate off-site venues and potential partners. Q4/24

PROJECT F2 Fundraising

- Establish a 501(c)3 non-profit to support fundraising for senior services. Q2/23
- Establish a fundraising committee. Q4/23
- Form board for the senior non-profit. Q1/24
- Launch capital campaign. Q4/24
- Partner with county supervisors and state legislature on funding plans. Q4/24
- Capital campaign consultant and develop annual targets. Q4/24
- Explore government grants - local, state & federal. Q4/24
- Complete capital campaign. Q1/28

PROJECT F3 Optimize Existing Space

- Evaluate existing space & renovation options. Q1/24
- Track existing facility utilization. Continuing
- Ongoing projects- ADA accessible bathroom upgrade. Q4/24

PROJECT F4 Community Facility Direction

- Develop a design example/model. Q2/24
- Conduct feasibility study. Q2/24

- Define space alternatives. Q3/24
- Establish key features of the facility. Q3/24
 - Ability to rent
 - Host large community and county-wide events
 - Enhanced recreational and fitness activities
 - Educational and social activities
 - Accessible
- Identify the preferred alternative (renovate or build). Q2/25

PROJECT F5 Community Facility Design (Renovate or Build)

- Develop an implementation plan. Q3/25
- Form building committee. Q2/24
- Architectural drawings and a model to support fundraising. Q3/25
- Architect consultation. Q2/25
- Builder consultation. Q2/25
- Conceptual design. Q3/26

PROJECT F6: Community Facility Construction (Renovate or Build)

- Property divestiture and acquisition, if required. Q1/27
- Initiate facility construction. Q1/28
- Complete facility construction. Q2/30

PROJECT F7: Community Facility Operations

- Establish business support options - how to run and operate a community center. Q1/29
- Operating model. Q1/29
- Sustainable financial plan. Q1/29
- Ensure ample quality space for older adult services & programs.
- Provide a staffed welcome desk to answer questions and accept volunteers. Q1/31
- Ribbon-cutting and opening. Q1/31

Goal 1. First Steps

- Form 501(c)3 non-profit
- Recruit fundraising committee
- Plan for community charrettes

Goal 2. Core Senior Services

Subcommittee - Pearson (chair), Khanal, Konrad, Lenoci, Mlinarich, Picraux

A thriving town needs to provide essential core services for older adults. These services cover such areas as support for social, educational, and healthy living activities. Also, it is essential to meet basic nutrition and health needs for the disadvantaged. Services for older adults are provided by a diversity of municipal, county, regional, and state organizations. The Town gains much leverage for this goal by encouraging and supporting the work of community nonprofits and organizations such as hospitals and health clinics that are essential to the Town's safety net. Provisions for physical and mental health, as well as support for caregivers and their loved ones, are also essential. The availability and use of community parks, gardens and open spaces provides significant core support, not only to older adults, but to all. Efforts to preserve and provide adequate core services include:

- Social, educational, and healthy living opportunities
- Funding and expanding essential services for all stages of aging including nutrition and adult day care programs
- Training and classes to enhance marketable and/or new skills
- Personal safety, scam avoidance, legal assistance awareness, etc.
- Promote food security and options
- Promotion of County mental/behavioral health offerings and the local availability of these services

Goal 2. The 1-3-10 Year Activities Overview

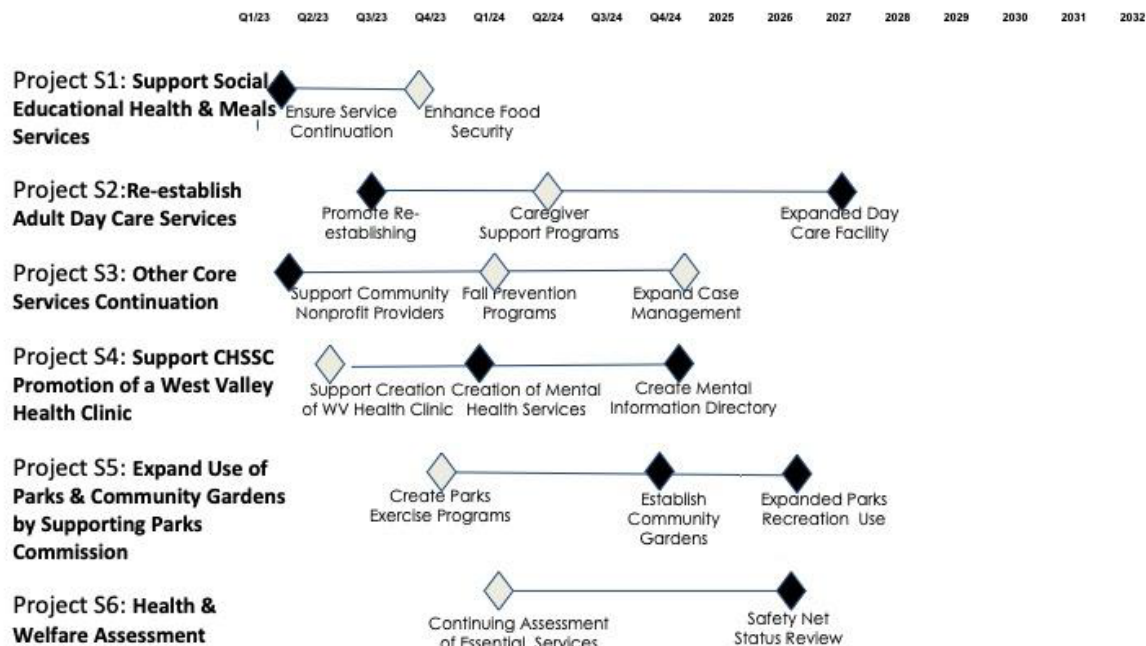
One Year - Continue to support essential services in Town.

Three Year - Re-establish adult day care services.

Ten Year - Promotion of mental health services in the West Valley.

Goal 2. Projects Overview

2. Core Senior Services



Goal 2. Projects

PROJECT S1 Support Continuation of Social, Educational, Healthy Living and Meal Services for Older Adults

- Ensure continuation of senior adult recreation, social, educational and healthy living provided by the 55 Plus program. Q1/23
- Ensure continuation of the Live Oak Nutrition Program and funding to provide food security for older adults. Q1/23
- Promote and enhance food security and healthy options for older adults, including supplemental food collection and distribution, local food bank services, etc. Q3/23

PROJECT S2 Support Re-establishment of Adult Day Care Services

- Promote establishment, support, and use of adult day care services in Los Gatos Q3/23
- Establish facilitated caregiver support programs for families and family caregivers. Q2/24
- Promote caregiver respite programs. Q4/26
- Facilitate an expanded adult day care program with more space and a controlled-access outdoor area to provide services for future growth. Q4/27

PROJECT S3 Support Continuation of Other Core Services in Los Gatos by Community

Organizations

- Advocate for support of community nonprofits that provide services and assistance to older adults in Los Gatos (WVCS, SASCC, Next Door Domestic Violence, Jewish Family Services, House of Hope, local hospitals, etc.). Q1/23
- Promote and advocate on behalf of services for older unhoused people and for those in danger of becoming unhoused. Q3/23
- Advocate for and seek to expand the availability of case management workers serving older adults in Los Gatos. Q4/24
- Establish an ongoing mentor program to enlist local organizations and seniors with special skills to provide social, educational & healthy living enrichment courses. Q2/24
- Promote County fall prevention programs. Q3/23
- Promote programs that provide information on personal safety devices, scam/fraud avoidance, and legal assistance. Q3/24

PROJECT S4 Support CHSS Commission Objectives to Establish a West Valley Health Clinic with Mental Health Services

- Support the Community Health and Senior Services Commission efforts, as well as those by community groups and the County to establish a health clinic in the West Valley. Q2/23
- Monitor and promote County initiatives and government grant opportunities to provide mental health services in the West Valley. *continuing*
- Promote establishment of a mental health task force in the West Valley. Q4/23
- Create a mental health information directory. Q4/24

PROJECT S5 Expand Use of Parks, Community Gardens, and Other Facilities

- Support the efforts of the Parks Commission as they relate to senior use of parks, community gardens and related facilities.
- Establish exercise programs in parks and on Town plaza. Q4/23
- Initiate a program to enhance cluster seating in parks for meet up areas. Q2/24
- Support and promote establishment and multigenerational use of community gardens (volunteer planning, landscape design, site plot layout). Q4/24
- Expand recreational use of existing parks and facilities (e.g., pickleball by striping to selected Town tennis courts, bocce ball facility renovation at Oak Meadow Park, establish lawn bowling site, etc.). Q1/26

PROJECT S6 Health and Welfare Assessment

- Provide a continuing assessment of community essential services for older adults in Los Gatos. Q1/24
- Review the welfare safety net status for older adults and the utilization and coordination of older adult services with County and community non-profit programs. Q1/26

Goal 2. First Steps

- Negotiate an agreement for continuation of 55 Plus social, educational, and healthy living program.
- Re-establish adult day care services.
- Continue support of community essential core services by non-profits.

Goal 3. Communications and Engagement

Subcommittee - Konrad & Pearson (co-chairs), Miller, Mlinarich, Picraux, Somers, Yick, Guest: Kennedy (LGS Rec 55 Plus)

Older adults and caregivers need ways to obtain information about available services, resources, and events in multiple formats. It is also essential that they have opportunities to engage in social, lifelong learning, and healthy living activities. Productive activities outside of work promote quality of life and contribute to active aging. Finding and engaging in social activity and volunteering in activities of interest becomes increasingly challenging as people age. Opportunities to participate and socialize with others, volunteer in meaningful and productive activities and engage in the community in which one lives contribute to a feeling of belonging and personal satisfaction. The survey and workshops point to these areas as critical elements to solve problems, participate in community activities and enhance quality of life. Benchmark results for other cities indicated that Los Gatos could offer more programs.. This goal helps residents age in place. Areas addressed would include:

- Availability of resources, activities, programs (clubs, local centers, and government - supported services, etc.)
- Presented in the form of an Information Hub (trusted, well-curated content on services availability, activities pointer, events calendar, etc.) - short term. Includes web, mobile, and social network capabilities. Phone feature with live senior services and volunteer coordinator - longer term
- Navigation to services tools (medical, maintain physical health)
- Information included from other goals of transportation, volunteering, and housing (stay in home support options, wellness calls, assistive devices)
- Consistent availability, coordination, engagement, and age-friendly accessibility of weekly activities and monthly social events
- Promotion ranging from print to in-person engagement by going to where older adults live (ambassadors, volunteers, etc.)
- Finding ways to subsidize existing programs to expand reach to older adults - medium to short term
- Enlisting local organizations and expertise to help enhance programming
- Highlight special events that are Age-Friendly

Goal 3. The 1-3-10 Year Activities Overview

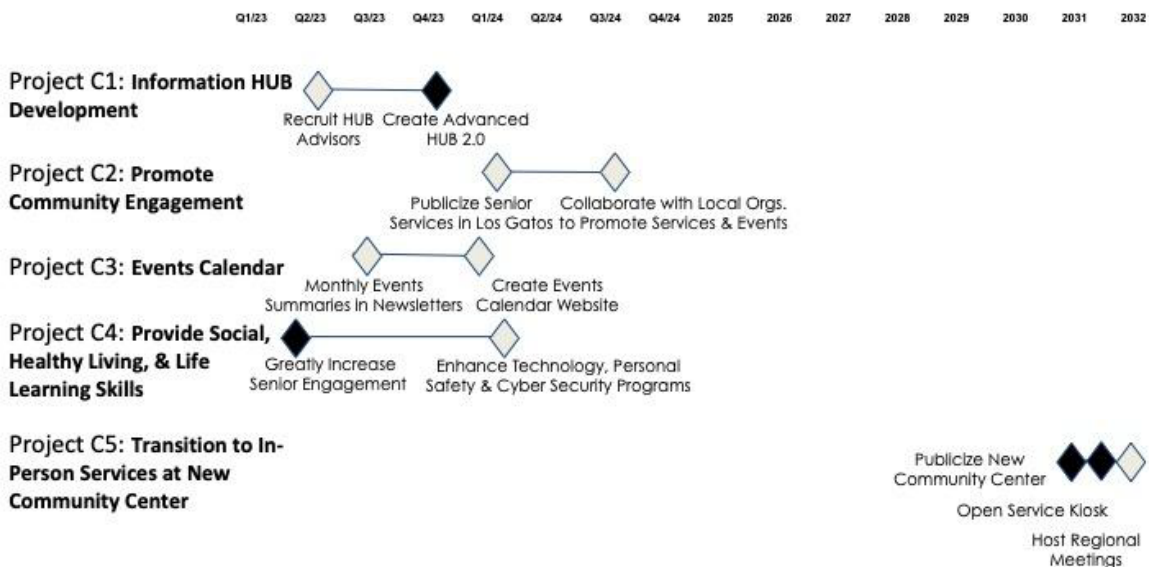
One Year - Provide older adults ways to easily learn information about available services and resources. Increase engagement in social, educational, and healthy living programs. Promote volunteering. Establish measurable goals.

Three Year - Partner with service providers to expand participation in events promoting social, educational and healthy lifestyle programs.

Ten Year - Move into a beautiful Community Center with dedicated space for senior programs.

Goal 3. Projects Overview

3. Communications and Engagement



Goal 3. Projects

PROJECT C1: Information HUB Development and Deployment

- Refine, edit, and broaden HUB 2.0 to make access to senior services much more intuitive and broaden HUB coverage to include other senior services in the local community: Q4/23
- Recruit and sustain a volunteer Hub advisory group to collect information on what's not available, help maintain the accuracy of the HUB information and promote HUB. Q2/23
- Develop a program with merchants to help promote Hub. Q2/23
- Identify a HUB administrator with technical skills to incorporate identified missing services and maintain the HUB advisory group. Q2/24
- Create conceptual design including master release schedule e.g., 2.0, 3.0, 4.0. Q2/24
- Evaluate the benefits of developing a mobile app. Q4/24
- Invite the creator of Cupertino Senior Services website to review and make suggestions. Q4/23
- Coordinate with government agencies to take advantage of resources. Q2/24
- Partner with District 5 County Supervisor to benefit other cities and offset costs. Q2/24
- Incorporate video tutorials into HUB (e.g., how to sign up for RYDE, etc.) and explore and utilize evolving technology tools Q4/24
- Use digital inclusion initiatives to teach people how to access information on the HUB, use QR codes, etc. Q4/23
- Utilize KCAT to advertise and to help develop videos for HUB. Q2/24
- Continue tracking HUB clicks and identify the most popular areas. Q1/23
- Continue tracking the number of calls that come into the office for older adult information from all sources (55 Plus; Chamber; Others). Q1/23
- Require Town participation and promotion to ensure success of objectives. Q1/23

PROJECT C2 Promotion of Community Awareness and Engagement in Services

- Publicize senior services available in Los Gatos. Q1/24
 - nutrition
 - adult day services
 - recreation and socialization opportunities
 - educational opportunities and health fairs
- Collaborate with other local organizations to promote Town and community events and services. Q3/24
- Join the AARP Network of Age-Friendly Communities. Q3/23
- Promote on-going awareness of HUB and Town senior events by Town in social media, website, and newsletter and in local newspapers with articles and ads. (Los Gatos, The Outlook, etc.). Q4/23
- Increase participation in Town events. Q2/23
- Establish an outreach ambassador volunteer program (go to where older adults live to promote awareness and participation). Q2/23
- Promote use of faith-based community services (e.g., Jewish Family Services of Silicon Valley's Aging with Dignity and Healthy Aging Programs. Q3/23

PROJECT C3 Events Calendar

- Initiate an events calendar website that includes Town meetings and special events. Q1/24
- Establish connectors (APIs) to various organization's information. Q2/24
- Include monthly events summary in the monthly older adult newsletters. Q3/23
- Assist with community holiday events and promotion. Q2/24
- Develop a mobile app. for smart phones to sign up for local events. Q4/24

PROJECT C4 Provide and Engage Older Adults in Social, Healthy Living, and Life Learning Skills Activities

- Promote monthly special social activities. Q1/23
- Organize First Friday monthly events. Q1/23
- Greatly increase engagement in ongoing LGS Rec. activities and classes (exercise, swimming, etc.), senior club activities, JCC exercise and other programs. Q1/23
- Promote programs with emphasis on multigenerational activities. Q1/23
- Establish diet, nutrition & healthy eating classes and programs. Q3/23
- Promote technology training programs (including library programs, etc.). Q1/24
- Promote personal safety and cyber security presentations and classes. Q1/24
- Develop training classes to enhance marketable skills. Q4/24
- Partnership with West Valley Community College to deliver local life-learning courses oriented to older adults. Q3/24
- Develop Distinguished Guest Lecture program. Q3/30

PROJECT C5 Transition to In-Person Services at New Community Center

- Publicize new dedicated senior facility space for senior programs. Q1/32
- Have an information kiosk near the entrance for verbal, posted and printed materials including volunteer information. Q2/32
- Central point of coordination for Senior Services including tech support. Q3/32
- Large room exercise classes and weekly dance in new community center Q2/32
- Host local community theater, music and dance group programs. Q3/32

- Promote engagement by organizing regional large group meetings (SCC Cities Association, SCC Seniors Agenda, Caregiver Conference, Aging Wisely Conference, etc.). Q4/32

Goal 3. First Steps

- Expand & promote information HUB.
- Expand engagement of the senior community by increasing participation in social, educational & healthy living activities.
- Engage volunteers to implement programs.

Goal 4. Volunteer Support and Engagement *(be a volunteer/seek a volunteer)*

Subcommittee - Pearson (chair), Picraux, Somers, Yick

Vibrant communities provide opportunities for older members to become volunteers and/or to find needed assistance from volunteers. Promoting and supporting volunteerism allows the community to marshal the expertise of older adults and to increase engagement of older adults for the benefit of the entire community. Our Committee found that many older adults want to volunteer, and many others need volunteers for help. With volunteer time in California currently estimated at \$29.95/hr. by the Independent Sector organization, the many 1000's of hours available locally represents an important resource for the Town to take advantage of as much as possible. The volunteer support and engagement goal would include:

- Develop and coordinate volunteer opportunity exchange (aggregated Town page of opportunities)
- Support connections between service providers, clubs and those interested in volunteering (consider holding volunteer fair)
- Support equitable and inclusive processes to engage older adult volunteers
- Consider a 'Community Unity' bulletin board approach for two-way volunteering as promoted in the past by former Mayor Wasserman

Goal 4. The 1-3-10 Year Activities Overview

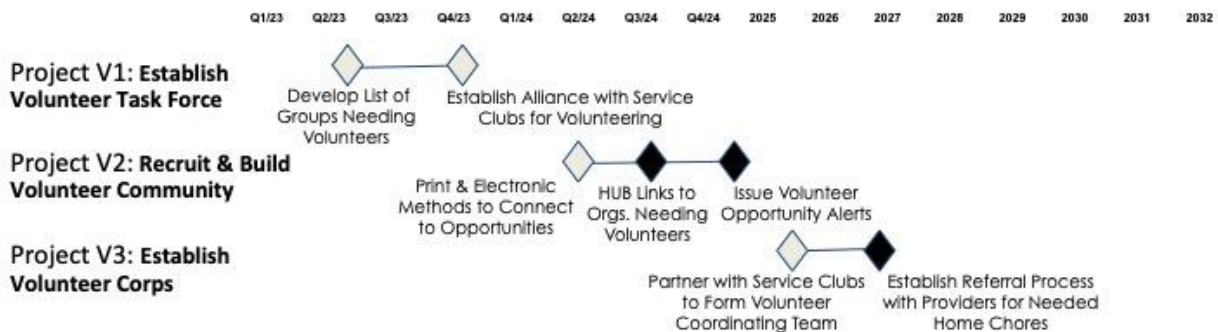
One Year - Develop a process for older adults to become a volunteer or to find needed assistance from volunteers.

Three Year - Establish a volunteer corps with a coordinating team, tracking, a coordinator, and creation of an opportunity exchange.

Ten Year - Establish a volunteer station at the welcome desk in the new community center and provide regular volunteer socialization.

Goal 4.c. Projects Overview

4. Volunteer Support and Engagement



Goal 4. Projects

PROJECT V1: Establish Volunteering Task Force

- Collaborate with the Community Health & Senior Services Commission and/or other commissions to form an ad hoc task force with Town liaison identified. Consider adding guest members. Q1/23
- Develop a list of groups needing volunteers for programs, events, and activities. Q2/23
- Establish a joint alliance of service clubs for volunteering composed of a designated person from each organization with an alliance representative on the ad hoc task force. Q4/23

PROJECT V2: Recruit and Build a Volunteer Community with the Ad Hoc Task Force

- Establish a process to coordinate between organizations needing volunteers. Q4/23
- Provide links on The HUB to organizations needing volunteers. Q2/24
- Establish methods for volunteers to connect to opportunities via print and electronic communications. Q2/24
- Include volunteer opportunities in local event calendars. Q3/24
- Publicize opportunities and recruit volunteers at community events (First Fridays, etc.). Q3/24
- Issue volunteer opportunity alerts. Q4/24
- Promote volunteerism and explore new ways to marshal the expertise of older adults in Los Gatos. *continuing*
- Ensure equitable and inclusive opportunities to increase engagement of older adult volunteers. *continuing*

PROJECT V3 Establish a Volunteer Corps

- Obtain part time staff support for coordinated volunteer intake and coordination of the Volunteer Core. Q1/25
- Establish a volunteer coordinating team with required service clubs representation. Q1/25
- Develop a method for volunteer tracking. Q3/25
- Provide periodic events for volunteers to socialize and exchange information on opportunities. Q3/25
- Establish a senior mentorship service that utilizes talents and skills that can be shared in a multigenerational setting. Q2/25

- Develop and coordinate volunteer opportunity exchanges (volunteer tables at Town events, bulletin boards, volunteer fair, etc.). Q4/25
- Develop an opportunities exchange site on The HUB. Q4/25
- Establish a referral process to support connections between those with needs for household chores and service providers, clubs (including high school and middle school), other groups interested in volunteering and local businesses. Q4/26
- Establish and support a volunteer information component to the welcome kiosk at the new community center. Q1/32

Goal 4. First Steps

- Establish an ad hoc volunteer task force.
- Create a listing of organizations needing volunteers.
- Engage service clubs in the initiative.

Goal 5. Enhanced Transportation Options for Older Adults

Subcommittee - Heath (chair), Khanal, Picraux, Ristow, CSTC member expert partners Buxton, Thompson, and Miano

Livable communities facilitate transportation options for older adults, including auto, bicycling, walking and public transportation. Older adults consider the need for flexible transportation options to be especially important as they age, including:

- Better information distribution on mobility options (e.g., VTA Senior Mobility Guide)
- RYDE awareness and enhancement
- VTA and VTA Access awareness
- Lyft/Uber supplemented programs
- In-Town shuttle provided by Town
- Last minute rides through volunteer network
- Options for mobility-challenged older adults

Goal 5. The 1-3-10 Year Activities Overview

One Year - Form senior transportation advisory committee (tracking, input, advocacy).

Promote availability of mobility options and information.

Increase use of existing Bus 27 and advocate for expanded local transit services.

Three Year - Implement a Town shuttle.

Expand mobility services - auto, bicycle, walking, & public transportation.

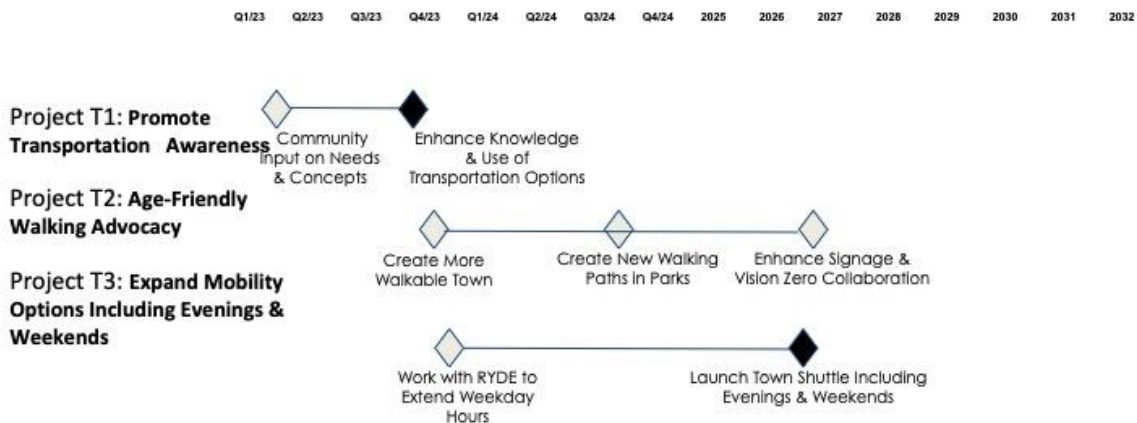
Add Age-Friendly accessible walking paths.

Ten Year - Create Age-Friendly accessible walking track.

Develop a door to door shuttle service.

Goal 5. Projects Overview

5. Transportation Options for Older Adults



Goal 5. Projects

PROJECT T1: Implement and Promote Transportation Awareness and Use

- Collaborate with Complete Streets & Transportation Commission and Community Health & Senior Service Commission to form an ad hoc Senior Transportation Committee with Town liaison identified. Consider adding guest members. Q1/23
- Obtain community input on needs & concepts. Q3/23
- Seek grant opportunities in the transportation area. *continuing*
- Monitor General Plan 2040- Section 5- Mobility- Implementation Programs A-S. Q2/24
- Establish a mechanism for continuing assessment of Los Gatos, County, State and Federal master plans, laws and grants involving all forms of mobility impacting older adults for possible recommendation. Q4/24
- Explore wheelchair accessible parking needs. *continuing*
- Track VTA bus actions. *continuing*
- Enhance community knowledge and use of RYDE, VTA Access, and Santa Clara County Mobility Management Program (e.g., intro to use bus pass, low income senior passes, eligible registered dining participant passes). Q3/23
- Promote distribution and awareness of the VTA Senior Mobility Guide. *continuing*
- Link transportation information and new options to The HUB. *continuing*
- Promote use of bicycles through education, training and repair, safety programs and classes. Promote development and awareness of bike and pedestrian pathways, support for more bikeways, valet use for older adult events with secure bike parking facilities. - *continuing*
- Achieve increased community use of existing Bus 27 and use data to advocate for expanded local VTA transit services. Q2/26
- Develop "Transportation Los Gatos" software that links all forms of mobility (FlexDenmark Model). Q1/32

PROJECT T2: Advocate for an Age-Friendly Walking Plan

- Coordinate with existing commissions and the General Plan to advocate for an Age-Friendly walking plan. *continuing*
- Create a more walkable Town through signage, increased benches, safer and more accessible sidewalks and crosswalks. Q4/23

- Create an Age-Friendly accessible walking track (Campbell Community Center track as a possible model) accessible to public at fixed hours, suitable for people with mobility limitations. Q2/26
- Add new walking paths in Town parks. Q3/24
- Conduct a senior safety zone study. Q2/25
- Enhance signage, pavement markings, evaluate extended traffic signal timing, and participate in a Vision Zero collaboration. Q4/26

PROJECT T3: Expand Mobility Options Including Evenings and Weekends

- Work with RYDE to extend weekday hours of service M: Q4/23
- Explore Town shuttle options and focus on the best option. Consider fixed+flexible Town shuttle: contract or volunteer based, collaboration with large scale developers and employers, cooperative programs with neighboring cities (e.g. Cupertino VIA shuttle), cooperative programs with new Town community developments, cooperative programs with local businesses or senior housing entities, and explore possible subsidies). M: Q4/24
- Launch a Town shuttle that provides or includes an evening and weekend older adult transportation service. Q4/26
- Promote ride voucher programs with health care providers. Q3/25
- Create or expand existing programs to include a door-to-door shuttle service. M: Q1/32

Goal 5. First Steps

- Establish collaboration with Commissions and form a Senior Transportation Advisory Committee.
- Start exploring shuttle options.
- Expand community knowledge of available mobility options.
- Take action to create a more walkable Town.

Goal 6. Senior Housing - Information on Approaches and Options

Subcommittee Heath (chair), Miller, Picraux, Planning Commission Guest: Jeffrey Barnett
Opportunities for older adults to continue to live in Los Gatos after retirement and to enjoy the community and friends as they age, with services that help older adults manage living situations and age in place including such things as service referrals, home maintenance helpers, and realtors.

Goal 6. The 1-3-10 Year Activities Overview

One Year - Form Housing Advisory Committee.

Identify and produce an inventory of residential options. Encourage development of housing options.

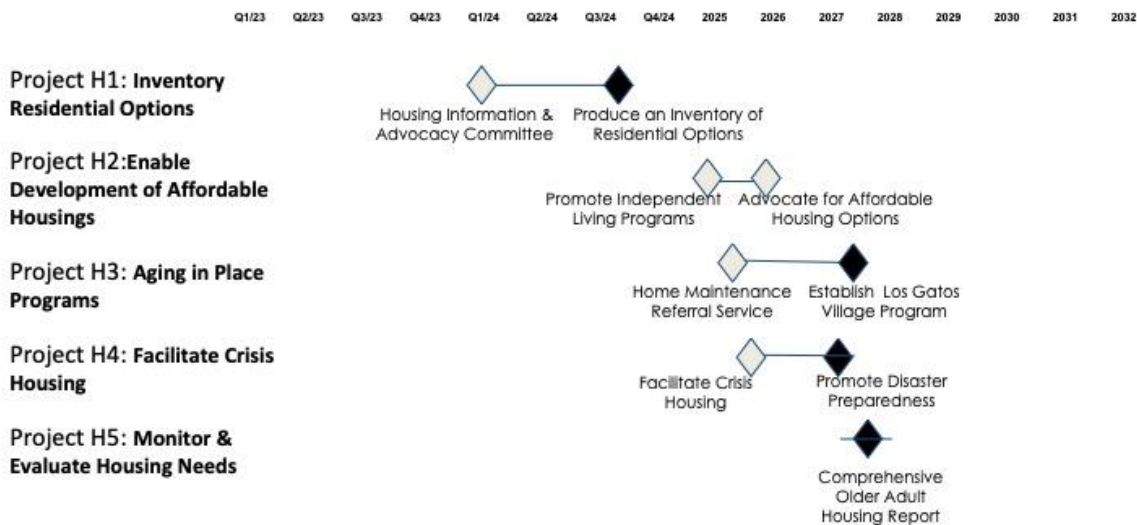
Three Year - Establish aging in place programs. Facilitate crisis housing and support.

Support programs that help with home upkeep and accessibility.

Ten Year - Monitor housing while promoting opportunities for older adults to continue to live in Los Gatos after retirement and to enjoy the community and friends as they age.

Goal 6. Projects Overview

6. Senior Housing - Information on Approaches and Options



Goal 6. Projects

PROJECT H1 Identify and Inventory Residential Options for Older Adults

- Establish a committee for older adult housing information and advocacy in coordination with the Planning Commission and the Housing Element Advisory Board. Q1/24
- Support Los Gatos Housing Element as adopted by the Town Council as it relates to older adults. Q3/24
- Identify and produce an inventory of residential options for older adults. Q4/24
 - Encourage developers to consider the needs of older adults through all stages of aging including smaller units, one story units, housing close to accessible transportation and/or restaurants and stores,(new urbanism), walkable spaces and multi-residency units for caregivers. Q1/25
 - Advocate for legislation that supports quality care and services at local residential care facilities; promote culturally competent services. Q1/26

PROJECT H2 Enable Development of Affordable Housing for Older Adults

- Engage with local and state stakeholders to promote programs for older adults living independently. Q1/25
- Advocate for the development of housing options through all stages of aging as well as affordable housing for older adults. Q3/25
- Pursue potential funding (state & federal) for housing income support and housing modifications and repairs. Q4/25

PROJECT H3 Establish Aging in Place Programs (Including a Los Gatos Village)

- Develop infrastructure and programs for aging in place and establish a Los Gatos Village (subscription-based association based on Beacon Hill/Avenidas model). Q1/27
- Develop a home maintenance (small job) helper referral service with volunteer coordinator (service clubs). Q1/25
- Support programs that provide help with modification and accessibility of homes. Q3/25
- Support older adults living independently in the community through down-sizing or step-down independent living options. Q1/25

PROJECT H4 Facilitate Crisis Housing

- Facilitate crisis housing for older adults. Q1/26
- Promote disaster preparedness programs with focus on older adults including online information and the safety of older adults in residential care facilities during emergencies or disasters. Q4/26

PROJECT H5 Monitor and Evaluate Housing Needs and Stock

- Complete a comprehensive Older Adult Housing Report (for inclusion in the General Plan and Housing Element's 5-year update). Q3/27

Goal 6. First Steps

- Establish an older adult housing advisory committee for inventorying housing options and advocacy.
- Promote development of affordable housing for older adults.
- Advocate for older adults living independently in the community.

Goal 7. Integrated Governance, Funding, and Accountability for Senior Services

Subcommittee - Hudes (chair), Blum, Heath, Miller, Phelan, Picraux, Rossmann

In this section there is first a description of the benefits and proposed elements that will be needed to achieve an integrated model for governance and accountability for senior services. Second, the Committee proposes four recommended Town Council actions for the first year to achieve this model. Finally, a proposed approach is presented to sustain progress on the Roadmap in subsequent years. The Committee is of the opinion that these actions provide an essential component for achieving the 10-year vision of an affordable and sustainable Roadmap for senior services.

Integrated Governance Model

Currently our Town has a distributed model of senior services with minimal central planning, measurement, coordination, or accountability for maintaining and advancing services. Creating an integrated governance structure with accountability for services could result in significantly increased efficiencies, enhanced senior services leading to additional sources of support, and long-term stability of programs. A recommended governance model for Los Gatos includes:

- Distinct roles for non-profits, Town administration, and others serving older adults,
- A coordinated management model (accountability, metrics, oversight, etc.)
- Funding mechanisms to help support older adult programs and services
- Sustainable financial plan, including pro forma budgets for consideration by deciding bodies
- Methods for measurement, accountability and maintaining transparency
- Approaches to maintain Town oversight

The Committee analysis suggests that an integrated governance model will also lead to stronger community participation and will result in greater support for services, more successful funding initiatives, and greater transparency of senior services operations. The benchmarking survey of other cities and our assessment of services in Los Gatos show that Los Gatos currently has a fragmented model of service delivery coupled with little accountability. To enhance accountability, the Roadmap proposes and discusses below four key interrelated elements that will need to be developed for a future model of senior services governance :

- One-Three-Ten-year fiscal planning
- Measurement and accountability tracking
- Roles and responsibilities decisions
- Roadmap maintenance and update process

One-Three-Ten Year Fiscal Planning

The Committee recommends that an integrated budget process for senior services be adopted. This financial plan would include:

- All of the entities providing services for older adults in Los Gatos;
- Establishing a comprehensive process for fiscal analysis and budget planning, including Town, county, state, and federal and third-party organizations;
- Annual budgets that would include:
 - Services provided and residents served
 - Capital and operating budgets (decoupled)
 - Planned and actual budgets
 - Sources, including grants and fundraising
- Timing would be coordinated with Town, area, and third-party budget processes.

Information assembled over the first year of the Roadmap is proposed to provide the basis for development of the fiscal plan under guidance of the Town Council. The plan is recommended to be developed during the first quarter of 2024 as part of a review of Roadmap progress, as discussed in the Roadmap Maintenance and Update Process section below.

Next steps:

1. Set schedule for subcommittees to provide resource estimates prior to Committee sunsetting;
2. Provide template and assistance in developing pro-forma financial estimates for key initiatives;
3. Involve Town staff in financial estimates and budgeting;
4. Create a budget model.

Measurement and Accountability Tracking

In order to make progress in delivering services in a sustainable manner to older adults there is a need to develop measures of the services provided and their impact. To best support integrated governance these measures would include the full range of senior service providers, including Town, regional, and third-parties. Measures of service would include the number of people served in a transparent and easily understood format. Much of the information would be obtained through a collaboration with the various service providers serving older adults.

Recommended activities include:

- Determine what measures of effort are needed and how the results would ensure success of the Roadmap goals;
- Identify who would receive the reports and at what frequency;
- Establish a process to provide an annual report describing the State of Senior Services in Los Gatos based on an assessment of the measurements that are tracked and the services that are being provided to older adults.

Next CHSSC steps:

1. Establish a measurement and tracking process based on the above recommendations;
2. Review examples of annual senior services reports by other cities and the state to provide a starting point for an Annual Los Gatos Report;
3. Compile metrics from other communities and service providers on what data and rate of collection is most useful for an efficient accountability tracking process.

Roles and Responsibilities

The Committee recommends that for the changes proposed by this Roadmap in support of our older adult community to occur it will be important to define the roles and responsibilities, as existing organizations are modified, and new organizations are put in place. From a long term perspective it would be valuable for the Town to consider the following questions regarding roles and responsibilities:

- Given the goals and resources required, what oversight is appropriate to ensure success?
- Are new or re-comprised teams, committees, or roles required? If so, how should new and existing teams and roles be modified and participation encouraged?
- Are new or updated service agreements or contracts needed?

The Year 1 Actions proposed by the Committee below provide suggested approaches to these questions for the near term.

To transition from the decentralized, or what might be characterized as a fragmented delivery of services to our older adults, to a more reliable and sustainable means of providing these services in a coordinated community partnership, our Integrated Governance subcommittee realized that some changes would be helpful. This was further reinforced by site visits and fact-finding conversations with several other communities, especially with Palo Alto, Los Altos, and Morgan Hill. Also further considerations would be needed upon making a decision concerning facility direction in about 3 years' time.

For now, it appears that the Morgan Hill approach and governance model offers the most similar and promising starting point to address needs over the next several years. With the successful development of this approach over a 3- to 10-year period, a long-term model closer to that of Palo Alto's Avenidas, where even greater community contributions to support senior services as well as to initiate a "Village" concept for aging in place may become possible.

Why the Morgan Hill model in the near-term?

While there are demographic differences from Los Gatos, the provision of services to older adults in Morgan Hill offers some situational similarities. In Morgan Hill, recreation-oriented senior services were previously provided by the YMCA, which was serving a broad age-range of community members through fee for service as well as contracted services for seniors. The organization ran into financial constraints that challenged the provision of services for seniors. The community also embarked on the creation of a community recreation center that included space where older adults would participate. This required substantial fund-raising as well as contribution of city-owned properties in order to build the new center, which was completed in the mid-2000's and is operated by the city. Later the community

established an independent 501(c)3 Friends of Morgan Hill Seniors Foundation to provide additional support for senior services, with a city representative participating on the Board of Directors. In addition, the city established an independently operated Senior Advisory Committee to sustain senior programs. This committee includes a city representative and representation from community leaders, service providers, the community center staff, and the Foundation and has subcommittees for transportation, life-long learning, endowment, and outreach. The city recreation center with its senior space provided the catalyst for these governance decisions.

As the transition to the new Morgan Hill community center and charitable foundation funded facilities and programs proceeded, some of the key personnel of the YMCA and predecessor organizations transitioned to the new organizations as well as to the city. Some of the best people are still serving Morgan Hill's older adult community, yet they transitioned to a new organization. Today, a vibrant senior services program is being provided in an excellent community center, funded significantly by charitable giving and grants, along with moderate city support. Los Gatos is facing similar constraints regarding Town finances and similar financial constraints faced by LGS Recreation in providing a recreation-oriented services program for older adults. Los Gatos can learn from the Morgan Hill story in developing a journey for enhancing senior services for the older adult community.

Proposed Year 1 Actions to Transition to Integrated Governance for Senior Services

To support the transition of this Senior Services Roadmap for revitalizing senior services from planning to action the Committee recommends the Town Council begin with the following roles and responsibilities for the first year of the Roadmap:

1. Engage Town Commissions and Boards

By expanding its role the Community Health and Senior Services Commission has suggested it would undertake the following three activities considered critical for maintaining Roadmap progress. The first area of communication and engagement represents the essential support for maintaining the momentum of the other Roadmap goals while the second and third activities address initial needs in the governance and accountability of senior services. Those activities include the following:

- i. Communication and Engagement: This activity is the portion of the Roadmap addressing Goal #3. It is suggested that the CHSSC create an ad hoc subcommittee from its membership to fulfill the tasks involved and to also consider adding a few community expert guests to help support the subcommittee and extend its reach.
- ii. Roadmap Tracking: In this activity the CHSSC would be responsible for tracking and assessing whether the goals of the Roadmap are being accomplished according to the timelines set forth in the Roadmap. This may be done via the necessary communication and annual or more frequent written assessments.
- iii. Annual Senior Services Assessment: In this activity the CHSSC would be responsible for assessing and reporting on the nature and quality of senior services in Los Gatos. This may be done via an annual State of Los Gatos Senior Services written report.

The CHSSC could consider creating subcommittees to assist in implementing activities ii) and iii) if needed. Similar to activity i), the CHSSC would be responsible for appointing the members of the subcommittees and could include expert guests as appropriate. Consideration could be given to requesting that the Town Council appoint a liaison from the Council to the CHSSC, to assist in the foregoing work and/or help with recruitment of people to serve on the CHSSC and its subcommittees.

Duties and responsibilities on issues relating to other Roadmap goals such as housing and transportation would remain with the Town boards and commissions currently responsible in those areas. However, in its role of Roadmap tracking the CHSSC would periodically meet with the boards and commissions responsible for these areas, to assess their progress and align goals with them related to these areas. Some examples found in the project proposals of this Roadmap include: 1) Parks Commission: the development of a Community Garden 2) Complete Streets and Transportation Commission: transportation options for older adults including walking paths and exploration of a shuttle 3) Planning Commission and/or Housing Element Advisory Board: creation and maintenance of an inventory and directory of housing options for seniors. These enhancements might include subcommittees or cross-commission ad hoc teams as well as specific older-adult-related tasks in the annual work plans of the Town Commissions and Boards, and could include issuing reports to the Town Council about progress on these items. Members of the Senior Services Committee could help organize these activities during the period before the sunset of the Senior Services Committee.

Next steps:

1. CHSSC assigns members to coordinate each of the above three activities
2. Town Age-Friendly Coordinator and/or CHSSC plans projects to be pursued with other Commissions or Boards

2. Appoint Town Age-Friendly Coordinator (0.2 FTE)

The Committee recommends the Town Council appoint a part time (0.2 FTE) Coordinator for senior services in Los Gatos. The Coordinator is envisioned to be a staff member within the town administration. Their allocated time would be dedicated to being a point of contact for senior services in Los Gatos. This position would provide an important step to realizing the Roadmap vision of a coordinated partnership for senior services between the Town, Town commissions and boards, the proposed Friends of Los Gatos Seniors Foundation, community service providers, and other nonprofits and regional providers. The Coordinator would also be a member of the Foundation advisory committee. Responsibilities for the Age-Friendly Coordinator might include:

- Act as the point of contact for the Commissions, Service Provider organizations, Foundation, and regional nonprofits providing services for Los Gatos older adults
- Be the point of contact for key provider of recreational services to older adults (currently LGS Recreation)
- Receive information from the three CHSSC activities coordinators involving Communication & Engagement, Roadmap Tracking, and Annual Assessment
- Serve as the point of contact for questions about volunteer opportunities as Roadmap projects advance in support of this goal

- Coordinate receipt of budget proposals to both the Town of Los Gatos as well as the Friends of Los Gatos Seniors Charitable Foundation
- Facilitate review and presentation to Town Council of the Annual Assessment of Senior Services provided by the CHSSC for receipt by Council
- Provide information and support for the Town Council review of the Roadmap progress and governance during the first quarter of 2024 and subsequently as discussed in the Roadmap maintenance section below.

As the Roadmap successes accrue in future years and senior services delivery advances, there may be considerable leverage gained by increasing the fractional 0.2 FTE allocation to the Town's Age-Friendly Coordinator. This graded approach could facilitate the transition of Los Gatos senior services governance from a fragmented model to an integrated partnership model.

Next steps:

1. Town appoints an Age-Friendly Coordinator
2. Ensure the Coordinator is brief on the senior services landscape.

3. Recognize and Encourage Community-Based Activities to Support Senior Services

It is recommended that the Town Council recognize and encourage community efforts in support of the Senior Services Roadmap. This support would include recognizing a community-planned 501(c)3 nonprofit Foundation that will be formed and having the Town Age-Friendly Coordinator participate in the nonprofit's Advisory Committee.

The community-based Friends of Los Gatos Seniors Foundation will be created for raising funds in support of senior programs and facilities to supplement Town funding, and establishing a sustaining endowment from individuals and corporate entities. The Foundation will explore options and funding mechanisms for a new or refurbished community facility with dedicated space for senior programs. It will also seek funds to supplement and enhance support for senior programs and activities. As an independent nonprofit entity it will have a Board of Directors and it is recommended that they appoint an Advisory Committee. The Advisory Committee may assist the Board in such areas as investigating community facility options, creating a capital facility fundraising campaign, seeking methods to raise funds for senior service activities, seeking grants to support these efforts, and, over time, establishing a sustaining endowment. It is recommended that the Foundation coordinate its activities with the Town.

Next steps by the nonprofit:

1. Establish a Board of Directors for the Friends of Los Gatos Seniors Foundation
2. Apply for 501(c)3 status

4. Re-Establish Baseline Services

As part of an integrated governance model the Committee believes that sustainable support of core senior services is necessary to re-establish the pre-pandemic baseline in order to achieve the vision of the Roadmap. These services are considered to be essential to be maintained as a base of support for an important and often older segment of our senior population. There are two provider areas for these services:

- Town: social, educational, healthy living activities provided by LGS Recreation,

- Community: grants to nonprofit community service providers to help supplement their services in Los Gatos (Live Oak Nutrition, West Valley Community Services, re-establish Live Oak Adult Day Care, etc.).

Role of Los Gatos-Saratoga Recreation

LGS Recreation has been providing services to the seniors of Los Gatos based under an agreement initiated in 2009. The 20-year lease agreement defines the scope of services that are to be provided in return for partial rent relief. After obtaining a better understanding of the services and associated funding of LGS Recreation, it appears this full suite of services currently (in 2022) being provided to the senior community cannot be sustained without an increase in funding. In fact, as of 2023, even baseline services are not funded given the direction of the LGS Recreation Board to no longer fund senior services with surpluses from other LGS Recreation programs. Additionally, services and governance aspects of the original 2009 Lease Agreement (see Appendix G) with LGS Recreation have changed.

The Committee has reviewed the base-line services that LGS Recreation is providing and recommends that the Town negotiate an acceptable one-year agreement to maintain essential services. Also, the Committee notes from its benchmarking studies of peer cities that essential services by nonprofits are not charged rent for the municipal facilities they occupy to provide the services, in contrast to the pre-pandemic practice in Los Gatos. For the following three-year period, it is recommended to re-evaluate the provision of services by LGS Recreation as circumstances change while also considering the ability of the newly formed Friends of Los Gatos Seniors Foundation to raise additional funds to provide supplemental support for these senior services. If LGS Recreation is able to provide an ongoing role in the delivery of services to the seniors of Los Gatos, it is important to re-evaluate and document changes to the services initially enumerated in the 2009 Lease Agreement. It could also be beneficial for collaboration to have a Town representative participate on the Board of LGS Recreation and have the Town's Age-Friendly Coordinator provide a point of contact for LGS Recreation services for older adults.

5. Sunset Senior Services Committee

The Committee recommends that the transition from planning to action be facilitated by engaging the Senior Services Committee to assist the Town in publicizing and jump-starting year 1 projects and then to sunset the Committee in 2023.

Roadmap Maintenance and Update Process

The Committee recommends that for the Roadmap to be of continuing value, both during its *implementation* and beyond, there needs to be a process for this document to evolve as circumstances change, as current needs are satisfied, and as new needs emerge in the community. Maintaining and updating the Roadmap will ensure that it is sustainable and of continuing value. Recognizing that the ultimate authority for the Roadmap implementation rests with the Town Council the Committee recommends the following process:

- During the first quarter of 2024 the Town Council would review the Roadmap progress over its first year and the effectiveness of its governance, making any needed modifications;
- The review would be informed by the tracking data and annual assessment of senior

services provided by the CHSSC and any other information collected. The Age-Friendly Coordinator would facilitate this effort;

- During the proposed year 1 review it is recommended that the 1-3-10 year fiscal planning process also be completed;
- In the subsequent years two and three it is recommended that the Council repeat this process, ensuring that the Town continues to make progress in transitioning to an integrated governance model with community engagement, and address any issues as circumstances change;
- The review process for this 10-year Roadmap could thereafter be repeated only as needed, for example if plans are initiated for the renovation or construction of a new community center with space for senior programs.

Roadmap Communication

The Committee recommends that the Roadmap be communicated to both community leaders and the larger Los Gatos community. During the period of transition to implementation of the Roadmap the Committee members will participate in the following activities over the next couple of months through the direction of the Chair.

Roadmap Awareness

To increase community awareness the Committee will develop an action plan to promote the Roadmap and the proposed 1-3-10-year goals. In partnership with the Town administration, Town commissions, the Chamber of Commerce, service clubs and others, Committee members will promote the Roadmap via print, social media, email, and group presentations. Individuals and groups will be made aware of what they've already done to help and identify needs, emphasizing an opportunity to become involved. The objective will be for the community to become engaged in what the Roadmap proposes, to be aware of the benefits it can bring to older adults and the community at large, to plan for the next steps, and to get people excited about the future.

Tailored Messages to Request Participation

In coordination with the CHSSC, Committee members will meet with Town commissions such as CSTC, Planning Commission, and Parks Commission to present specific elements of the Roadmap 1-3-10-year goals and project ideas and to explore if they would be willing to lead those efforts within their area. Also, members will hold meetings with the Chamber of Commerce, SASCC, regional, county, state leader and other potential partners. The Committee hopes commissions and other groups that have participated in the development of the Roadmap plans will join forces in the proposed Roadmap effort so that the community moves toward a common goal.

Conduct Roadmap Town Halls

Launch Town halls similar to the original community workshops that were held during February – April 2022 with the objective of explaining the Roadmap content, reaching additional groups and individuals.

Conclusions

This Roadmap provides an actionable, community plan for revitalizing senior services in Los Gatos. It was developed by first creating a vision where older adults are engaged, valued, and provided equitable opportunities to thrive in an inclusive, Age-Friendly Town. The needs of Los Gatos older adults were then assessed and ways in which these needs were addressed in other communities were analyzed. Seven overall goals were developed and broken down into 1, 3, and 10-year plans for each goal. The work required to achieve these goals was structured into projects with quarterly milestones and these projects organized into programs. Finally, a plan to transition the governance and accountability of services to achieve these goals in a Town-community partnership was identified. To achieve this five “asks” of the Town Council were identified as detailed in Section II.B. Our objective is at the end of this 10-year Roadmap to have prepared our community for the next generation of older adults when it is estimated that those aged 55 or older in Los Gatos will approach $\frac{1}{3}$ of the Town’s population. The Committee respectfully submits that with a sustained, affordable commitment by the Town and with strong engagement and support by the community this 10-year Roadmap will provide a thriving Town environment where the entire community benefits.



Los Gatos Senior Services Roadmap

A Report Prepared for the Town of Los Gatos



Vision

Making Los Gatos an age-friendly community where older adults are engaged, valued and provided equitable opportunities to thrive!

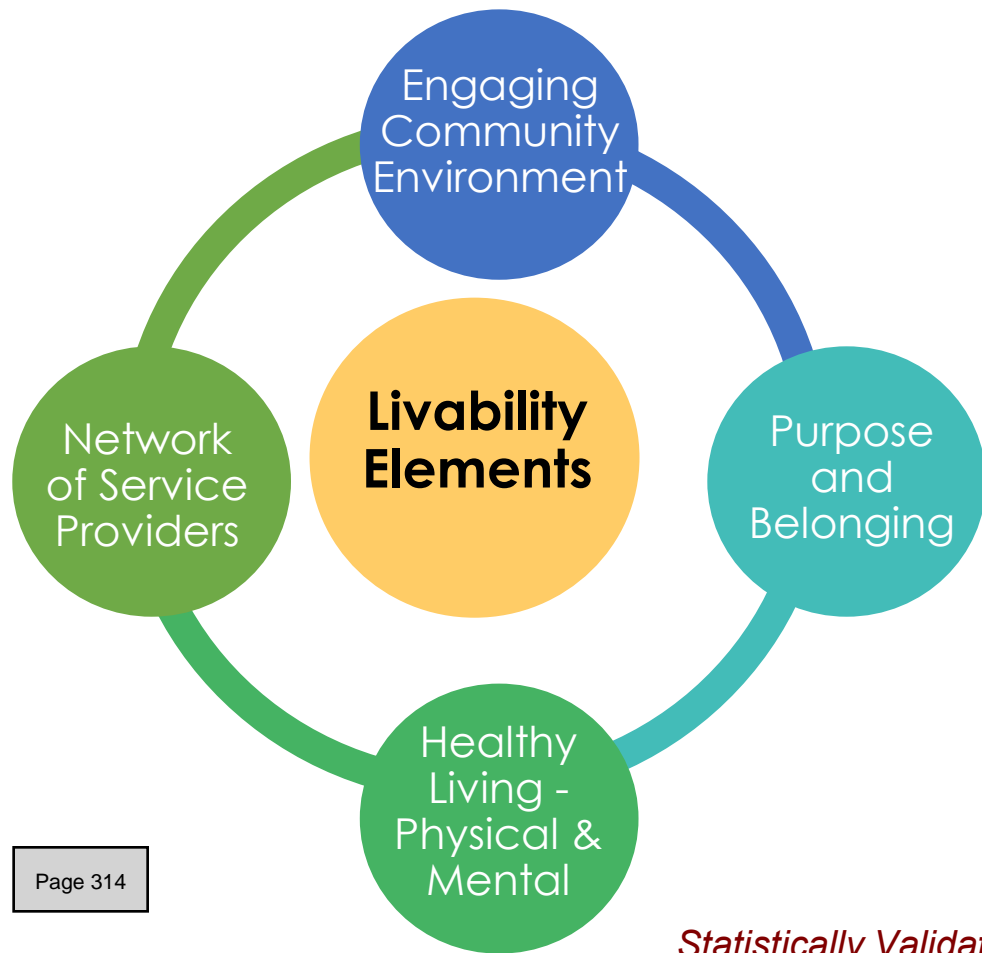
Committee Members Representing:

- Community Health & Senior Service Commission
- Councilmembers/Mayors
- Service Clubs
- Chamber of Commerce
- Service Providers
- Senior Community Leaders
- County Department of Aging
- Healthcare Providers



ATTACHMENT 2

Creating an Age-Friendly Environment for Los Gatos



Our findings served to clarify the most important aspects of what makes a thriving community.

Key needs for our community

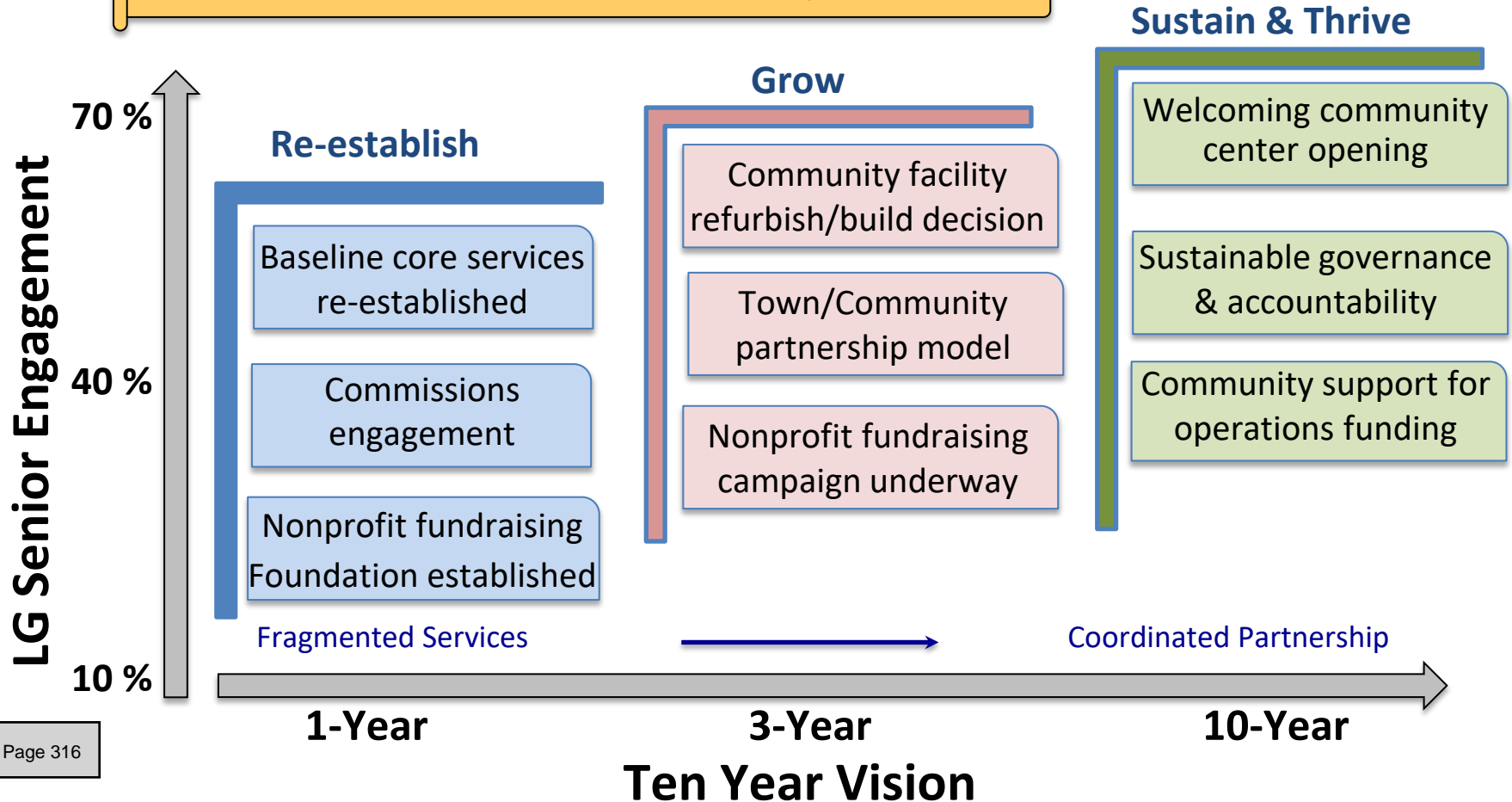
- Communication
- Socialization
- Mobility

Goals for Senior Services in Los Gatos



Making Los Gatos an age-friendly community where older adults are engaged, valued and provided equitable opportunities to thrive

Senior Services Roadmap Vision



Seven Goals for a Community Roadmap

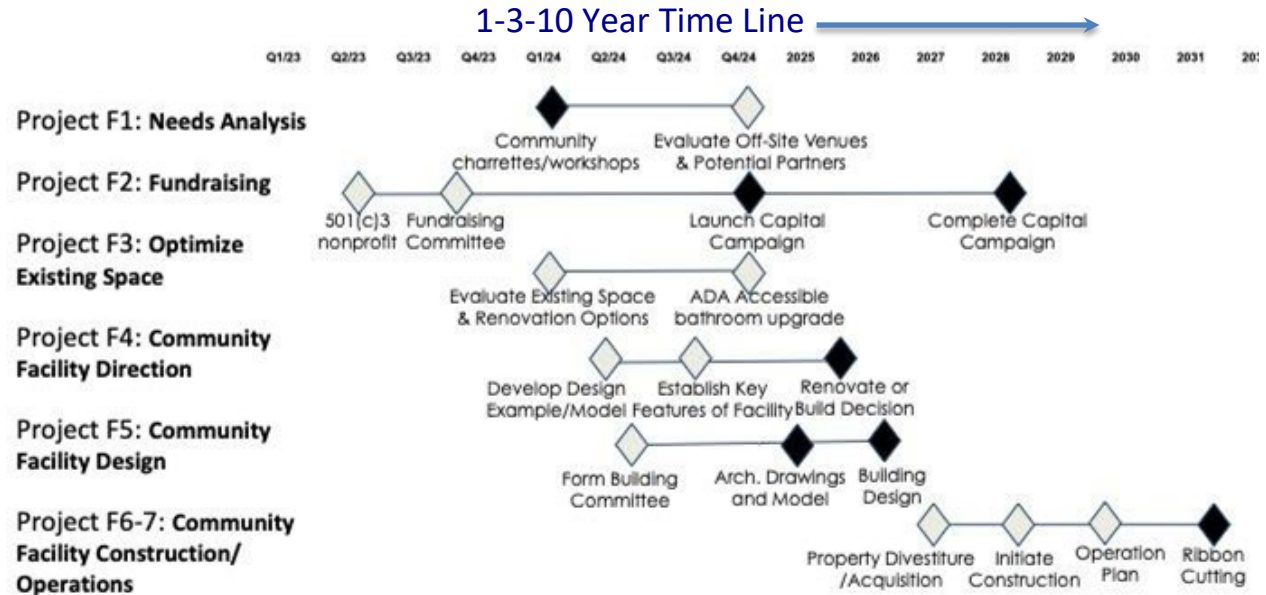
Appealing and Inviting Facility (Renovate or Build)

What

- Welcoming community center with dedicated space for older adults.
- Funding strategy: 501(c)(3), solicit donations, grants, ...
- Direction in 3 years for renovate or build
- Coordinated community engagement & support.

How & When

- Roadmap proposes projects



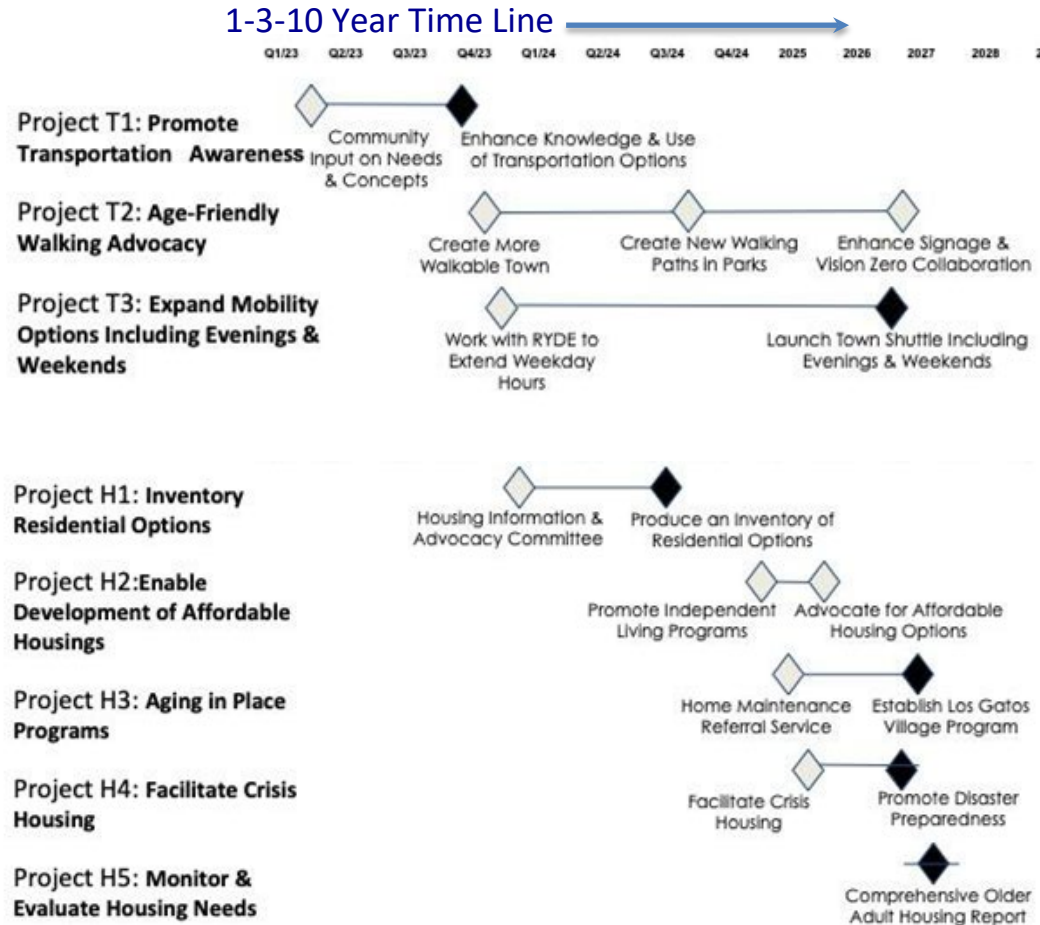
Seven Goals for a Community Roadmap

Enhanced Transportation Options

- Promote availability of mobility options and information
- Implement a Town shuttle
- Create age-friendly accessible walking track

Senior Housing Options

- Produce an inventory of residential options
- Establish a “Los Gatos Village” (subscription-based concierge association)



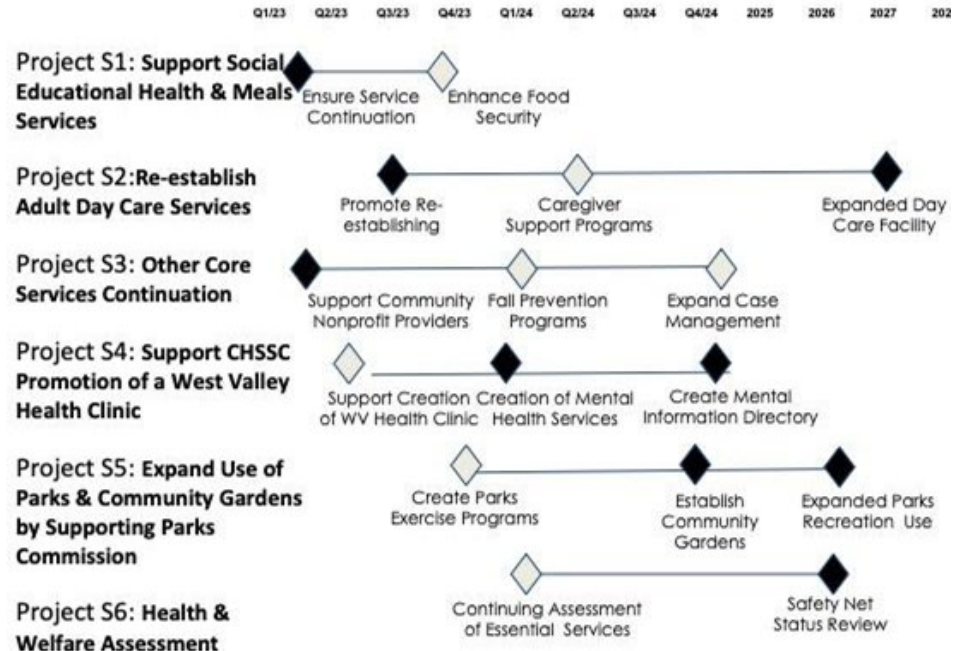
Seven Goals for a Community Roadmap

Core Senior Services

What

- Essential services for all stages of aging: nutrition, adult day care, socialization, educational, and healthy living opportunities.
- Classes on new skills, safety, scam avoidance; legal assistance, county mental health offerings

How & When



Seven Goals for a Community Roadmap

Communications & Engagement

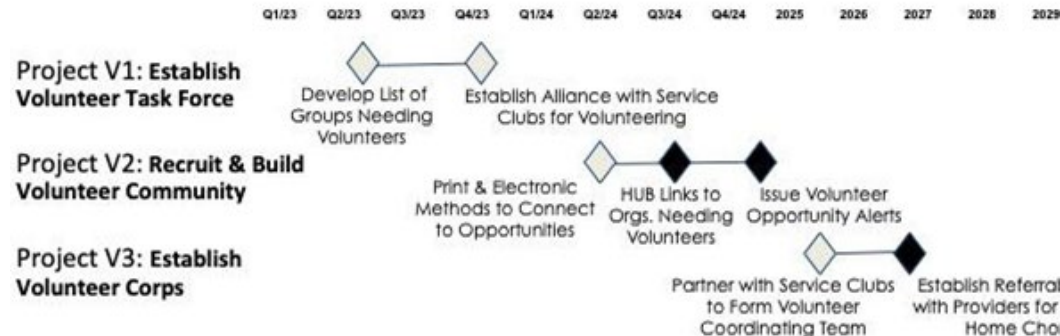
- Information on services & resources – The HUB, Outlook, The Print, transportation, etc.
- Increase engagement in social, educational & healthy living programs.
- Establish measurable goals.



Volunteer Support and Engagement

(be a volunteer/seek a volunteer)

- Volunteer opportunity exchange
- Link service providers, clubs, volunteers – bulletin board, fairs, etc.
- Inclusive processes to engage volunteers



Seven Goals for a Community Roadmap

Integrated Governance, Funding, & Accountability

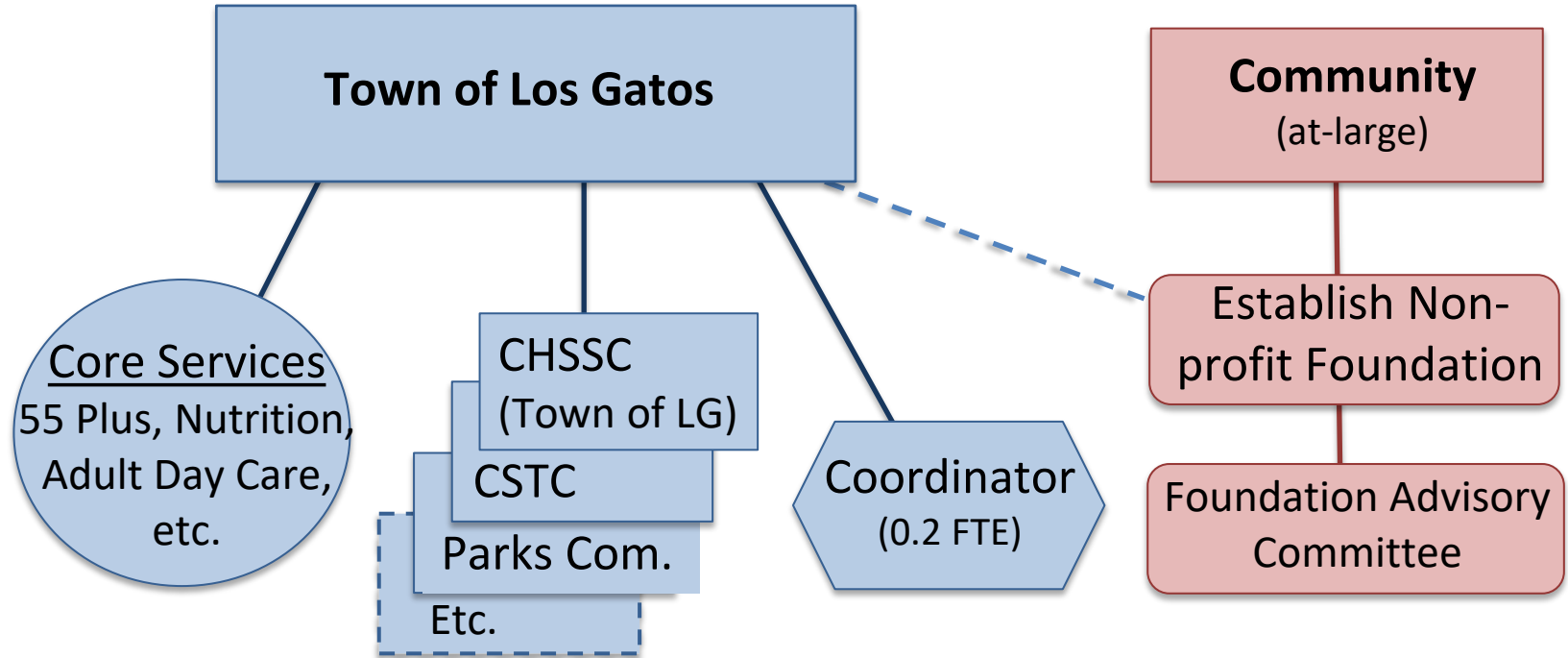
What

- **Integrated governance model** with stronger community participation
- **Enhanced role for CHSSC** (Communications & Engagement, Roadmap Tracking, Assessment)
- Engage other **Town Commissions and Boards** in support of age-friendly initiatives (e.g., Community Garden - Parks Commission; Enhanced Shuttle Service - CSTC)
- **Establish fiscal planning process** by Q1 2024 including Town, County, and third-party organizations

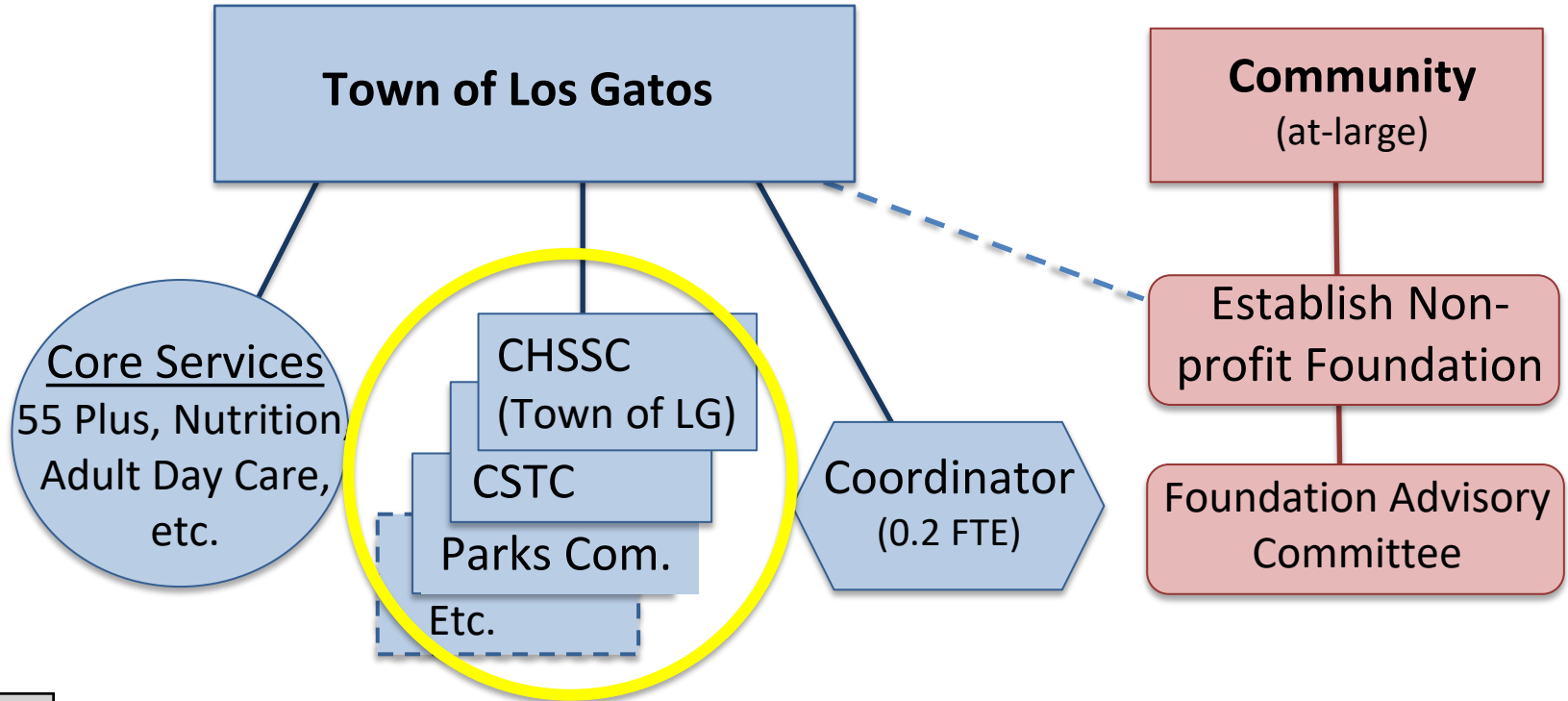
How & When (key 2023 goals)

- **Community nonprofit foundation** (501(c)3) established for facility & services fundraising in ***years 1-3 and beyond***
- **Town Age-Friendly Coordinator** (0.2 FTE initially) as point of contact for integration of senior programs
- **Sufficient funding** of LGS Recreation for ongoing senior services ***in 2023*** and evaluate go-forward relationship
- **Assessment Report** on Senior Services prepared ***annually*** by CHSSC for Council
- **Annual Q1 Review of Roadmap Progress by Council** for ***years 1-3***, and then as-needed

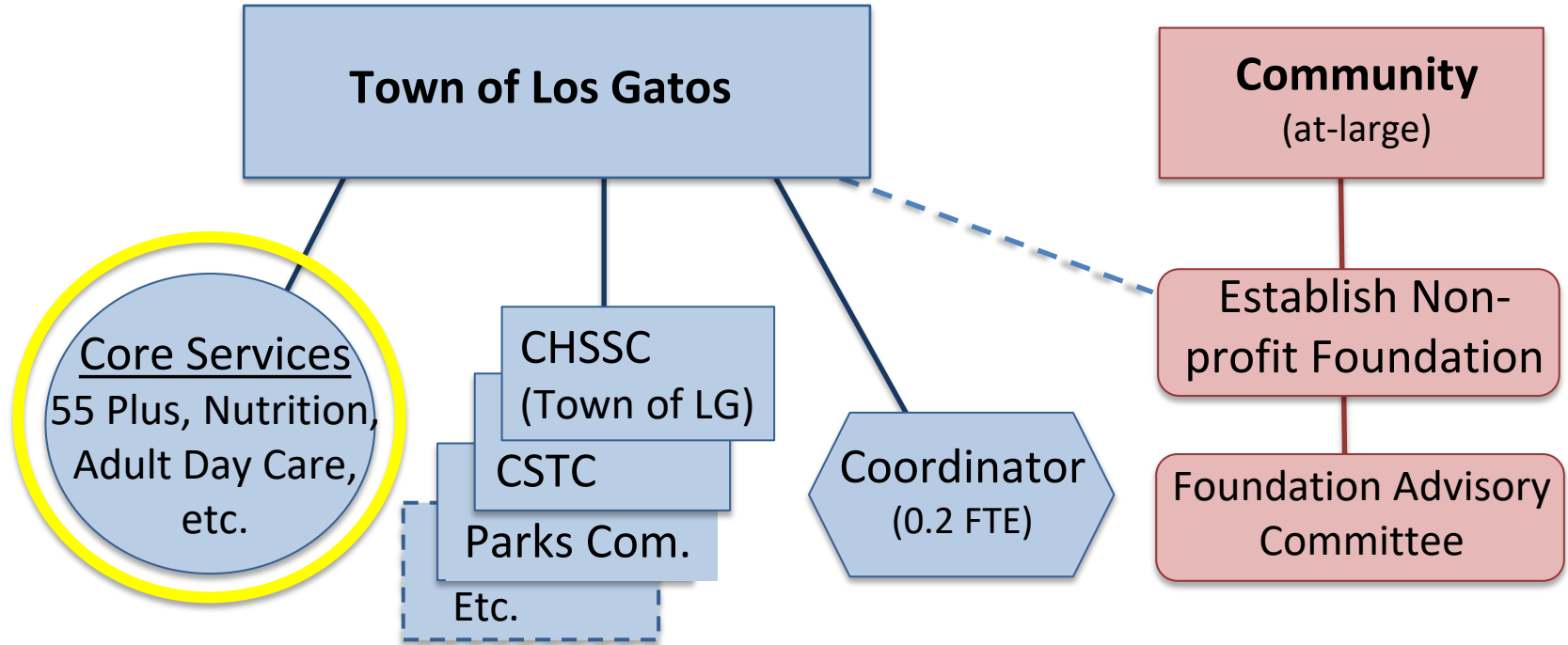
Year 1 - Re-establish Baseline



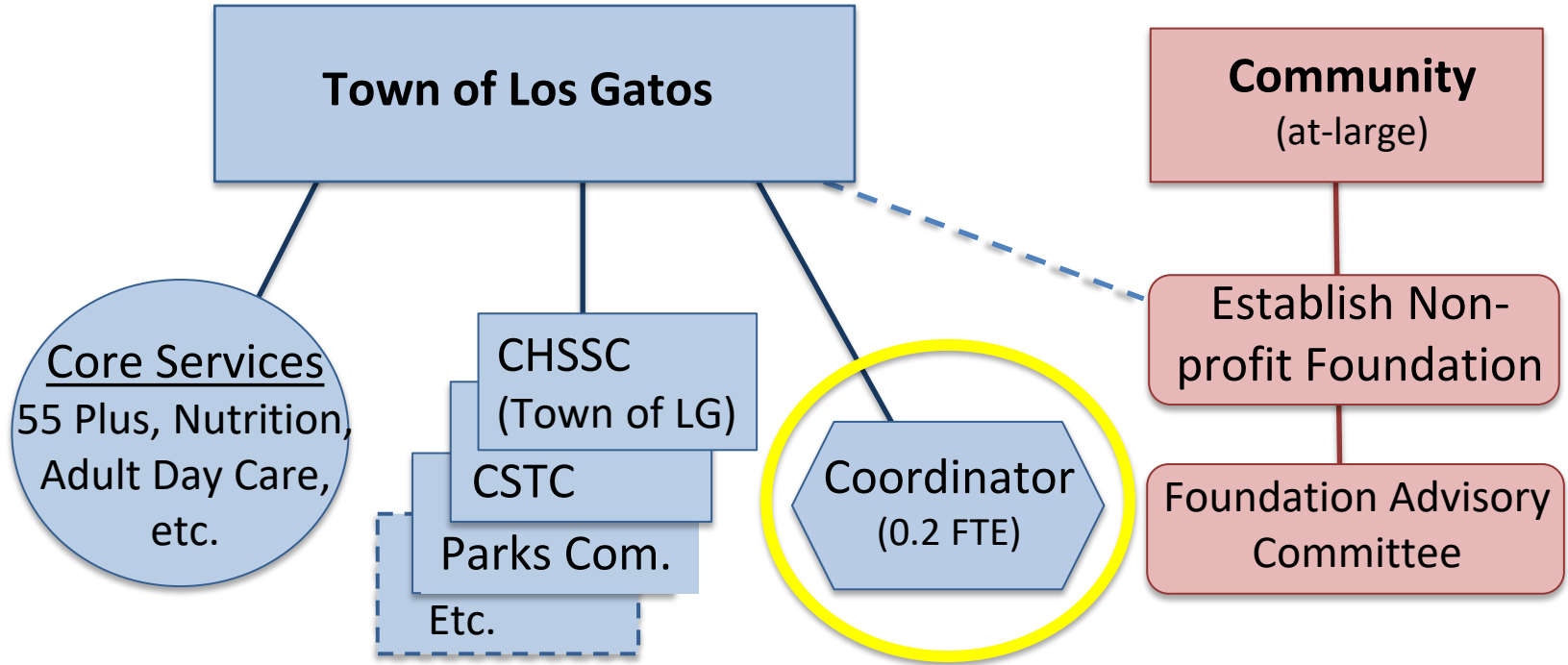
Year 1 - Re-establish Baseline



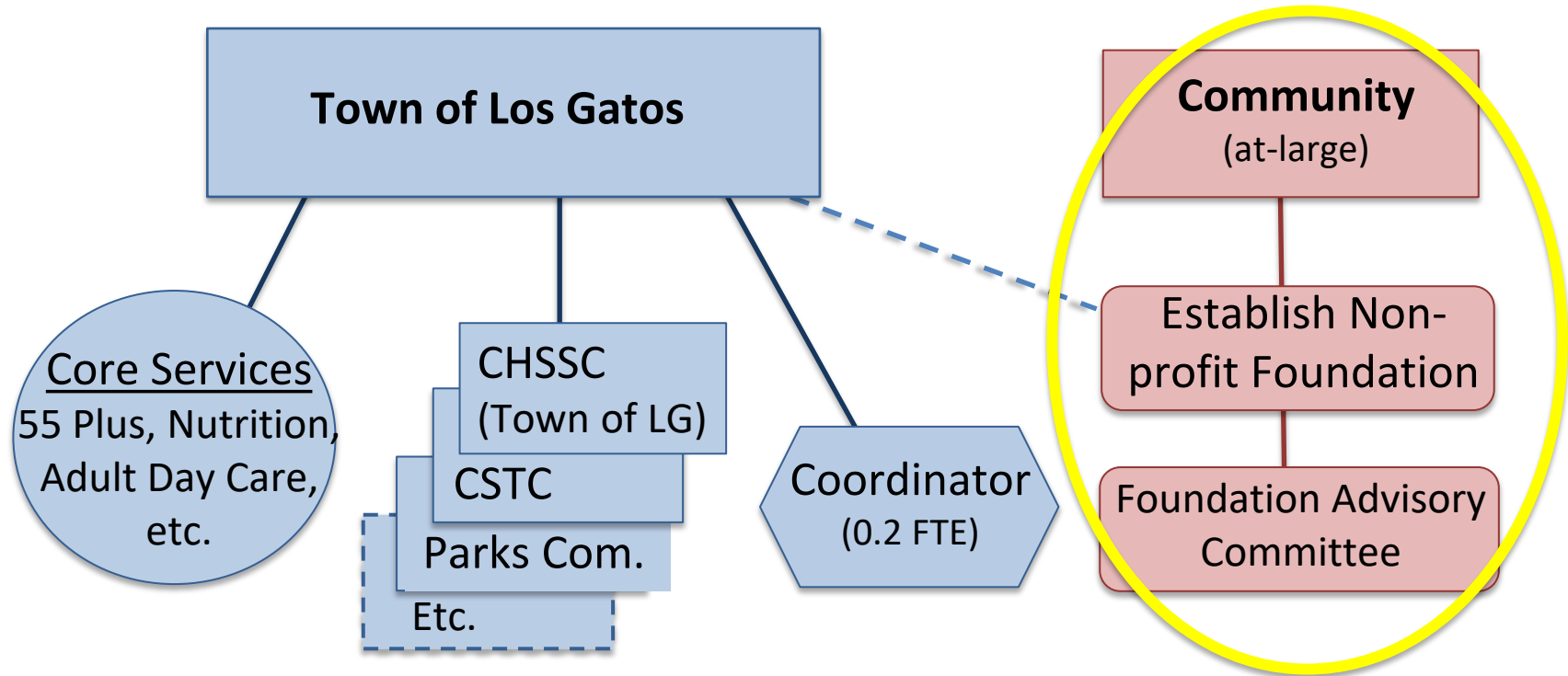
Year 1 - Re-establish Baseline



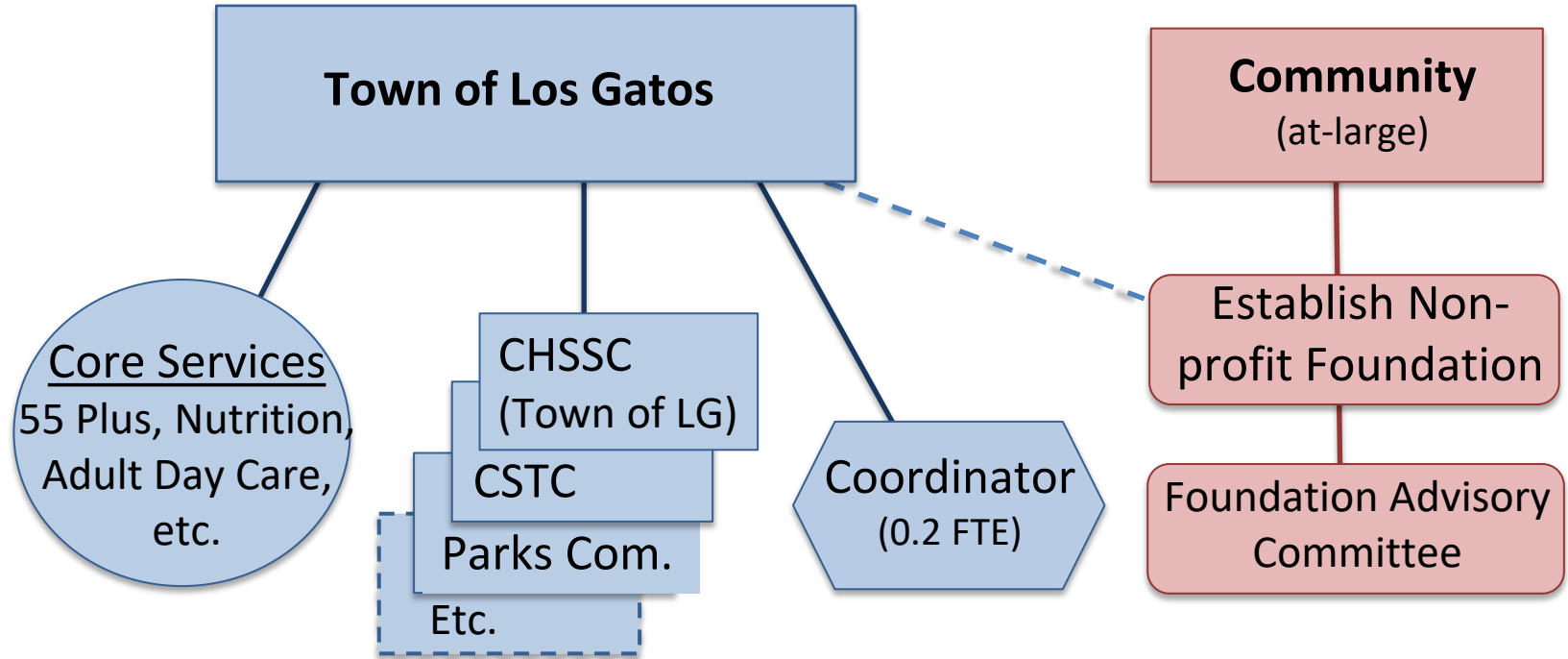
Year 1 - Re-establish Baseline



Year 1 - Re-establish Baseline



Year 1 - Re-establish Baseline



Committee Recommendation Summary

- **Endorse roadmap**
- **Approve the 5 recommendations for Year 1**

1. Engage Commissions and Boards in support of the Roadmap goals
2. Sustainably support core senior services:
 - a. Town: social, educational, healthy living activities provided by LGS Recreation,
 - b. Community: grants to services (Live Oak Nutrition, WVCS, re-establish Adult Day Care, etc.)
3. Create an Age-Friendly Coordinator position (0.2 FTE) as the central point of contact
4. Encourage formation of an independent community nonprofit Foundation to raise funds for senior programs and a community facility with space for senior activities
5. Transition from planning to action by engaging the Senior Services Committee to jump-start year 1 projects and then sunset the Committee in 2023

Backup slides

Senior Services Committee

Tom Picraux, Senior Community Leader, Chair

Maureen Heath, Senior Community Leader, Vice Chair

Matthew Hudes, Council Member

Rob Rennie, Council Member & Mayor (Sept. 2021 - Apr. 2022)

Maria Ristow, Mayor & Council Member (Apr. 2022 – Jan. 2023)

Nancy Pearson, Service Clubs (Kiwanis)

Catherine Somers, Los Gatos Chamber of Commerce

Kathy Mlinarich, Service Provider (Live Oak Nutrition)

Lisa Lenoci, Service Provider (Live Oak Adult Daycare)

Diana Miller, County Department of Aging Representation

Brennan Phelan, El Camino Hospital

Dick Konrad, CHSSC (Chair in 2022)

George Rossmann, CHSSC (Chair in 2021)

Maia Bernholz/Arshia Mathur, CHSSC Youth Representatives

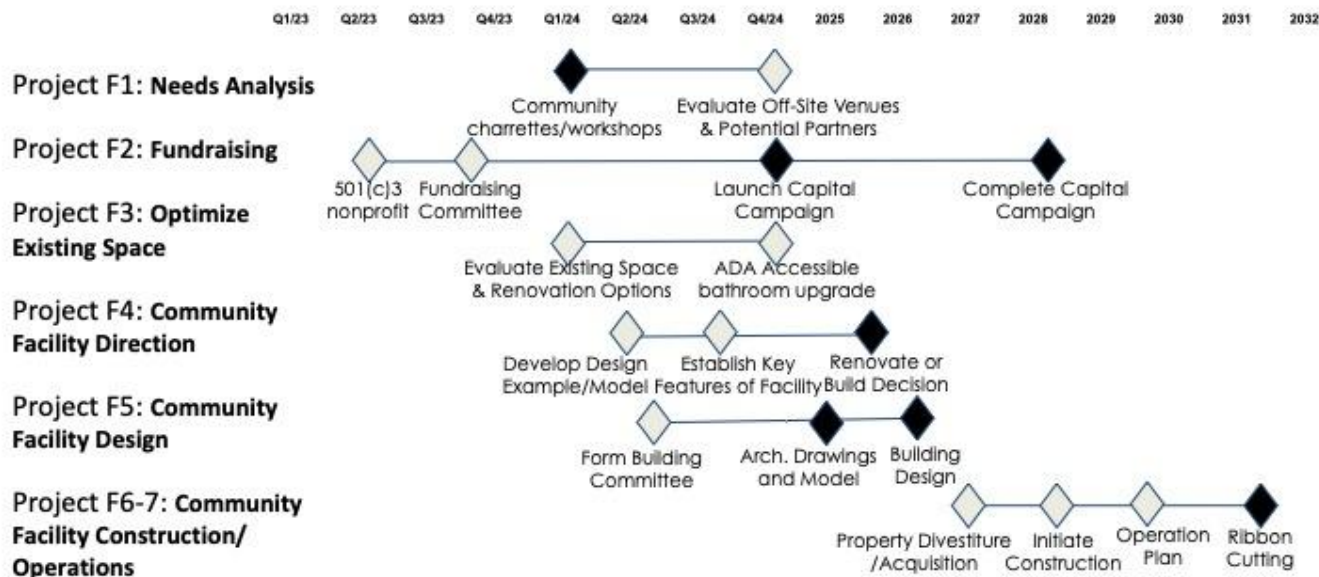
Eleanor Yick, CHSSC Member

Jeff Blum, CHSSC Member

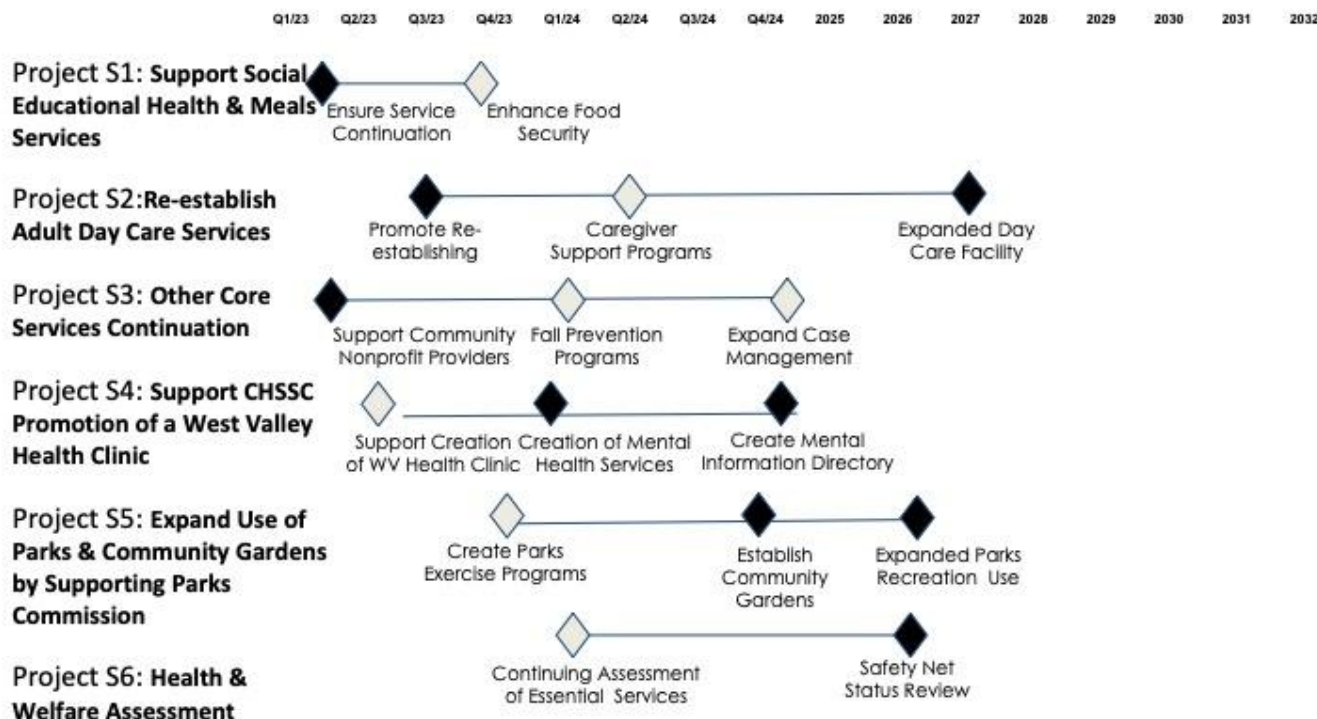
Pradeep Khanal, CHSSC Member

Arn Andrews, Assistant Town Manager, Town Liaison

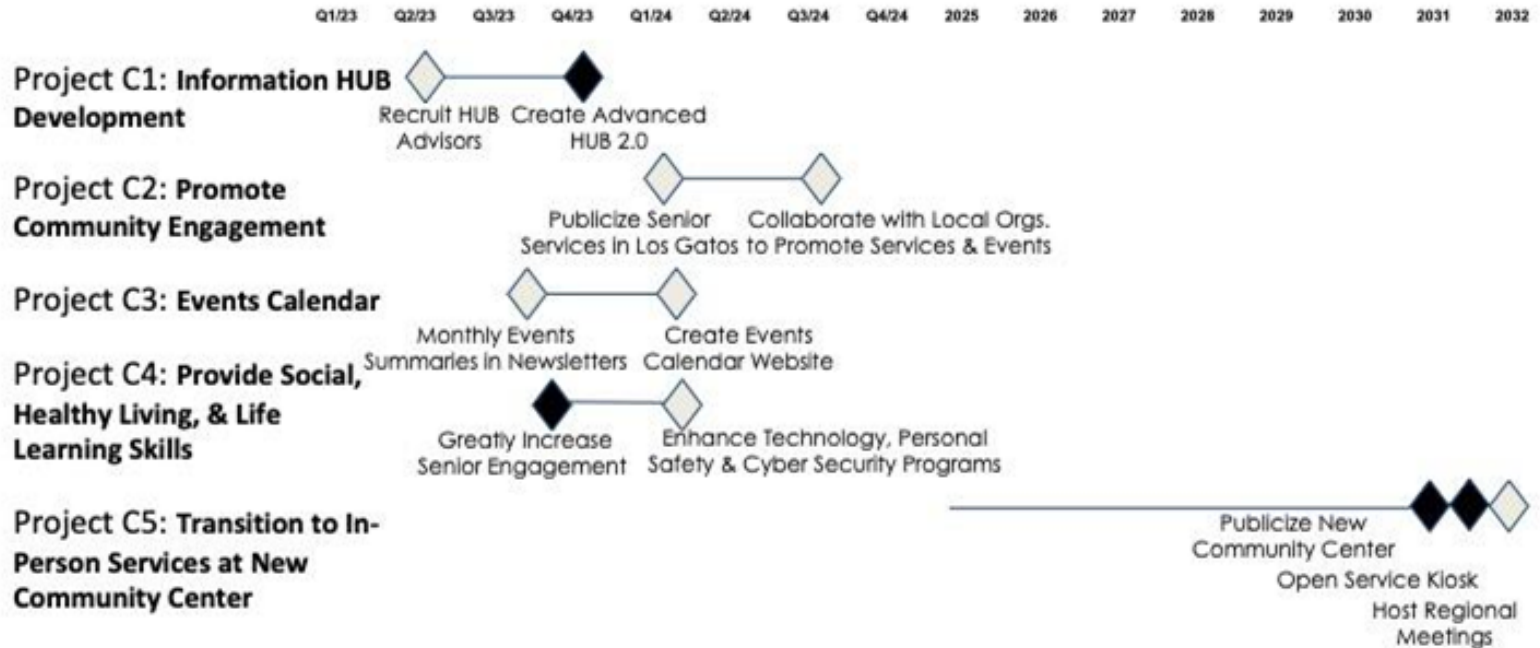
1. Appealing and Inviting Facility (Renovate or Build)



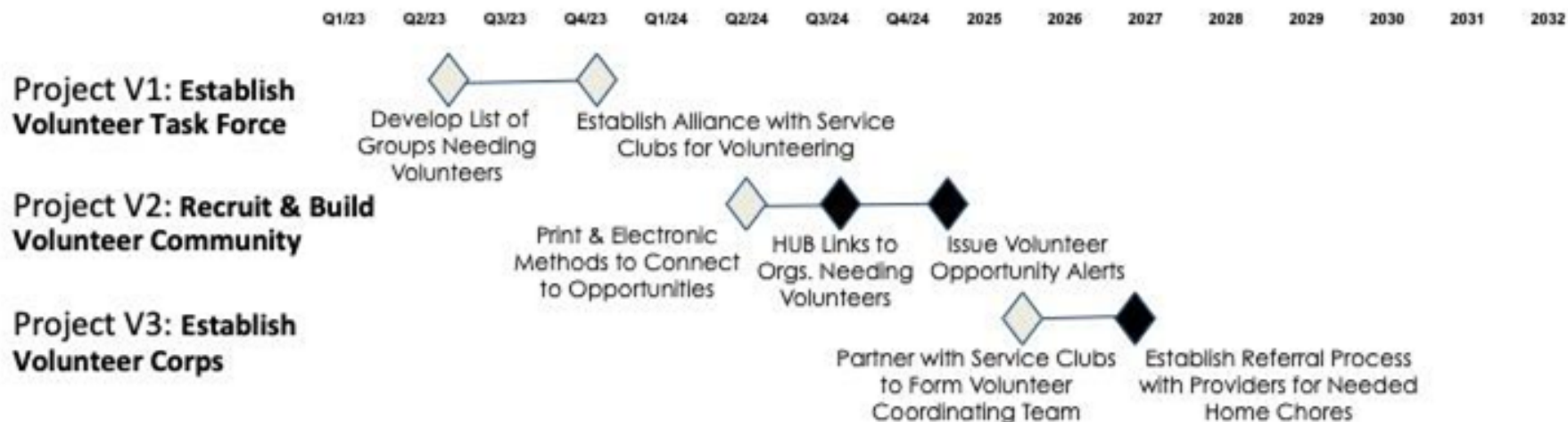
2. Core Senior Services



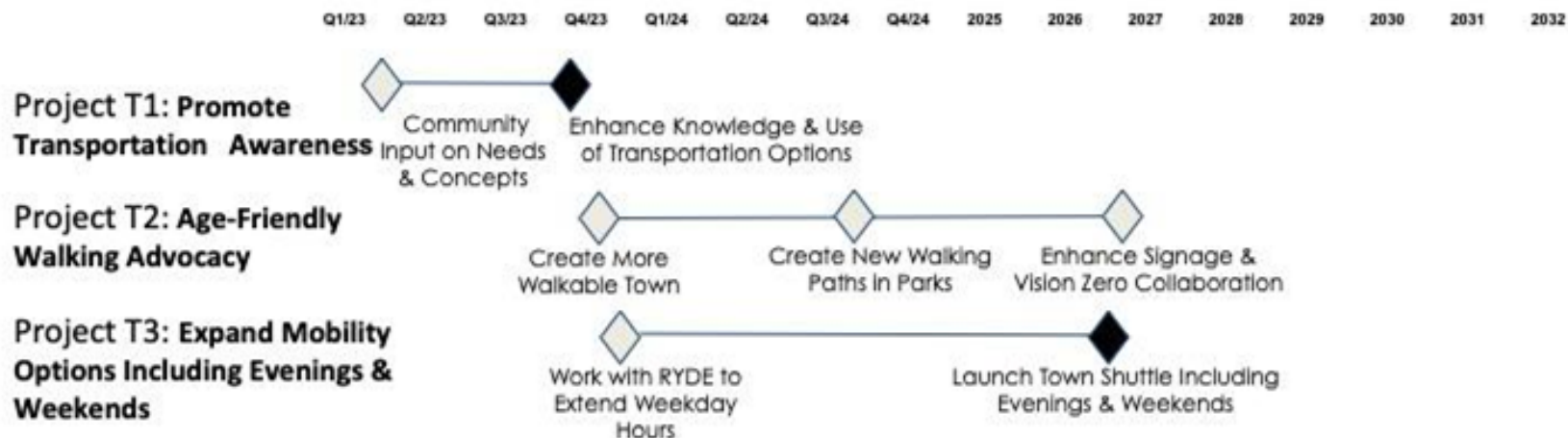
3. Communications and Engagement



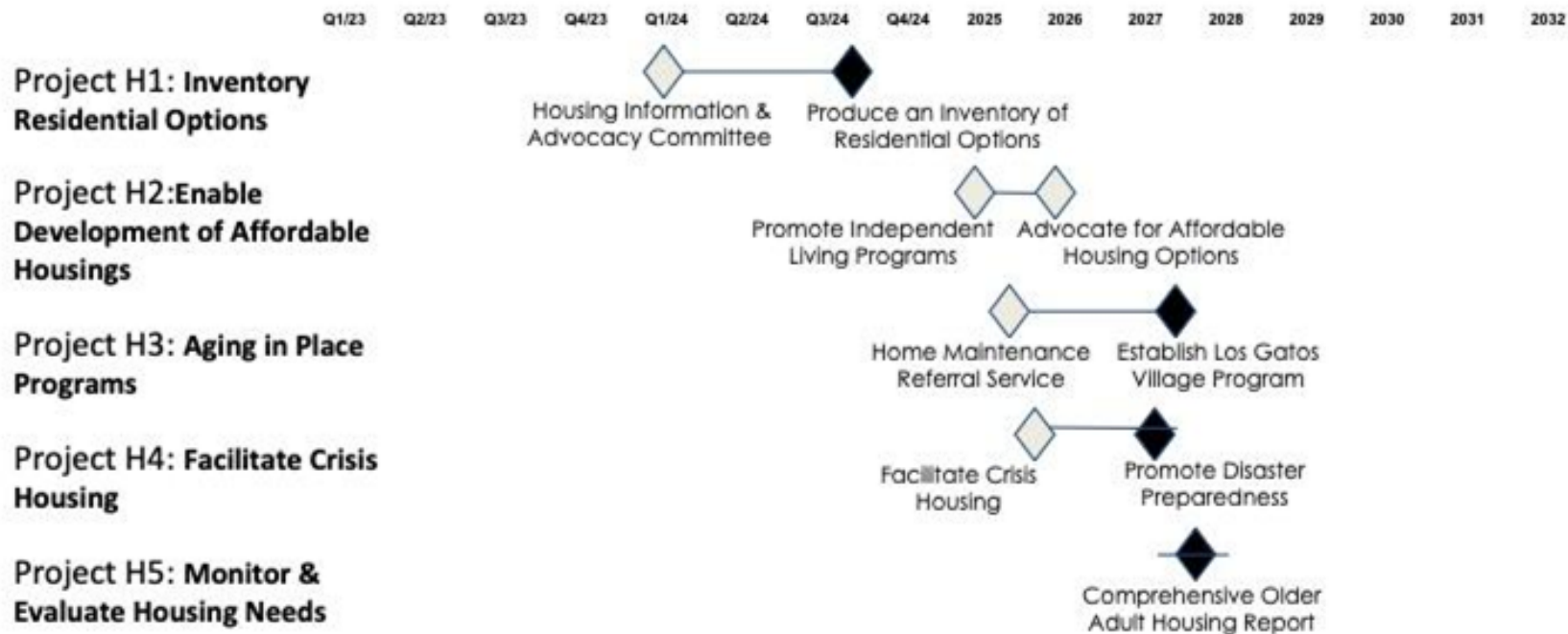
4. Volunteer Support and Engagement



5. Transportation Options for Older Adults



6. Senior Housing - Information on Approaches and Options





**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2023

ITEM NO: 16

DESK ITEM

DATE: February 7, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Receive the Senior Service Committee Roadmap for Senior Services and
Provide Any Additional Direction to the Committee and/or Staff

REMARKS:

Attachment 3 contains public comments received before 11:01 a.m. on Tuesday, February 7, 2023.

Attachments Previously Received with the Staff Report:

1. Senior Service Roadmap
2. PPT of the Roadmap

Attachments Distributed with this Desk Item:

3. Public comments received before 11:01 a.m. Tuesday, February 7, 2023

PREPARED BY: Arn Andrews
Assistant Town Manager/Committee Liaison

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

From: 55 Plus [REDACTED]
Sent: Tuesday, February 7, 2023 9:11 AM
To: Council <Council@losgatosca.gov>
Subject: Desk Item - Support for Senior Services Committee Roadmap

[EXTERNAL SENDER]

Town Council,

Please include this email as a desk item in support of the proposed Los Gatos Senior Services Committee Road Map. It has been my pleasure to work alongside and get to know the members of the Seniors Services Committee. This committee is passionate about making Los Gatos an age friendly town. The work that has been done by this Committee has ignited an exciting momentum for Senior Services in Los Gatos. Not only did they conduct research, surveys, and discussion groups to be able to craft this road map thoughtfully and quantitatively, but they also were immersed themselves in the community by getting active and involve. Members of this committee supported local health fairs, holiday drive throughs, volunteerism, town special events, and many 55 Plus Programs so that they could unify the voices of local seniors and prepare this roadmap . They have helped shaped what is possible through 55 Plus by supporting events and projects like the ARC Bar, The HUB, and the New Year Social by volunteering and aiding communication. This road map not only outlines goals for the Town of Los Gatos but practical solutions and projects necessary to achieve those goals.

At the special Town Council meeting on January 24th, LGS Recreation submitted a Proposal for Funding of the 55 Plus program. Specifically outlined in our proposal are a multitude of ways that LGS Recreation, with financial support from the Town of Los Gatos, can help the Town meet these goals, complete projects, establish services, and fill the gaps indicated in the road map of senior services. The 55 Plus Program is prepared to take on this role and continue to be the center of information and activity for our older adult population. Please consider adopting the Senior Services Road Map and with it the Proposal for 55 Plus funding.

Our mission is aligned, both the Senior Services Committee and LGS Recreation are committed to making Los Gatos a town where older adults can thrive.

Sincere thanks for your time and consideration,



Lisanne Kennedy

Recreation Coordinator

55 Plus Program & Adult Enrichment

Direct: 408.354.1514

LGS Recreation

Main Office: 408.354.8700

208 E. Main St, Los Gatos, CA 95030

Building a Healthy Community Through Enrichment, Innovation, and Fun!



From: S SERVER [REDACTED]
Sent: Tuesday, February 7, 2023 10:10 AM
To: Council <Council@losgatosca.gov>
Subject: Senior Services Roadmap

[EXTERNAL SENDER]

As a resident and senior citizen of Los Gatos, I would like to offer my support for the Senior Services Roadmap for Los Gatos.

Susan Server



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2023

ITEM NO: 17

DATE: February 1, 2023

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Consider the Following Items Recommended by the Art and Culture Commission:

- a. Receive the Arts and Culture Commission's Three-Year Plan Consisting of Capital Improvement Program (CIP) Funding for Completion of the Gateway Project and Annual Funding for Maintenance of Existing Town-Owned Public Artwork; and
- b. Authorize the Town Manager to Enter into a Memorandum of Understanding with Silicon Valley Creates; and
- c. Grant permission for Arts and Culture Commissioners to Solicit Philanthropic Funding for Future Public Art Projects

RECOMMENDATION:

1. Receive the Arts and Culture Commission's three-year plan consisting of Capital Improvement Program (CIP) funding for completion of the Gateway Project and Annual funding for maintenance of existing Town-owned public artwork; and
2. Authorize the Town Manager to enter into a Memorandum of Understanding (MOU) for partnership with Silicon Valley Creates; and
3. Grant permission for Arts and Culture Commissioners to solicit philanthropic funding for future public art projects.

BACKGROUND:

The Arts and Culture Commission (ACC) last presented an arts plan to Council in April of 2017. That plan contained elements focused on a variety of projects, funding ideas, and arts engagement. From the elements of that plan the ACC has been successful in bringing a Percent for Arts from Development ordinance to Council, as well as completed two of five Gateway sculptures to welcome residents and visitors to Town.

PREPARED BY: Ryan Baker
Library Director

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

BACKGROUND (continued):

While the ACC is proud of the accomplishments it has made for the Town, the Commissioners feel generally that many other aspects of that plan were not able to come to fruition due to limitations for arts funding. The ACC has been working over the past year to revise its workplan to a smaller project focus and a larger vision for partnerships and alternative funding.

The ACC has been working to create an achievable three-year plan that it wishes to implement between FY 2023/24 to FY 2025/26. The ACC believes that the growth of public art in Town will create vibrancy, promote a sense of place, boost economic vitality, and engage the community. The ACC recognizes that the costs of robust public arts programs is often substantial while Town resources are limited, therefore the ACC has kept both a narrow scope of vision for this proposed plan in addition to proposing a mechanism for obtaining future funding and adding regional strength through proposed partnerships.

DISCUSSION:

The ACC's proposed plan consists of four points:

- 1. Complete the ACC's Gateway Project by committing CIP funds in the amount of \$37,000 per year over the next three years.** The Town and ACC have installed two of an envisioned total of five Gateway sculptures at points of entry/exit to Town. The ACC proposes to commission and install the final three at a rate of one per year between FY 2023/24 and FY 2025/26. The requested funding would be added as a CIP item and would cover the cost of the artist commission, fabrication, and installation for each Gateway sculpture as well as on-site installation costs incurred by the Parks and Public Works Department. The final three locations being considered are Winchester Ave near Highway 85, one location to be determined near the western border of Town, and one location to be determined near the eastern border of Town. Council approved the artist and concept design of the additional Gateway sculptures at Town Council meeting on November 16, 2021.
- 2. Fund annual maintenance Town-owned public art at an estimated cost of \$2,500 per year.** Funds would be added as a line item in the Parks and Public Works Department's budget and would not be expended if not needed in any given year. Maintenance of Town-owned public art includes the costs of cleaning, repairs, graffiti removal, and other maintenance related costs.
- 3. Establish a partnership with Silicon Valley Creates (SVC) which includes allowing SVC to act as a non-profit fiscal agent on behalf of the Town for handling donations for future public arts projects.** SVC is a 501c3 non-profit organization that operates across Santa Clara County to promote public art, foster communication across arts agencies, connect arts agencies with grant opportunities, and raise the visibility of the creative sector. The ACC proposes entering into an agreement with SVC with a Memorandum of Understanding (MOU) (Attachment 1).

DISCUSSION (continued):

This agreement would allow the ACC to leverage SVC resources to strengthen the arts in Los Gatos while also allowing the ACC to contribute to the larger arts ecosystem of Santa Clara County. In addition to providing opportunities for programs, networking, grants, and collaboration, through this agreement SVC has also volunteered to act on behalf of the Town and the ACC as a fiscal agent for the purpose of receiving and expending private donations, corporate matching funds, or philanthropic giving to support the Town's future public arts projects.

This would allow for greater opportunities for local philanthropic giving to support future Town-initiated public arts projects. Examples of these projects are envisioned to include sculpture commissions, murals, utility box artwork, or other permanent and publicly accessible artwork that adds to the vibrancy and character of the Town. Funds would not be envisioned to be dispersed to non-profit third-party agencies or organizations that are capable of pursuing fundraising through their own means. Town Council would retain ultimate authority for expenditure of collected funds for public art in keeping with the spirit of the agreement except in cases where donation use is specified by the donor.

4. Grant permission for the ACC Commissioners to solicit private donations, corporate matching funds, and philanthropic giving to support future Town-initiated public arts projects.

The ACC understands that Town funds are limited. Being conscientious of this, the ACC has actively been discussing ways to create an alternative funding model to supplement the cost of future Town-initiated public arts projects. The ACC envisions a three-point model for alternative funding and is currently seeking Council approval to test this model with the intention of having accumulated alternative funds available for use to supplement Town-initiated public arts projects by the beginning of FY 2026/27. This component ties to the 2040 General Plan Policy PFS-25.4: *Encourage Private and Public Funding for the Arts* (Attachment 3).

1. *Percent for Arts Development In-Lieu Contributions.* This program, by which developers may either install public art or contribute an in-lieu fee for future public art at 1% of building valuation for private developments, was approved by Council on April 20, 2021. Although no funding has yet been collected through this mechanism, it is anticipated to have accumulated some funds for use by FY 2026/27. No additional action is needed on this item.

2. *Solicitation of donations/sponsorships, corporate matching funds, and general philanthropy.* The ACC believes that there is potential for alternative funding for Town-initiated public arts through these mechanisms and is seeking approval per the Town's Solicitation and Donation Policy (Policy Number 2-17) (Attachment 2) to allow the ACC Commissioners to conduct

DISCUSSION (continued):

targeted solicitation to test whether this is a viable alternative method for public arts funding. The Town Council approved the Donation List which includes Public Art on May 17, 2022.

3. *Grant opportunities.* The ACC is requesting approval for its Commissioners to apply for eligible arts grants on behalf of the Town. Under normal circumstances, such grants would fall under the purview of Town staff; however, the ACC understands that staff resources are limited and envisions the opportunity to engage in and submit such applications as they are discovered. Grants that require match funding would only be pursued if/when funding is available through the aforementioned mechanisms.

CONCLUSION:

The ACC is committed to furthering the arts in Los Gatos for the benefit of residents, visitors, and community vitality. The Commissioners express their thanks for Council's consideration of the plan as presented. If the Council supports these budgetary recommendations, they will be brought forward for Council's consideration with other budget direction at the February 21st Town Council meeting.

ALTERNATIVES:

Council may approve all, none, or any combination of the four parts of the ACC plan presented here with or without modification, limitation, or additional direction. Council should strongly consider how other Town Boards and Commissions may interpret any proposals of this plan as it pertains to precedent or scope of responsibility. Should Council not be in favor of any part of this plan, staff advises that clear direction be given to the ACC as it pertains to solutions for securing long-term funding to support Town-initiated public arts projects and clear work plan direction for the Commission.

FISCAL IMPACT:

The requested actual costs of \$118,500 would be divided as \$39,500 per year over three fiscal years beginning in FY 2023/24 with \$37,000 per year directed to the CIP budget for the Gateway project and \$2,500 per year to the PPW operational budget for maintenance of Town-owned public artwork. If Council agrees with the requests by the ACC, it should provide this direction for the preparation of the Proposed FY 2023/24 Operating and Capital Budgets. Potential alternative funding amounts for future projects cannot be determined at this time.

ENVIRONMENTAL ASSESSMENT:

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

PAGE 5 OF 5

SUBJECT: Arts and Culture Commission Three-Year Public Arts Plan

DATE: February 1, 2023

Attachments:

1. Memorandum of Understanding between SVC and Town of Los Gatos
2. Donation and solicitation policy, Policy number 2-17
3. Excerpt from 2040 General Plan, pages 6-31 and 6-32.
4. SVC white paper on the Business of Arts and Culture
5. Americans for the Arts green paper on Public Art

Memorandum of Understanding
A statement of intention
between SVCCreates and Los Gatos
from January 2023 through December 2027

Setting the Stage: SVCCreates is a regional non-profit on a mission to build the capacity of Silicon Valley's arts and culture ecosystem, raise the visibility and voices of our creative sector and increase access to the arts for high need communities. The Town of Los Gatos has a population of about 32,000 and is nestled at the base of the Sierra Azules in the southwestern portion of Santa Clara County.

We are entering this partnership with a shared appreciation for the value of the arts to our community and an awareness of our region's unique qualities and corresponding challenges and opportunities.

Santa Clara Valley Context: We live in a broadly diverse county – spanning from a tech centric Palo Alto to the north to the urban core of San Jose to the rural hills of Gilroy and everything in between. Our dynamic “start-up” culture changed the world through technology and innovation. Iconic Silicon Valley became a global economic force and the envy of many regions by creating an abundance of highly skilled jobs, fueling extreme wealth and attracting talent from across the globe. This unparalleled success, however, has come with a cost. It has strained our transportation systems, driven up housing costs and widened the income gap which in turn has made recruiting and retaining talent difficult. Living in Santa Clara County is challenging, especially for those who are not part of the tech-employed workforce.

These factors are exacerbated by: 1) 90% of our philanthropic giving that leaves our region; 2) a transient workforce that weakens our collective attachment to place; 3) a suburban development pattern that divides us; 4) the opportunity and complexity of a broadly diverse population; and 5) the challenges of navigating the impacts of digital culture first.

To varying degrees, these challenges impact everyone who lives and works in Silicon Valley but they are magnified for the creative sector trying to: 1) retain an artist community; 2) find affordable creative spaces for the arts; 3) serve multicultural arts audiences; 4) create a sense of place; and 5) build community through the arts.

Importance of the Arts: While we acknowledge that arts and culture are not the “main event” in Silicon Valley we stand firmly behind its value to the health and well-being of our community. The arts have the power to heal and transform our lives. The arts drive social change. The arts preserve cultural heritage and connect us to our humanity and to each other. The arts help shape and define our community and drive small business activity. The arts fuel creativity, innovation and self-expression. And the arts are integral to the healthy development of our children.

The sector's contribution comes at a time of a racial reckoning, pandemic exhaustion, the challenges facing our democracy, the weaponizing of immigrants, and negative impacts of social

media to our children and society. The arts can be part of the solution. And our sector challenges highlight the need for us to work together, to leverage the assets that we have and to ensure that each unique community benefits from the power of the arts.

Partnership Goals:

- Leverage SVC resources and civic and cultural assets within each community to strengthen the arts.
- Raise local awareness and support for the arts.
- Build a region wide network of arts advocates for private, state and federal investment in the arts.

Guiding Principles:

- Each town, village and city in Santa Clara County has its own unique characteristics, priorities and aspirations.
- Knowledge about our local arts and cultural ecosystem informs public policy and local investment in the arts.
- We embrace the innovative and entrepreneurial spirit and multicultural community of Silicon Valley and seek to leverage what we already have.
- A regional network of civic leaders who care about the arts strengthens our ability to advocate.
- An equity lens helps us to prioritize our efforts

Partnership Responsibilities:

SVCcreates agrees to:

- Deepen our understanding of Los Gatos' cultural sector through research, interviews and engagement.
- Customize a suite of SVC program and initiative offerings for Los Gatos based on interest, available resources and the unique needs of the community. Examples include:
 - Operating, project or access grants for local arts organizations
 - Workshops, conferences, roundtables, leadership training, coaching and peer support for arts leaders
 - Artist or leadership features across Content Media Platform
 - Networking events for civic and arts leaders and local creatives
 - County Poet Laureate and Content Emerging Artist nominations
 - ArtsEdConnect teacher grants for k-12 arts education
 - Fiscal agency in support of fundraising efforts for the arts.
- Share arts ecosystem research. This includes copies of The Business of Arts and Culture publication and Civic Leadership Briefings upon request.
- Provide Content Magazine subscriptions to city staff liaison and elected officials.
- Invite designated arts and civic leaders from Los Gatos to SVC events, workshops and convenings.

Los Gatos agrees to:

- Designate a contact person for SVC from the Town of Los Gatos.
- Co-create customized approach to serving arts community within Los Gatos.
- Promote SVC program opportunities to Los Gatos artists and arts organizations through city communication channels.
- Host an Arts and Civic Leadership Briefing on the Business of Arts and Culture.
- Be open to public policy proposals and debates impacting the arts.
- Help to find any “unmapped” artists or arts organizations within your community that might benefit from SVC resources.
- Identify any private or institutional funding candidates for the arts within Los Gatos.
- Consider local “matching funds” when opportunities are presented.

SVCcreates Leadership

Name:

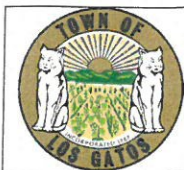
Connie Martinez, CEO SV Creates

Title

Los Gatos Leadership

Name:

Title



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 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

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.

| | | |
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| Title: Solicitation and Donation | Page: 4 of 4 | Policy Number: 2-17 |
|---|------------------------|----------------------------|

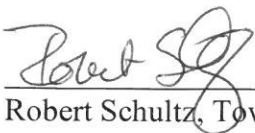
Plaques may be used to commemorate donations accepted by the Town from persons, businesses, and organizations according to the following standards:

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

6. Public Facilities, Services, and Infrastructure Element

The following goal and policies address libraries in Los Gatos.

PFS-24

Provide a library facility that will accommodate library services to meet the educational and informational needs of the community.

PFS-24.1

Access to Library Services

Ensure that all residents have access to Library services, including electronic resources, technology resources, and a range of operating hours.

PFS-24.2

Maintain Relevance of Library

Maintain the Library as an important activity center within the community.

6.12 Town Arts

The Town of Los Gatos has a rich history as a center of arts and literature and the home to both historical and contemporary artists of renown. And today, Los Gatos maintains a thriving arts community that is invaluable to people of all ages in the Town. The Town has committed to protecting and promoting its cultural resources, including theaters, museums, art galleries, and public art. The Town also strives to further attract and encourage performing arts in Los Gatos, including live theater, music, and dance, as well as the literary arts, including author events and poetry.

Los Gatos's Arts and Culture Commission is actively involved in promoting cultural events and public art displays in the Town. The Arts and Culture Commission is an advisory group to the Town Council and works to encourage the development of music, drama, art, and other cultural and creative activities. One of the seven members of the Arts and Culture Commission is a Youth Commissioner, appointed by the Youth Commission.

The Town supports a wide variety of cultural experiences including the Music in the Park Summer Concert Series, the annual July Fourth musical celebration, and public art in the Council Chambers and throughout the community. Music in the Park is a free summer concert series held Sunday afternoons on the Civic Center Lawn which has been running since 1988. Arts in the Council Chambers displays exhibits throughout the year. The Forbes Mill Footbridge children's murals span Highway 17 and link Forbes Mill to Old Town. The Banner Project incorporates public art in Downtown banners. The Utility Box program covers local utility boxes with artwork created by Town residents. Many of these efforts are supported or led by the Arts and Culture Commission.

Los Gatos has a museum – the New Museum of Los Gatos (NUMU). NUMU has been a key cultural element of the Town since its founding in 1965, contributing to the unique character of Los Gatos. The Museum's stated mission is to engage the community at the intersection of art, history, and education through innovative, locally connected, and globally relevant exhibits, programs, and experiences. NUMU actively partners with many community organizations and Town departments and government leaders to make programs accessible and responsive to the community. The Museum is the custodian of an extensive art and history collection and works with the Los Gatos Library and other resources to enrich an understanding of our cultural heritage.

The following goal and policies address the arts in Los Gatos.

PFS-25

Enrich the Town by making visual arts, the performing arts, literary arts, and other cultural amenities more accessible to the Town's residents.

PFS-25.1

Incorporation of Art-Related Uses

Encourage and maintain art-related uses (theaters, museums, and art galleries) in new and remodeled retail development.

- PFS-25.2 Support and Maintain Arts Programs**
Continue to support and maintain community-based, musical, and other arts programs in an effort to collect, archive, and share the stories and histories of Los Gatos residents through a variety of platforms and voices.
- PFS-25.3 Performing Arts Facilities**
Encourage new or expanded public and private facilities to host performing arts events.
- PFS-25.4 Encourage Private and Public Funding for the Arts**
Encourage private and public funding, development, and operation of cultural amenities, activities, and centers.
- PFS-25.5 Facilitate Cross-Disciplinary Collaboration**
Encourage all local arts groups and artists to collaborate and partner across disciplines, media, and venues for a richer and more diverse cultural experience.
- PFS-25.6 Expand and Deepen Partnerships**
Retain art-related uses, with the objective of retaining the museum and art organizations in Town.
- PFS-25.7 NUMU and the Visual Arts**
Continue to support the growth of NUMU, its visual arts program, local history and education programming, and the stewardship of its Art and History Collections for service to and benefit of, visitors and participants of all ages.

6.13 Healthy Community

A healthy community promotes a positive physical, social, and economic environment that supports the overall well-being of its residents. While other parts of the General Plan also touch on aspects of health and quality of life, the purpose of section is to promote a healthy lifestyle and improve residents' quality of life.



Outdoor activity is also part of a healthier community. Bicycle and pedestrian options are covered in Section 5.2 (Bicycle and Pedestrian Facilities) in the Mobility Element and in Section 6.2 (Parks and Recreation) in the Open Space, Parks, and Recreation Element.

The following goal and policies address health in Los Gatos.

PFS-26

Ensure all residents have access to healthy foods, including plant-based options.

EJ HC

PFS-26.1

Healthy Food Options

EJ HC

Encourage farmer's markets and healthier food options within neighborhoods or near child-oriented uses (e.g., schools, day care, and parks).

PFS-26.2

Limit Concentrations of Alcohol and Tobacco

HC

Establish zoning code requirements to guide locations and restrict concentrations of businesses selling alcohol and tobacco near sensitive land uses.

PFS-26.3

Healthier Diet Options

HC

Support programs that guide healthier diet and plant-based eating options within the community.

THE BUSINESS OF ARTS AND CULTURE

SVCREATES

21



ATTACHMENT 4



“WE ARE NOT IN KANSAS ANYMORE, *AND NEVER WERE.*”
_Connie Martinez, CEO, SVCcreates



SVCREATES BOARD OF DIRECTORS:

- Tamara Alvarado**, Program Officer of Local Grantmaking, The David and Lucile Packard Foundation
- Teresa Alvarado**, Former Chief of Local Impact for SPUR
- Maryles Casto**, Founder and Former CEO, Casto Travel
- Roy Hirabayashi**, Co-Founder, San Jose Taiko
- Janice Fry**, Former VP Executive Development, Sun Microsystems
- Marshall Jones**, VP Regional Sales, Prestige
- Jennifer Hull**, Nonprofit Management
- James LaCamp**, VP Finance, Coupa Software
- Matt Ogawa**, Human Resources, Facebook
- Barry Posner**, Accolti Endowed Professor of Leadership, Leavey School of Business at SCU
- Joshua Russell**, Director of Marketing and Public Relations, Evergreen Valley College
- Sheena Vaidyanathan**, Public School Teacher, Los Altos School District
- Mark Waxman**, Chief Marketing Officer, CBIZ

SILICON VALLEY BRAINTRUST:

- Kerry Adams Hapner**, Director, Office of Cultural Affairs, City of San Jose
- Hector Armienta**, Founder and Director, Opera Cultura
- Gina D. Dalma**, EVP, Community Action, Policy and Strategy, Silicon Valley Community Foundation
- Khori Dastoor**, General Director, Opera San Jose
- Erin Fogg**, Founder and Principal, Spoke Consulting
- Daniel Garcia**, SVCreates Cultivator and Founder of Content Magazine
- Karen Kienzie**, Director, Palo Alto Art Center
- Chike Nwoffiah**, Founding Director, Silicon Valley African Film Festival
- Mauricio Palma**, Director Strategic Initiatives, Silicon Valley Community Foundation
- Joshua Russell**, Director of Marketing and Public Relations, Evergreen Valley College
- Usha Srinivasan**, CEO and Co-Founder, Mosaic America

RESEARCH:

- Creative Community Builders (CCB)
- Americans for the Arts
- Joint Venture Silicon Valley
- Californians for the Arts
- Please visit svcreates.org for full list of resources and data.

Thank you to the SVCreates Board, SVBrain-trust, Erin Fogg of Spoke Consulting, Daniel Garcia and Alexandra Urbanowski at SVCreates.

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SETTING THE STAGE

The essence of Silicon Valley informs our unique arts and cultural ecosystem.

Silicon Valley is a relatively young and highly educated region that attracts people from around the world. Our entrepreneurial, risk taking, startup culture fueled the emergence of a global center of technology and innovation at record speed – a feat for which we have become world renowned. And in doing so, we also created a broadly diverse “culture of churn” and unprecedented wealth that is, in many cases, only loosely tied to our local community.

Silicon Valley wealth is largely “new money” and resides with our technology elite, not the social elite who historically funded the arts. Just like our companies, Silicon Valley philanthropy leans global and is often driven by a desire to change the world. And, for many in our “valley of immigrants,” connection to this place remains a bit illusive.

As a result, **there is a deep chasm between the capacity and propensity to fund arts and culture.**

We believe engagement and investment in our arts ecosystem requires a nuanced understanding of our region’s unique and beautiful complexity and the value of the arts in overcoming our civic challenges. This publication will help you understand who we are as a cultural sector and what we bring to this special community, it will shed light on the particular challenges we face and how we are

confronting them. Most importantly, it will help you understand your essential role in sustaining the business of the arts.

It is worth noting that our research for this project was underway before COVID-19 hit the arts sector particularly hard. You will see that we have added pandemic texture and insights to each section, but, as is true for most other sectors, we have yet to fully realize the long-term impact of 2020’s concurrent crises on the arts.

Before we invite you to dig in, let’s pause for a moment of reflection.

Imagine navigating a global pandemic, a racial reckoning, home schooling, and the social and economic complexities of this world without access to music, film, poetry, performances, visual arts, cultural events and festivals.

Hard to imagine? We agree. And we rest our case.

Warm regards,

Connie Martinez, CEO, SVCREATES

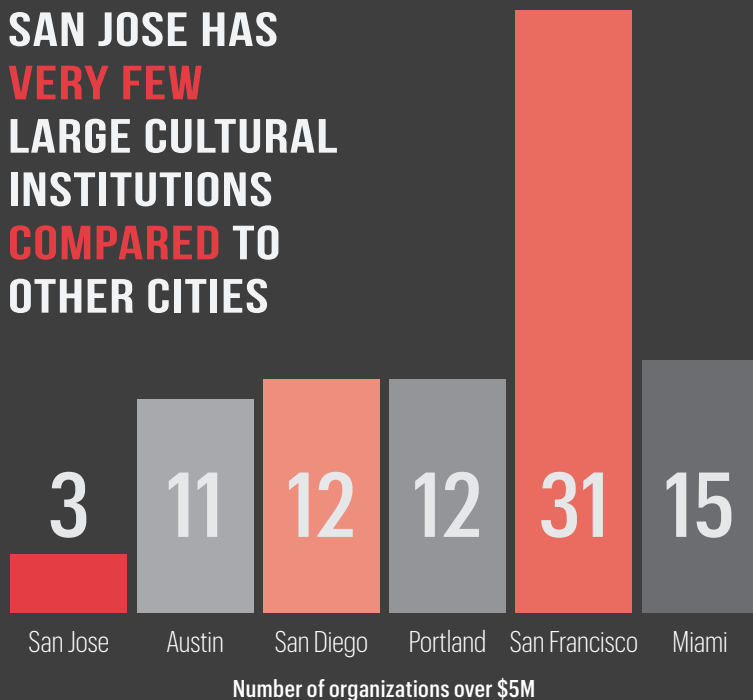
SILICON VALLEY ARTS & CULTURE
EARLY ADOPTER OF THE 21ST CENTURY

From 20th Century Industrial Economy To 21st Century Creative Economy

| | | |
|-------------------------|--|-------------------------------|
| Hierarchical Leadership | | Entrepreneurial Leadership |
| Prominent Structures | | Decentralized Creative Spaces |
| Observing Art | | Creative Expression |
| Centralized Power | | People Power |
| Highly Capitalized | | Scrappy Great |
| Social Elitism | | Inclusivity |
| Status | | Cultural Identity |
| Excellence | | Relevance |

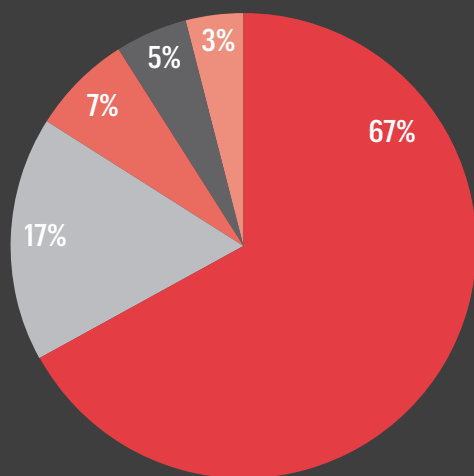
South Bay Hooper Caroline Kim

**SAN JOSE HAS
VERY FEW
LARGE CULTURAL
INSTITUTIONS
COMPARED TO
OTHER CITIES**



**SILICON VALLEY NONPROFIT
ARTS LEAN SMALL**

Only 8% have budgets over \$500k



Total number of organizations in 2019 = 1,063

Under \$50K \$50K-\$200K \$200K-\$500K \$500K-\$1.5M Over \$1.5M

Source: CCB 2019 Study

WHO WE ARE

Silicon Valley's cultural ecosystem is a vast, organic network of hundreds of small- to mid-sized multidisciplinary arts and cultural organizations and thousands of artists, creative entrepreneurs, volunteers and individual participants.

MUCH LIKE THE WEB, SILICON VALLEY'S ARTS ECOSYSTEM IS INVISIBLE UNLESS YOU USE IT AS AN ARTS CONSUMER OR PRODUCER, OR BOTH – and your experience and understanding of the arts is contained almost entirely to the “sliver” of the ecosystem that you experience directly. This is not the case in most comparable US regions, where decades of cultural policies and investments have favored large “legacy” organizations, cultural facilities and donor events that are predominantly white and highly visible.

SILICON VALLEY HAS NEVER BEEN A TRADITIONAL MARKETPLACE FOR THE ARTS and has little history of well-funded, euro-centric arts organizations. In fact, ours is the only comparable city-region whose community of arts organizations with budgets over \$5M contracted between 2010 and 2020 (as San Jose Rep, American Musical Theater and San Jose Ballet closed). Just as these mid-sized euro-centric arts institutions were shuttered, 501c3 start-ups and culturally specific arts organizations grew by 60%, funded by “family and friends” and fueled by volunteers. During this same time, local public investment in the arts grew faster than inflation, population growth and national averages for public support, primarily driven by a surge in arts funding by the City of San Jose.

DEMOGRAPHIC SHIFTS AND TECHNOLOGY INNOVATIONS ARE THE KEY DISRUPTORS TO THE SECTOR as culturally specific demand grows and digital culture changes an individuals' relationship with the arts. Silicon Valley felt the impact of these disruptors ahead of other US regions because our innovation economy attracted the global talent that created the technology platforms for digital culture and changing demographics shifted priorities and the consumption of the arts. These disruptors were less about quality and more about relevance, as audiences began curating their own, and often culturally specific, experiences.

AS INTERNATIONAL IMMIGRATION HAS PROPELLED OUR POPULATION GROWTH, OUR ARTS AND CULTURE SECTOR HAS GROWN TO ALIGN WITH OUR DEMOGRAPHICS AND CULTURAL IDENTITY. A decade of growth, coupled with our entrepreneurial and engineering culture, fueled culturally specific art start-ups. At the same time, growth in funding for “technology centric” cultural institutions outpaced our national peers by a factor of 5 and expenditures by organizations focused on western art forms contracted by 50%.

AN ECOSYSTEM OF MANY VOICES AND TALENTS

There are thousands of stories like Usha’s, Harumo’s, Jimmy’s, and the Xochitl project that breathe life into our ecosystem.

NONPROFIT ARTS LEADER - Usha Srinivasan, Mosaic America

A recent immigrant from India, Usha Srinivasan arrived in Silicon Valley in 1995 to attend Stanford. After earning her MBA she settled into a career in high tech. Becoming a mother forced her to reckon with issues of identity and belonging in her new homeland. She was struck by the lack of social integration between culturally distinct groups in Silicon Valley – a consequence of rapid demographic shifts as the valley transformed from an agricultural center to a global high-tech hub. Raised in a highly multicultural environment in India, she knew first hand



the power of culturally-rooted arts to build bridges. She founded Sangam Arts (now Mosaic America) in 2013 – a presenting platform for multicultural arts. In 2016, she was joined by Priya Das and together they launched Mosaic – a unique and innovative grassroots movement for cultivating belonging through inter-cultural and co-created art. Mosaic programming has featured artists from over 35 cultures, collaborated with over 40 partner organizations and reached more than 25,000 in six Bay Area cities.

LOCAL ARTIST - Harumo Sato

Harumo Sato’s art exudes joy, color, and wonder. The characters she draws could be your “spirit friend” and the magic of her life story is present in her work – a fantastic journey of spiritual crisis, impossible healing, and happy discovery. Soon after Harumo moved to Mountain View, a friend brought her to South First Fridays Art Walk in downtown San Jose. She met local artists and creatives and was overjoyed to find like-minded thinkers and makers. Harumo gained local and national recognition by selling art at fairs and festivals and in 2018,

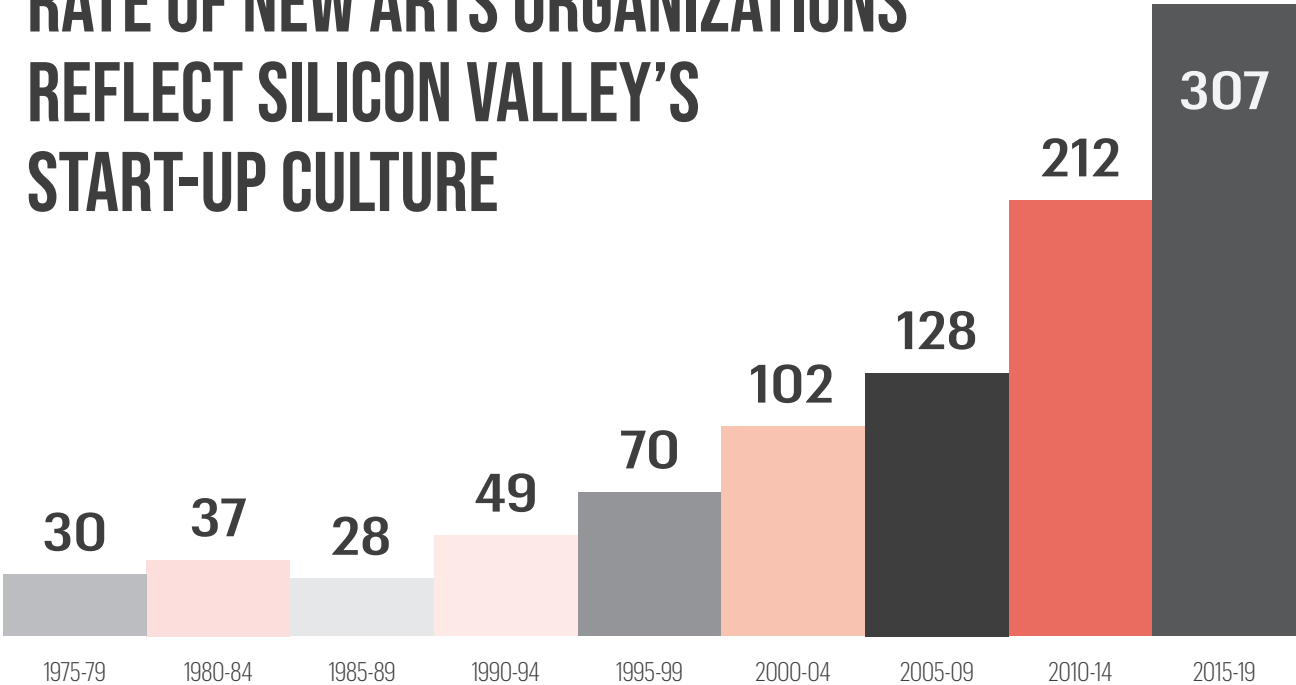


she landed a series of shows through Art Attack San Francisco and painted a mural at Dac Phuc restaurant during POW! WOW! San Jose. In 2019, she produced murals for Facebook and Target and is now hoping to create art for hospitals, rehabilitation clinics, and hospice centers—to cultivate joy for those most in need. “Art really changed my life. It saved me—really cured me. So I want to enhance positivity and make people happy. I want to draw a peaceful world.”

KEY INSIGHTS

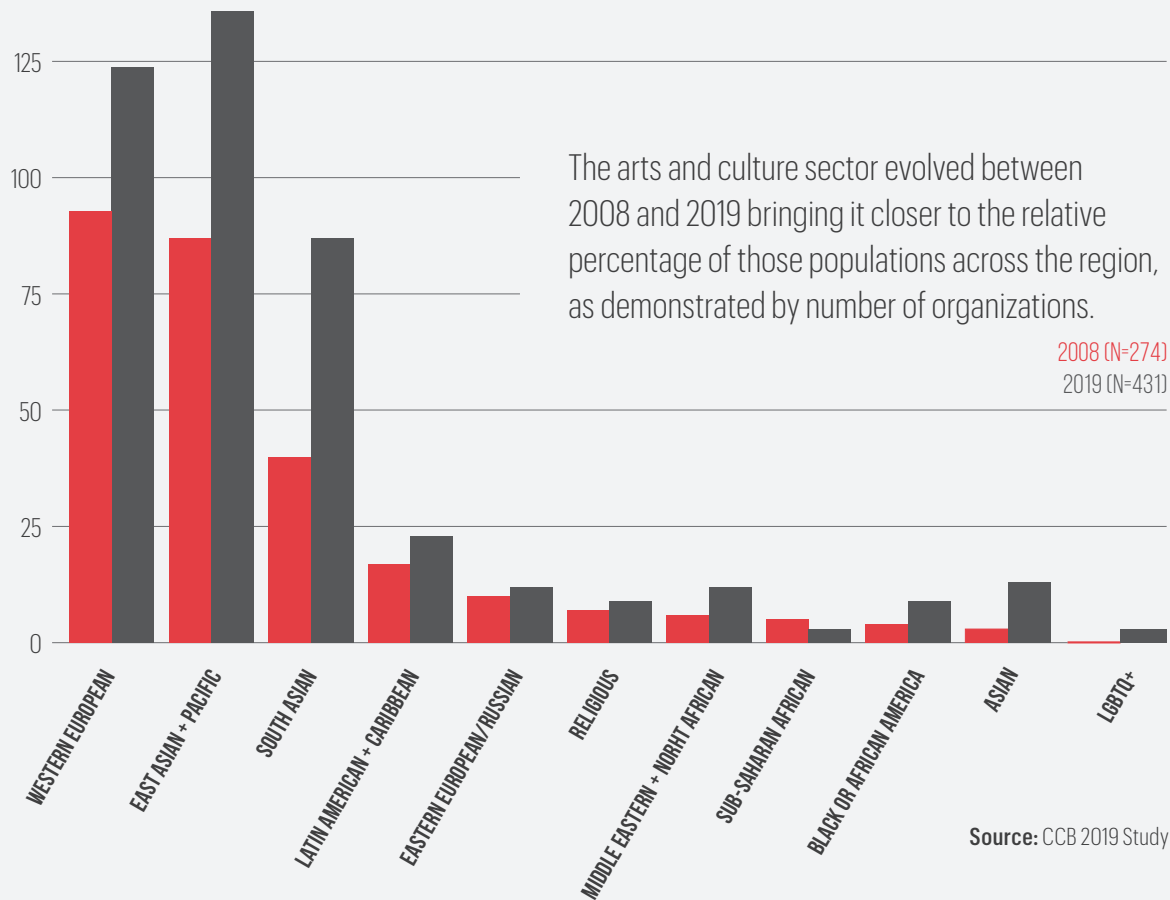
- WE ARE A VALLEY OF DIVERSE VOICES AND MANY CULTURES
- THE VIBRANCY OF OUR CULTURAL SECTOR DEPENDS ON RELEVANCE & DIVERSITY, NOT SIZE OF INSTITUTIONS
- UNLIKE OTHER US CITY-REGIONS, SILICON VALLEY’S CULTURAL SECTOR NEARLY MATCHES THE DEMOGRAPHICS OF THE REGION
- ORGANIZATIONAL BUDGET GROWTH DOES NOT ALWAYS EQUAL RESILIENCE
- OUR CULTURAL SECTOR MIRRORS OUR START-UP DNA AND LEANS “MARKET”

RATE OF NEW ARTS ORGANIZATIONS REFLECT SILICON VALLEY’S START-UP CULTURE



Source: CCB 2019 Study

CULTURALLY SPECIFIC ORGANIZATIONS GREW BY 57%, DOMINATED BY ASIAN GROUPS



AN EVOLVING MARKETPLACE FOR ARTS AND CULTURE

The number of 501c3 arts organizations grew from 659 in 2008 to 1063 in 2019.

In Silicon Valley, about 60% of 501c3 arts and culture funding comes from consumers of culture, not funders. That's higher than comparable regions in the US.

While the financial value of the cultural sector remained relatively constant over the past decade, overall funding shifted from euro-centric arts organizations to technology-centric cultural institutions such as The Tech Interactive and the Computer History Museum.

OFF-THE-GRID - Xóchitl - Folklorico Dance

In the 1990s, former teacher Roslia Novotny established Xóchitl, a folklorico dance group that became very popular with students and their families at Lincoln High School in San Jose. Megan McAlister and Sam Cortez expanded this community gem and brought a cross-cultural perspective to Xóchitl that reflects the beautiful diversity of Silicon Valley. Megan was born and raised in San Jose and brings a lifelong love of ballet and tap to Xóchitl and Sam brings his folklorico talent and experience after studying dance at University of Colima in Mexico and



Dancer: Mariagrace Garcia Morones, Xóchitl dancer class of 2020

now directing Los Lupeños and Los Lupeños Juvenil in San Jose. These leaders are growing the community's energy and passion for dance and showcasing new dance routines from different regions. During COVID, the group stayed together through Xóchitl online cultural class. "My early journey with folklorico began at a young age by sneaking into my sister's practices," said Sam. "I hope Megan and I can help all of our kids carry the joy and creativity of dance into their community and their futures."

CREATIVE ENTREPRENEUR - Jimmy Fonseca

Raised in East San Jose, Jimmy Fonseca remembers experimenting with graffiti as his gateway into art. Today he is an artist and muralist on a mission to spread his floral aesthetic, by creating blooming flowers with a mixture of spray paint and acrylics rendered in lush, expressionist tones. With a degree in graphic design, Jimmy works for a print shop and pursues his art business after hours. He currently does commissions, has several murals he has painted around town and hopes for international proj-



ects. He has been a featured artist at SoFA Street Fair and has artist residency at Local Color. "I get inspired by flowers that I see on walks in my neighborhood. It's something I like to go back to and experiment with. It's an organic thing, so it's not very structured. Flowers have contour, shading, lines that can be played with no right or wrong way. The first time I tried spray painting a rose, it came out cool, so I wanted to do it again, to the point that it became kind of an obsession."



Artist Francisco Ramirez

WHY **ART** MATTERS

Arts are the key to a more just, soulful, and livable Silicon Valley. They bring joy, beauty and healing to our lives. They drive economic and social activity. They attach people to place and to each other, fuel creativity and learning, and foster social justice and truth making.

ARTS IMPROVE THE HEALTH AND WELL-BEING OF OUR COMMUNITY AND THE INDIVIDUALS WHO LIVE HERE.

There is extensive scientific evidence that the arts improve our physical and mental health, increase civic engagement, nurture social cohesion, improve child welfare and lower poverty rates. Americans for the Arts recently reported that the arts result in a 66% improvement in individuals experiencing depression, 50% improvement in anxiety symptoms, and an 83% decrease of stress. About 50% of US healthcare institutions use arts programming for patients, families, and staff to reduce hospital stays, manage pain and decrease dependency on medication.

ARTS CONTRIBUTE TO OUR ECONOMY. Americans for the Arts found that nonprofit arts generate \$166.3 billion in economic activity, 4.6 million jobs and \$27.5 billion in government revenue annually. Locally, the arts generated about \$250M in economic activity, created 4,000 jobs, and audiences of more than 4 million people. Music and artistic performances and exhibitions are important drivers of bar and restaurant revenue and other small business services and are attractive to a creative workforce as they choose where they want to live.

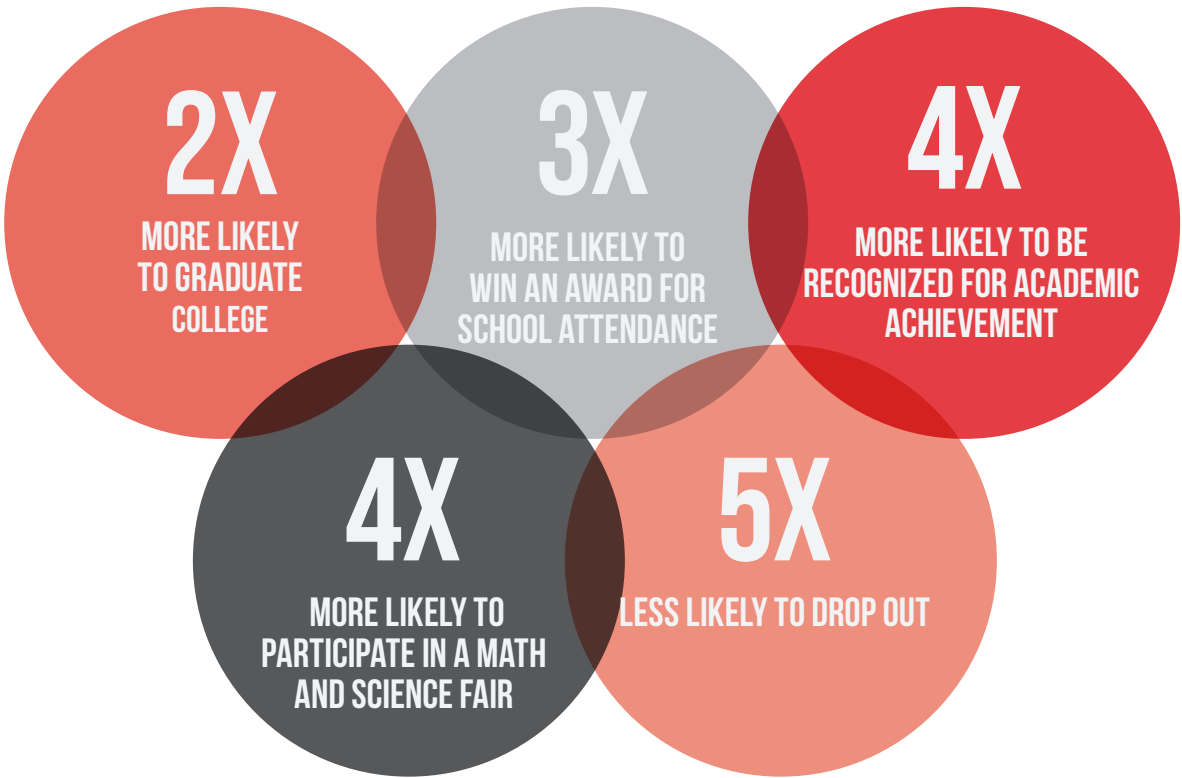
ARTS ENHANCE CREATIVITY AND ACADEMIC PERFORMANCE. Research shows that students engaged in the arts perform better academically regardless of socio-economic

status and that for every \$1 spent on after-school programs a community saves \$9 on other public expenditures. Nobel laureates in the sciences are 17 times more likely to be actively engaged in the arts than other scientists. Creativity is among the top five applied skills sought by business leaders and 91% of Americans believe that arts are part of a well-rounded K-12 education.

ARTS FOSTER ENVIRONMENTAL STEWARDSHIP. Two national studies conducted by the Knight Foundation found that the arts deepen a person's attachment to the place. Stewardship of our local environment and its relationship to climate change, environmental justice and sustainability is fueled by our knowledge of our environment and caring for the place we call home.

ARTS DRIVE SOCIAL CHANGE. Most major movements or societal shifts throughout history have been driven, advanced, revealed, or envisioned by artists. **From murals of George Floyd to the spoken word of Youth Poet Laureate Amanda Gorman, the arts enlighten, provoke and inspire.** There is a reason dictators and authoritarian leaders fear the arts and its power to inspire a change of mind and spirit. As German playwright Bertolt Brecht once said, "Art is not a mirror held up to society but a hammer with which to shape it."

STUDENTS WHO PARTICIPATE IN ARTS ARE:



Source: Americans for the Arts

THE ARTS MEAN BUSINESS

\$166B

Nonprofit arts and culture is a \$166B driver of our national economy.

4.6M

The cultural sector creates 4.6M jobs across the nation.

\$102B

The cultural sector generated \$102B in local spending across the U.S.

\$27.5B

Nationally, the nonprofit arts industry generated \$27.5 billion in government revenue.

7.4%

Arts and culture represent 7.4% of California's GDP.

Sources:
Americans for the Arts and
Californians for the Arts

KEY INSIGHTS

ARTISTS ARE INFLUENCERS AND RAISE THE VOICES AND IMAGES OF SOCIAL CHANGE

THE ARTS ARE THE ENABLERS OF COMMUNITY BUILDING, PLACE MAKING AND CROSS-CULTURAL UNDERSTANDING

THE ARTS ACTIVATE PUBLIC SPACES, FUEL SMALL BUSINESSES AND HELP ATTRACT A CREATIVE WORKFORCE

PARTICIPATION IN ARTS PROGRAMS IS A GAME-CHANGER FOR KIDS, FAMILIES AND COMMUNITIES

THE ARTS REVEAL A REGION'S CHARACTER, ITS PRIORITIES AND COMMITMENT TO PLACE



San Jose Jazz High School All Stars

COVID HIT THE SECTOR HARD

- National unemployment rate for arts workers soared to 21.7% in July 2020.
- The cultural sector lost 60% of its revenue in March 2020 as gatherings halted and people sheltered-in-place.
- National economic loss of nearly \$16B in the cultural sector as of March 2021 due to COVID-19.
- California creative workers made up 59% of unemployed population through July 2020.



Rina Chang, San Jose Taiko



KEY INSIGHTS

- SILICON VALLEY'S SUCCESS IS ALSO ITS WEAKNESS WHEN IT COMES TO SUSTAINING ITS ARTS ECOSYSTEM
- THE LACK OF LOCAL PHILANTHROPY HIGHLIGHTS THE IMPORTANCE OF GOVERNMENT INVESTMENT IN THE ARTS
- GOVERNMENT INVESTMENT IS CRITICAL TO THE ARTS ROLE IN PLACEMAKING, COMMUNITY-BUILDING AND ACCESS TO PROGRAMS
- THE PANDEMIC MADE ACCESS TO THE ARTS LESS EQUITABLE
- COVID-19 EXPOSED THE SECTOR'S VULNERABILITY AND THE NEED TO INCREASE ECONOMIC SECURITY, EQUITY AND DIGNITY FOR ALL WORKERS



Pianist/composer Kris Bowers



AN UPHILL CLIMB

Silicon Valley is a challenging place to live and work if your livelihood is not connected to our extraordinarily successful technology industries, success that has driven up housing costs, strained transportation systems, and widened the income gap.

RIISING REAL ESTATE COSTS MAKE FINDING AND KEEPING SPACES DIFFICULT AND OFTEN OUT OF REACH for housing culture workers, recruiting and retaining artistic talent, and sustaining the business of the arts. Many of these challenges are the same challenges facing others, but talent is the cornerstone of the industry and space is the “delivery” mechanism. The sector cannot operate without both of them.

THESE ECONOMIC PRESSURES ALSO DRIVE UP THE COST OF BUSINESS SERVICES for artists and small- to mid-sized organizations as they struggle to make their art in a high-cost region. The ecosystem’s capacity to run their “community serving” small businesses depends on access to affordable business support and expertise outside of their “creative” skill sets.

DESPITE OUR TREMENDOUS WEALTH, RAISING MONEY FOR THE ARTS IS VERY DIFFICULT BECAUSE Silicon Valley immigrants, engineers, and entrepreneurs “lean into” DIY activities and use their philanthropic strength to support global causes, disaster relief, and science and technology. And as Silicon Valley became more broadly diverse, philanthropic investment in the arts became more dispersed and in alignment with a wide range of cultural priorities.

IF AUDIENCES CAN’T COME TOGETHER, ARTS ORGANIZATIONS LOSE THE OPPORTUNITY TO ENGAGE THEM AS PATRONS AND DONORS. Silicon Valley’s suburban development pattern and transportation challenges also dilute energy and make bringing audiences and donors together difficult.

COVID-19 ELIMINATED THE ART SECTOR’S ABILITY TO BRING PEOPLE TOGETHER, further undermining its small business model of serving “paying customers” and bridging the gap with donations. The sector quickly pivoted to online content and experiences, which helped them stay connected with audiences, donors and students, but did not pay the bills and at a time that philanthropy rallied around emergency funding for “basic needs.”

FEELING THE SQUEEZE

90%

90% of Silicon Valley philanthropy leaves the region.

\$50k

Average annual income for a culture sector worker in Silicon Valley is less than \$50k.

\$1.2M

The median price of a home in Silicon Valley is \$1.2M.

16%

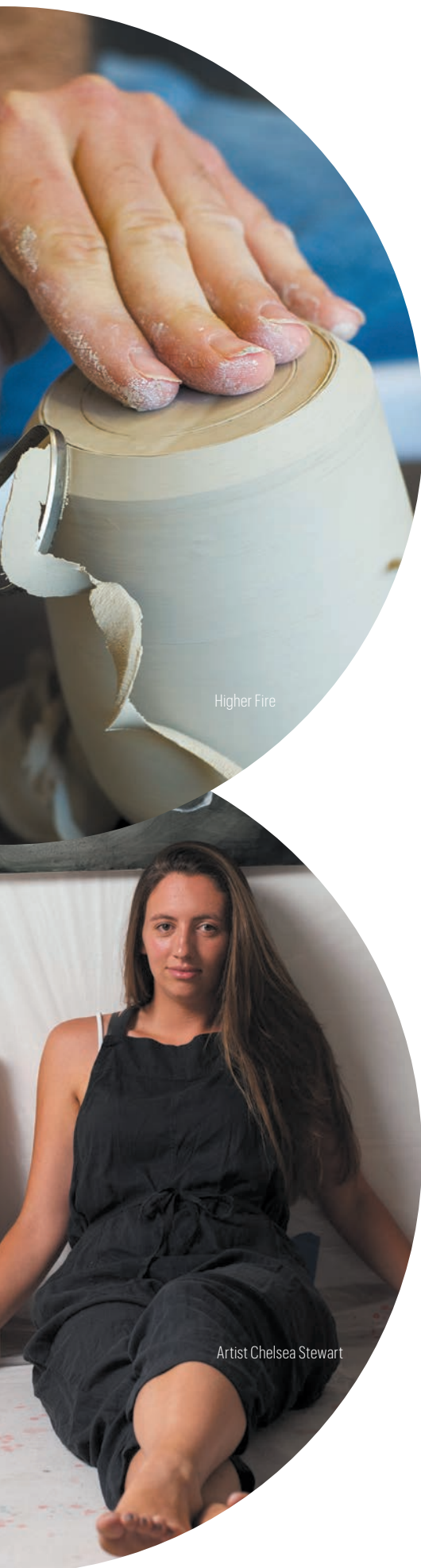
Top 16% of households hold 81% of regional wealth.

2x

Silicon Valley’s income divide grew twice as fast as California and the nation.

Sources:

Joint Venture Silicon Valley, The Giving Code and Americans for the Arts



Higher Fire

Artist Chelsea Stewart

FACING OUR CHALLENGES

SVCreates is committed to a series of regional initiatives to build a better community through the arts. These initiatives respond to the financial realities of Silicon Valley and address the challenges of funding, spaces, and business services. They embrace its quirky, entrepreneurial, and start-up culture. And they address the needs of a broadly diverse arts ecosystem that leans small and culturally specific.

A WEB OF SUPPORT

ArtsWeb is a network of shared services and peer-to-peer support for artists, arts leaders, and arts organizations.

A software platform helps connect individual artists and arts organizations with customized business services and offers the support of an Arts Business Navigator and a cohort of peers. ArtsWeb is designed to make the “business of the arts” more affordable and accessible for artists and smaller culturally specific arts organizations. It is being designed and prototyped in Santa Clara and Alameda counties in partnership with Community Vision and with funding from Kenneth Rainin Foundation.

A NETWORK OF SHARED SPACES

Creative Spaces Collaborative is a network of organizations that are creating affordable and collaborative social purpose real estate options for our creative community.

As part of this initiative, SVCreates is partnering with Urban Community to provide shared spaces for seven arts organizations and creative entrepreneurs in San Jose’s SoFA district, and with the City of San Jose and Shea Properties to build a creative center in Japantown for San Jose Taiko and 3-4 smaller arts organizations.

Like-minded organization Local Color provides shared spaces for artists in San Jose’s SoFA and Diridon districts. School of Arts and Culture at Mexican Heritage Plaza provides performance space for over 30 culturally specific arts organizations. And CreaTV San Jose is leading the development

of a multi-use, technology enabled space on Second Street in downtown San Jose with a focus on collaboration, creativity, and civic engagement that will house six to eight arts organizations and be available for community use. As the Valley begins to reopen post-pandemic, the Creative Spaces Collaborative will learn from each other and continue to steward shared space solutions.

A MARKETPLACE FOR ARTS EDUCATION

ArtsEdConnect is a scalable technology platform that connects teachers and school districts to arts education offered by local artists and arts organizations and provides funding to support their work together.

ArtsEdConnect is designed to bridge the arts and creativity gap in Silicon Valley schools and bring joy, learning and skill building to children without equitable access to the arts. In partnership with Santa Clara County Office of Education and with funding from Charmaine Warmenhoven and the County of Santa Clara, nearly 10,000 children are benefitting from having access to arts and creativity each year through ArtsEdConnect, and that number can grow with more resources for unmet demand, especially in Title I schools serving high-need children and families.

A STORYTELLING PLATFORM

Under the artistic direction of founder Daniel Garcia, Content Magazine is the voice of our creative culture heard through its hyper local magazine, podcasts and social media.

The Content platform works with local artists in its production and embraces beauty, story, and the soul of Silicon Valley’s creative culture. It inspires our region with local artist profiles, insights, and advocacy for the arts. The platform is designed to rise above the churn of Silicon Valley, give voice and access to artists and sector leadership and foster community engagement, pride and understanding of the sector.

A COALITION OF ADVOCATES

Advocacy for good public policy and funding for the arts is getting stronger as leaders are forming coalitions to address issues ranging from a development’s % for a public art to affordable housing to public and private funding of the arts and everything in between.

The challenges of a global pandemic have fueled a sense of urgency, accelerated efforts already underway, and brought kindred spirits together. Change takes time, but it begins by working together on actionable strategies that lift up the sector. Arts advocates from SVCreates, Americans for the Arts, Californians for the Arts, American Leadership Forum Silicon Valley, San Jose Arts Advocates, Arts Commissions, and San Jose’s Office of Cultural Affairs are actively working together to face the challenges of the sector.

SVCreates’ SVCultural Fund and SVCreative Corps are local campaigns to increase institutional funding of nonprofit arts operations, leverage local, state and federal recovery funding, unleash local giving and put artists to work on creative projects and programs of benefit to the community.



LOOKING FORWARD

As with most of the world, Silicon Valley's arts and culture sector did not plan for a global pandemic. But the sector can plan for this moment of reopening and recovery by strengthening its relationship to community and leveraging emerging trends.



THE QUEST FOR SOCIAL JUSTICE HAS MOMENTUM.

The arts have a voice and a following. A voice to challenge our thinking and spotlight inequity, and a following that listens and engages. The arts are a strong community partner for sustaining positive momentum and creating a paradigm shift worthy of all our support.

HEALTH IS TOP OF MIND.

The pandemic exposed our mental and physical fragility, fueled community trauma, shed light on environmental insecurity, and surfaced every other health risk hidden between the cracks of society. The arts are poised to play an essential role in our community's healing, deliver trusted health messages, and help navigate our future informed by these vulnerabilities and the healing power of the arts.

"ROARING TWENTIES" MAY LIE AHEAD.

As our federal, state and local governments invest heavily in a safe reopening and as pent-up demand for gatherings and economic activity soars, arts and culture can activate small business, create a sense of belonging, and safely meet the demand for human interaction.

VIRTUAL ENGAGEMENT IS HERE TO STAY.

The sector learned a lot about digital content and technology platforms during COVID. As we reopen safely and reconnect with each other in person, we will also use our new knowledge to engage others virtually to augment our offerings, deepen our relationships, and expand our reach.

COALITIONS MATTER.

The sector is stronger together and has the power to demonstrate unprecedented cooperation by crossing the boundaries of possibility for funding, policy, and justice, and centering cultural and racial equity in our collective efforts.

Above: Sculptor Oleg Lobynin
Photography by Sannie Celeridad

A CALL TO ACTION



NICOLE TAYLOR
President & CEO, Silicon Valley Community Foundation

"The arts is a driving force behind healing in our communities. Artists challenge our thinking, speak truth to power and change hearts and minds. We need to invest in artists and organizations that champion the arts as they can be powerful agents of social change and racial justice."



STEVE WOZNAK
Apple Inc., Co-founder

"Every child in Silicon Valley deserves the joy, learning and discovery that comes from participating in arts and culture."



CINDY CHAVEZ
Santa Clara County Supervisor, District 2

"The arts are essential to the health and well-being of our entire community. The arts nurture our souls, unleash our creativity, and deepen our attachment to our community and to each other."

GOVERNMENT leaders can adopt public policies that strengthen a more equitable and accessible cultural sector, champion arts funding equal to the economic, social and community benefit of arts, and use their public platform to deepen community understanding of the value of cultural workers and the cultural sector.

BUSINESS AND INDUSTRY leaders can invest money, technology and know-how in the cultural sector, engage artists in their work and the creation of spaces, and encourage other corporate investment in the arts through peer-to-peer recruitment, articulating the business case for the arts and modeling engagement.

FOUNDATION leaders can invest in the cultural sector, inspire and influence others to invest, and use their philanthropic platform to increase donor understanding of the sector while amplifying its value and visibility.

GRASSROOTS leaders can advocate for good public policy, engage in community coalitions and strategies that lift up the arts, and be knowledgeable ambassadors for the arts.

ARTS AND CULTURE leaders can band together to advocate for good public policy and fair treatment of artists and cultural workers, build bridges across sectors by engaging in our community outside of the arts, and nurture and grow donor relationships.

INDIVIDUALS can donate, engage, lead, participate and enjoy the arts!

svcreates.org

Cover Image, "HERE & THERE" Mural by Sam Rodriguez
Location Eighth St. and Empire, Kiem Service Laundromat San Jose.



SV**CREATES** | 310 S. FIRST ST. | SAN JOSE, CA 95113

www.svcreates.org

A big thank you to the David & Lucile Packard Foundation,
San Jose Office of Cultural Affairs and the Silicon Valley
Foundation for funding our research work.

Why Public Art Matters

Cities gain value through public art – cultural, social, and economic value. Public art is a distinguishing part of our public history and our evolving culture. It reflects and reveals our society, adds meaning to our cities and uniqueness to our communities. Public art humanizes the built environment and invigorates public spaces. It provides an intersection between past, present and future, between disciplines, and between ideas. Public art is freely accessible.

Cultural Value and Community Identity

American cities and towns aspire to be places where people want to live and want to visit. Having a particular community identity, especially in terms of what our towns look like, is becoming even more important in a world where everyplace tends to look like everyplace else. Places with strong public art expressions break the trend of blandness and sameness, and give communities a stronger sense of place and identity. When we think about memorable places, we think about their icons – consider the St. Louis Arch, the totem poles of Vancouver, the heads at Easter Island. All of these were the work of creative people who captured the spirit and atmosphere of their cultural milieu. Absent public art, we would be absent our human identities.

The Artist as Contributor to Cultural Value

Public art brings artists and their creative vision into the civic decision making process. In addition to the aesthetic benefits of having works of art in public places, artists can make valuable contributions when they are included in the mix of planners, engineers, designers, elected officials, and community stakeholders who are involved in planning public spaces and amenities. Artists bring their own creative skill set to those conversations, which can also inspire creativity in others, ideally bringing the means of decisions and problem-solving to a more responsive and imaginative result. There is a public art continuum that appreciates the varied creative intentions and roles that artists may bring to a project. Artists may be invited by an official entity, a project may be artist-initiated, or work may take the form of a non-sanctioned artistic endeavor. However, artists inevitably bring personal and distinctive interpretations to each idea, site, social construct, and aesthetic potential. In this way, artists can be social and civic leaders, advocating through art for alternative perspectives that can challenge assumptions, beliefs, and community values.

Social Value and Placemaking

Public art is a reflection of its place and time. It acts as a place marker in all human settlements. Artworks like *Cloud Gate* in Chicago's Millennium Park are intertwined with our images of those cities. Transient artworks, like Christo and Jean Claude's *Running Fence* in California or the *Sultan's Elephant* in London, have become memorable moments in time, captured in picture postcards and in family photo albums. Public art activates the imagination and encourages people to pay attention and perceive more deeply the environment they occupy. Public art stimulates learning and thought about art and society, about our interconnected lives, and about the social sphere as a whole. Public art is uniquely accessible and enables people to experience art in the course of daily life, outside of museums or other cultural institutions. Public art provides everyone in the community direct and on-going encounters with art. It engages social interaction—both during the selection process and following installation. And, an artwork can lead the viewer toward self-reflection and awareness.

Social Value and Collaboration

The effort of creating art for public space is not solitary: the public art process asks the artist to share his/her creative point of view and approach to art-making, and to collaborate with others throughout its development. In consequence, the work can reverberate throughout the community, thereby encouraging a sense of shared ownership and collective affiliation. The inclusion of artists' thinking, creative input, aesthetic contributions, and problem solving methods in the public realm engage ways of working in the built environment that are different from the approaches of practitioners of other disciplines because their concerns are different.

Economic Value and Regeneration

As has been witnessed throughout history, public art can be an essential element when a municipality wishes to progress economically and to be viable to its current and prospective citizens. Data strongly indicates that cities with an active and dynamic cultural scene are more attractive to individuals and business. Public art can be a key factor in establishing a unique and culturally active place. Public art can create civic icons, but it also can transform our playgrounds, train stations, traffic circles, hospitals, water treatment facilities, and airports into more vibrant expressions of human imagination. By building and reinforcing community culture, public art can act as a catalyst for community generation or regeneration. In this case, size does not necessarily matter. Public art can be very visible, large, permanent and unmistakable as an art experience; but it can also be very subtle, short lived or seamlessly integrated into one's experience of a place. Public art matters.

Challenges to the Field of Public Art

In order for the field of public art to stay relevant and thrive in America's rapidly changing environment, we need to actively shape its future and make the case for the value and relevance of public art. These challenges fall into two complementary and surprisingly uncomplicated questions: what to do (ideas and concepts) and how to do it ("nuts and bolts").

How to do it? Working Together

Artists, administrators and curators have so much to learn from one another, and they need to communicate more effectively. There will always be different points of view, but these are strengths and not weaknesses in a field that requires so much collaboration. For administrators and curators, the challenge is to advocate and create opportunities for artists, even while negotiating a minefield of government or institutional bureaucracies, regulations, and budgetary and other constraints, as well as community expectations. For artists, the challenge is to understand (and perhaps reconcile) the requirements, restrictions, and callings of the site with his/her ongoing creative inquiry. Open to productive discussion should be issues related to fees for services, insurance procurement, contracts, image submission, selection processes, artist training for public art, collections management, conservation and other topics of shared interest, with the understanding that standardization may not always be possible or desirable.

How to do it? Services to the Field

The PAN Council -- a 15 member elected volunteer group of artists and administrators -- tackle, debate, organize, support, undertake, create, and revise documents and services of benefit to the PAN constituency. These include the useful and unmediated ListServe, website, blog, sample contracts, best practices, consultants lists, monographs, year-in-review. Forthcoming are: mentoring programs, regional networks, webinars, and other resources for administrators, artists, and community leaders. The PAN Council welcomes ideas and suggestions for services and tools to better serve the field of public art.

What to do? Creative Collaboration

To some degree, every public art project is an interactive process involving artists, architects, administrators, design professionals, community residents, civic leaders, elected officials, approval agencies, funding agencies, and construction teams.

The challenge of this communal process is to support artists' creative involvement through cooperation, not compromise, and to create opportunities for artists to engage in the issues of our time.

What to do? Partnerships and Opportunities

Historically, public art partnerships have been fruitful sources of cultural expression and social practice, as well as catalysts for revenue and urban regeneration. Broadly speaking, partnerships can include private developers or funders, infrastructure consortia, museums and galleries, educational institutions, transportation systems or private industry. Interdisciplinary opportunities can blur boundaries among cultural-visual-performative art, design, decoration, and technology.

What to do? Education, Engagement and Evaluation

We know that learning happens when we ask questions, and public art prompts vital and primary questions about our environment and ourselves. Public art can encourage a broad range of learning opportunities, from didactic to aesthetic. Educational programs and interpretive opportunities can form the basis for evaluation methodologies that help us understand and engage our public art audiences.

Equilibrium on the edge

Public art does something that neither a public space without art nor even a museum with all its art can do: it can capture the eye and mind of someone passing through our public spaces. It can make us pay attention to our civic environment; it can encourage us to question what's around us. Much of our newly built environment lacks the resonance of history or reflection of civic ownership, which makes residents proud of where they live. Carefully conceived public art installations and environments, rich with connections to our history, the natural world or the ephemeral quality of life, help make places of meaning within a community. Art can celebrate the qualities that make one place different from another. The best of public art can challenge, delight, educate and illuminate. Most of all, public art creates a sense of civic vitality in the cities, towns and communities we inhabit and visit.

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**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2023

ITEM NO: 18

DATE: January 30, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Receive a Report on the Town Resources Utilized to Support 2022 Special Events, Provide Direction for the Allocation of Resources to Support Anticipated 2023 Special Events, and Approve the Attached Modifications to the Town's Facilities Use Policy

RECOMMENDATION:

Receive a report on the Town resources utilized to support 2022 special events, provide direction for the allocation of resources to support anticipated 2023 special events, and approve the attached modifications to the Town's Facilities Use Policy.

BACKGROUND:

The Town of Los Gatos embraces special events as opportunities to gather, celebrate, memorialize, support, vitalize, and honor various facets of the community. Los Gatos special events garner strong community interest from both organizers and attendees. Many of the current annually recurring events have been taking place in Town for decades; and, with a renewed interest of community vitality and connection following the COVID-19 Pandemic, the Town has seen a significant increase in the proposals for new annually reoccurring events, and additional interest in one-time events and celebrations.

The majority of special events tend to be centrally located in downtown, most often occurring in Town Plaza Park, including the adjacent streets of Montebello Way and Broadway Avenue, the Civic Center, and N. Santa Cruz Avenue, both within the confines of the stores and sidewalks, as well as through a road closure.

PREPARED BY: Monica Renn
Economic Vitality Manager

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

BACKGROUND (continued):

Along with the higher volume, there has also been an increase in the resources needed to evaluate the logistics and layout of each special event, as concerns have risen surrounding the safety and security of special events. Town staff recognizes that the environment in which events are being implemented has changed significantly in recent times due to the unfortunate rise of threats and attacks on community events nationwide, and this must be carefully considered by the event organizers and Town staff throughout each step of the event planning and implementation process.

With this report, staff intends to share the trends of special events in Los Gatos, Town resources required to support the most recent events of 2022, and gain guidance from the Town Council on resource allocation to support future events.

In 2017, staff worked to rebuild the special event permit program to provide a more streamlined process that invited stakeholder groups to create community vitality through special events and become more responsible for the resources required to support the event. The notion of the special event process moving in the direction of being full-cost recovery was not supported by many community stakeholders at the time, as they had come to rely on the Town to provide certain services and resources at no cost, thus their established budgets factored this in. The Town Council agreed that events provided a community benefit and adopted the fee schedule in fall of 2018 in which some of the fees for non-profit organizations coordinating events were reduced to continue to support the non-profit events and fundraisers, while setting expectations up front for the organizer's that there are costs related to events that the organizers are responsible for covering.

Over the last five years, staff has partnered with community event organizers to move in the direction of events becoming more self-sustaining and limiting the need for staff resources outside of those required by the permit. The community stakeholders have generally been on board with this transition and new events are met with the expectations from the start.

Also, as a part of the work in 2017, the Town Council adopted modifications to the Town Code Chapter 14, Article X, "Special Events" that provided greater clarity on the event provisions and shortened the minimum timeframe necessary to apply for events. Then, in early 2018 (January 16, 2018, and continued to February 20, 2018), staff brought forward a list of specific items related to events for the Town Council to consider. From these discussions and the direction provided by the Council, the staff has been working with the community stakeholders to support the special events program.

One of the issues discussed in 2018, that remains a topic of conversation today is the amount of required staff resources and the community impact caused by road closures on N. Santa Cruz Avenue. Road closures in general take a large amount of staff resources and is amplified when

BACKGROUND (continued):

located on the main throughfare in downtown. To properly support a closure of N. Santa Cruz Avenue, the Police Department (PD) will generally need to deploy one patrol team to assist during the closure and remain in the vicinity through the duration of the event due to the elevated concerns of creating a secure environment around the event closure. With this in place, the patrol team is less available as a resource in other parts of Town during this time.

Due to the COVID-19 Pandemic and the health and safety shutdowns and mandates that occurred, the ability for special events to take place in public became very limited in 2020 and 2021. Recognizing this, and the community's desire to reconnect in the summer of 2021, the Town Council provided American Recovery Plan Act (ARPA) funding to the Chamber of Commerce and approval for N. Santa Cruz Avenue to be closed several times throughout the summer to support a pilot special event series that allowed for an outdoor gathering with space to socially distance for those that preferred it. The 2021 Promenade series successfully reengaged the community and created one of the first Bay Area event series after the original COVID shutdown in 2020. The Chamber of Commerce, and many members of the business community and community at large specifically requested that this event return in 2022, and thus the Town Council provided additional ARPA funding to support a second Promenade event series in the summer of 2022.

Building off of the momentum of the Promenades, the Town began to see the interest and volume of special event permit application rise, with 2022 becoming the busiest special event year within recent times, in terms of number and scope of events.

For the purposes of this report, the difference between Town events and special events are as follows:

- Town Events are those coordinated and implemented by Town staff, using resources allocated by the Council through the annual Town Budget process. These events currently include:
 - Spring Into Green, typically celebrated the Sunday after Earth Day, in conjunction with Farmer's Market at Plaza Park and on adjoining streets
 - 4th of July, celebrated on the 4th of July in Oak Meadow Park
 - Screen on the Green, typically the 3rd or 4th Friday in September in Oak Meadow Park
 - Holiday Tree Lighting, the first Friday in December at Plaza Park
- Special Events in general are those organized by community stakeholders, both non-profit and for-profit, that complete the special event permit process to achieve approval for the event. These include events such as:
 - Races, runs, etc. (Girls on the Run)
 - Concert series events (Jazz on the Plazz and Music in the Park)

BACKGROUND (continued):

- Festivals (Fiesta de Artes and Oktoberfest)
 - Shopping and Downtown Vitality (Wine Walk, Girls Night Out, Running of the Roses)
 - Community Events and Cultural Celebrations (9/11 Veteran’s Memorial, Drum in the Park, Hanukkah on the Town)
 - Large Road Closure events (Promenades, Children’s Holiday Parade)
- “Organic” events are those that do not obtain or require an event permit yet must be managed with Town resources. Currently, this would include the evening of Halloween in two specific Los Gatos neighborhoods.

The table below provides an overview of the number of approved special event permits issued since 2017:

| Year | Special Event Permits |
|------|-----------------------|
| 2022 | 25 |
| 2021 | 10 |
| 2020 | 2 |
| 2019 | 19 |
| 2018 | 20 |
| 2017 | 15 |

Some of these special events require a tremendous amount of support from Town resources, while others are mostly self-sufficient after the issuance of the special event permit. The special event management needs have significantly increased in recent years related to oversight from Town staff to assure a safe and successful event. The Town resources required to support events are not always fully captured or recovered through fees; and, even when they are, the wear and tear on the Town staff teams can become overwhelming.

In terms of staff resources to support special events, the core services of the special event permit process include a multi-Departmental team that meets to coordinate logistics, identify event resource needs, and draft conditional letter of approval.

The following list provides a high-level snapshot of additional tasks that may be required of Town resources to support special events:

- Police Officers to patrol the event specifically, outside of the normal patrol teams, often requiring overtime.
- Parking and Community Service Officers to assist with road closures and ensuring compliance of cars left parked in the closure areas.

BACKGROUND (continued):

- PD and Parks and Public Works (PPW) staff to assist with road closures either due to the absence of a traffic vendor, or traffic vendors who are unfamiliar with the Town and require assistance.
- PPW staff to deploy anti-vehicle barriers. These must also be staffed for the full duration of the event.
- PD to clear the crowds and roadways to allow for a safe re-opening of the streets.
- PD and PPW staff and volunteers to assist with the reroute of traffic.
- PPW staff to manage changes in irrigation and fountain operation times to accommodate event.

DISCUSSION:

2022 Special Events

As community special events had a strong presence in Los Gatos in 2022, staff was faced with the realization of its capacity to support the events with onsite, while balancing core services.

As noted in the table above, 25 special event permits were issued in 2022; however, the total number of days in which a special event took place in Los Gatos is much higher. Multi-day or series events put on by the same organizer in a consecutive daily or weekly pattern are only required to obtain one special event permit and such are counted as one event on the chart in the Background section of this report.

In 2022, of the 25 approved special event permits, six were for multi-day events including the Promenades, Music in the Park, Jazz on the Plazz, Fiesta de Artes, St. Mary's Country Fair, and the Holiday Carriage Rides. Considering the number of days within each multi-day event, plus the single day events, the total number of days in 2022 in which there was an approved special event was 58. This total increases to 62 days with the inclusion of the annual Town events.

Additionally, the Town has a contract with the Farmer's Market to operate a weekly street closure and Farmer's Market event on Sundays, around Town Plaza Park, closing on Montebello Way and Broadway Avenue between E. Main Street and S. Santa Cruz Avenue. For this street closure, an approved traffic plan has been prepared, and the Farmer's Market implements their own road closure and road reopening weekly.

Town Resources for Special Events

The majority of special events require little staff support outside of what is standard practice to process and approve the special event permit. The addition of two event elements, alcohol and road closures, are often what tip the scale to requiring a significantly greater resource commitment from Town staff. Even when events are being implemented with an approved special event permit and by a community stakeholder group, once alcohol or street closures are

DISCUSSION (continued):

added, Town staff are needed to ensure that the event is set up for success. The location and scope of the event also play a role in the resources required.

When events involve the sales and service of alcohol, the applicant must gain approval from the State Alcohol Beverage Control (ABC) and the Chief of Police for the sale and service, as well as act as the responsible party throughout the event. The Town typically requires Police Officers to be onsite for events with the sales and service of alcohol, primarily towards the latter half, to monitor and mitigate life safety issues and encourage responsible behavior. This requirement includes two Officers with the cost being incurred by the event organizers at the fee listed in the Town adopted fee schedule. At times it can be difficult to secure Officers to work at events due to staffing constraints. The shifts at events are in addition to regular staff shifts, often requiring the Officers to work overtime and the hours to be absorbed by the Department's budget.

To date, staff has been hesitant to rely on the event organizers to hire security guards in lieu of the Officers as there are several unknowns with unvetted security firms, and there have been some unsafe situations in the past when security was hired in lieu of Officers at past events in Los Gatos.

During 2022, Town staff connected with the ABC to gain clarity on the current regulations and expectations associated with a temporary alcohol license granted for special events and has incorporated these specifics into the conditional letter of approval for events. Staff makes it a priority to talk through the specifics with the event organizers prior to the event to ensure that correct parameters are in place for responsible sales and service of alcohol. Event organizers have been receptive to this guidance and for the most part have risen to the occasion of implementing the necessary components to align with the ABC and Town provisions. In addition, beginning July 1, 2022, special events with an ABC license must have always at least one person onsite that holds a certification with the ABC for the Responsible Beverage Service (RBS) training.

Road closures, especially those on N. Santa Cruz Avenue, require a large resource investment from the Police and Parks and Public Works Departments, much of which takes place immediately before, during, and after the events. Again, this entails requiring staff to work outside of normal staff hours. Some of these hours are captured and the financial cost is shared with event organizers. It has been the experience of staff that even when a third-party traffic vendor is hired, there is lack of communication between the permittee and the vendor, ultimately falling back on Town staff to work with the traffic vendor to secure a proper closure. To mitigate this, staff must spend the resources to work directly with the traffic vendor before the event and/or onsite, day of the event.

DISCUSSION (continued):

The table below provides an overview of the number of staff hours that were provided to support the 2022 Town events, and those 2022 special events that required significant staff resources.

| 2022 Event | Event Type | PD Officer Hours | PD Non-Officer Hours | PPW Hours | Total staff hours |
|---------------------------|-----------------------|------------------|----------------------|-----------|-------------------|
| Spring into Green | Town Event | 0 | 64 | 20 | 84 |
| Music in the Park (MIP) | Special Event | 80 | 0 | 20 | 100 |
| Promenade | Special Event | 100 | 20 | 135 | 255 |
| 4th of July | Town Event | 0 | 18 | 18 | 36 |
| Screen on the Green | Town Event | 0 | 0 | 5 | 5 |
| Halloween | Organic, Unpermitted | 30 | 30 | 0 | 60 |
| Holiday Light Display | Town Event/Unbudgeted | 0 | 0 | 135* | 135+ |
| Holiday Tree Lighting | Town Event | 58 | 32 | 23 | 113 |
| Children's Holiday Parade | Special Event | 290 | 220 | 400 | 910 |

* This work item is not yet complete. The 135 hours accounts for the repair, delivery, and installation the holiday light fixtures. Deinstallation has not taken place yet due to the workload of the January storms. Town staff delivers and picks up the light fixtures placed on private property, and the Chamber of Commerce pays their vendor to install in these locations.

Town Events are included in the Town's adopted annual budget each year. The budgeted line item pays for the materials of the event, and the staff time is absorbed within each Department as a part of the Department's core services.

For special events, limited hours have been charged back to the special event organizer and thus have been absorbed by the Town. The Promenade received a grant from the Town for the event series and the cost of the Officers and PPW staff onsite during the event was captured and included in the grant; however, there were many additional hours that went into managing the road closure and logistics of the alcohol sales and service that were not. The Chamber of Commerce was a great partner in working with Town staff to achieve a streamlined process for the weekly needs and communication of the event.

Likewise, for the 2022 Children's Holiday Parade, the staff resources for the event were tremendous. Town staff values this longstanding holiday tradition and takes an active partnership role with the Los Gatos-Saratoga Recreation (LGS) and the Los Gatos Lions Club in its planning and implementation. LGS and the Lions provide a large volunteer contingency and work diligently to remain in open communication with Town staff throughout the planning process to ensure event logistics are considered and managed.

DISCUSSION (continued):

Multiple Town staff attend the preplanning meetings and meet one-on-one with the event organizers to ensure a proper road closure and traffic management. The planning for these event elements is quite involved. For the first time in 2022, the Town engineering staff took on the work to develop a traffic control plan that can be implemented to meet current traffic safety standards. With this plan, the need for engagement with a traffic management company increased significantly, a cost and effort the event organizers were not expecting. Thus, the Town also took on this additional work and cost to keep the event moving forward.

When it comes to the day of the Parade, this is considered an “all hands-on deck” day for the Police Department and Parks and Public Works Team, with most, if not all field staff, working at the event, as well as the Police Department’s volunteer teams of the Disaster Assistance Response Team (DART) and Community Emergency Response Team (CERT). These staff resources were offered in kind, as they have been in the past, at the direction of the Town Council through the adopted annual budget. The amount noted in the budget is in-kind for staff resources and does not account for the hard costs required to hire a traffic management company for proper implementation of the event scope. In addition, with the lean staffing levels at the Town, absorbing this staff work in each Department’s budget is challenging, and does not account for the impacts on the individuals doing the work in addition to the core services that must be completed. If it is the desire of the Town Council to continue to provide this support, Town staff is asking the Council to consider allocating additional funding to support the Parade. With the allocation of additional dollars, Town staff could hire a traffic management company to oversee more of the traffic closures and closure attendant roles.

Halloween

Some events take place without a permit as either a free speech event or as an organic gathering of the public without a single entity that will take on the role as the organizer. The latter is unique to holidays such as Halloween where the greater community tradition is for children and families to gather in the local neighborhoods for trick or treating. This is welcomed by many and particularly embraced by a couple of neighborhoods in Los Gatos, the Almond Grove and Johnson Avenue. For years, thousands of people will gather in these locations of Los Gatos to trick or treat and enjoy the Halloween festivities. With the absence of a special event permit, or adopted Town event, road closures have not been planned; however, are repeatedly necessary given the grand size of the crowd that is unable to remain on sidewalks.

Moving forward, Town staff recommends that the Town Council acknowledge the need for road closures in these locations and allocate resources for a traffic control company to be hired by the Town to close these neighborhoods and staff the closure points. With this resource in place, Town staff will be able to be most effective working within their roles to support the core Town services including public safety.

DISCUSSION (continued):

Facilities Use Policy

When providing guidance for event stakeholders, Town staff uses the Town Code to set the high-level framework and rules for governing events, then refers to the Town Facilities Use Policy (Policy) to provide more detailed and specific guidance for specific Town facilities. There is a balance that is necessary to maintain when keeping public facilities open, welcoming, and available for the public and business of the Town, while also supporting and welcoming special events.

Attachment 1 contains a redline version of the Policy. Staff is recommending the changes noted to provide better clarity on use of public facilities for events and limit the number of street closures for events to ensure there is a balance of the impacts associated with the road closures. The most notable changes to the Policy are outlined below:

Insurance Requirements - The Towns has recently updated the Certificate of Insurance requirements and staff believes that keeping this language more general will allow for this Policy to remain up to date as the requirements may change based on activities or general Town updates.

Civic Center and Town Meeting Room Facilities - Modification to these sections of the Town's Facility Use Policy are minimal and recommended with the intent to clean up and clarify the language for the end user.

Town Plaza Park - In the previous iterations of the Policy, Oak Meadow Park and Town Plaza Park were grouped together with the same provisions in place. We now know these two Town facilities are quite different and serve the community as such. Thus, they have been separated in the attached draft of the Policy. The intent remains that Plaza Park shall be a facility that supports special events while always have some portion that remains open to the public.

Road Closures in General - Sections have been added to the Policy to provide guidance and structure to using the Town's public roadways for events. Notably, Town staff recommends that the Policy require that special event organizers involved a professional traffic control company that is in contact with the Town staff, with sufficient lead time to ensure that all stakeholders are moving in the same direction and operating under the same understanding.

Road Closure and use of Montebello Way and Broadway for Special Events - There has been an increase in the public's interest to use the roadways adjacent to Plaza Park to support special events. This section has been added to provide framework for such events.

The staff is recommending that outside of the weekly Farmers Market closures, that this roadway may not be closed and used for special events more than eight times per year. This

DISCUSSION (continued):

would allow for community vitality events periodically throughout the year, averaging less than once a month. Staff believes this is a manageable number to support through the events process.

There is one application currently in the process for March 17, 2023 that is proposing use of Plaza Park and Montebello Way. Town staff is working with the applicant to firm up the details and provide a conditional letter of approval. The outcome of the Town Council discussion and any changes to the Policy will be included in the special event permit.

Road Closure and use of N. Santa Cruz Avenue and Main Street for Special Events - The closure of these two major streets in the downtown is quite impactful to the surrounding stakeholders. Staff is recommending that these be limited to no more than three times per year, with an increased application timeline of 90 days to allow for more sufficient review time. Currently, the 2023 Children's Holiday Parade is the only application in process for a N. Santa Cruz Ave. closure.

Oak Meadow Park - As noted above, this facility has been separated out and remains in the Policy with the same intent and similar provisions as previous drafts. Language was modified to increase clarity and come into alignment with how the special event permits and special park use permits are applied here.

CONCLUSION:

This report provides an overview of the events that took place in Los Gatos during 2022. With this context, staff is seeking specific direction on resource allocation and a modification of the Town's Facilities Use Policy 1-04.

To help guide the conversation, staff has outlined the specific points in which direction is sought:

- Allocation of Town resources to support the Children's Holiday Parade, including the possibility of funding to support the expanded use of a professional traffic management vendor for the street closure and traffic management of the event.
- Allocation of funding to support the use of a professional traffic management vendor to implement road closures on Halloween in the Almond Grove and Johnson neighborhoods.
- Adoption of the modified, redline draft of the Facilities Use Policy (Attachment 1), including any direction on the proposed parameters for road closures for events.

CONCLUSION (continued):

Should the Town Council wish to allocate resources, including funding, to support special events, including Halloween road closures and/or the Children's Holiday Parade, staff can come back with the specific budget recommendations through the budget process.

COORDINATION:

This report has been a collaboration between the Town Manager's Office, and the Police and Parks and Public Works Departments.

FISCAL IMPACT:

The fiscal impacts are dependent upon the actions of the Council as described in this report.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Redlined Draft of 1-04 Town Facilities Use Policy

TITLE: TOWN FACILITIES USE

POLICY NUMBER: 1-04

EFFECTIVE DATE: 8/3/2016

PAGES: 9 14

ENABLING ACTIONS:

REVISED DATES: 10/18/2016; 2/7/2017;
2/6/2018; 12/1/2022; [02/07/2023](#)

APPROVED:

PURPOSE

To establish a policy for managing the use of ~~the~~ certain Town of Los Gatos facilities by the ~~general~~ public, for official Town business, ~~and~~ for governmental agencies, ~~and approved special events~~ which will:

1. Preserve core Town functions.
2. Provide for public access and use of ~~Civic~~Town facilities.
3. Facilitate and coordinate multiple uses of ~~Civic~~Town facilities.

SCOPE

Guiding Principles

1. ~~Civic~~Town facilities are intended to be used primarily for administrative operations of Town programs, and by the Town for the community. Therefore, official Town business, programs, and activities shall have priority use of all civic facilities.
2. ~~Civic~~Town facilities are further intended to serve as a hub of civic and cultural activity and a major gathering center for community meetings and an active program of outdoor events.
3. Designated portions of the civic facilities may be used by the public for events including concerts, festivals, ceremonies, or other similar activity for the purposes of celebration, education, or cultural enrichment.

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4. It is the Town's intent to provide spaces that are affordable and accessible for cultural, civic, and celebratory activities, without compromising security and official Town business needs.

POLICY

Policy Overview

1. The Town Council will establish the Town Facilities Use Policy. The Town Manager and his or her designee will issue permits and use agreements for events, and act as the final authority for the application of the Policy.
2. The Town Manager's Office is responsible for the day-to-day operation of scheduling and administering facility reservations.
3. The granting of permission to use any civic facility shall not in any way constitute an endorsement of the views of the persons and/or group reserving the facility.
4. Users of ~~Civic~~-Town facilities for events will be required to obtain a special event permit and comply with all requirements set forth by the conditions of approval within the special event permit and within ~~in~~ this Town Facilities Use Policy.
5. All ~~Civic~~-Town facility use reservations shall be made subject to the condition that the Town maintains the right to cancel or change any reservation if ~~Civic~~-Town facilities are needed for official Town business. In no event shall the Town have any liability whatsoever for any cancellation made under the Town's authority to do so.
6. Use of ~~Civic~~-Town facilities must not interfere with the conduct of official Town business or be unduly disruptive to others present in Town Hall or to immediately adjacent properties.
7. Private parties (such as a wedding reception) are not allowed at the Civic Center, Town Plaza Park or on public Town facilities except when permitted with a Parks Special Use Permit, or by agreement or conditional use permit.
8. Town approved non-profit fundraising activities and special events are allowed in/on Town facilities with an appropriate permit, or license issued by the Town, or provided in an agreement or Conditional Use Permit with the Town.

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9. The roping off of a portion of a ~~Civic~~-Town facility to create an exclusive section is permissible with an approved special event permit as long as the majority of the facility is open and accessible to the public.
10. Separate Council approved use agreements may supersede this Policy. Where conflicts in terms or conditions arise, the use agreement will prevail.

Public Use – ~~Civic~~-Town Facilities

A. *Civic Center Lawn, Deck, and Stairs*

1. The Civic Center lawn, deck, and stairs are focal points for the Town of Los Gatos Civic Center. These areas shall be used as the regular location for community gatherings and events free and open to all members of the public including concerts, festivals, ceremonies, or other similar activity for the purposes of celebration, education, or cultural enrichment. Reservations are processed on a “first come, first served” basis. A tentative reservation may be made up to one year in advance, **but no less than 60 days in advance**, by submitting an application for a special event permit. **The reservation becomes confirmed once the special event permit is approved with signature from the Town Manager or their designee, and Release of Liability. All required paperwork must be submitted with original signatures.**
2. Scheduled events must not interfere with the conduct of official Town business or be unduly disruptive to others present in Town Hall or to immediately adjacent properties.
3. Consistent with the special event permit requirements, a certificate of insurance and endorsement meeting the Town of Los Gatos current requirements; release of liability, assumption of risk and indemnity agreement; and all applicable fees must be received and approved by the Town prior to the event taking place.
4. ~~The following must be submitted and approved no later than two months prior to the scheduled event:~~
 - ~~a. Special Event Permit Application or Town agreement.~~
 - ~~b. Certificate of Insurance and Endorsement, naming the Town as an additional insured and making coverage primary, \$1,000,000 liability insurance.~~
 - ~~c. Release of Liability, Assumption of Risk and Indemnity Agreement.~~

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~~Complete payment of all applicable fees and charges for use as established within the Municipal Code and are contained in the Town's Fee Schedule. All checks are to be made payable to "The Town of Los Gatos."~~

B. Civic Center West Patio

The Civic Center West Patio (located at outside of the building at 106 and 108 E. Main Street) shall be used as the regular location for community gatherings and events open to all members of the public for the purposes of celebration, education, or cultural enrichment. For consistency with previous Town Council approvals, Civic Center West Patio may also be referred to as the Sculpture Garden.

1. Reservations are processed on a "first come, first served" basis. A tentative reservation may be made up to one year in advance, but no less than 60 days in advance, by submitting an application for a special event permit. The reservation becomes confirmed once the special event permit is approved with signature from the Town Manager or their designee.,~~and Release of Liability. All required paperwork must be submitted with original signatures.~~
2. Private events are not allowed with the exception of approved events hosted by the tenants of 106 and 108 East Main Street as stated in tenant lease agreements.
3. Scheduled events must not interfere with the conduct of official Town business or be unduly disruptive to others present in Town Hall or to immediately adjacent properties.
4. Consistent with the special event permit requirements, a certificate of insurance and endorsement meeting the Town of Los Gatos current requirements; release of liability, assumption of risk and indemnity agreement; and all applicable fees must be received and approved by the Town prior to the event taking place.
5. ~~The following must be submitted and approved no later than two months prior to the scheduled event:~~
 - ~~a. Special Event Permit Application or Town agreement.~~
 - ~~b. Certificate of Insurance and Endorsement, naming the Town as an additional insured and making coverage primary, \$1,000,000 liability insurance.~~
 - ~~c. Release of Liability, Assumption of Risk and Indemnity Agreement.~~
 - ~~d. Complete payment of all applicable fees and charges for use as established within the Municipal Code and are contained in the~~

~~Town's Fee Schedule. All checks are to be made payable to "The Town of Los Gatos."~~

C. Council Chambers

The Town Council Chambers may be reserved by federal, state, county, and municipal agencies, and schools for activities that benefit Los Gatos residents and students. The Town Council Chambers may also be reserved by agencies providing government education programs. A reservation of the Chambers includes access to the Chambers Lobby.

1. The Town may grant permission to use the Town Council Chambers in the following priority order:
 - a. Town Council/Board, Commission, and Committees, including ceremonial events
 - b. Town Departments
 - c. Town established Organizations and Committees (in which Town employees or Town officials participate)
 - d. Government Agencies and Officials
 - e. Non-profit organizations that are related to Town business or are hosting events that are associated with a government purpose.
 - f. Private events are not allowed with the exception of approved events hosted by the tenants of 106 and 108 East Main Street as stated in tenant lease agreements.
- ~~2.~~ Reservations are processed on a "first come, first served" basis. A tentative reservation may be made up to ~~six months~~ one year in advance, but no less than 60 days in advance, by submitting an application for a special event permit. The reservation becomes confirmed once the special event permit is approved with signature from the Town Manager or their designee, ~~and Release of Liability. All required paperwork must be submitted with original signatures.~~
2. Consistent with the special event permit requirements, a certificate of insurance and endorsement meeting the Town of Los Gatos current requirements; release of liability, assumption of risk and indemnity agreement; and all applicable fees must be received and approved by the Town prior to the event taking place.
- ~~3. The following must be submitted and approved no later than two weeks prior to the scheduled event:~~
 - ~~a. Application for Use of Room~~

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- ~~b. Certificate of Insurance and Endorsement, naming the Town as an additional insured and making coverage primary, \$1,000,000 liability insurance~~
~~c. Release of Liability, Assumption of Risk and Indemnity Agreement~~

3. During the evenings (after 5 p.m.), on the weekends (Saturdays and Sundays), and on Holidays, all users will be charged a Facility Use Fee and other applicable charges for Town services as set forth in the Fee Schedule, unless the meeting or event is for official Town business, and the meeting or event is planned, managed, and led by the Town Council or Town Department.
4. A Building Attendant is required for all meetings regardless of meeting time or size. The Town will schedule the Building Attendant and invoice the applicant for the actual time scheduled. The Building Attendant will be responsible for the opening and closing of the facility and overseeing that the room is returned to its original condition.
5. Use is limited to a maximum of ten hours, per event, subject to other scheduled events, or Town use.
6. Groups composed of minors must be supervised by at least one (1) adult for every ten (10) children under the age of 18 at all times while they are using the facility.
7. Alcohol is not permitted in the Council Chambers. ~~or Lobby.~~
8. Applicants are responsible for setting up before and cleaning up after each event in the Chambers. Applicants shall be responsible for removing all personal property, owned or rented, prior to vacating the facility.
 - a. Absolutely no open flames are allowed in the Chambers ~~or Lobby.~~
 - b. No foreign substance may be applied to the floor, walls, or ceiling (this includes decorations).
 - c. No rice, birdseed, confetti, etc., may be thrown in or around the Town Council Chambers ~~or Lobby.~~
 - d. Gambling or wagering is prohibited.
9. Pursuant to state and federal law and Town Council Resolution 2017-24, the use of the Town Council Chambers will not be restricted because of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, medical condition, religion, place of national origin, or any other basis prohibited by law or Town resolution or policy.

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10. Any exceptions to the use regulations must be approved, in writing, by the Town Manager.

D. Council Chambers Lobby (as a standalone facility)

The Council Chambers Lobby located within Town Hall shall be used for conducting Town related business only, [or to support a Town event or special event with Town Council approval, such as Music in the Park.](#)

1. The Town may grant permission to use the Council Chambers Lobby in the following priority order:
 - a. Town Council and Town Council Committees
 - b. Planning Commission
 - c. Other Town Boards, Committees, and Commissions
 - d. Town Departments
 - e. [Special Events with Town Council approval, and are subject to the following:](#)
 - i. [Users will be charged a Facility Use Fee and other applicable charges for Town services as set forth in the Fee Schedule.](#)
 - ii. [A Building Attendant is required. The Town will schedule the Building Attendant and invoice the event organizer for the full-service time scheduled. The Building Attendant will be responsible for the opening and closing of the facility and overseeing that the room is returned to its original condition.](#)
 - iii. [Alcohol is not permitted in the Council Chamber Lobby.](#)
 - iv. [Applicants are responsible for setting up before and cleaning up after each event in the Lobby. Applicants shall be responsible for removing all personal property, owned or rented, prior to vacating the facility.](#)
 1. [Absolutely no open flames are allowed in the Lobby.](#)
 2. [No foreign substance may be applied to the floor, walls, or ceiling \(this includes decorations\).](#)
 3. [No rice, birdseed, confetti, etc., may be thrown in or around the Town Council Lobby.](#)
 4. [Gambling or wagering is prohibited.](#)

E. Civic Center and Town Facility Conference and Meeting Rooms

Conference and Meeting Rooms located within Town Hall, the Library, the Police Operations Building, and the Parks and Public Works Corporation Yard shall be used solely for conducting official Town business.

1. The Town may grant permission to use the Meeting Rooms in the following priority order:
 - a. Town Council and Town Council Committees
 - b. Planning Commission
 - c. Other Town Boards, Committees, and Commissions
 - d. Town Departments

F. Town Plaza Park and Oak Meadow Park

Town Plaza Park ~~and Oak Meadow Park, as is~~ focal points ~~for the~~ in downtown Town of Los Gatos and shall be predominantly used as a location for free gatherings that are open to the public. Special events ~~that may be permitted~~ ~~allowed~~ include concerts, festivals, ceremonies, or other similar activity for the purposes of celebration, education or cultural enrichment.

1. Reservations are processed on a “first come, first served” basis. A tentative reservation may be made up to one year in advance, ~~but no less than 60 days in advance~~, by submitting ~~an application for a Park Use Permit and/or~~ an application for a special event permit. ~~The reservation becomes confirmed once the special event permit is approved with signature from the Town Manager or their designee, and Release of Liability. All required paperwork must be submitted with original signatures.~~
2. ~~Events are limited to one event per week.~~
3. No event may completely overtake the park. The park must always remain accessible to the public.
4. Use of any portion of Plaza Park for a special event is subject to the fees included in the Town’s Fee Schedule.
5. Private events ~~(outside of Town-designated reservable spaces as identified below)~~ and fee for entrance events are not allowed. Incidental item sales may be allowed if they are consistent with the special event activities, ~~as~~ and approved within the special event permit.

6. Reservable spaces may include the portions/areas of Plaza Park approved within the special event permit, and may allow for barriers necessary for the sales and service of alcohol consistent with ABC guidelines and as approved by the Police Chief and Santa Clara County Fire Department. ~~may include the Oak Meadow Bandstand, Oak Meadow picnic areas, Oak Meadow horseshoe pits, and other similar areas as designated by the Director of Parks and Public Works.~~
7. The sidewalks surrounding Plaza Park must remain open and free of obstruction. If the parking spaces adjacent to the park along S. Santa Cruz Avenue are necessary for the exclusive use of the special event or its vendors, approval must be granted through the special event permit process and an encroachment permit is required. ~~Public entrances to the event venue must remain open during all times of the event. This includes gates, roads, sidewalks, pathways, and parking lots. If shuttle buses are approved, the parking lot may be closed with a parking attendant present. Parking spots cannot be reserved, unless to increase handicap spots.~~

Special events beyond the scope of the Town's Special Event Permit shall require a Town agreement and receive Town Council approval.

8. Consistent with the special event permit requirements, a certificate of insurance and endorsement meeting the Town of Los Gatos current requirements; release of liability, assumption of risk and indemnity agreement; and all applicable fees must be received and approved by the Town prior to the event taking place.
5. ~~The following must be submitted and approved no later than two months prior to the scheduled event:~~
 - a. ~~Special Event Permit Application or Town agreement.~~
 - b. ~~Certificate of Insurance and Endorsement, naming the Town as an additional insured and making coverage primary, \$1,000,000 liability insurance.~~
 - c. ~~Release of Liability, Assumption of Risk and Indemnity Agreement.~~
 - d. ~~Complete payment of all applicable fees and charges for use as established within the Municipal Code and are contained in the Town's Fee Schedule. All checks are to be made payable to "The Town of Los Gatos."~~

G. Montebello Way and Broadway – Road Closure for Special Events

Montebello Way and Broadway (Roadways) is a one-way, public roadway that borders Town Plaza Park on two sides. It shall be predominately used as a roadway; however, may be closed periodically to support Town events and special events.

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1. These Roadways may be closed each Sunday for the Town's Farmers Market, consistent with the agreement executed with the Farmers Market vendor and approved by the Town Council.
2. Not including Farmers Market or Town events, these Roadways may be closed and utilized for special events not more than eight times per year.
3. Reservations are processed on a "first come, first served" basis. A tentative reservation may be made up to one year in advance, but no less than 60 days in advance, by submitting an application for a special event permit. The reservation becomes confirmed once the special event permit is approved with signature from the Town Manager or their designee.
4. The Town will provide the special event organizer with a traffic plan for the road closure. It is the responsibility of the special event organizer to ensure that qualified person(s) accurately implement the road closure with adequate equipment in accordance with the traffic plan at no cost to the Town.
 - a. The special event organizer must provide contact information to the Town of the person(s) implementing the closure no less than 14 days prior to the event.
 - b. Anti-Vehicle Barriers (ABV) may be required at the direction of the Town, and are subject to the fees adopted in the Town's Fee Schedule, or may be obtained through a third-party traffic control/safety vendor with approval of the Town Manager or their designee.
5. Special event organizers must notify the adjacent businesses along the Roadways, and the VTA (if bus route is affected) of the closure no less than fourteen (14) days in advance of the event.
6. Private events and fee for entrance events are not allowed. Incidental item sales may be allowed if they are consistent with the special event activities, and approved within the special event permit.
7. Barriers necessary for the sales and service of alcohol consistent with ABC guidelines and as approved by the Police Chief and Santa Clara County Fire Department may be installed and must be approved within the special event permit.

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8. Exclusive use by the special event or its vendors of any portion of public space outside of the Roadways, including sidewalks, the public parking lot on Montebello Way, other parking spaces, or portions of public right-of-way outside of the Roadways require approval within the special event permit, and an encroachment permit.
9. No Parking signs are required to be posted at least 72 hours before the road closure begins for any parking spaces located within the Roadways.
 - a. No Parking signs are provided by the Town at the cost listed in the Fee Schedule and must be installed by the special event organizer as outlined in the approved special event permit.
10. Special events beyond the scope of the Town’s Special Event Permit shall require a Town agreement and receive Town Council approval.
11. Consistent with the special event permit requirements, a certificate of insurance and endorsement meeting the Town of Los Gatos current requirements; release of liability, assumption of risk and indemnity agreement; and all applicable fees must be received and approved by the Town prior to the event taking place.

H. N. Santa Cruz Avenue and Main Street – Road Closure for Special Events

N. Santa Cruz Avenue (NSC) and Main Street (Main) are two of the key thoroughfares through downtown and support access to many local businesses, schools, churches, and residential locations. Closing these roadways, in any combination of one another, for special events is not encouraged when alternative options are available, as the closure greatly impacts the community at large.

1. NSC and/or Main may be closed for special events, with an approved special event permit, no more than three times per calendar year, unless otherwise approved by agreement with the Town Council.
2. Reservations are processed on a “first come, first served” basis. A tentative reservation may be made up to one year in advance, but no less than 90 days in advance, by submitting an application for a special event permit. The reservation becomes confirmed once the special event permit is approved with signature from the Town Manager or his or her designee.

- a. Given the extent of a NSC and/or Main closure, additional time is necessary to plan for the closure, thus the special event organizer must apply a minimum of 90 days in advance of the event.
- 3. The Town may provide a previously approved traffic plan for the road closure of NSC and/or Main. Should the area of the event differ from the traffic plans approved by the Town, the event organizer is responsible for the cost of developing or modifying the traffic plan to satisfy the Town.
 - a. It is the responsibility of the special event organizer to contract with a professional traffic control vendor, approved by the Town, to implement the road closure at no cost to the Town.
 - b. The special event organizer must provide contact information to the Town, for the traffic control vendor implementing the closure, no less than 45 days prior to the event.
 - c. Anti-Vehicle Barriers (ABV) may be required at the discretion of the Town and are subject to the fees adopted in the Town's Fee Schedule or may be obtained through a third-party traffic control/safety vendor with approval of the Town Manager or his or her designee.
- 4. No Parking signs are required to be posted at least 72 hours before the road closure begins for any parking spaces located within the road closure area.
 - a. No Parking signs are provided by the Town at the cost listed in the Fee Schedule and must be installed by the special event organizer as outlined within the approved special event permit.
 - b. No parking signs must be completely removed by the special event organizer upon the conclusion of the special event.
- 5. Special event organizers must notify the adjacent property stakeholders and the VTA (if bus route is affected) of the closure no less than fourteen (14) days in advance of the event as outlined within the approved special event permit.
- 6. Private events and fee for entrance events are not allowed. Incidental item sales may be allowed if they are consistent with the special event activities and approved within the special event permit.

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7. Barriers necessary for the sales and service of alcohol consistent with ABC guidelines and as approved by the Police Chief and Santa Clara County Fire Department may be installed and must be approved within the special event permit.
8. Exclusive use by the special event organizers or its vendors of any portion of public space outside of the road closure area including sidewalks, public parking lots and spaces, or portions of public right-of-way require approval within the special event permit, and an encroachment permit.
9. Special events beyond the scope of the Town's Special Event Permit shall require a Town agreement and receive Town Council approval.
10. Consistent with the special event permit requirements, a certificate of insurance and endorsement meeting the Town of Los Gatos current requirements; release of liability, assumption of risk and indemnity agreement; and all applicable fees must be received and approved by the Town prior to the event taking place.

I. Oak Meadow Park

Oak Meadow Park is a focal point for the Town of Los Gatos, with reservable picnic areas available to support multiple private celebrations at one time such as barbecues, birthday parties, and similar celebrations. It is the location of the Town's bandstand and Billy Jones Railroad and Carousel making it an appealing location for the public to gather. Special events may be permitted including concerts, festivals, ceremonies, or other similar activity for the purposes of celebration, education or cultural enrichment.

1. Reservations are processed on a "first come, first served" basis. A tentative reservation may be made up to one year in advance, but no less than 60 days in advance, by submitting an application for a special event permit. The reservation becomes confirmed once the special event permit is approved with signature from the Town Manager or their designee.
2. In addition to a special event permit, a Parks Special Use Permit is required, and will be coordinated through the special event permit process. As such, use of any portions of Oak Meadow Park for a special event are subject to the fees included in the Town's Fee Schedule.
3. No single event may occupy the entire park or reserve a majority of the picnic areas on Saturdays, Sundays, or Holidays.

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4. The park must always remain accessible to the public.
5. Private events (outside of Town designated reservable spaces as identified below) and fee for entrance events are not allowed. Incidental item sales may be allowed if they are consistent with the special event activities, and approved within the special event permit.
6. Reservable spaces may include the Oak Meadow Bandstand, Oak Meadow picnic areas, Oak Meadow horseshoe pits, and other similar areas as designated by the Director of Parks and Public Works.
 - a. Barriers necessary for the sales and service of alcohol during approved special events, within the reserved areas, consistent with ABC guidelines, and as approved by the Police Chief and Santa Clara County Fire Department may be installed and must be approved within the special event permit.
7. Public entrances to Oak Meadow Park must remain open during all times of the event. This includes gates, roads, sidewalks, pathways, and parking lots. If shuttle buses are approved, the parking lot may be closed with a parking attendant present.
8. Parking spots may be reserved at the rate listed in the adopted fee schedule. ADA parking spaces must remain unreserved and accessible.
9. Special events beyond the scope of the Town's Special Event Permit shall require a Town agreement and receive Town Council approval.
10. Consistent with the special event permit requirements, a certificate of insurance and endorsement meeting the Town of Los Gatos current requirements; release of liability, assumption of risk and indemnity agreement; and all applicable fees must be received and approved by the Town prior to the event taking place.

APPROVED AS TO FORM:

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Gabrielle Whalen, Town Attorney



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/07/2023

ITEM NO: 19

DATE: February 7, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Approve the Library's Holiday and Recognition Work Plan

RECOMMENDATION:

Approve the Library's holiday and recognition work plan.

BACKGROUND:

Given the recent interest in what holidays and months the Town recognizes through its Library programs and communications, this agenda item provides the Town Council and the public an opportunity to review the recognition work plan and provide input within the context of the Town's available resources for such recognition. The goal of thoughtful acknowledgement of holidays and recognition months is to foster an inclusive community. The Library's core purpose is to connect people with stories that broaden understanding.

As a Library, the primary vehicle of connecting people with stories is through books. Our primary focus is ensuring equitable access to collections that reflect a broad range of authors, primary characters, histories, and narratives in which community members can find representation. This is year-round work that is not confined to a calendar month or day, as the publishing industry does not coincide publications to align with recognition months in general practice.

Selections of materials is done by our Librarians on staff and assisted by diversity, equity, and inclusion software purchased in July of 2022 that analyzes the collection to ensure growth in the following catalog subject headings: Asian, Black, Disabilities and Neurodiversity, Equity and Social Issues, Hispanic and Latinx, Indigenous, Lesbian Gay Bisexual Transgender, Queer, or Questioning (LGBTQ+) and Gender, Mental and Emotional Health, Middle Eastern and North African, Multicultural, and Religious Background. Purchased books and e-books include titles by

PREPARED BY: Ryan Baker
Library Director

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

BACKGROUND (continued):

authors with backgrounds historically underrepresented in the publishing industry, titles that give strong representation of historically marginalized peoples as primary characters, and histories told or researched through the lens of disenfranchised populations.

In addition to books, e-books, and media, the Library produces programs and events for 30,000 Library users representing a wide variety of ages, backgrounds, and interests. Within this work, celebration of holidays and recognition months through the medium of books and stories is included.

DISCUSSION:

The Library strives to recognize the following 33 cultural and national holidays that have been identified as holding importance to members of our community (days marked with "varies" fall on different days in different years with the month displayed indicating 2023; items marked with an asterisk (*) note events that will be newly added to our celebration calendar as of this year):

| | |
|--------------------------------------|--------------------------------------|
| New Year's Day (Jan)* | Independence Day (Jul) |
| Martin Luther King Jr. Day (Jan) | Islamic New Year (Aug - varies)* |
| Lunar/Chinese New Year (Jan- varies) | Labor Day (Sept) |
| Holocaust Remembrance Day (Jan) | Rosh Hashanah (Sept – varies) |
| Presidents' Day (Feb) | Yom Kippur (Sept – varies) |
| Purim (Mar - varies) | Mid-Autumn Festival (Sept – varies)* |
| Holi (Mar - varies) | Indigenous Peoples' Day (Oct) |
| Ramadan (Mar - varies) | National Coming Out Day (Oct) |
| Nowruz (Mar - varies) | Halloween (Oct) |
| Cesar Chavez Day (Mar) | Dia de los Muertos (Nov) |
| Passover (Apr - varies) | Veterans' Day (Nov) |
| Easter (Apr - varies) | Diwali (Nov – varies) |
| Eid al-Fitr (Apr -varies) | Thanksgiving (Nov) |
| Earth Day (Apr) | Chanukah (Dec) |
| Cinco de Mayo (May) | Christmas (Dec) |
| Memorial Day (May) | Kwanzaa (Dec) |
| Juneteenth (Jun) | |

DISCUSSION (continued):

The Library strives to recognize the following 14 recognition months/weeks that have been identified as holding importance to members of our community:

| | |
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| Braille Literacy Month (Jan) | Mental Health Awareness Month (May)* |
| Black History Month (Feb) | Pride and LGBTQ Month (Jun) |
| Women's History Month (Mar) | Disability Pride Month (Jul)* |
| Developmental Disabilities Month (Mar)* | Physical Disability Awareness Month (Aug)* |
| Arab American Heritage Month (Apr)* | Suicide Prevention Month (Sept)* |
| Autism Acceptance Month (Apr)* | Hispanic Heritage Month (Sept 15 - Oct 15) |
| Asian Pacific Islander Heritage Month (May) | Native American Heritage Month (Nov) |
| Jewish American Heritage Month (May)* | United Against Hate Week (Nov) |

Also included here for the context of calendar timing and workload, the Library additionally recognizes the following seven library/literacy-specific months/weeks:

| | |
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| Poetry Month (Apr) | Friends of the Library Week (Oct) |
| Library Week (Apr) | Teen Read Week (Oct) |
| Summer Reading Program (Jun to Aug) | National Novel Writing Month (Nov) |
| Banned Books Week (Sept) | |

Deliverables

Given the scope of work calendared above, staff has determined that the capacity for deliverables would entail:

Month-long recognition*:

- Social media post through Library's social media, reposted through Town social media
- Newsletter call out
- "Stories We Are Celebrating" booklist
- Storytimes featuring a broad cast of characters and families in book selections
- Reader's advisory highlighting recognition
- Book displays in Children's, Teen, and Adult sections
- Post showcasing the display, featuring the sign, with links to "Stories We Are Celebrating" content
- Storywalk in Oak Meadow Park (when feasible)
- One related program, live or virtual (when feasible)
- "Stories We Are Celebrating" graphics on lobby screens and desks
- Booklist callouts in the Library newsletters

DISCUSSION (continued):

*During months in which there are two or more recognition categories assigned, staff will divide display space appropriately between the multiple categories.

Week-long recognition:

- Small book display on countertop
- Give away items such as bookmarks, stickers, or buttons (as/when available)
- Social media post through Library's social media, reposted through Town social media
- "Stories We Are Celebrating" booklist

Single day observances:

- Social media post through Library's social media, reposted through Town social media
- "Stories We Are Celebrating" booklist

Deliverables for holidays and recognition months/weeks will sometimes be augmented by contributions from invested community partners that may provide materials, displays, give away items, etc. that would generally be outside of staff capacity or budget.

Limitations

The above-mentioned deliverables constitute the 'high-end' of what staff has analyzed is within our capacity to produce. Staff desires to recognize all holidays and recognition months equally; however, there will be occasions where it will not be logistically possible due to the following limitations:

- Availability or quantity of titles produced by publishing houses. While publishers have made significant strides in quantity and quality of publications reflecting a more diverse range of voices, certain holidays have significantly more publications available than others. This may impact the ability to build and maintain full displays.
- Availability of presenters or speakers. Competition for speakers and presenters directly related to celebrating holidays and recognition months by schools, libraries and other institutions far exceeds supply and greatly increases in cost the closer to the day/week/month of recognition.
- Budget. Programming funds do not come from Town General Fund dollars, but rather through donations (the Friends of the Library being the largest donor). These limited funds are divided by staff for use across a wide variety of programming appealing to broad interests across the community. Museum quality displays, curriculum development, and exclusive programming themes are not possible for staff to produce.

DISCUSSION (continued):

- Physical space. The Library is highly limited in available display space. Space may need to be shared or have mixed use depending on how holidays and recognition months fall on the calendar for any given year.

Community Input

The Library is open and receptive to adding additional holidays within our capacity as suggested by community input. We have created a link in our "Stories We Are Celebrating" call outs that specifically ask community members to contact us for consideration of additional holidays important to their families.

Use of Social Media

Social media engagement will generally consist of a single post on Instagram and on Facebook for each holiday or at the beginning of a recognition month. Within the spirit of stories, staff in 2023 will be using a similar template for each post that highlights books from our collection as they relate to the holiday or recognition month. Library staff will tag the Town in postings to allow Town staff to repost. Postings for holidays that fall on days the Town or Library is closed will generally be posted some days in advance to allow the Town to repost as appropriate. Note that program and event advertising through social media means will primarily be through the Library's newsletters with a measurable click/engagement rate of 16.39% compared to Facebook at 1.16% and Instagram at 0.06%.

CONCLUSION:

Library staff is committed to working towards all community members feeling represented and included as part of our Town core values. Holidays and recognition months are one of the many ways staff undertakes to create this sense of inclusion for Los Gatos. This report has been prepared through conscientious examination of an ongoing process.

COORDINATION:

This workplan has been reviewed by the Library Board. The high-level comment that the Board feels appropriate to communicate to Council is:

The primary focus for the Library's mission to foster a diverse and inclusive community should first and foremost be through conscientiously striving for equitable access to a large variety of books, e-books, and media that reflect the experiences and backgrounds of diverse communities. Every person of every age, background, and identity must be

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SUBJECT: Approve the Library's Holiday and Recognition Work Plan

DATE: February 7, 2023

COORDINATION (continued):

able to have access to a wide offering of books in which they can see themselves reflected. The Library should not lose sight of this as their primary means of fostering dialog and understanding within the community as it pursues additional avenues of recognition.

FISCAL IMPACT:

There is no direct fiscal impact associated with this item.

ENVIRONMENTAL ASSESSMENT:

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