



**TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
OCTOBER 18, 2022
110 EAST MAIN STREET AND TELECONFERENCE
TOWN COUNCIL CHAMBERS
LOS GATOS, CA
7:00 P.M.**

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

PARTICIPATION IN THE PUBLIC PROCESS

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

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

Deadlines for Public Comment and Presentations are as follows:

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

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

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

**TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
OCTOBER 18, 2022
TOWN COUNCIL CHAMBERS AT 110 EAST MAIN STREET AND TELECONFERENCE
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/82608393569?pwd=SmNVUjFWL2NjNzhjdmsrTnhmc3JWZz09>
Passcode: 139751. You can also type in 826 0839 3569 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 PublicComment@losgatosca.gov the subject line “Public Comment Item #__” (insert the item number relevant to your comment) or “Verbal Communications – Non-Agenda Item.” Comments received by 11:00 a.m. the day of the meeting will be reviewed and distributed before the meeting. All comments received will become part of the record.

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

CLOSED SESSION REPORT

COUNCIL / MANAGER MATTERS

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

- [1.](#) Approve Draft Minutes of the October 4, 2022 Special Town Council Meeting.
- [2.](#) Approve Draft Minutes of the October 4, 2022 Town Council Meeting.
- [3.](#) Approve Draft Minutes of the October 13, 2022 Closed Session Town Council Meeting.
- [4.](#) 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.
- [5.](#) Adopt an Extension to June 30, 2023 to the Town's Economic Recovery Resolution to Allow for the Continued Support of the Town's Economic Recovery Efforts, including the Completion of the Construction and Implementation of the Semi-Permanent Parklet Program.
- [6.](#) Adopt a Resolution Approving and Authorizing the Town Manager to Execute the Project Specific Maintenance Agreement for Los Gatos Creek Trail with the California Department of Transportation.

7. Authorize the Town Manager to Enter into a Memorandum of Understanding with the Los Gatos Saratoga Union High School District and Los Gatos Union School District to Participate in a Community Norms Effort at a Cost Not to Exceed \$16,800.
8. Receive Independent Accountants' Report on Agreed-Upon Procedures on Measure G Revenues and Expenditures for the Period March 1, 2019 to June 30, 2021.
9. Storm Drainage System Repair at 62 Ellenwood Avenue (CIP No. 816-0420):
 - a. Reject All Bids Received and Opened on October 10, 2022 for the Project; and
 - b. Authorize the Town Manager to Re- Bid the Project with Changes that May Reduce Project Cost.

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.)*

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

10. Receive an Annual Report Regarding the Independent Police Auditor Function.
11. Discuss the Housing Element Process and the Next Steps for the Referendum of the 2040 General Plan Land Use and Community Design Elements, and Provide Direction on the Preferred Approach for the Referendum.

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: The Town of Los Gatos has adopted the provisions of Code of Civil Procedure §1094.6; litigation challenging a decision of the Town Council must be brought within 90 days after the decision is announced unless a shorter time is required by State or Federal law.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 10/18/2022

ITEM NO: 1

**DRAFT
Minutes of the Town Council Special Meeting – Study Session
October 4, 2022**

The Town Council of the Town of Los Gatos conducted a special meeting utilizing teleconference and electronic means consistent with Government Code Section 54953, as Amended by Assembly Bill 361, in response to the state of emergency relating to COVID-19 and enabling teleconferencing accommodations by suspending or waiving specified provisions in the Ralph M. Brown Act (Government Code § 54950 et seq.) and Town of Los Gatos Resolution 2021-044 on Tuesday, October 4, 2022 at 6:00 p.m.

STUDY SESSION CALLED TO ORDER AT 6:00 P.M.

ROLL CALL

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

Absent: None

STUDY SESSION

1. Study Session to Discuss Potential Master License Agreement for Telecommunications Facilities in the Public Right-of-Way.

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

Council discussed the item.

STUDY SESSION ADJOURNED

Study Session adjourned at 6:42 p.m.

Jenna De Long, Deputy Clerk



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 10/18/2022

ITEM NO: 2

**DRAFT
Minutes of the Town Council Meeting
Tuesday, October 4, 2022**

The Town Council of the Town of Los Gatos conducted a regular meeting utilizing teleconference and electronic means consistent with Government Code Section 54953, as Amended by Assembly Bill 361, in response to the state of emergency relating to COVID-19 and enabling teleconferencing accommodations by suspending or waiving specified provisions in the Ralph M. Brown Act (Government Code § 54950 et seq.) and Town of Los Gatos Resolution 2021-044 on Tuesday, October 4, 2022 at 7:00 p.m.

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

ROLL CALL

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

Absent: None

COUNCIL/TOWN MANAGER REPORTS

Council Matters

- Vice Mayor Ristow stated she attended the Campbell State of the City, Saratoga State of the City, Fusion Academy 10-year Anniversary Celebration event, the Los Gatos-Monte Sereno Police Department (LGMSPD) Academy, Screen on the Green, Youth Citizen of the Year Awards, LGMSPD Swearing-In Ceremony, Senior Services Committee meeting, and a Senior Services Engagement Ad Hoc Committee meeting; and toured the Live Oak Adult Day Care.
- Council Member Badame stated she attended the Council Policy Committee meeting, met Saratoga Area Senior Coordinating Council (SASCC) Executive Director Tyler Taylor, and met with constituents regarding issues in Town.
- Council Member Sayoc stated the League of California Cities Peninsula Division held an annual social meeting.
- Council Member Hudes stated he attended Senior Services Committee and subcommittee meetings, attended a Silicon Valley Regional Interoperability Authority meeting, participated in the LGMSPD Academy, taught at the Emergency Communications "HAM Cram" classes, and attended the Los Gatos Concert Series.
- Mayor Rennie stated he attended the Bay Area Air Quality Management District Board and Legislative Committee meetings, LGMSPD Swearing-In Ceremony, Youth Citizens of the Year Award, and the West Valley Mayors and Managers meeting; and spoke with Cub Scout Pack 556 .

Manager Matters

- Announced staff will be at the Farmer's Market to discuss the Housing Element.
- Announced adult Board, Commission, and Committee recruitment is underway; the application period closes on December 2, 2022 at 4:00 p.m.; additional information and applications are available on the Town Clerk webpage.

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

1. Approve Draft Minutes of the September 17, 2022 Town Council Special Meeting Retreat.
2. Approve Minutes of the September 20, 2022 Closed Session Town Council Meeting.
3. Approve Minutes of the September 20, 2022 Town Council Meeting.
4. Adopt a Resolution Reaffirming Resolution 2021-044 Regarding Brown Act Compliance and Teleconferencing and Making Findings Pursuant to Government Code Section 54953, as Amended by Assembly Bill 361, During the COVID-19 Pandemic. **RESOLUTION 2022-060**
5. Authorize the Town Manager to Execute a Second Amendment to the Agreement with M-Group for Consultant Services as Provided in the Senate Bill 2 Los Gatos Planning Grant Program Application by Increasing Compensation to a Total Not to Exceed Amount of \$130,279 Including Contingencies and Authorize a \$67,279 Revenue Budget Adjustment to Recognize the Grant Receipt.
6. Authorize the Town Manager to Execute a Third Amendment to the Agreement for Audit Services with Badawi and Associates to Extend the Term of the Agreement.
7. Adopt a Resolution Amending the Enabling Resolution of the Senior Service Committee and Rescind Resolution 2021-035. **RESOLUTION 2022-061**
8. Approve an Amendment to the Management Salary Schedule to Establish a New Classification Title and Salary Range for Finance and Accounting Manager.
9. Adopt a Resolution to Accept the Elections Official's Certification of the Sufficiency of the Petition of the Referendum of Resolution 2022-046. **RESOLUTION 2022-062**

MOTION: Motion by Council Member Badame to approve consent items 1-9. Seconded by Vice Mayor Ristow.

VOTE: Motion passed unanimously.

VERBAL COMMUNICATIONS

Folake Phillips

- Commented on inclusion and belonging, and inquired about support for the United Against Hate week.

Ami Davis, NUMU Executive Director

- Stated NUMU would like to help participate and be a resource for the Town to promote justice, equity, diversity, and inclusion efforts.

Verbal Communication – continued

Jeffrey Suzuki

- Commented on the Town's justice, equity, diversity, and inclusion efforts.

OTHER BUSINESS

10. Adopt the Updated Town Social Media Policy as Recommended by the Policy Committee.

Holly Young, Management Analyst, presented the staff report.

Opened Public Comment.

No one spoke.

Closed Public Comment.

Council discussed the matter.

MOTION: Motion by Council Member Hudes to adopt the updated Town Social Media Policy as recommended by the Council Policy Committee. **AMENDMENT:** Direct staff to review the policy every two years and if there are material changes either bring it to the Policy Committee or directly back to the Council in the event that the Policy needs to be amended.. **Seconded** by Council Member Badame.

VOTE: Motion passed unanimously.

11. Adopt the Updated Town Council Code of Conduct Policy as Recommended by the Policy Committee.

Gabrielle Whelan, Town Attorney, presented the staff report.

Opened Public Comment.

No one spoke.

Closed Public Comment.

Council discussed the matter.

MOTION: Motion by Council Member Badame to adopt the updated Town Council Code of Conduct Policy as recommended by the Council Policy Committee. **Seconded** by Council Member Hudes.

VOTE: Motion passed unanimously.

12. Adopt a Resolution Granting 4 New York Avenue to the Los Gatos-Saratoga Union High School District and Authorize the Town Manager to Negotiate and Execute the 4 New York Avenue Grant Agreement and All Documents Needed to Complete the Transaction in a Form Acceptable to the Town Attorney. **RESOLUTION 2022-063**

Arn Andrews, Assistant Town Manager, presented the staff report.

Opened Public Comment.

Scott Hoffman, San Jose Water

- Commented on concerns for future utility easements.

Lee Fagot

- Commented in support of the item.

Closed Public Comment.

Council discussed the matter.

MOTION: Motion by **Vice Mayor Ristow** to adopt a resolution granting 4 New York Avenue to the Los Gatos-Saratoga Union High School District and authorize the Town Manager to negotiate and execute the 4 New York Avenue grant agreement and all documents needed to complete the transaction in a form acceptable to the Town Attorney. **Seconded** by **Council Member Sayoc**.

VOTE: Motion passed unanimously.

13. Adopt Final Lease Agreement with CineLux Theatres Co. LLC for the Operation and Program Management of the Los Gatos Theatre.

Arn Andrews, Assistant Town Manager, presented the staff report.

Opened Public Comment.

No one spoke.

Closed Public Comment.

Council discussed the matter.

Other Business Item #13 - continued

MOTION: Motion by **Vice Mayor Ristow** to adopt a final lease agreement with CineLux Theatres Co. LLC for the operation and program management of the Los Gatos Theatre. **Seconded by Council Member Hudes.**

VOTE: Motion passed unanimously.

14. Adopt a Resolution to Confirm Suspension of the 2040 General Plan Land Use and Community Design Elements and Provide that the 2020 General Plan Land Use and Community Design Elements Govern During the Period of Suspension. **RESOLUTION 2022-064**

Joel Paulson, Community Development Director, presented the staff report.

Opened Public Comment.

Jeffrey Suzuki, Los Gatos Anti-Racism Coalition President

- Commented in support of the 2040 General Plan.

Ali Miano, Los Gatos Anti-Racism Coalition

- Commented in support of the 2040 General Plan.

Closed Public Comment.

Council discussed the matter.

Mayor Rennie reopened public comment.

Marica Jensen

- Commented on the 2040 General Plan, encouraged the Council to move forward with the Housing Element, and inquired about the suspension of the Land Use and Community Design Elements due to the Referendum.

Closed Public Comment.

Council continued to discuss the matter.

MOTION: Motion by **Council Member Badame** to approve the resolution to confirm suspension of the 2040 General Plan Land Use and Community Design Elements and provide that the 2020 General Plan Land Use and Community Design Elements govern during the suspension period. **Seconded by Council Member Hudes.**

VOTE: Motion passed unanimously.

PAGE 6 OF 6

SUBJECT: Draft Minutes of the Town Council Meeting of October 4, 2022

DATE: October 4, 2022

ADJOURNMENT

The meeting adjourned at 8:42 p.m.

Respectfully submitted:

Jenna De Long, Deputy Clerk



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 10/18/2022

ITEM NO: 3

**DRAFT
Minutes of the Town Council Special Meeting – Closed Session
October 13, 2022**

The Town Council of the Town of Los Gatos conducted a special meeting utilizing teleconference and electronic means consistent with Government Code Section 54953, as Amended by Assembly Bill 361, in response to the state of emergency relating to COVID-19 and enabling teleconferencing accommodations by suspending or waiving specified provisions in the Ralph M. Brown Act (Government Code § 54950 et seq.) and Town of Los Gatos Resolution 2021-044 on Tuesday, October 13, 2022 to hold a Closed Session at 10:30 a.m.

MEETING CALLED TO ORDER AT 10:32 A.M.

ROLL CALL

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

Absent: None.

VERBAL COMMUNICATIONS

None.

THE TOWN MOVED TO CLOSED SESSION ON THE FOLLOWING ITEM:

1. Conference with Legal Counsel – Existing Litigation (Gov. Code Section 54956.9)
Name of Case: Town of Los Gatos v. County of Santa Clara et al, Case No. 22CV395530

ADJOURNMENT

Closed Session adjourned at 11:23 a.m.

Attest:

Submitted by:

Jenna De Long, Deputy Town Clerk

Laurel Prevetti, Town Manager



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 10/18/2022

ITEM NO: 4

DATE: October 11, 2022
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. This allowance also depends on State or local officials imposing or recommending measures that promote social distancing or a legislative body finding that meeting in person would present an imminent safety risk to attendees.

DISCUSSION:

The County Public Health Officer continues to recommend that public meetings be conducted remotely. 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 continues to directly impact the ability of the members to meet safely in person, or that 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 Resoluition 2022-056

PAGE 3 OF 3

SUBJECT: Adopt a Resolution Regarding Brown Act Compliance and Teleconferencing

DATE: October 11, 2022

DISCUSSION (continued):

- September 20, 2022 adopted Resolution 2022-059
- October 4, 2022 adopted Resoluiton 2022-060

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

RESOLUTION 2022-

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, the Centers for Disease Control and Prevention recommends physical distancing of at least six (6) feet whenever possible, avoiding crowds, and avoiding spaces that do not offer fresh air from the outdoors, particularly for people who are not fully vaccinated, or are at a higher risk of severe illness due to COVID-19; and

WHEREAS, that the Santa Clara County Public Health Department continues to recommend that public bodies meet remotely to the extent possible; 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 18th day of October 2022, 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: 10/18/2022

ITEM NO: 5

DATE: October 13, 2022
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt an Extension to June 30, 2023 to the Town's Economic Recovery Resolution to Allow for the Continued Support of the Town's Economic Recovery Efforts, including the Completion of the Construction and Implementation of the Semi-Permanent Parklet Program

RECOMMENDATION:

Adopt an extension to June 30, 2023 to the Town's Economic Recovery Resolution, to allow for the continued support of the Town's Economic Recovery efforts, including the completion of the construction and implementation of the Semi-Permanent Parklet Program.

BACKGROUND:

The Town Council remains proactive, adaptive, and flexible in its efforts and actions to support the business community through the dynamic economic recovery environment created by the COVID-19 pandemic. The Council has been steadfast in its support of the Town's business community, while delicately balancing competing interests and continuing to consider additional options to provide available assistance.

One key element of continued economic recovery support is the currently adopted Economic Recovery Resolution, Resolution 2021-051, which provides flexibility and additional opportunities for businesses to adapt to the dynamic environment. Some of the ongoing opportunities of note in the Resolution include: Town-subsidized business permits; the ability for private commercial properties to flex their space for outdoor dining and other business opportunities; the subsidized semi-permanent parklet program with grant funding allocated by the Town Council using America Recovery Plan Act (ARPA) funds; streamlined opportunities

PREPARED BY: Monica Renn
Economic Vitality Manager

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

BACKGROUND (continued):

that reduce cost and timelines for businesses to locate, relocate, bifurcate and evolve within the Town; and time extension on the expiration of permits.

At the direction of the Town Council, these efforts and initiatives have provided many businesses with new options and flexibility to pivot during some of the most trying economic times.

The Economic Recovery Resolution was first adopted on May 26, 2020, then extended on two subsequent occasions with the current, Resolution 2021-051, extending until December 31, 2022. As the Town Council continues to acknowledge the successful support and process streamlining the Resolution provides the Town's business community, staff is recommending another extension to the Resolution (Attachment 1), until June 30, 2023.

DISCUSSION:

Since the semi-permanent parklet program and grant funding structure were adopted on April 20, 2021, Town staff has been working continuously with stakeholders to implement the semi-permanent parklet program. This project originally set a completion date of December 31, 2022, requiring all parklets to be fully built with final inspection approval, and the required paperwork filed for grant payment.

The Town's recovery efforts, including the semi-permanent parklet program, have become a model recovery program throughout the Bay Area on account of the Town Council's proactive direction and support of economic recovery and community vitality. With such swift action and subsequent scale of programming, there has also been a bit of a learning curve that has presented a fair number of challenges along the way. This coupled with rising material costs, delayed material deliveries, and stretched contractor resources, has resulted in the timeline for the semi-permanent parklet program becoming longer than originally anticipated. Staff has worked with stakeholders to navigate these challenges; however as a result, it is not feasible to assume that the original project completion deadline of December 31, 2022 can be met.

Aside from these challenges, the Economic Recovery Resolution continues to bring incentives and a smoother path forward for many stakeholders, offering new opportunities for business recovery and success. For example, the ability to enact an Economic Recovery Agreement in lieu of a Conditional Use Permit for new personal services in the C2 and Office zones, has allowed for small business owners to expand, relocate, or open their own location, in most cases, in small, harder to fill vacancies much quicker and at less of a financial investment. This change offers a savings of nearly \$9,000 and months in a Conditional Use Permit review process for the small businesses, a process that must be completed before a business may begin applying for building permits for tenant improvements.

DISCUSSION (continued):

Staff estimates that extending the Resolution until June 30, 2023, should provide ample time for semi-permanent parklet program completion.

The chart below offers a snapshot of general phases in the parklet design and construction process, with the column on the right noting the number of semi-permanent parklets in that phase, at the time of this report. The construction, inspection, and reporting processes are dynamic thus some parklets will move through the phases rather quickly, while others will take longer in a particular phase for project specific reasons.

PARKLET PHASES	# OF PARKLETS
Parklet complete, full grant issued	3
Parklet complete, awaiting grant documents or grant payment in process	15
Parklet in construction	8
Parklet building permit issued and agreements executed	3
Parklet in design, building permit review, or agreement processing phase	7

CONCLUSION:

Town staff recommends that the Town Council adopt an extension to the Town's Economic Recovery Resolution until June 30, 2023, to allow for the continued support of the Town's Economic Recovery efforts, including the completion of the construction and implementation of Semi-Permanent Parklet Program.

COORDINATION:

The preparation of this report was coordinated with the Community Development Department.

FISCAL IMPACT:

Funding for the Economic Recovery efforts supported by the Economic Recovery Resolution have been previously allocated by the Town Council.

ENVIRONMENTAL ASSESSMENT:

The program extended by this resolution is statutorily and categorically exempt from CEQA as outlined in the resolution.

PAGE 4 OF 4

SUBJECT: Approve an extension to the Economic Recovery Resolution

DATE: October 10, 2022

Attachment:

1. Draft Economic Recovery Resolution

RESOLUTION 2022-

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS APPROVING TEMPORARY OUTDOOR PUBLIC SPACE EXPANSION AND TEMPORARY MODIFICATIONS TO SPECIFIC PROVISIONS RELATED TO BUSINESS PERMITS, PROCESSES, PROVISIONS, AND ACTIVITIES DURING THE COVID-19 PANDEMIC TO OFFER ECONOMIC RELIEF, RECOVERY, AND OPPORTUNITIES FOR COMMUNITY AND ECONOMIC VITALITY

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

WHEREAS, pursuant to California Government Code Section 8680.9, a local emergency is a condition of extreme peril to persons or property proclaimed as such by the governing body of the local agency affected by a natural or manmade disaster; and

WHEREAS, California Government Code Section 8634 states that "During a local emergency the governing body of a political subdivision, or officials designated thereby, may promulgate orders and regulations necessary to provide for the protection of life and property..."; and

WHEREAS, the purpose of a local emergency proclamation is to provide extraordinary powers to issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency, obtain vital supplies, and require emergency services of employees; and

WHEREAS, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2," and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"); and

WHEREAS, on January 30, 2020, the World Health Organization declared the Covid-19 outbreak a Public Health Emergency of International Concern; and

WHEREAS, on January 30, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency; and

WHEREAS, on January 31, 2020, the first case of COVID-19 was confirmed in Santa Clara County ("County"); and

ATTACHMENT 1

WHEREAS, on February 10, 2020, the Santa Clara County Board of Supervisors and Department of Public Health declared a local emergency and local public health emergency to aid the regional healthcare and governmental community in responding to COVID-19; and

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 11, 2020, the World Health Organization declared COVID-19 an International Pandemic; 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 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19; and

WHEREAS, on March 16, 2020, the Santa Clara County Department of Public Health directed all individuals in the County to Shelter in Place and mandated requirements, including but not limited to, social distancing, staying home if sick, canceling or postponing group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus; and

WHEREAS, on March 17, 2020, the Town Council of the Town of Los Gatos ratified the Proclamation of Local Emergency; and

WHEREAS, the pandemic and necessary federal, state and local public health orders requiring social distancing to prevent spread of COVID- 19 have had and will continue to have devastating economic impacts on the local community, including residents, businesses, employees and Town operations; and

WHEREAS, the longer the emergency order is in place, the more difficult it will be for small retail and restaurant operators to return and reopen their businesses; and

WHEREAS, although the Town continues to be in an emergency response phase, an emergency management principle has been established that recovery planning must begin as early as possible to strengthen community resilience while shortening the economic recovery timeline; and

WHEREAS, some of the actions that the Town has taken during this state of emergency to support local business are: eviction protections; suspension of rent for Town owned Facilities; a website with COVID 19 and business resources; and assistance for restaurants and food retailers by allowing sales of alcohol via delivery and takeout, providing flexibility for restaurants to sell groceries, and allowing curbside pickup; and

WHEREAS, due to the severe economic impacts of COVID- 19 and its economic impacts on the community and the Town organization, the Council deems it necessary to take additional action to suspend enforcement of certain provisions of the Town of Los Gatos Town Code and provide temporary process streamlining measures to facilitate the retention and attraction of Los Gatos businesses during the COVID-19 pandemic, reduce economic impacts, foster recovery, encourage economic vitality, and reduce commercial vacancies; and specified below to support social distancing requirements, effective public communication related to rapidly transitioning business re-opening status, and economic viability of businesses in adhering to permitted opening and social distancing requirements; and

WHEREAS, the below measures are intended to provide economic relief to businesses that are experiencing economic uncertainty while complying with State and County Orders. Accordingly, the Town will facilitate a temporary “pilot” program, which will include the development and implementation of a plan to use the right- of-way, sidewalks and streets to help maintain social distancing during the first few phases (stages) of reopening consistent with the State’s Resilience Roadmap and continued economic support of businesses for uses such as walking space, outdoor dining, and pick- up/delivery areas. The program would provide for residents to receive the health and wellness benefits of being outdoors and support businesses with enough space to safely physically distance; and

WHEREAS, the program is established for the purpose of supporting and facilitating the recovery of business and economic activity in the Town by expanding the spaces available for the safe conduct of such activities for Town businesses and their customers and patrons to create more physical distance for pedestrians and business patrons to maintain physical distancing; and nothing herein is intended to nor shall be deemed to create open gathering places or public fora unrelated to the intended business support and recovery purpose; and

WHEREAS, over the years, the Town’s conservative budgeting practices have resulted in healthy reserves and frequent annual budgetary surplus with a balanced Operating Budget for Fiscal Year 2020-2021 with no reductions to service, despite significant revenue and other economic impacts from sheltering-in-place. Those reserves and surpluses are now paying the Town huge dividends during the COVID 19 crisis; and

WHEREAS, on May 26, 2020, the Town Council reallocated \$1,900,000 in prior surpluses reserved for downtown streetscape revitalization toward COVID-19 economic stimulus recovery efforts. This is one of the single largest economic recovery packages ever proposed in the Town’s history; and

WHEREAS, time is of the essence to quickly implement a program to allow for safe physical distancing consistent with the State's Resilience Roadmap and County Guidelines in order to address both public health and economic impacts of COVID- 19, as residents have been primarily indoors since the initiation of the State and County Orders, this will be a dynamic temporary program, receiving input from the Town Council, and shall be subject to administrative modification by the Town, as authorized herein, as necessary in response to emerging issues or concerns of public, health, safety or convenience; and

NOW, THEREFORE, BE IT PROCLAIMED AND RESOLVED by the Town Council of the Town of Los Gatos that:

SECTION 1. All recitals set forth above, and all recitals included in support of Federal, State, and County actions referenced herein, are adopted as though fully set forth herein as findings in support of this Resolution and, after considering all such findings and current local circumstances the Council hereby declares the continuing existence of a local emergency related to the continued threat of COVID- 19 as it relates to public health and economic impacts; and

SECTION 2. In order to support the re-opening of restaurants and other businesses in accordance with the State Executive Order N-60-20, the Town Council hereby directs and authorizes the Town Manager to implement the following strategies that may be used independently or in combination, as outlined below:

1. As identified by the Town generally along N. Santa Cruz Avenue (south of Highway 9/Los Gatos-Saratoga Road) and Main Street, private businesses in the C-2 Zone are permitted to utilize public street parking spaces in proximity to their business for expanded dining and alcohol service, retail, or business use space to facilitate safely distanced pedestrian circulation, expanded outdoor dining and alcohol service, and customer queuing, pickup and waiting areas associated with permitted business activities and pursuant to the terms agreed upon in an Economic Recovery Agreement between the business and the Town;
2. Suspend parking requirements in private commercial lots to allow some parking spaces to be utilized for restaurant seating or business activities given sufficient parking remains available for customer use, and to allow for such to facilitate safely distanced pedestrian circulation, expanded outdoor dining and alcohol service, customer queuing, and pickup and waiting areas associated with permitted business activities and pursuant to the terms of agreed upon in an Economic Recovery agreement between the business and the Town;
3. Allow pop-up patios, parklets, and other areas to encourage and support additional ideas for outdoor space such as use of parts of the sidewalk for signage, merchandise

and queueing, where adequate sidewalk width exists consistent with disabled access requirements and public safety; and

4. Current Los Gatos businesses may relocate, expand, or open an additional business location without obtaining a new Conditional Use Permit provided the business enters into an Economic Recovery agreement with the Town, documenting that any change of ownership is subject to a new Conditional Use Permit or Conditional Use Permit modification consistent with the existing Town Code;
5. The requirement for personal service businesses to obtain a Conditional Use Permit in the C-2 zone is suspended, and personal service businesses may locate within Office Zones (O), provided the business enters into an Economic Recovery agreement with the Town, documenting that any change of ownership is subject to a new Conditional Use Permit, or must comply with current provisions consistent with the existing Town Code;
6. The requirement for up to a total of five (5) markets, bars and/or other miscellaneous commercial businesses to obtain a Conditional Use Permit in the C-2 zone is suspended provided the business enters into an Economic Recovery agreement with the Town, documenting that any change of ownership is subject to a new Conditional Use Permit consistent with the existing Town Code;
7. The cost for a new Conditional Use Permit is reduced by 50% with the Town paying the balance of the fees;
8. Alcohol consumption is permitted with meals in Town parks, temporary pop-up parks, temporary patio dining, and parklets; and
9. The expiration date for all building permits and planning entitlements shall be extended by two years.

SECTION 4. Environmental Review. As a result of the COVID- 19 public health emergency, the Town of Los Gatos proposes a temporary program to use the right- of-way, sidewalks and streets to help maintain social distancing during the first few phases (stages) of reopening consistent with the State’ s Resilience Roadmap and provide for residents to receive the health and wellness benefits of being outdoors and support businesses with enough space to safely physically distance. The proposed project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) as followed:

- A. The project is statutorily exempt under State CEQA Guidelines Section 15269 (Emergency Projects), because the temporary program includes specific actions that would allow for safe physical distancing consistent with the State's Resilience Roadmap and County and State Guidelines in order to mitigate the COVID- 19 public health emergency.
- B. The project is categorically exempt under State CEQA Guidelines Section 15301 (Existing Facilities) because the actions identified in the program are limited to the permitting, leasing, and minor alteration of existing public facilities, including existing streets, sidewalks, bicycle and pedestrian trails, which would not result in the creation of additional automobile lanes. The program would result in a negligible expansion of existing commercial uses and a negligible expansion of the public's use of Town right of- way, as the uses included in the temporary program would not vary from the current uses of commercial businesses, residential areas, or public access within the Town's right- of-way.

SECTION 5. Notwithstanding any other Town policy or procedure, the Town Engineer shall be authorized to review and approve on behalf of the Town any and all design and construction necessary as part of the temporary program herein and the Town Manager shall be authorized to enter into agreements on behalf of the Town to implement the strategies herein without further action of the Town Council.

SECTION 6. Any provision of the Los Gatos Town Code or any appendix thereto inconsistent with the provisions of this Resolution, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Resolution.

SECTION 7. All current and prior emergency and public health orders as currently enacted and in effect, or as subsequently amended or modified, issued by the Governor, the State or County Public Health Official or the Town or County Emergency Services Director are expressly adopted.

SECTION 8. This resolution remains in place until June 30, 2023.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 18th day of October, 2022 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: 10/18/22

ITEM NO: 6

DATE: October 13, 2022
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt a Resolution Approving and Authorizing the Town Manager to Execute the Project Specific Maintenance Agreement for Los Gatos Creek Trail with the California Department of Transportation

RECOMMENDATION:

Adopt a resolution (Attachment 1) approving and authorizing the Town Manager to execute the Project Specific Maintenance Agreement for Los Gatos Creek Trail (Attachment 2) with the California Department of Transportation (Caltrans).

BACKGROUND:

The design work on the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505) began in October 2019 to install bicycle and pedestrian connections between Highway 9 and the Los Gatos Creek Trail, including the installation of a bicycle and pedestrian bridge across Los Gatos Creek just south of the Highway 9 and a pedestrian switchback ramp on the north side of Highway 9 (see Attachment 3 for a Site Plan). Los Gatos Creek Trail, including the creek itself along Highway 17, is largely within the Caltrans' operation right-of-way. In addition to the work being in Caltrans' right-of-way, since federal grant funds are involved, staff has been closely coordinating the project with Caltrans following the Caltrans Local Assistance Process for federal-aid projects.

The preliminary design was presented to the Complete Streets and Transportation Commission and to the community in February of 2020. Both groups provided input and support for the project. On March 3, 2022, the Town Council approved the preliminary design and authorized staff to proceed to final design.

PREPARED BY: WooJae Kim
Town Engineer

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

SUBJECT: Adopt a Resolution Approving and Authorizing the Town Manager to Execute the Project Specific Maintenance Agreement for Los Gatos Creek Trail with the California Department of Transportation

DATE: October 13, 2022

DISCUSSION:

Caltrans lands along Highway 17 include Los Gatos Creek and the Los Gatos Creek Trail between the Forbes Mill footbridge and Roberts Road West. These parcels are remnants from the construction of Highway 17 and remained under Caltrans ownership.

As the property owner, Caltrans is requiring execution of a Project Specific Maintenance Agreement for Los Gatos Creek Trail as a condition to approve the encroachment permit to allow the Town to work on the Caltrans' right-of-way for construction. There is an existing Delegated Maintenance Agreement for the Creek Trail between the Town and Caltrans from 1975. The Project Specific Maintenance Agreement is meant to replace or supersede this earlier Maintenance Agreement. The new Maintenance Agreement documents and clarifies the Town's maintenance responsibilities for the existing Los Gatos Creek Trail between the Forbes Mille Footbridge and Roberts Road West as well as for the proposed Connector Project.

Execution of the Maintenance Agreement is a critical step for Caltrans to facilitate the consideration of the approval of the encroachment permit for construction of the trailhead connector project. Before the project is advertised for bid, staff will return to Council to request approval of the Project Plans, Specifications, and Estimates (PS&E) and authorization to advertise for bid. The project schedule is heavily dependent upon Caltrans' contracting process, and the schedule will be updated as the project progresses. Construction is anticipated to start by spring or summer 2023.

As of September 2022, the project PS&E have been completed and approved by Caltrans and construction funding identified. The project is close to fully funded at this time and sources include funds from the One Bay Area Grant Program - Cycle 2 (OBAG 2), the Transportation Fund for Clean Air (TFCA) regional grant, 2016 Measure B Funds, and commitment of up to \$1 million of Town local funds as approved by Council on March 1, 2022. The actual distribution of funding from different sources and grant funding agreements will be presented to Council for approval once finalized within the next two months. Illustrated below is the current total funding distribution summary for the construction phase:

Funding Source	Amount
OBAG 2	\$3,351,200
TFCA	\$755,921
2016 Measure B	\$693,500
Town Local Funds	\$928,687
Total Funding	\$5,729,308

PAGE 3 OF 3

SUBJECT: Adopt a Resolution Approving and Authorizing the Town Manager to Execute the Project Specific Maintenance Agreement for Los Gatos Creek Trail with the California Department of Transportation

DATE: October 13, 2022

CONCLUSION:

Staff recommends that the Town Council adopt a resolution approving and authorizing the Town Manager to execute the Project Specific Maintenance Agreement for Los Gatos Creek Trail with Caltrans.

FISCAL IMPACT:

The Los Gatos Creek Trail has been maintained by Town staff. The Project Specific Maintenance Agreement for Los Gatos Creek also calls for on-going maintenance of the new improvements installed as part of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project, which would include bicycle/pedestrian bridge, retaining walls, and pathways. It is anticipated the maintenance costs for the new infrastructure will be included in future operating budgets for the Parks and Public Works Department.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Draft Resolution
2. Project Specific Maintenance Agreement for Los Gatos Creek Trail in Town of Los Gatos
3. Site Map

DRAFT RESOLUTION 2022-

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS APPROVING THE PROJECT SPECIFIC MAINTENANCE AGREEMENT (AGREEMENT) FOR THE LOS GATOS CREEK TRAIL WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the design work on the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505) began in October 2019 to install bicycle and pedestrian connections between Highway 9 and the Los Gatos Creek Trail, including the installation of a bicycle and pedestrian bridge across Los Gatos Creek just south of the Highway 9, and a pedestrian switchback ramp on the north side of Highway 9; and

WHEREAS, Los Gatos Creek and Los Gatos Creek Trail along Highway 17 between the Forbes Mill footbridge and Roberts Road West are within California Department of Transportation's operation right-of-way, and Town staff has been closely coordinating with the State Transportation Department on the Connector Project; and

WHEREAS, property rights for the Los Gatos Creek Trail were intended to be transferred to the Town when the trail was constructed in 1994, but the transfer was never completed; and

WHEREAS, California Department of Transportation is requiring the execution of the Project Specific Maintenance Agreement for Los Gatos Creek Trail as a condition to approve the encroachment permit to allow the work in their right-of-way for construction; and

WHEREAS, the Project Specific Maintenance Agreement (Agreement) is meant to replace and supersede an existing Delegated Maintenance Agreement for the Creek Trail between the Town and Caltrans from 1975; and

WHEREAS, the Agreement requires the Town to maintain the improvements from the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project and other improvements made to the Creek Trail between the Forbes Mill footbridge and Roberts Road West; and

WHEREAS, execution of the Maintenance Agreement is a needed step to facilitate the California Department of Transportation's consideration to approve the encroachment permit for construction of the Trailhead Connector Project.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Los Gatos approves the Project Specific Maintenance Agreement for Los Gatos Creek Trail with the California Department of Transportation; and

BE IT FURTHER RESOLVED that the Town Council of the Town of Los Gatos authorizes the Town Manager to execute the Project Specific Maintenance Agreement for Los Gatos Creek Trail.

PASSED AND ADOPTED at a regular meeting of the Town Council held on the 18th of October 2022, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CA

ATTEST:

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

**PROJECT SPECIFIC MAINTENANCE AGREEMENT
FOR LOS GATOS
CREEK TRAIL IN TOWN OF LOS GATOS**

THIS AGREEMENT is made effective this _____ day of _____, 20__, by and between the State of California, acting by and through the Department of Transportation, hereinafter referred to as "STATE" and the TOWN of Los Gatos; hereinafter referred to as "TOWN"; and collectively referred to as "PARTIES".

SECTION I

RECITALS

1. Encroachment Permit No. _____ was executed between TOWN and STATE on _____ to construct a Bike/Pedestrian Trail on State Route (SR) 9, hereinafter referred to as "PROJECT", and
2. In accordance with said agreement, it was agreed by PARTIES that prior to or upon PROJECT completion, TOWN and STATE will enter into a Maintenance Agreement, and
3. The PARTIES hereto mutually desire to identify the maintenance responsibilities of TOWN for the improvements of PROJECT constructed within the STATE right of way under the Encroachment Permit No. _____, and
4. There is an existing Delegated Maintenance Agreement(s), with TOWN originally dated 1-3-1975 (with Amendment #1 on 5-14-2019). This Agreement is meant to replace or supersede this earlier Delegated Maintenance Agreement (with amendments) with respect to area of Los Gatos Creek Trail as shown on Exhibit A.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

SECTION II

AGREEMENT

1. PARTIES agree this Agreement shall supersede the portion of said Delegated Maintenance Agreement executed by PARTIES on January 3rd, 1975 that are included in this Project Specific Maintenance Agreement.
2. Exhibit A consists of plan drawings and cross-sections. They delineate and describe the areas within STATE right of way which are the responsibility of the TOWN to maintain in accordance with this Agreement. Exhibit B is the insurance document, covering the project, which the Town is required to keep current.

3. If there is mutual agreement on a change in the maintenance responsibilities between PARTIES, the PARTIES can revise the Exhibit A by a mutual written execution of the exhibit.
4. TOWN must obtain the necessary Encroachment Permits from STATE's District 04 Encroachment Permit Office prior to entering STATE right of way to perform TOWN maintenance responsibilities. This permit will be issued at no cost to TOWN.
5. PEDESTRIAN/BICYCLE OVERCROSSINGS (non-vehicular) constructed as a permitted encroachment within STATE's right of way. TOWN is solely responsible for, but not limited to, the structural adequacy, lighting, fencing, guard railing, drainage facilities, graffiti removal, sweeping and debris removal, signing, and striping, slope paving and delineation. TOWN will maintain, at TOWN expense, a safe facility for pedestrian and bicycle use along the entire length of the structure, by providing structure inspection, and structure maintenance.
6. WALLS, SOUNDWALLS, AND COLUMNS - TOWN is responsible for debris removal, cleaning and painting to keep TOWN's side of any wall structure or column free of debris, dirt, and graffiti.
7. LANDSCAPED AREAS - TOWN is responsible for the maintenance of any plantings or other types of roadside improvements of PROJECT lying outside of the fenced area restricting walk-on access to the freeway.
8. PEDESTRIAN/BICYCLE PATHS, LANES, AND CYCLE TRACKS constructed as permitted encroachments within STATE's right of way, TOWN is solely responsible for all permitted improvements, including but not limited to the delineation, fencing, guard railing, drainage facilities, related structures, retaining walls, slope and structural adequacy of components of the Path. TOWN will maintain, at TOWN expense, a safe facility for pedestrian and bicycle travel along the entire length of the path by providing sweeping and debris removal when necessary; and all signing and striping, and pavement markings required for the direction and operation of that non-motorized facility.
9. LEGAL RELATIONS AND RESPONSIBILITIES
 - 9.1. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of a PARTY to the Agreement by imposing any standard of care

with respect to the operation and maintenance of STATE highways and local facilities different from the standard of care imposed by law.

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

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

10. PREVAILING WAGES:

10.1. Labor Code Compliance- If the work performed under this Agreement is done under contract and falls within the Labor Code section 1720(a)(1) definition of a "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771. TOWN must conform to the provisions of Labor Code sections 1720 through 1815, and all applicable provisions of California Code of Regulations found in Title 8, Chapter 8, Subchapter 3, Articles 1-7. TOWN agrees to include prevailing wage requirements in its contracts for public works. Work performed by TOWN'S own forces is exempt from the Labor Code's Prevailing Wage requirements.

10.2. Requirements in Subcontracts - TOWN shall require its contractors to include prevailing wage requirements in all subcontracts when the work to be performed by the subcontractor under this Agreement is a "public works" as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771. Subcontracts shall include all prevailing wage requirements set forth in TOWN's contracts.

11. INSURANCE -

11.1. SELF-INSURED - TOWN is self insured. TOWN agrees to deliver evidence of self-insured coverage providing general liability insurance, coverage of bodily injury liability and property damage liability, naming STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. Coverage shall be evidenced by a certification of self-insurance letter ("Letter of Self-Insurance"), satisfactory to STATE, certifying that TOWN meets the coverage requirements of this section. This Letter of Self-Insurance shall also identify the Los Gatos Creek Trail location as depicted in EXHIBIT A. TOWN shall deliver to STATE the Letter of Self-Insurance with a signed copy of this AGREEMENT. A copy of the executed Letter of Self-Insurance shall be attached hereto and incorporate as Exhibit B.

11.2. SELF-INSURED using Contractor - If the work performed under this AGREEMENT is done by TOWN's contractor(s), TOWN shall require its contractor(s) to maintain in force, during the term of this AGREEMENT, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. Coverage shall be evidenced by a certificate of insurance in a form satisfactory to the STATE that shall be delivered to the STATE with a signed copy of this Agreement.

12. TERMINATION - This Agreement may be terminated by mutual written consent by PARTIES or by STATE for cause. TOWN's failure to comply with the provisions of this Agreement may be grounds for a Notice of Termination by STATE.

13. TERM OF AGREEMENT - This Agreement shall become effective on the date first shown on its face sheet and shall remain in full force and effect until amended or terminated as set forth in Article 14 above.

PARTIES are empowered by Streets and Highways Code Section 114 and 130 to enter into this Agreement and have delegated to the undersigned the authority to execute this Agreement on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this Agreement.

IN WITNESS WHEREOF, the PARTIES hereto have set their hands and seals the day and year first above written.

TOWN OF LOS GATOS

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
Mayor/Chairmen

Tony Tavares
Director of Transportation

Initiated and Approved

By: _____
TOWN Manager

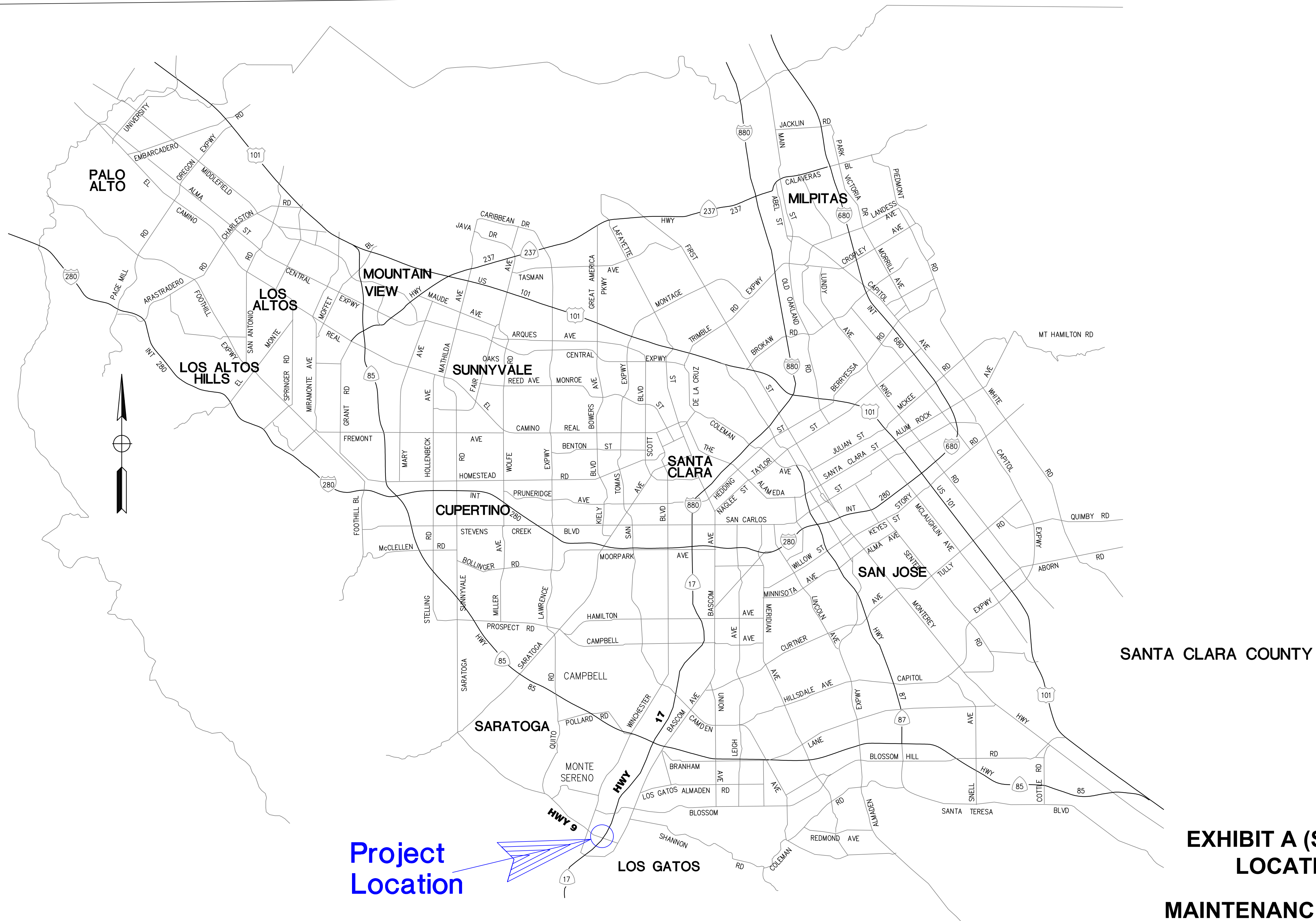
By: _____
Leah Budu
Deputy District Director
Maintenance District 04

ATTEST:

By: _____
TOWN Clerk

1

By: _____
TOWN Attorney

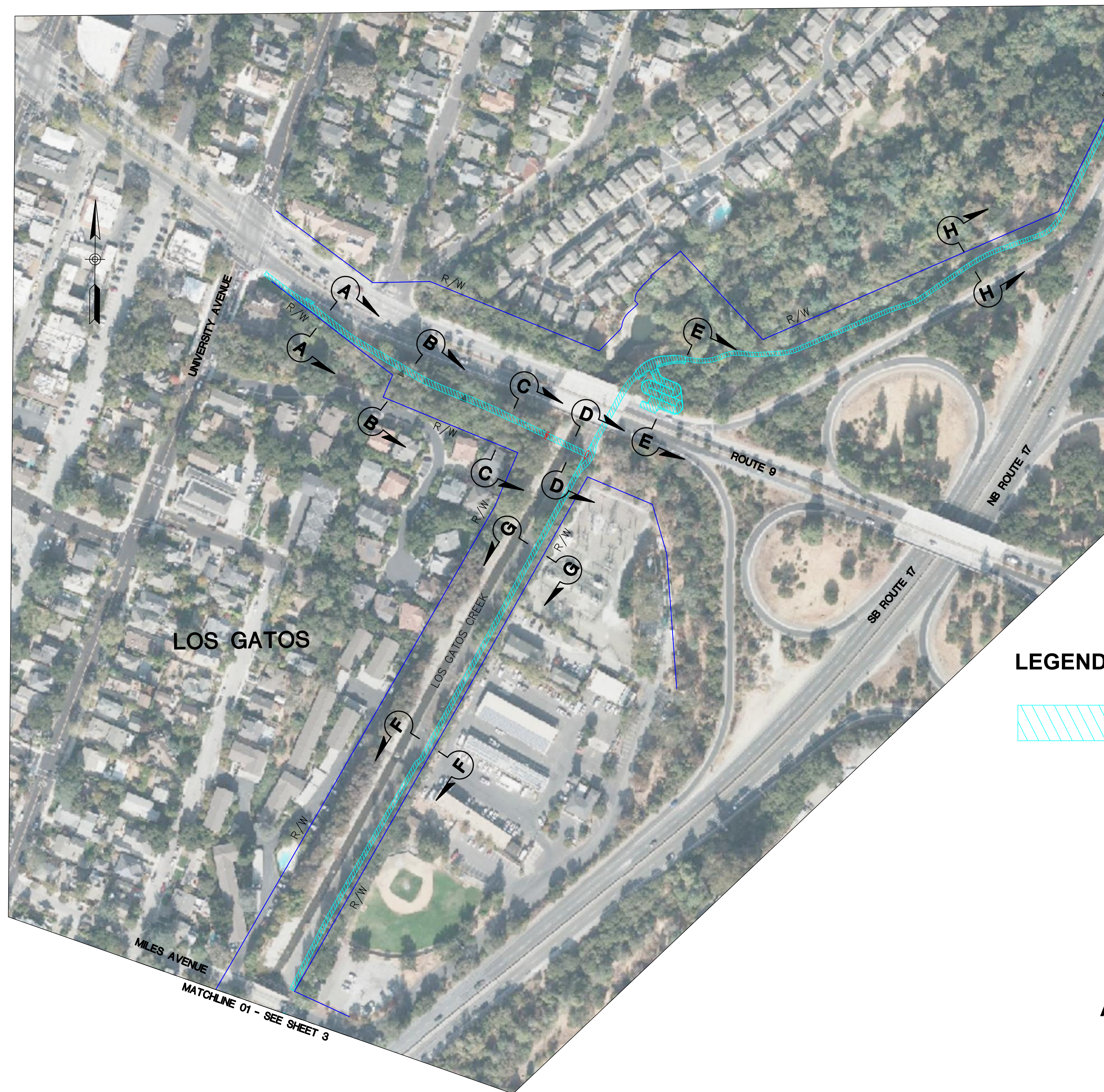


**EXHIBIT A (SHEET 1 of 4)
LOCATION MAP**

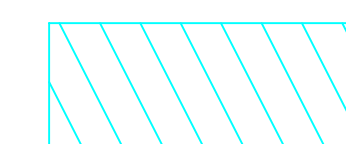
**MAINTENANCE AGREEMENT
WITH THE TOWN OF LOS GATOS
AND TRANSPORTATION DISTRICT**

04-SCI-17 PM 6.58 TO PM 7.66

NO SCALE



LEGEND



AREA WITHIN RIGHT OF WAY TO BE
MAINTAINED BY THE TOWN OF LOS GATOS

EXHIBIT A (SHEET 2 of 4)

MAINTENANCE AGREEMENT
WITH THE TOWN OF LOS GATOS
AND TRANSPORTATION DISTRICT

04-SCI-17 PM 6.58 TO PM 7.66

SCALE: 1" = 100'

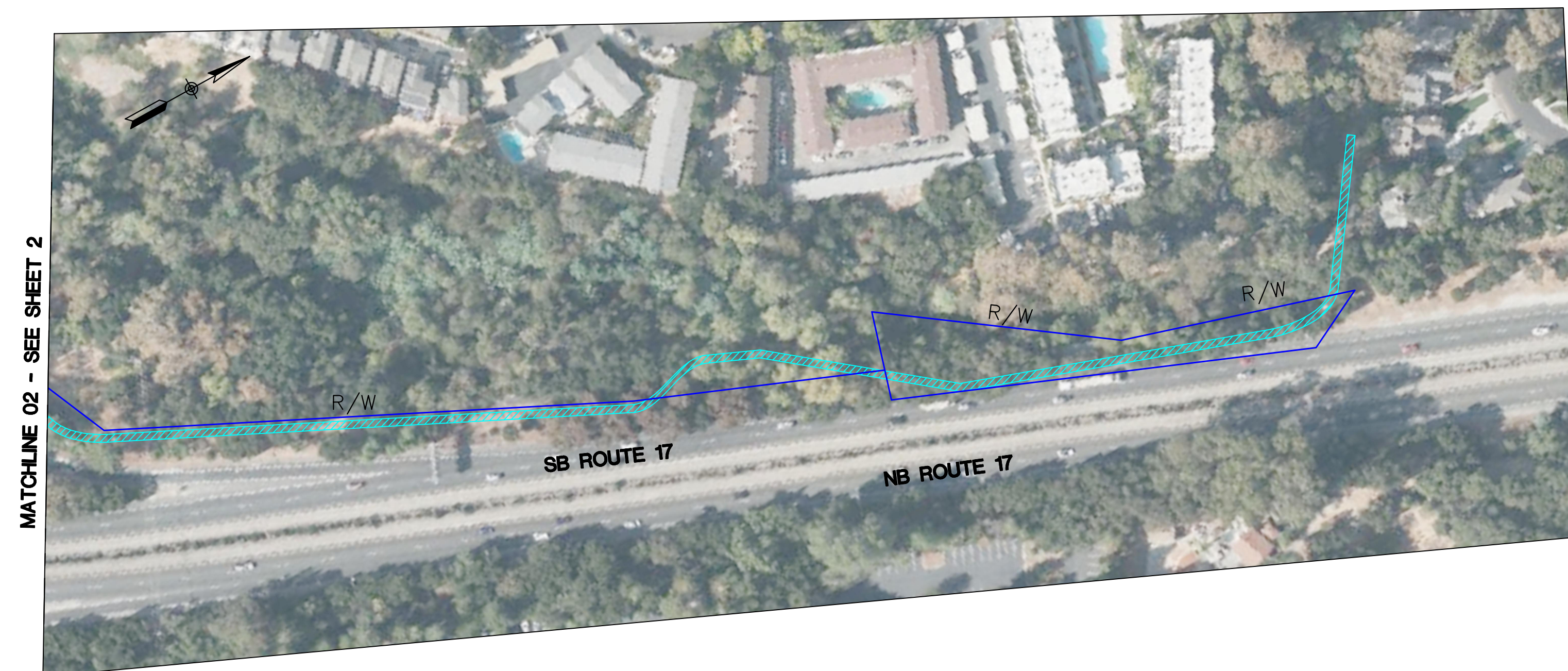
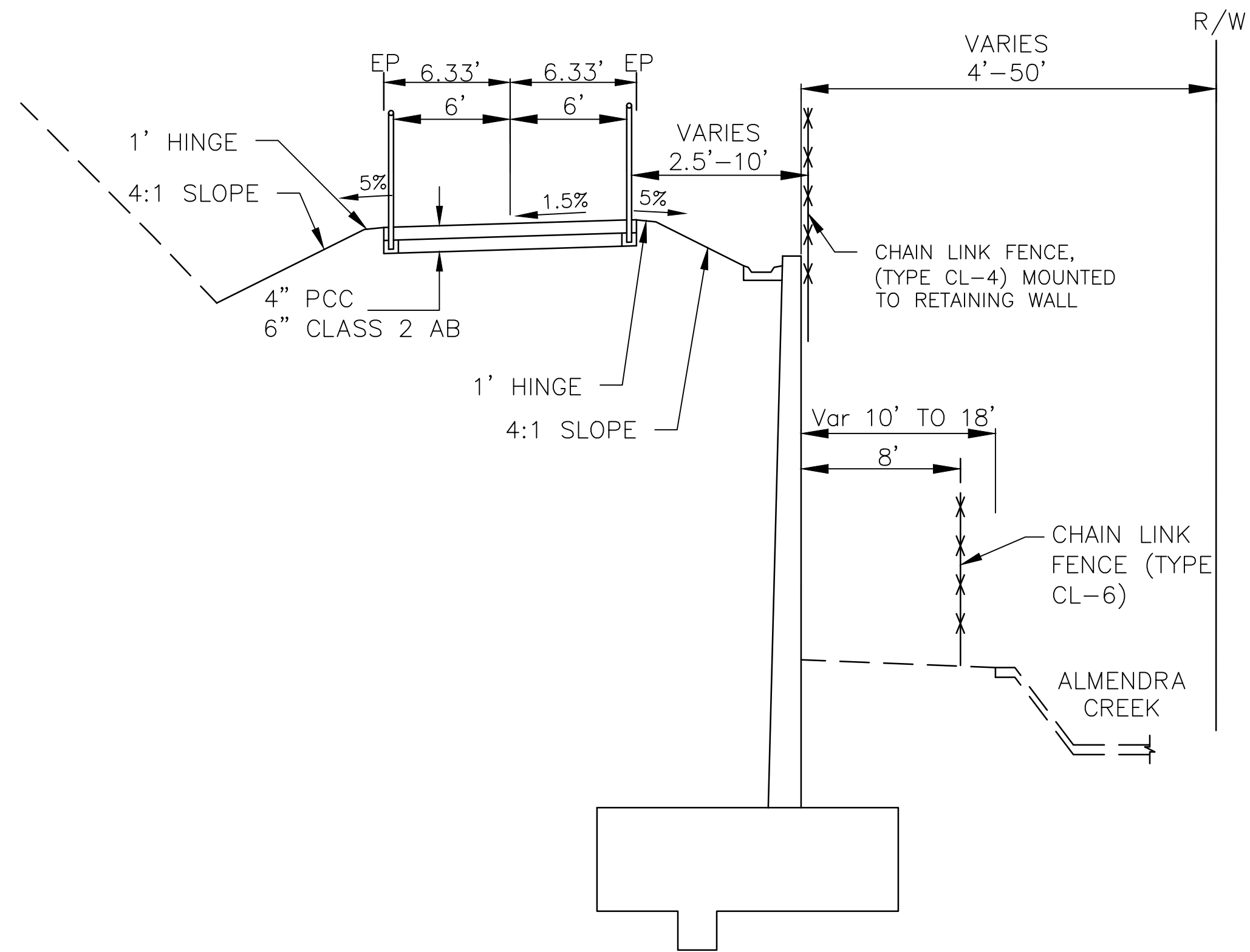


EXHIBIT A (SHEET 3 of 4)

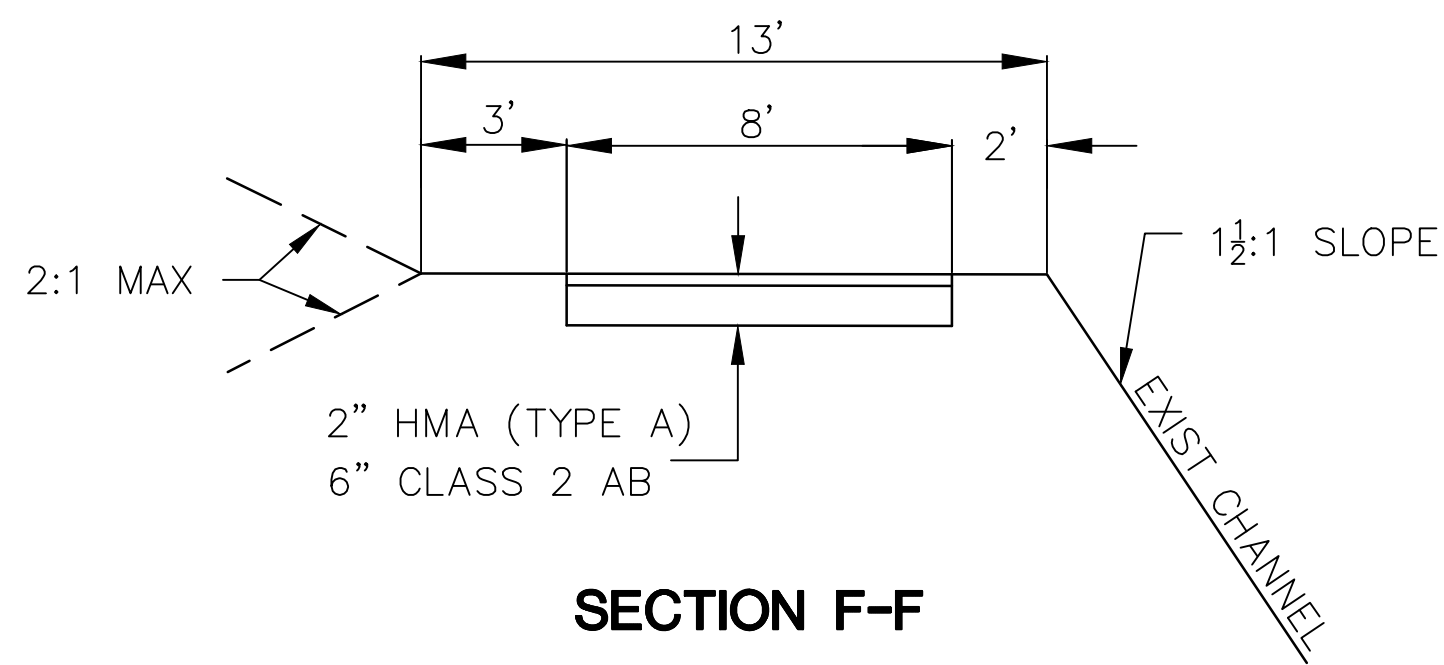
**MAINTENANCE AGREEMENT
WITH THE TOWN OF LOS GATOS
AND TRANSPORTATION DISTRICT**

04-SCI-17 PM 6.58 TO PM 7.66

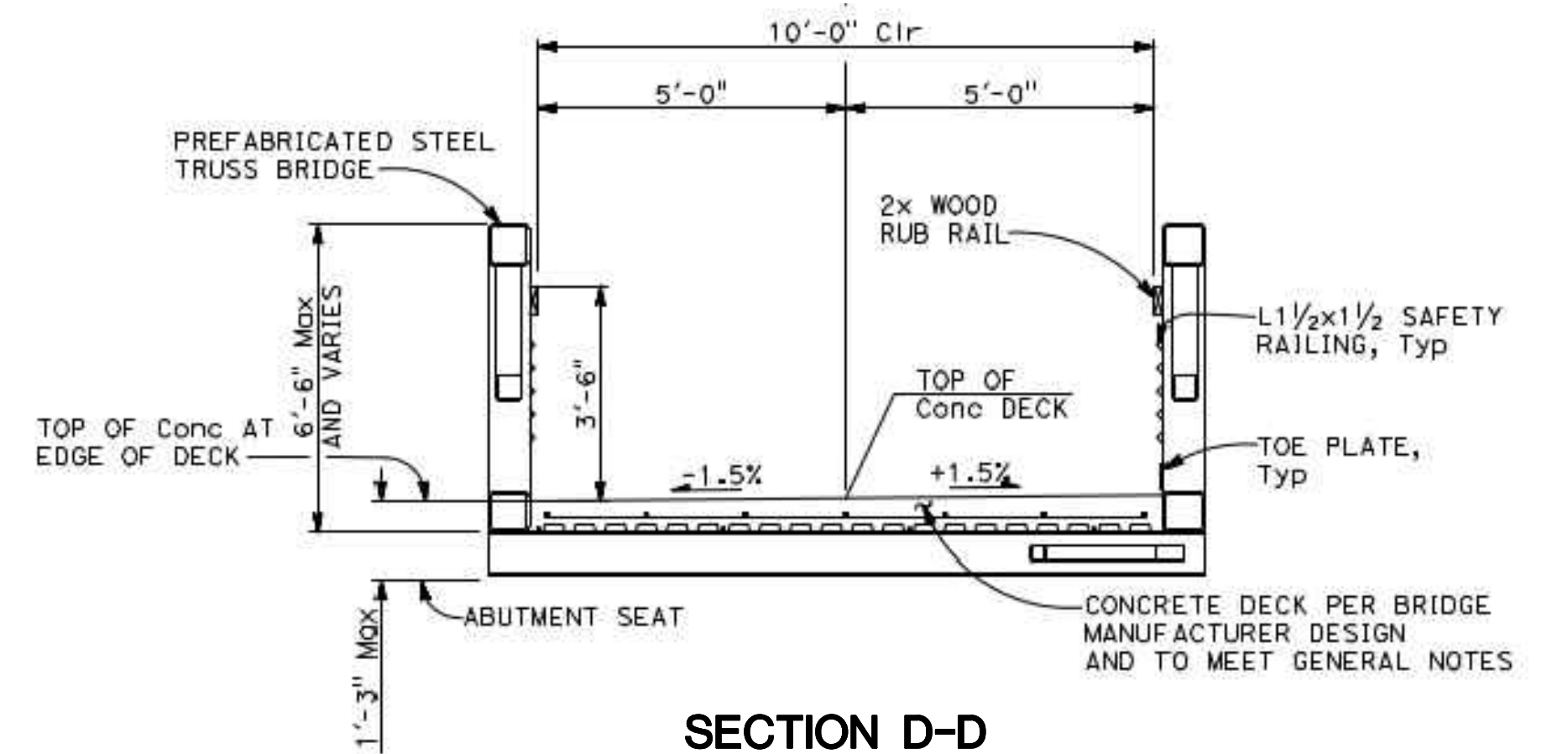
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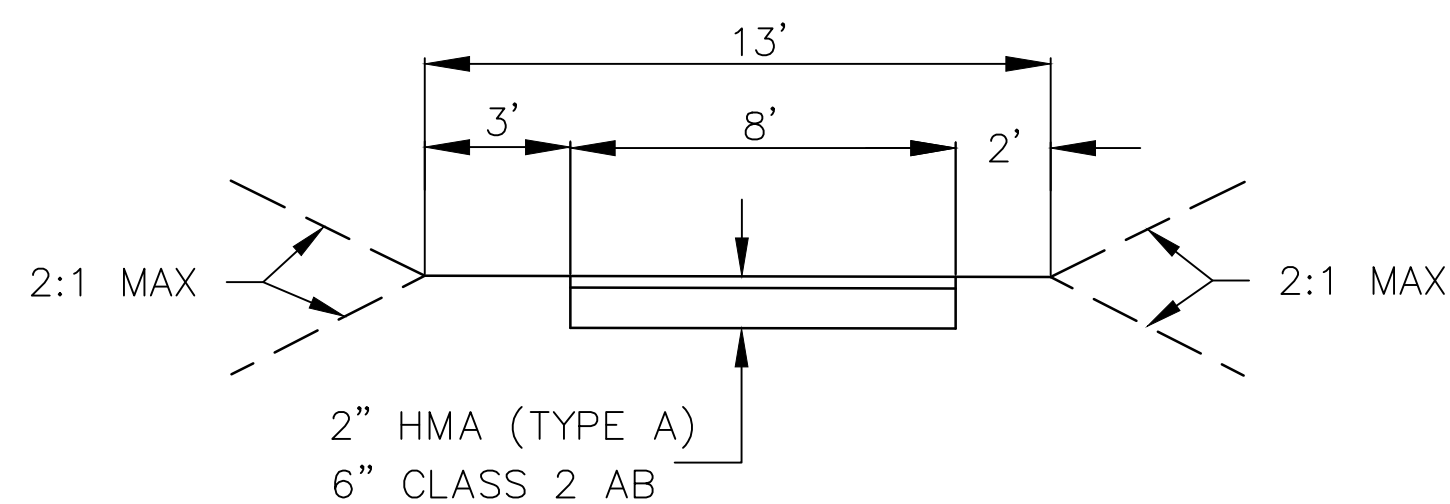
SECTION B-B



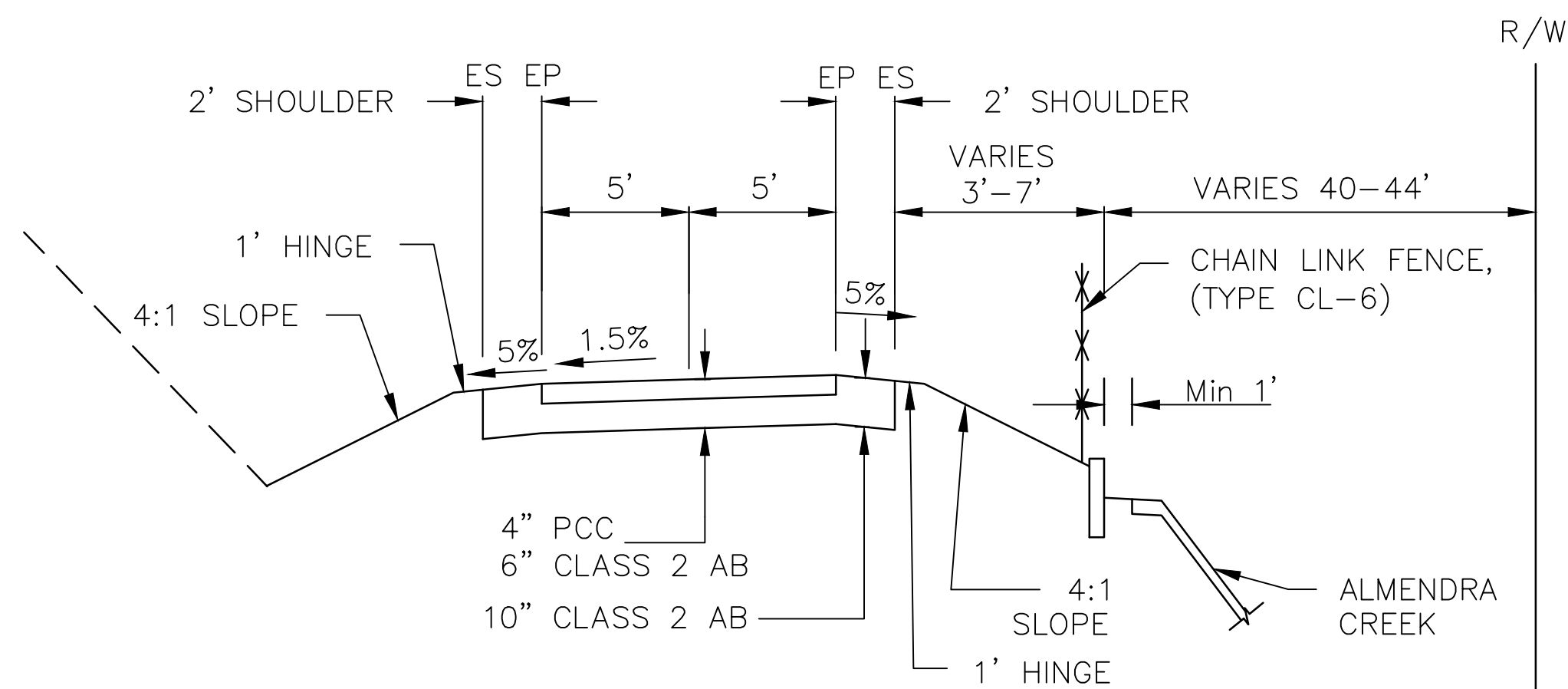
SECTION F-F



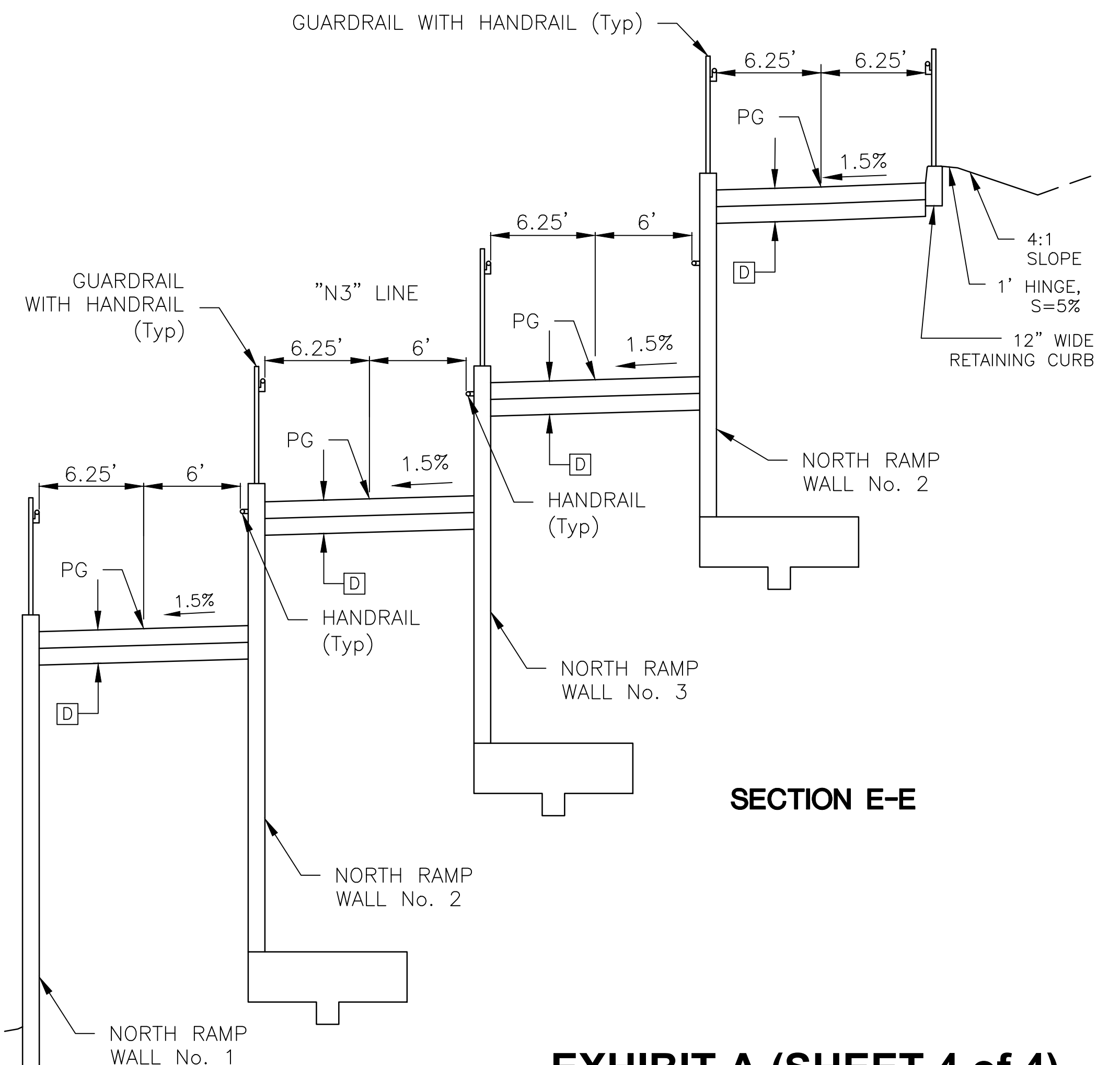
SECTION D-D



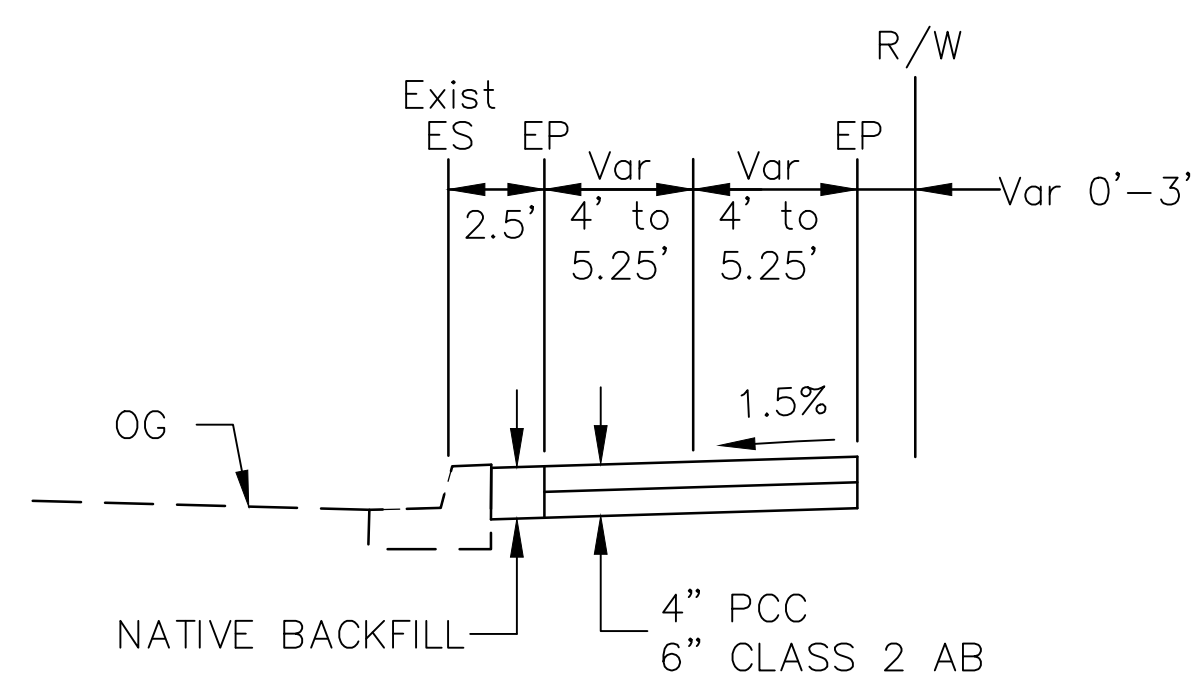
SECTION H-H



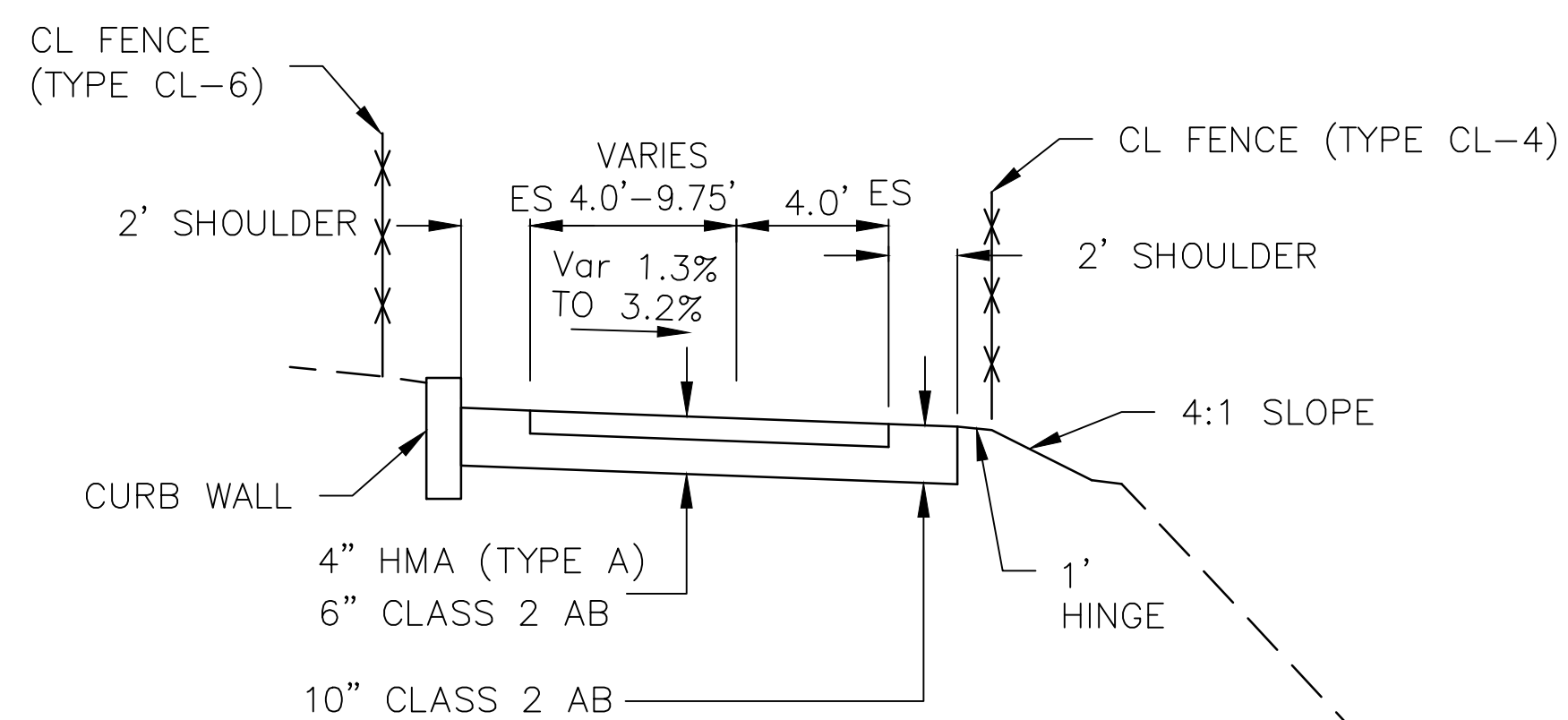
SECTION C-C



SECTION E-E



SECTION A-A



SECTION G-G

**EXHIBIT A (SHEET 4 of 4)
CROSS SECTIONS**

**MAINTENANCE AGREEMENT
WITH THE TOWN OF LOS GATOS
AND TRANSPORTATION DISTRICT**

04-SCI-17 PM 6.58 TO PM 7.66

NO SCALE

Pooled Liability Assurance Network Joint Powers Authority

**1750 Creekside Oaks Drive, Suite 200, Sacramento, CA 95833
916-244-1100**

Liability Certificate of Coverage

Evidence of Coverage

Certificate Holder: State of CA Department of Transportation

Attn: Leah Budu

Covered Party LG Parks and Public Works

Description of Covered Activity: As respects evidence of general and auto liability coverage regarding **Project Specific Maintenance A**
for the Town of Los Gatos Creek Trail in the Town of Los Gatos

Memorandum of Coverage Number:	GAL 2022 2023	Effective Date: 7/1/2022	Expiration Date: 6/30/2023
Limits:	\$5,000,000 (per occurrence)		
The Following Coverage is in effect:	General and automobile liability as defined in the Memorandum of Coverage on file with the covered party named above.		

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the Liability Memorandum of Coverage.

This is to certify that the coverage listed above has been issued to the Covered Party named above for the coverage period indicated, notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate may be issued or may pertain. The coverage afforded as described herein is subject to all the terms, exclusions, and conditions of the Memorandum of Coverage of the PLAN, which is available for your review upon request.

Coverage is in effect from 12:01 a.m. Pacific Time of effective date to 12:01 a.m. Pacific Time of expiration date as stated above and will not be canceled, limited, or allowed to expire except upon 30-day notice to the certificate holder.

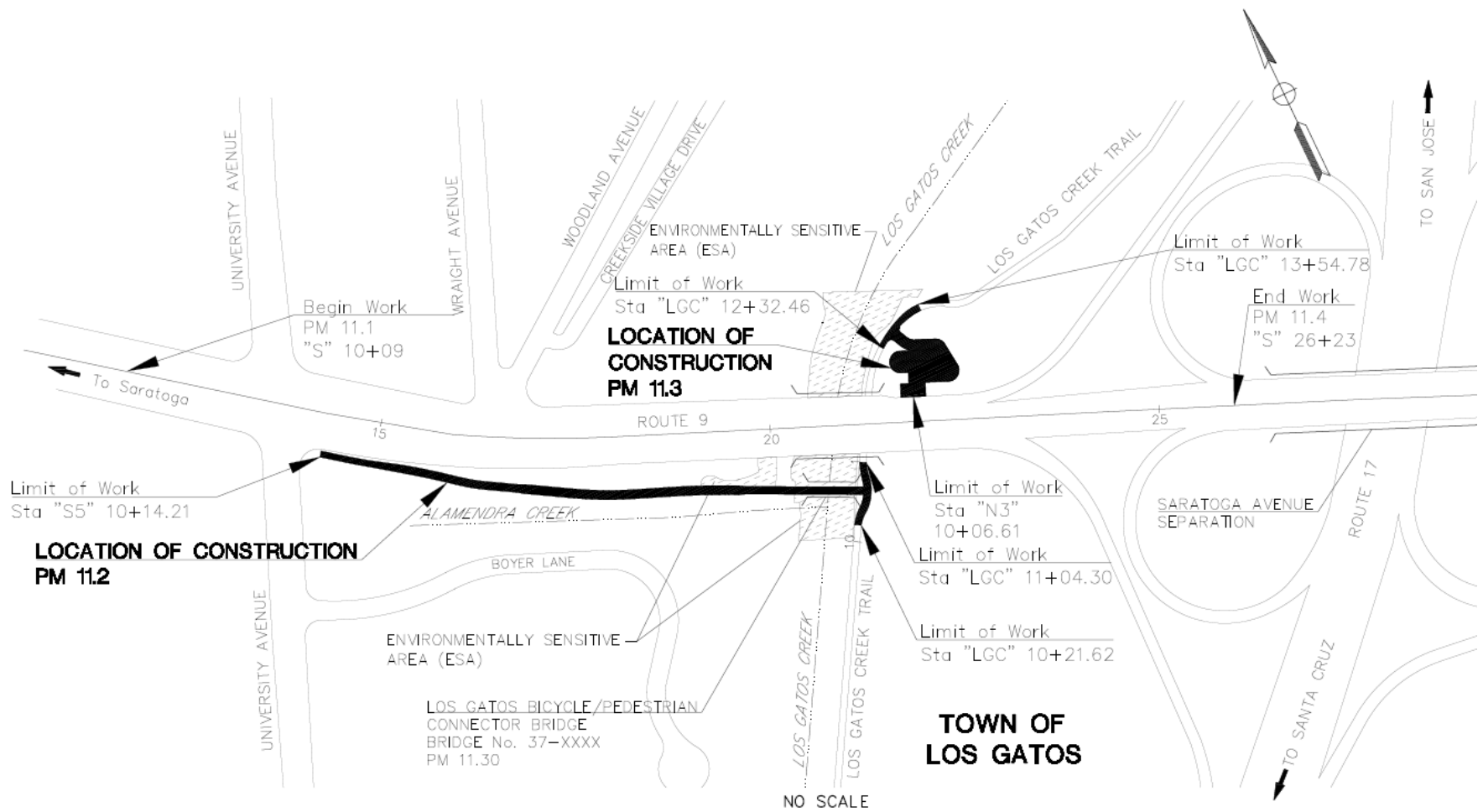
Date Issued: 9/28/2022

Renewal: Yes

Excess Certificate Issued: No

Authorized Representative Signature:





SITE PLAN



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 10/18/2022

ITEM NO: 7

DATE: October 3, 2022
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Enter into a Memorandum of Understanding with the Los Gatos Saratoga Union High School District and Los Gatos Union School District to Participate in a Community Norms Effort at a Cost Not to Exceed \$16,800

RECOMMENDATION:

Authorize the Town Manager to enter into an Memorandum of Understanding with the Los Gatos Saratoga Union High School District and Los Gatos Union School District to participate in a community norms effort at a cost not to exceed \$16,800.

BACKGROUND:

In 2021, staff at Los Gatos Saratoga Union High School District (LGSUHSD) requested that the Town Council update its Social Host Ordinance to enhance the enforcement provisions and create stronger accountability for the parents at whose homes or properties the parties may be occurring. LGSUHSD presented data to the Town Council about the use of alcohol by students and the impacts of this use. After the presentation, the Council directed the preparation of an updated Ordinance to address the items identified by LGSUHSD.

The Youth Commission participated in the creation of the stronger regulations in coordination with the Town Attorney. In May 2022, the Town Council adopted amendments to the Social Host Ordinance to strengthen its provisions regarding the use of alcohol and other controlled substances by youth at parties. The new regulations have higher fines for violations and stricter accountability for parents.

Since adoption, the Youth Commission and Police Department have been doing outreach to enhance awareness of the new regulations.

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

PAGE 2 OF 2

SUBJECT: Memorandum of Understanding with LGSUHSD and LGUSD for a Community Norms Effort

DATE: October 3, 2022

DISCUSSION:

LGSUHSD has done other research and learned that the substance-related decisions of both youth and adults are greatly affected by their perceptions of the behaviors of their peers. LGSUHSD has determined that a Positive Community Norms (PCN) framework is best suited to take the work of the Town, the school districts, and the public to the next level. PCN works on several levels at once, involving students, parents, teachers, and the entire community. PCN helps close the gap between perceptions of substance use and what is actually true. The Montana Institute (TMI) is the consultant who will lead this PCN project.

This project is a partnership between the LGSUHSD, the Los Gatos Union School District (LGUSD), and the Town of Los Gatos. Costs for this project will be shared as follows: LGSUHSD - \$28,000; LGUSD-\$11,200; and the Town of Los Gatos-\$16,800. Attachment 1 contains the Memorandum of Understanding that was approved by the LGSUHSD Board on September 27, 2022.

CONCLUSION:

The Town's participation in the community norms effort would benefit Los Gatos families by helping to address the use of substances and provide tools to reduce alcohol and substance use within the community.

COORDINATION:

The preparation of this report was coordinated with the Town Attorney and Finance Department. LGSUHSD took the lead in preparing the MOU with input from the Town and LGUSD.

FISCAL IMPACT:

The cost for the Town to participate in this effort is \$16,800 which can be funded through the Non-Departmental portion of the adopted Operating Budget. The Town's share of the cost is 30% of the total cost.

ENVIRONMENTAL ASSESSMENT:

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

Attachment:

1. Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING
FOR INTERVENTIONS TO REDUCE ALCOHOL USE IN THE LOS GATOS
COMMUNITY**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered by and between the Los Gatos Saratoga Union High School District (“LGSUHSD”), the Los Gatos Union School District (“LGUSD”), the Town of Los Gatos (“Town”) and The Montana Institute (“TMI”), a Montana Corporation. These entities may be collectively referred to as the **“Parties.”**

RECITALS

WHEREAS, TMI is devoted to the prevention of youth alcohol abuse, including binge drinking, through the use of surveys, data analysis and the formation and support of school and community based Positive Community Norms (“PCN”) Project Teams; and

WHEREAS, it is of vital concern to the Town, LGUSD and LGSUHSD to prevent and combat alcohol abuse and binge drinking for the health and safety of its youth and surrounding community; and

WHEREAS, LGSUHSD, LGUSD and the Town are authorized by Government Code section 53060 to contract with and employ an independent contractor specially trained to perform special services such as those required here;

WHEREAS, TMI represents that it is specially trained, experienced, and competent to perform the special services pursuant to this MOU; and

NOW, THEREFORE, for and in consideration of the Recitals above and the mutual covenants and conditions set forth herein, the Parties hereby agree as follows.

AGREEMENT

1. **Term of Agreement.** The term of this Agreement shall be from January 1, 2023, to December 31, 2023 (“**Term**”), unless terminated earlier in accordance with the terms herein.
2. **Type of Services; Contractor Duties.** TMI shall provide services to the Parties as further set forth in the Contractor’s Services and Procedures, attached hereto as **Exhibit “A”** and incorporated herein by this reference, and in accordance with the terms and conditions contained herein.
3. **Payment to TMI.** LGSUHSD, LGUSD and the Town will contribute to the fees due under this Agreement. Their relative shares shall be as follows: (i) LGSUHSD, \$28,000; (ii) LGUSD \$11,200; and (iii) Town, \$16,800. LGUSD and the Town shall reimburse LGSUHSD for payments made under this Agreement.

4. **Invoices** The Contractor shall submit a detailed, itemized invoice to the LGSUHSD representative monthly, on a form furnished by the District, certifying that Contractor has performed the services required. Invoice must state Agreement number in order to receive payment. TMI shall assume all expenses including, but not limited to, travel expenses, incurred by Contractor in performance of this Agreement, unless otherwise expressly authorized by the Parties in writing.
5. **Additional Expenses** TMI may provide additional services under this Agreement pursuant to the written authorization of the affected Party.
6. **Independent Contractor Not an Officer, Employee, or Agent of the Parties** While engaged in the performance of this Agreement, the Contractor is an independent contractor and is not an officer, employee, or agent of the Parties. Nothing in this Agreement shall be deemed to create an employment or agency relationship between the Parties.
7. **Indemnification.** Each Party agrees to defend, indemnify and hold harmless the other Parties and their respective officers, agents, employees, elected and appointed officials, and volunteers from and against any and all claims including active and passive claims, losses, costs, attorney fees and expenses arising out of any liability or claim of liability for personal injury, bodily injury to person or death, contractual liability and damage to property sustained or claimed to have been sustained during the performance of this Agreement to the extent that said harm resulted from the that Party's performance.
8. **Insurance.**
 - a. General Liability Insurance. During the entire Term of the Agreement and any extension or modification thereof, Contractor shall maintain insurance or a program of self-insurance acceptable to the Parties in their sole discretion, providing general liability insurance to cover Contractor's activities with a minimum Combined Single Limit for bodily injury, personal injury, and property damage as required: One Million Dollars (\$1,000,000). General Liability shall include Sexual Molestation Defense Liability.
 - b. Automotive (Owned and Non-Owned). During the entire Term of the Agreement and any extension or modification thereof, Contractor shall maintain insurance acceptable to the Parties in their sole discretion, to cover Contractor's activities with a minimum Combined Single Limit for automobile operations, bodily injury, personal injury, and property damage as required by District: One Million Dollars (\$1,000,000). .
 - c. Worker's Compensation. Contractor agrees to carry worker's compensation insurance acceptable to the Parties in their sole discretion at a limit determined by the Labor Code of the State of California and Employer's Liability insurance in the amount of One Million Dollars (\$1,000,000) or its current limit of each, whichever is greater. Proof of such coverage shall be furnished by Contractor prior to the commencement of this Agreement.

9. **Other Requirements.** All individuals under this Agreement are required to comply with and provide requisite documentation in accordance with all applicable law and Party policies regarding tuberculosis testing, fingerprinting, and criminal background checks.
10. **Assignment of Agreement.** Contractor shall not assign, transfer, or subcontract any of its rights, burdens, duties, or obligations under the Agreement without the prior written permission of the Parties.
11. **Americans with Disabilities Act.** All organizations/individuals providing services under contract to the Parties must agree to provide services in a nondiscriminatory manner consistent with the Americans with Disabilities Act.
12. **Governing Law.** The Parties agree that this Agreement is entered into and will be construed, interpreted, and governed by the laws of California, without regard to choice of laws principles. Exclusive venue for any and all disputes, claims, or actions arising out of or relating to this Agreement will be the courts of Santa Clara County, California.
13. **Student Data Privacy**
 - a. In accordance with applicable laws and regulations and the Student Data Privacy Agreement entered into between the Parties, Contractor agrees:
 - i. Contractor shall not store, nor permit any subcontractor or sub-processor to store, personally identifiable student information and other regulated data on a server or cloud-based service.
 - ii. Contractor shall maintain personally identifiable student information and other regulated data only to the extent necessary to provide the services during the Term of the Agreement.
 - iii. Contractor shall not personally, nor permit any subcontractor or sub-processor to, monetize or mine any personally identifiable student information and other regulated data in any manner whatsoever.
 - iv. Any and all labs, subcontractors, and sub-processors employed by Contractor shall comply with the terms of this Agreement.
14. **Termination of Agreement.** One or more of the Parties to this Agreement may terminate the Agreement at any time for any reason including, but not limited to, loss of funding for the Agreement. The termination of Agreement shall be in writing, with twenty-four (24) hours' notice. The Parties shall compensate the Contractor for services performed through the date of termination. Upon termination, the Parties may request that Contractor return or destroy any personal medical information in its possession that it is not required by law to maintain. In the event that the termination only effects one Party, the remaining Parties will discuss, in good faith, a reconfigured set of services.

15. **Taxes.** Contractor shall be liable and solely responsible for paying all required taxes and other obligations including, but not limited to, federal and state income taxes and social security taxes payable in connection with the Agreement. Contractor agrees to indemnify, defend, and hold the Parties harmless from and against any worker's compensation or other tax liability which the District may incur to any federal or state governments with jurisdiction as a consequence of the Agreement. All payment made to Contractor shall be reported to the Internal Revenue Service.
16. **Notices.** All notices and other communications given hereunder will be in writing. Notices will be effective when delivered, if delivered personally. Otherwise, they will be effective when sent to the Parties at the addresses listed below, as follows: (i) on the business day delivered (or the next business day following delivery if not delivered on a business day) if personally delivered or sent by overnight delivery courier; (ii) the next business day after transmission by confirmed electronic mail, facsimile or electronic means; or (iii) three (3) business days after mailing if mailed by registered or certified U.S. mail, postage prepaid and return receipt requested to the address listed below:

IF TO THE MONTANA INSTITUTE

ATTN: Valerie Roche
P.O. Box 5015
Bozeman, MT 59717
Phone: (406) 579-2577
Email: Valerie.roche@gmail.com

IF TO LOS GATOS SARATOGA UNION HIGH SCHOOL DISTRICT

ATTN: Heath Rocha
Assistant Superintendent
17421 Farley Road West
Los Gatos, CA 95030
Phone: (408) 354-6278
Email: hrocha@lgsuhd.org

IF TO LOS GATOS UNION SCHOOL DISTRICT

ATTN: Misty Hartung
Director of Student Services
17010 Roberts Road
Los Gatos, CA 95032
Phone: (408) 335-2040
Email: mhartung@lgusd.org

IF TO TOWN OF LOS GATOS

ATTN: Laurel Prevetti
Town Manager
110 E. Main Street
Los Gatos, CA 95030
Phone: (408) 354-6832
Email: LPrevetti@losgatosca.gov

Any person or entity may change the address or number to which notices are to be delivered to him, her or it by giving the other persons or entities named above notice of the change in the manner set forth above:

17. **Headings.** The headings contained in this Agreement are for reference purposes only and will not affect the meaning or interpretation of this Agreement.
18. **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
19. **Force Majeure.** No liability hereunder will result to any Party by reason of delay or inability in performance caused by circumstances beyond its reasonable control, including, without limitation, acts of God, acts of governmental authority, fire, flood, war, terrorism, civil unrest, labor unrest, shortage of or inability to obtain material or equipment, government orders or guidelines, illness, or disease.
20. **Entire Agreement.** This Agreement and its Exhibits hereto constitute the complete agreement between the Parties with respect to the subject matter hereof, superseding and replacing all prior agreements, communications, and understandings (written and oral) regarding its subject matter. Any ambiguity in this Agreement shall be resolved in favor of the meaning that permits the Parties to comply with applicable law and any current regulations promulgated thereunder. Any failure of a Party to exercise or enforce any of its rights under this Agreement shall not act as a waiver of such rights.
21. **Amendments; Modifications.** Any amendments, modifications, or changes to this Agreement or the services hereunder may only be made if agreed to in writing and executed by the authorized representatives of the Parties.
22. **Construction.** The Parties have participated mutually in the negotiation and drafting of this Agreement. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted mutually by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.
23. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which, when taken together, will constitute one and the same instrument.
24. **Authority to Enter into Agreement.** Each Party hereby represents and warrants that it has the power and authority to enter into this Agreement.
25. **Approval.** The Agreement shall become effective upon approval or ratification by each Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

THE MONTANA INSTITUTE

Signature

Name

Title

Date

LOS GATOS SARATOGA UNION HIGH SCHOOL DISTRICT

Signature *Heath Rocha*

Heath L Rocha

Name

Assistant Superintendent

Title

09/28/22

Date

LOS GATOS UNION SCHOOL DISTRICT

Signature

Name

Title

Date

TOWN OF LOS GATOS

Signature

Name

Title

Date

EXHIBIT “A”
(Description of Services)

Background

While binge drinking is a serious issue at Los Gatos High School (LGHS), with rates that are concerning higher than those measured in comparable schools and statewide, it is important to remember that binge drinking is not the norm among LGHS students. The norm is that 91% of LGHS 9th-12th graders didn't binge in the previous 30 days prior to the survey, and 85% didn't consume alcohol at all during that time (Source: Questions A.96 and A.97 of the CHKS 2021 Survey).

This distinction is of critical importance. Decades of norms research has shown that the substance-related decisions of both youth and adults are greatly affected by their perceptions of the behaviors of their peers. When youth perceive that most of their peers *would* do something, they are more likely to engage in that behavior. Conversely, when youth perceive that most of their peers *would not* do something (or would greatly disapprove of them doing it) they feel supported in deciding not to do it themselves, and can be empowered to intervene as bystanders.

The problem is that youth (and adults) usually misperceive the norms of their peers, believing that risky behaviors are far more common than they are. This is a hidden risk factor when it comes to many issues, including youth alcohol use. By correcting LGHS students' misperceptions of alcohol use norms, we can build on current norms to increase the number of students who are making the choice not to binge drink, or not to drink at all. It is important to include middle school students in these efforts as well. Sixth, seventh, and eighth graders will be high schoolers before you know it, and the earlier you can start to correct their misperceptions about alcohol use, the more effective and sustainable your intervention will be. (Please see the articles I forwarded about the success of our PCN efforts in middle and high schools across Minnesota.)

Below is our proposal for helping a local project team plan and launch a Positive Community Norms (PCN) intervention to increase alcohol non-use and reduce binge drinking among Los Gatos youth. Please let me know if you have any questions. This proposal is for the first year of work. Note that PCN is a long-term process of cultural transformation; it requires time and fidelity to see results.

Parties: This project would be launched in partnership between the Los Gatos Saratoga Union High School District, the Los Gatos Union School District, and the Town of Los Gatos.

Timeline: January 1, 2023 through December 31, 2023, with the goal of launching a PCN campaign at Fisher Middle School (FMS) and LGHS at the beginning of the 2023-2024 school year.

Introductory Training Event for Key Stakeholders

TMI will provide a remote “*Introduction to Positive Community Norms*” workshop. This 2-hour session will provide an introduction to Positive Community Norms (PCN) and the Science of the Positive framework on which it is based. It will be open to project staff, school staff, potential partners, and other key stakeholders identified by the client. The goals of this event are to introduce the positive, normative approach to the Los Gatos community, help stakeholders to understand the science behind it, increase support for the PCN project, and begin to build an environment in which the intervention will succeed. Interactive, small-group activities will help shift participants’ focus from what they are trying to *prevent* to what they are trying to *grow* in their communities and inspire them to want to get involved with or support a local PCN project. Building this project support is an important aim of effective PCN projects. Project to be hosted on TMI’s Zoom platform; TMI will provide an online evaluation form and all relevant electronic materials. *Estimated timing: January 2023. Cost = \$3,500.*

Supplemental Positive Community Norms Student Survey

In order to gather more information about student perceptions around youth alcohol use, TMI will create a brief online survey that will serve as a complement to the Los Gatos data collected by the California Healthy Kids Survey. This 10-12 question survey will gather information on student perceptions of peer alcohol use norms and additional information on student attitudes about alcohol use. This survey data will be essential to implementing a PCN intervention at LGHS. TMI will provide the electronic survey links to FMS and LGHS for administration, provide guidance on survey administration, clean and analyze the data, and provide a report on the results to all parties in the MOU. LGHS and FMS staff will be responsible for distributing and administering the survey among the student body, and ensuring a strong response rate. *Estimated Timing: February/March 2023. Cost = \$11,000*

Parent and Teacher Survey

Students are not the only members of the LGHS community that are likely to have significant misperceptions about alcohol use among their peers. Parents, teachers, and school staff are often carriers of the misperceptions as well -- fueling false narratives that binge drinking is the norm, that it is a “rite of passage” or that “everyone is doing it.” To create a real cultural shift around alcohol use at LGHS, it is important to include parents and teachers in the PCN process as well. TMI will create an online survey that can be sent out by the school to all current parents, teachers, and staff. TMI will provide the electronic survey to LGHS, clean and analyze the data, and provide a report on the results to all parties in the MOU. LGHS and FMS staff will be responsible for distributing the survey to parents, teachers and staff, and ensuring a strong response rate. *Estimated Timing: February/March 2023. Cost = \$18,000*

Training and Technical Assistance to LGHS PCN Project Team

TMI will provide Training and Technical Assistance (TA) to the LGHS PCN Project team to help ensure fidelity to PCN best practices, assist in the development of campaign materials, and prepare for future project sustainability. This training and TA will be provided to a select project team of up to 10 members identified by school staff. This TA will be structured around our national award winning Seven Step Model of Positive Community Norms Communications and may include live training sessions, recorded videos and online learning modules, as well as additional support in the form of emails, phone calls, and other learning materials. These trainings will be delivered by selected members of the TMI staff who have extensive experience in implementing school-based PCN campaigns, and will include both printed and electronic supporting materials. TMI will deliver a maximum of four hours of TA per month. TA hours include prep, planning, document review and material creation in addition to hours spent directly working with the Project Team and parties in the MOU. *Estimated timing: see below.*
Cost = \$23,500

Step 1: Planning and Environmental Advocacy

Developing the Seven Core Principles of the Science of the Positive. This is a key process that ensures that everyone is approaching the work from the same perspective and creates a strong, positive foundation for all project leadership, communications, and message development. *Estimated timing: January/February 2023.*

Step 2: Baseline Data

TMI will lead the Project Team through the best practices of administering the Supplemental Positive Community Norms Student Survey and the Parent and Teacher Positive Community Norms Survey described above. Once the data are collected and analyzed, TMI will lead the Project Team in reviewing the results, along with the results of the CHKS data, and evaluating them for use as the basis of potential Positive Community Norms messages. *Estimated timing: January-April 2023*

Step 3: Message Development

TMI will train the Project Team in the art and science of developing effective PCN messages, and lead them in a hands-on, skill-building process of developing messages to go out in their communities. Multiple campaign messages will be developed for the three primary project audiences: students, parents, and teachers. *Estimated timing: May-July 2023*

Step 4: Communications Planning

TMI will assist Client in developing a multi-channel Communications Plan for getting PCN messages out in the community, based upon Client goals and budget. Note that funds for creating and placing media (i.e. graphic design costs, image sourcing, paid advertising placement) are not included in this proposal. *Estimated timing: July-August 2023*

Step 5: Pilot Testing and Refining

Pilot Testing and Refining messages is a PCN Best Practice. TMI will train the Project Team on how to thoroughly pilot test all campaign messages and materials. *Estimated timing: July-September 2023*

Step 6: Campaign Implementation

TMI will train the Project Team in the daily ins and outs of campaign implementation and troubleshooting, alongside the important job of hearing and steering the dialogue around your messages in order to close misperception gaps. *Estimated timeline: August-September 2023*

Step 7: Evaluation

TMI will help the Project Team create an evaluation plan to measure the impacts of the LGHS campaign over time. This will include both qualitative and quantitative data, and will likely include additional administrations of the Supplemental Student and Parent/Teacher Surveys. They will also reflect on the work done together over the project year, and assess ongoing needs for training, TA and survey support. *Estimated timeline: October-December 2023.*

Please let me know if you have any questions. We can continue to add to or amend this proposal as we work towards a final Scope of Work. The entire TMI team is excited about this opportunity to help you grow positive norms and increase health among Los Gatos youth!



TOWN OF LOS GATOS
FINANCE COMMISSION REPORT

MEETING DATE: 10/18/2022

ITEM NO: 8

DATE: October 11, 2022
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Receive Independent Accountants' Report on Agreed-Upon Procedures on Measure G Revenues and Expenditures for the Period March 1, 2019 to June 30, 2021

RECOMMENDATION:

Staff recommends that Town Council receive the Independent Accountants' Report on Agreed-Upon Procedures (AUP) on Measure G Revenues and Expenditures for the period March 1, 2019 to June 30, 2021.

BACKGROUND:

On June 19, 2018, the Los Gatos Town Council adopted Ordinance No. 2274 establishing a General Transaction and Use Tax ("Ordinance 2274") for a period of twenty years and put forth the required ballot measure for voter consideration. On November 6, 2018, the voters of the Town approved the 1/8 Sales Tax dedicated to Los Gatos (Measure G). Among other items, Ordinance 2274 and Measure G required Citizens Oversight to ensure funds are spent according to the Measure's stated intent.

On November 3, 2020, voters of Los Gatos approved the Measure A ballot initiative establishing a new Finance Commission and disbanding both the Finance Committee and Sales Tax Oversight Committee. Among other responsibilities, the Finance Commission is charged with:

- (7) Issue an annual public report of the expenditures and appropriations of sales tax revenues approved by the Town Council during each fiscal year.

PREPARED BY: Gitta Ungvari
Interim Finance Director

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

DISCUSSION:

On September 16, 2022, Badawi & Associates finished the review process and provided the Independent Accountants' Report on Agreed-Upon Procedures on Measure G Revenues and Expenditures for the Period March 1, 2019 to June 30, 2021 as presented in Attachment 1 of this staff report. During this period, there were ten expenditures that utilized Measure G funds consistent with the Town Council's adopted FY 2019/20 and FY 2020/21 Budgets:

FY 2019/20	State Admin Fees Withheld	April - June 2019	\$	9,330
FY 2019/20	State Admin Fees Withheld	July -Sept 2019		9,330
FY 2019/20	State Admin Fees Withheld	Oct - Dec 2019		9,330
FY 2019/20	State Admin Fees Withheld	Jan - Mar 2020		5,060
FY 2020/21	State Admin Fees Withheld	April - June 2020		10,310
FY 2020/21	State Admin Fees Withheld	July -Sept 2020		10,310
FY 2020/21	State Admin Fees Withheld	Oct - Dec 2020		10,310
FY 2020/21	State Admin Fees Withheld	Jan - Mar 2021		7,440
FY 2020/21	State Admin Fees Withheld	April - June 2021		12,670
Total Collection Fees				84,090
FY 2020/21	50% to Police Safety			549,328
Total Expenditures				633,418

"State Admin Fees Withheld" is the administration fee imposed by the State Department of Tax Fee Administration to Los Gatos that is deducted from collected Measure G sales tax. Badawi & Associates found that the expenditures were consistent with the voter approved Measure G.

The Finance Commission received this report on October 10, 2022 and had no comments.

CONCLUSION AND NEXT STEPS:

Staff recommends that the Town Council to receive the Independent Accountants' Report. During the budget process, the Council approves the expenditures and appropriations of the sales tax revenues with consideration of the Finance Commission's recommendation(s).

Attachment:

1. Independent Accountants' Report on Agreed-Upon Procedures for Measure G Revenues and Expenditures For the period March 1, 2019 to June 30, 2021.

Town of Los Gatos

Los Gatos, California

*Independent Accountants' Report
On Agreed-Upon Procedures on Measure G
Revenues and Expenditures
For the period March 1, 2019 to June 30, 2021*



INDEPENDENT ACCOUNTANTS' REPORT

To the Honorable Mayor and Town Council
of the Town of Los Gatos
Los Gatos, California

We have performed the procedures enumerated below on the accompanying Schedule of Measure G Revenues and Expenditures of the Town of Los Gatos (Town) for the period from March 1, 2019, to June 30, 2021. The Town's management is responsible for the Measure G revenues and expenditures.

The Town has agreed to and acknowledged that the procedures performed are appropriate to meet the intended purpose of determining whether Measure G sales taxes were used and accounted for in accordance with specified laws, regulations, and recommendations of the Finance Commission for the period from March 1, 2019, to June 30, 2021. This report may not be suitable for any other purpose. The procedures performed may not address all the items of interest to a user of this report and may not meet the needs of all users of this report and, as such, users are responsible for determining whether the procedures performed are appropriate for their purposes.

The procedures performed and our findings are described below:

1. We obtained and reviewed Town Ordinance 2274, Amending Chapter 2.60 of the Town's Municipal Code, "'Transactions and Use Tax' to Extend the One-Eighth Cent Transactions and Use Tax Term for Twenty Years".

Finding: No exceptions were noted as a result of our procedures.

2. We obtained and reviewed Town Ordinance 2314, adding Article 5 to Chapter Two and amending Chapter 25.60.140 of the Town's Municipal Code.

Finding: No exceptions were noted as a result of our procedures.

3. We obtained a schedule of Measure G revenues and expenditures for the period from March 1, 2019 to June 30, 2021 and agreed totals reported on the schedule to the Town's audited trial balance.

Finding: No exceptions were noted as a result of our procedures.

4. We compared Measure G revenues reported to monthly sales tax reports from the California Department of Tax and Fee Administration (CDTFA).

Finding: No exceptions were noted as a result of our procedures.

To the Honorable Mayor and Members of Town Council
of the Town of Los Gatos
Los Gatos, California

5. Inquired if the Finance Commission reviewed and recommended use of Measure G revenues to the Town Council to meet the following objectives.
 - a. Maintaining and enhancing neighborhood police patrols and local crime prevention programs;
 - b. Improving Traffic Flow to Reduce Congestion;
 - c. Repairing potholes and maintaining the Town's streets, roads, and sidewalks; and
 - d. Maintaining the Town's long-term financial stability.

Finding: No exceptions were noted as a result of our procedures.

6. Inquired if the Town Council received the Finance Commission's recommendation and adopted a Council authorized expenditure plan directing the use of Measure G revenues for the period under reported thereupon.

Finding: No exceptions were noted as a result of our procedures.

7. Selected a sample of 25 Measure G expenditures to verify if they were for allowable purposes. Per Measure A Ordinance 2314 eligible expenditures include:
 - a. Maintaining and enhancing neighborhood police patrols and local crime prevention programs;
 - b. Improving traffic flow to reduce congestion;
 - c. Repairing potholes and maintaining the Town's streets, roads, and sidewalks; and
 - d. Maintaining the Town's long-term financial stability.

Finding: Measure G had only 10 expenditures during the period from March 1, 2019 to June 30, 2021. We tested all 10 expenditures and found no exceptions.

8. Agreed amounts held in the General Fund Reserve sub-fund for Measure G agree to Measure G sales tax collections from first receipt of revenues to report date less any amounts reduced for Town Council authorized uses as reported on the auditor's review of tests of expenditures.


Finding: No exceptions were noted as a result of our procedures.

We were engaged by the Town to perform this agreed-upon procedures engagement and conducted our engagement in accordance with attestation standards established by the AICPA. We were not engaged to and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on the accompanying Schedule of Measure G Revenues and Expenditures. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

To the Honorable Mayor and Members of Town Council
of the Town of Los Gatos
Los Gatos, California

We are required to be independent of the Town and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of the Town Council and management of the Town and is not intended to be and should not be used by anyone other than these specified parties. However, this report is a matter of public record and its distribution is not limited.

A handwritten signature in black ink that reads "Badawi & Associates". The signature is written in a cursive, flowing style.

Badawi & Associates, CPAs
Berkeley, California
September 16, 2022

**TOWN OF LOS GATOS
MEASURE G
SCHEDULE OF REVENUES AND EXPENDITURES
FOR THE PERIOD MARCH 1, 2019 TO JUNE 30, 2021**

	<u>Measure G</u>
REVENUES	
Sales Taxes - Measure G	\$ 2,363,908
Total Revenues	<u>2,363,908</u>
EXPENDITURES	
Public Safety	549,328
Collection Fees	<u>84,090</u>
Total Expenditures	<u>633,418</u>
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	<u>1,730,490</u>
NET CHANGES IN UNSPENT PROCEEDS	1,730,490
BEGINNING BALANCE OF UNSPENT PROCEEDS	<u>-</u>
ENDING BALANCE OF UNSPENT PROCEEDS	<u><u>\$ 1,730,490</u></u>

Town of Los Gatos
Notes to Schedule of Measure G Revenues and Expenditures
For the period from March 1, 2019, to June 30, 2021

1. MEASURE G

Measure G is a 1/8 percent transaction and use tax approved by voters in November 2018 for a twenty-year period. The Town of Los Gatos (Town) received the first taxes in May 2019 which represented sales in March 2019. In November 2020, voters approved a second measure which codified Measure G's objectives:

- a. Maintaining and enhancing neighborhood police patrols and local crime prevention programs
- b. Improve traffic flow to reduce traffic congestion
- c. Repairing potholes and maintaining the Town's streets, roads, and sidewalks
- d. Maintaining the Town's long-term financial stability

2. COLLECTION FEES

Collection fees are fees imposed by the State for collecting the Measure G sales tax and distributing it to the Town. Cash received by the Town is net of these fees. The Town has elected to record the gross sales taxes as revenue and the collection fees as expenditures.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 10/18/2022

ITEM NO: 9

DATE: October 13, 2022
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Storm Drainage System Repair at 62 Ellenwood Avenue (CIP No. 816-0420):
a. Reject All Bids Received and Opened on October 10, 2022 for the Project; and
b. Authorize the Town Manager to Re- Bid the Project with Changes that May Reduce Project Cost.

RECOMMENDATION:

Storm Drainage System Repair at 62 Ellenwood Avenue (CIP No. 816-0420):
a. Reject all bids received and opened on October 10, 2022 for the project; and
b. Authorize the Town Manager to re-bid the project with changes that may reduce project cost.

BACKGROUND:

On September 20, 2022, the Town Council authorized the bidding of the repair of the Town-owned storm drainage system that runs through the private property at 62 Ellenwood Avenue. Staff worked closely with the property owner and their engineers to develop design plans. The project was advertised for bid on September 26, 2022 and bids were opened on October 10, 2022. Three bids were received and all three exceeded the \$300,000 anticipated project cost reported to Council at the meeting of September 20, 2022 (see Attachment 1 for the bid summary).

DISCUSSION:

The project consists of the installation of 320 feet of High Density Polyethylene (HDPE) pipe to be installed adjacent the property line of 62 Ellenwood Avenue. The project is complicated by

PREPARED BY: Nicolle Burnham
Director, Parks and Public Works

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

SUBJECT: Consider Drainage Improvements at 62 Ellenwood Avenue; Reject All Bids and Authorize Re-bidding

DATE: October 13, 2022

DISCUSSION (continued):

the presence of a large oak tree, and ongoing construction associated with a new residence and associated ancillary improvements (e.g., pool, retaining walls, etc.) on the property. The complexity of the construction is considered to be a driver of the project cost. In rebidding the project, staff will evaluate the installation methods and propose cost saving measures.

Delaying installation of the drainage pipe until after completion of the residence and associated improvements will make the site more difficult to access for construction. Re-routing the drainage system around the property may be possible but would be more costly as the likely route would be to extend the piping within Ellenwood Avenue and other roadways to an outlet point. Therefore, staff recommends that we continue to pursue installation of this pipe within the property at 62 Ellenwood Road.

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	October 21, 2022
Bids Due	November 7, 2022
Award and Execute Agreement	December 6, 2022
Start Construction	February 1, 2023
Anticipated Completion	March 31, 2023

CONCLUSION:

This Council action will allow staff to repair a storm drainage line that is in disrepair and support the ability of the property owner to complete construction of their home in potentially a more cost effective manner.

COORDINATION:

This report has been coordinated with the Town Attorney, Community Development Department and Finance Department.

FISCAL IMPACT:

At its September 20, 2022 meeting, Council authorized up to \$300,000 to be spent on this work as noted in the table below. No additional funds are requested at this time, but will be requested following the bid opening if necessary.

PAGE 3 OF 3

SUBJECT: Consider Drainage Improvements at 62 Ellenwood Avenue; Reject All Bids and
Authorize Re-bidding

DATE: October 13, 2022

FISCAL IMPACT (continued):

Annual Storm Drain Improvement Project CIP No. 816-0420 - Storm Basin #2 (Fund 462)		
	Budget	Costs
Storm Basin #2	\$ 186,600	
Transfer from Fund 462 - Storm Basin #2	\$ 113,400	
Total Budget	\$ 300,000	
		Costs
Construction Agreement (Approved on 9/20/22)		\$ 300,000
Total Costs		\$ 300,000
Available Balance		\$ -

ENVIRONMENTAL ASSESSMENT:

This is a project as defined under CEQA but is categorically exempt under Section 15301 (Existing Facilities), Section 15302 (Replacement or Reconstruction), and Section 15304 (Minor Alterations to Land). A Notice of Exemption will be filed.

Attachment:

1. Bid Summary



TOWN OF LOS GATOS

CLERK DEPARTMENT

BID SUMMARY FORM

PROJECT: #816-0420 Annual Storm Drain Improvements – 62 Ellenwood Avenue

DATE: October 10, 2022 TIME: 2:00 p.m.

BY: Wendy Wood, Town Clerk

BIDDER	BID
Blackwell General Engineering, Inc.	\$419,410.00
Casey Construction, Inc.	\$447,330.00
Sanco Pipelines, Inc.	\$708,100.00

ATTEST: _____

DATE: _____

N:\CLK\BONDS\BID SUMMARY\MASTER BID SUMMARY FORM.DOC



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 10/18/2022

ITEM NO: 10

DATE: October 10, 2022
TO: Mayor and Town Council
FROM: Gabrielle Whelan, Town Attorney
SUBJECT: Receive an Annual Report Regarding the Independent Police Auditor Function

RECOMMENDATION:

Receive an annual report regarding the Independent Police Auditor function.

BACKGROUND:

The Los Gatos-Monte Sereno Police Department (LGMSPD) personnel are held to the highest standards of conduct both on and off duty. As a critical component of building and maintaining trust with the community, allegations of misconduct by sworn members of the LGMSPD must be investigated in a manner that is fair, impartial, independent, thorough, and timely.

On September 8, 2020, the Town hosted a Community Workshop regarding Police practices and subsequently potential changes were reviewed and discussed with community input at the September 15, 2020 and November 3, 2020 Town Council meetings. On November 3, 2020, the Town Council voted to authorize the Town Manager to establish an Independent Police Auditor (IPA) function with a panel of diverse rotating independent investigators and requested the publication of quarterly IPA reports. On May 18, 2021, the Town Council authorized the Town Manager to enter into agreements with three firms who responded to a Request for Qualifications and were determined to be the most qualified to serve as independent investigators.

The IPA function creates distance between the Police Department in the review, investigation, and analysis of community complaints regarding police activities.

PREPARED BY: Gabrielle Whelan
Town Attorney

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Police Chief, and Interim Finance Director

BACKGROUND (continued):

For this reason, complaints may be submitted to the Town Clerk or through an online complaint form. The Town Attorney then reviews the complaint and any applicable materials, such as video footage, in order to determine whether the complaint should be referred to an independent investigator who is overseen by the Town Attorney. This process has been documented in an Administrative Procedure which may be updated by the Town Manager consistent with Town procedures.

The Council requested quarterly summary reports; however, given the low number of complaints received, this is the first report since the establishment of the IPA function.

DISCUSSION:

The current Procedure provides that complaints may be made either in writing or verbally. Town has received six complaints since the IPA function was established. When a complaint is received, it is evaluated by the Town Attorney after review of back-up information. Of the complaints received since the Procedure's adoption, two resulted in Supervisory Referrals and the remainder were unfounded. No complaints were submitted to an independent investigator.

CONCLUSION:

Based on our recent experiences, Town staff are amending the Administrative Procedure to require that all complaints be made in writing and to clarify the possible determinations to be made after an initial review of the complaint.

FISCAL IMPACT:

Based upon recent experience, review of a complaint requires approximately 20 hours of staff time, which includes review of the complaint and any related body cam footage and communication with the complainant, and is absorbed into the Town Attorney's budget. Fees have not been established to recover these costs. The adopted budget contains funds to pay for consultant costs if an independent investigation is warranted.

ENVIRONMENTAL ASSESSMENT:

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



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 10/18/2022

ITEM NO: 10

DESK ITEM

DATE: October 18, 2022
TO: Mayor and Town Council
FROM: Gabrielle Whelan, Town Attorney
SUBJECT: Receive an Annual Report Regarding the Independent Police Auditor Function

REMARKS:

The following information is provided in response to questions from Council Members since the posting of the staff report.

How many complaints were submitted in writing (as opposed to verbally) over the past year, why a public agency might opt not to require written complaints, and what the common practice is in other public agencies.

All but two complaints were submitted in writing. One individual asked to make two complaints verbally and that those verbal complaints be transcribed by Town staff.

In order to insure adequate review of complaints, it is useful to have the complaints in written form. The Town could adopt a policy to provide transcription services in certain circumstances. For instance, if a complainant has a disability or cannot write in English, Town staff could provide transcription services.

In Santa Clara County, we have located three agencies that allow verbal complaints and one agency that requires that complaints be submitted in written form.

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Police Chief, and Interim Finance Director



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 10/18/2022

ITEM NO: 11

DATE: October 13, 2022
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Discuss the Housing Element Process and the Next Steps for the Referendum of the 2040 General Plan Land Use and Community Design Elements, and Provide Direction on the Preferred Approach for the Referendum

RECOMMENDATION:

Discuss the Housing Element process and next steps for the referendum of the 2040 General Plan Land Use and Community Design Elements, and provide direction on the preferred approach for the Referendum.

BACKGROUND:

In accordance with the State Elections Code, sufficient signatures have been collected on a petition to referend the Land Use and Community Design Elements of the Town's 2040 General Plan. This means that the question of whether or not the Land Use and Community Design Elements of the 2040 General Plan should be adopted has qualified for placement on an upcoming ballot. In accordance with Elections Code Section 9237, the effective date of those two Elements is currently "suspended."

Elections Code Section 9241 provides that, if the Town Council does not repeal the legislation that is being referended, the Town Council shall submit the legislation to the voters at either a special election or a regular municipal election. Either the special election or the regular municipal election must be conducted at least 88 days after the Town Council votes to put the

PREPARED BY: Gabrielle Whelan, Town Attorney

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

BACKGROUND (continued):

legislation on the ballot. The legislation (e.g., the Land Use and Community Design Elements of the 2040 General Plan) would not take effect until approved by a majority of the voters. The options are discussed in more detail later in this report. There is no immediate deadline for the Town Council to decide its preferred approach to address the Referendum.

At the last Council meeting, the Council expressed interest in understanding the relationship between the Referendum and the Housing Element. Regardless of the Referendum option the Town Council ultimately chooses, the Housing Element update process will continue to move forward concurrently.

The public comment period for the Initial Public Review Draft of the Housing Element ended on September 27, 2022. After making some changes to the Draft Housing Element, the Town has submitted it along with a response to comments to the California Department of Housing and Community Development (HCD) for its first preliminary review. The review by HCD can take up to 90 days to complete. Based on the experience of other California communities, the process is expected to include multiple reviews by HCD, and this review is a chance for preliminary feedback to guide future revisions.

Initiating this first review by HCD is critical, both because of the tight timeline available for this process, and so the Town Council, Planning Commission, and Housing Element Advisory Board (HEAB) have input from HCD for their future discussions. The Town has a legal obligation to adopt the final Housing Element within 120 days of the statutory deadline of January 31, 2023.

Staff has included two implementation programs in the Draft Housing Element submitted to HCD that require updates to the 2020 General Plan Land Use Element and Zoning Regulations. These implementation measures would affect the regulations in the 2020 General Plan Land Use Element while it is in effect during the suspension period imposed by the referendum, and the Zoning Regulations for those sites included in the Site Inventory of the Draft Housing Element.

DISCUSSION:

The Town Council's options in response to the Referendum are:

A. Hold a Special Election for Consideration of the Ballot Measure

The Town Council could vote to place the measure on the ballot at a special election in 2023.

DISCUSSION (continued):

The established Special Election dates for 2023 are March 7, May 2 (mail-in ballot only), August 29 (mail-in ballot only), and November 7. Following are the dates between which a resolution can be submitted to the Registrar of Voters to place a measure on the ballot and call a Special Election:

- March 7, 2023 election: November 24 – December 9, 2022
- May 2, 2023 election: January 19 – February 3, 2023
- August 29, 2023 election: May 18 – June 2, 2023
- November 7, 2023 election: July 27 – August 11, 2023

The estimated cost for a stand-alone Special Election is approximately \$900,000 - \$1,000,000 and the estimated cost for a stand-alone mail in ballot only Special Election is approximately \$600,000 - \$700,000.

B. Place the Measure on the Ballot at the November 2024 General Municipal Election

The Town Council could vote to place the measure on the ballot for the General Municipal Election in November of 2024.

The deadline for placing a measure on the November 5, 2024, General Election has not yet been posted on the Registrar of Voters website. Typically, the deadline to submit a resolution placing a measure on the ballot is 88 days before the Election Day, which would be August 9, 2024.

The estimated cost for placing a measure on the November 5, 2024 ballot is approximately \$145,000.

C. Rescind the Land Use and Community Design Elements of the 2040 General Plan and Adopt Revised Elements

The Town Council could vote to rescind its adoption of the Land Use and Community Design Elements of the 2040 General Plan and adopt revised Land Use and Community Design Elements. This option could be completed at any time prior to the November 2024 general municipal election. Doing so no later than three months prior to the election would give the referendum proponents an opportunity to remove the ballot measure from the ballot.

If the Town Council wishes to place a competing ballot measure on the ballot, the competing ballot measure should be submitted no later than six months before the election in order to meet the deadline for providing ballot materials to the County

DISCUSSION (continued):

Registrar. Development of revised Land Use and Community Design Elements would include review by the General Plan Committee (GPC) and the Planning Commission (PC) prior to Town Council consideration and adoption.

Please note that regardless of the Referendum option the Town Council chooses, the Housing Element update process will continue to move forward concurrently.

CEQA:

The Town Council's decision with regard to next steps is not a project subject to the California Environmental Quality Act (CEQA). The environmental impacts of any revisions to the Land Use and Community Design Elements will undergo CEQA review.

CONCLUSION AND NEXT STEPS:

Staff looks forward to the Town Council's discussion and direction. To structure the Council conversation, the Council may wish to follow the organization of this report by first discussing the Housing Element and then each Referendum option.

If the Council decides to move forward with one of the election options, staff will bring forward the appropriate resolution during the required timeframe for the preferred election date. If the Council prefers to rescind the two Elements, a resolution for the rescission will be brought forward at a later date and at that time, the Council may provide additional direction for the preparation of new Land Use and Community Design Elements.

COORDINATION:

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

FISCAL IMPACT:

The fiscal impacts are outlined above.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 10/18/2022

ITEM NO: 11

DESK ITEM

DATE: October 18, 2022
TO: Mayor and Town Council
FROM: Gabrielle Whelan, Town Attorney
SUBJECT: Discuss the Housing Element Process and the Next Steps for the Referendum of the 2040 General Plan Land Use and Community Design Elements, and Provide Direction on the Preferred Approach for the Referendum

REMARKS:

The following information is provided in response to questions from Council Members since the posting of the staff report, and attachment 1 contains public comments received between 11:01 a.m. Monday October 17, 2022 and 11:00 a.m. Tuesday, October 18, 2022.

How different does a new/replacement Land Use Element need to be from the Land Use Element that is the subject of the referendum?

Case law addressing this issue provides that the new legislation can't be "essentially identical" to, or retain all the "essential features" of, the referended legislation. The new legislation needs to be "essentially different." Courts recommend that public agencies focus on the features that gave rise to the objection to begin with and avoid re-enacting those features. For example, I have located case law discussing referenda of a lease and a franchise (but no cases in the land use context). In both cases, the public agency re-approved the lease and franchise, but with slightly different terms such as the length of the agreements. The court ruled that, when entry into the lease and the franchise was the subject of the referendum, the public agency could not just make slight changes to the terms.

What is the remedy in the event that new legislation is "essentially identical" to the referended legislation?

The remedy for a referendum proponent would be to seek a writ of mandate to overturn the agency's approval of the new legislation and to seek a stay against its implementation. Alternatively, the new legislation could be referended.

PAGE 2 OF 2

SUBJECT: Housing Element Process and Next Steps on Referendum of 2040 General Plan
Land Use and Community Design Elements

DATE: October 18, 2022

REMARKS (continued):

If the Land Use and Community Design Elements are rescinded, will the resolution suspending those two Elements need to be revised?

Yes, the Town Council would need to adopt a resolution to either:

- 1) Provide that the 2020 Land Use and Community Design Elements will remain in effect until revised Elements are adopted; or
- 2) Adopt revised Elements.

ATTACHMENTS:

1. Public Comments

From: Anne Roley
Sent: Monday, October 17, 2022 8:01 PM
To: Town Manager <Manager@losgatosca.gov>
Subject: RE: 10/18/22 Town Council Meeting - 2040 General Plan

EXTERNAL SENDER

Los Gatos Town Manager and Town Councilmembers,

I encourage you to consider the following items when making decisions for the 2040 General Plan.

Only Up Zone the density of land necessary to meet the State Mandated 1,993 homes. Be creative in how you implement housing development without up zoning our residential neighborhoods.

Spread development out over the next 20 years.

We need a strategic growth plan for the future housing developments in Town, which includes traffic, schools, utilities, police, and fire.

Financial consideration is an important element of all plans for development. We need transparency for a balanced budget regarding future growth and development.

Uphold the Town's current #1 Land Use Goal "to preserve, promote, and protect the existing small-town character and quality of life within Los Gatos.

Keep Our Town a Small Town. Put "small-town" back as a Land Use Goal in the 2040 General Plan

With Appreciation,

Anne Robinson Roley
Los Gatos, CA. 95032

From: Bill Kraus

Sent: Monday, October 17, 2022 10:36 PM

To: Rob Rennie <RRennie@losgatosca.gov>; Matthew; Marico Sayoc <MSayoc@losgatosca.gov>; Town Manager <Manager@losgatosca.gov>

Subject: General Plan - Housing In Los Gatos

EXTERNAL SENDER

Dear Town Manager,

Please assure the email reaches the two council members who I do not have addresses for.

Dear Mayor, Council, and Town Manager:

Our household is against the Town housing element that exceeds the state mandate. Our household is also FOR affordable housing. Those two stands are NOT mutually exclusive.

Just increasing the housing stock does not make housing more affordable. Look at cities like New York and Tokyo where housing densities are high and prices are high and neither has the Los Gatos quality of life most residents wish to retain.

When housing densities increase in a highly desirable Town like Los Gatos, the prices don't decrease but the quality of life does.

By meeting the minimum housing element numbers required by the state, the Town will be compliant and impact the character of the Town no more than necessary.

Now those new housing units in the housing element can be properly planned so housing is more affordable for critical workers, others climbing the economic ladder, and under-represented folks that many desire to join our community. How can that be done? One simple approach is as the Town allows more density, then have it come at a cost where the property owner does not get all the increase in value.

An example: say the Los Gatos Lodge wants to redevelop as housing and the current zoning allows three stories and 20 units per acre. The Town could have a benefit for the landowner that they could add a story and 33% more density IF 50% of the extra units are added to the deed restricted BMP (Below Market) program. That means the Town would allow 27 units per acre and four stories IF 3.5 units per acre are added to the BMP program.

The result is more units for the housing element and more units for the BMP program where those we wish to join our community can find a home. This can be police, fire fighters, teachers, and under-represented folks that can't afford to live in Town but could with the extra units in BMP.

Some might say it is too difficult to craft something like this and yes it is not easy to balance property rights, state mandates, and affordable housing but if we don't both manage the growth and maximize the fairness of distribution of new housing, then we will have the worst of sprawl and inequity.

So please change our approach to only meet minimum mandates while maximizing the fairness of the distribution of the added units to folks who otherwise could not afford to live here.

Thank you,
Bill Kraus - Los Gatos resident for 59 years

Lee Quintana attached a document



Lee Quintana [REDACTED] has attached the following document:



For desk item



TC Agenda Item 11 10/18/22

Snapshot of the item below:

To: Mayor and Town Council
 From: Lee Quintana
 Subject: Agenda item 11: Housing Element Process, and Referendum

- The General Plan and the General Plan Land Use Designation vs the Zoning Code which is the law that implements the General Plan.

My understanding is that the referendum was based on concerns that Low Density 0-5 DU/AC) and what used to be Medium Density Residential that (14-22 DU/AC) General Plan Designation will "upzone" all parcels with those General Plan Designations to be "Upzoned" to allow the maximum density allowed by the General Plan Designation. The figure of allowing 12,000 new dwelling units comes from that interpretation. However, Where a General Plan Designation is implemented more than one Zoning District as with GP Low Density and Hillside it is the Zoning Code that determines the maximum density by setting minimum building sites..

At the current time both the Hillside and Low Density GP designations are implemented by more than one Zoning District each of which determines the maximum density of each district by setting a minimum lot size for each of those districts. At the current time the minimum lot size for R-1 districts runs from 5000sf per lot for R-1D to 30,000sf per lot for R-1:30.

Since, to my knowledge, no information is currently available to whether changes to minimum lot sizes are

going to be proposed for the zones corresponding to the Low Density Residential or Hillside Residential it is not possible to know whether the 2040 General Plan will actually result in changes to the zoning code that will actually upzone any parcels.

- None of the suggestions in the Staff Report would seem to address the dilemma facing the Town caused by the Referendum. Some out of the box thinking is needed.

Google LLC, 1600 Amphitheatre Parkway, Mountain View, CA 94043, USA

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