

**TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
JUNE 06, 2023
110 EAST MAIN STREET AND TELECONFERENCE
TOWN COUNCIL CHAMBERS
LOS GATOS, CA
7:00 PM**

PARTICIPATION IN THE PUBLIC PROCESS

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

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

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

Deadlines for Public Comment and Presentations are as follows:

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

Town Council Meetings Broadcast Live on KCAT, Channel 15 (on Comcast) on the 1st and 3rd Tuesdays at 7:00 p.m.

Rebroadcast of Town Council Meetings on the 2nd and 4th Tuesdays at 7:00 p.m.

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

www.LosGatosCA.gov/TownYouTube

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

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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/87922005778?pwd=RnNadElXWEVQd290dDJJVzEwaEw3Zz09>
Passcode: 771495 You can also type in X in the “Join a Meeting” page on the Zoom website at <https://zoom.us/join>.
 - When the Mayor announces the item for which you wish to speak, click the “raise hand” feature in Zoom. If you are participating by phone on the Zoom app, press *9 on your telephone keypad to raise your hand.
- **Join by telephone:** Join by Telephone: Dial: USA 877 336 1839 US Toll-free or 636 651 0008 US Toll. Conference code: 686100
 - If you are participating by calling in, press #2 on your telephone keypad to raise your hand.
- **In-Person:** If you wish to speak during the meeting, please complete a “speaker’s card” located on the back of the chamber benches and return it to the Town Clerk. If you wish to speak to an item on the agenda, please list the item number. If you wish to speak on an item NOT on the agenda, please list the subject and you may speak during the “Verbal Communications” period. The time allocated to speakers may change to better facilitate the Town Council meeting.

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

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

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

MEETING CALL TO ORDER

ROLL CALL

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

RULES OF DECORUM AND CIVILITY

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

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

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

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

PLEDGE OF ALLEGIANCE

PRESENTATIONS

- i. Outgoing Youth Commissioner Commendations
- ii. Youth Friendly Business of the Year
- iii. Youth Friendly Green Business of the Year

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 the Draft Minutes of the May 16, 2023, Town Council Meeting.
2. Ratify the Town Council Selection Committee's Recommended Youth Commissioner Appointments.
3. Approve Town Council Meeting Schedule for the 2023/2024 Fiscal Year.

4. Authorize the Town Manager to Execute a First Amendment to a Consultant Services Agreement with AMS Electric LLC (dba Prime Electric LLC) for a Design-Build Project to Install a Battery Storage System at the Library (CIP 821-2502) to Extend the Term and Time of Performance through June 30, 2024.
5. Authorize the Town Manager to Execute a First Amendment to the Agreement with Pacific Water Art for Fountain Maintenance and Repair Services, Extending the Term to June 30, 2024, and to Add to the Compensation \$46,495 for a Total Agreement Amount Not to Exceed \$253,505.
6. Authorize the Town Manager to Execute a Third Amendment to the Agreement for Services with St. Francis Electric, Inc. for Traffic Signal and Streetlight Maintenance and Underground Service Alert Locating Services to Include:
 - a. An Increase to the Contract Amount for Fiscal Year 2022/23 in the Amount of \$53,381, for a Fiscal Year Amount of \$238,381 and a Total Agreement Amount Not to Exceed \$953,948; and
 - b. An Expenditure Budget Adjustment in the Amount of \$53,381 from Available Capital/Special Project Reserve.
7. Authorize the Town Manager to Execute a Revised Use Agreement with West Valley Red Hawks Lacrosse Club.
8. Authorize the Town Manager to Accept the Holiday Light Displays as Donations to the Town From the Los Gatos Chamber of Commerce.
9. Authorize the Town Manager to Execute a First Amendment to the Agreement for Consultant Services with Kier and Wright Civil Engineers and Surveyors, Inc. to Provide Services as the "Acting Town Surveyor" for Various Land Development Mapping Services, Extending the Term to June 30, 2024.
10. Authorize the Town Manager to Execute a Grant Agreement with KCAT for "The Producers" 55+ Volunteer Program for \$100,000 and Authorize an Expenditure Budget Adjustment of \$100,000 from the Available General Fund in the Council Priorities-Economic Recovery Reserve.

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.)*

11. Authorize the Town Manager to Close the Winchester Boulevard Complete Streets Project (CIP No. 813-0238) and:
 - a. Request that VTA Reallocate Measure B \$1,734,250 Funding;
 - b. Authorize an Expenditure Budget Transfer in an Amount of \$169,000 from Available General Fund Appropriated Reserve (GFAR) Funds in Project No. 813-0238 to Project No. 832-4505 - Los Gatos Creek Trail to Highway 9 Connector Project; and
 - c. Authorize an Expenditure Budget Transfer in an Amount of \$432,926 from Available GFAR Funds in Project No. 813-0238 to Project No. 813-0241 - Kennedy Sidewalk - Los Gatos Boulevard.

12. Approve a Funding Plan for Construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505) and take the following actions:

- a. Authorize the Town Manager to Execute Supplement 2 to the Agreement for One Bay Area Grant Program (OBAG II) Grant Funds for Total Compensation of \$6,193,000 from the Department of Transportation (Caltrans); and
- b. Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$2,842,000 to Recognize the Receipt and the Spending of the Additional OBAG II Grant; and
- c. Adopt a Resolution Authorizing Receipt of \$68,884 from the Transportation Development Act Article 3 (TDA3) Funding Program; and
- d. Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$68,884 to Recognize the Receipt and the Spending of the TDA3 Funding.

PUBLIC HEARINGS *(Members of the public may be allotted up to three minutes to comment on any public hearing item. Items requested/recommended for continuance are subject to Council's consent at the meeting.)*

13. Operating and Capital Budgets

- a. Adopt a Resolution Approving the Town of Los Gatos Fiscal Year (FY) 2023/24 Operating Budget and FY 2023/24 – 2027/28 Capital Improvement Program (CIP), New Appropriations, Additional Council Actions on May 16, 2023; American Rescue Plan Act Budget Adjustment, Minor Corrections, and Carry-Forward Appropriations.
- b. Adopt a Resolution Approving Commitment of Fund Balances under GASB 54.
- c. Approve FY 2022/23 Budget Adjustments:
 1. Major Revenue Adjustments to Match Year-End Estimated Revenues as Directed by the Town Council on May 16, 2023 and as Determined from Updated Information
 - i. Property Tax revenue Increase in the Amount of \$140,000,
 - ii. Educational Realignment Augmentation Fund (ERAF) Revenue Increase in the Amount of \$818,891.60 and Reserve 30% (689,607.60) of the Total Proceeds (\$2,298,691.60) in an ERAF Risk Reserve,
 - iii. Transient Occupancy Tax Increase in the Amount of \$348,547,
 - iv. Interest Revenue Increase in the Amount of \$237,074,
 - v. Sales Tax Revenue Increase in the Amount of \$121,878 (\$124,851 Increase in Regular Sales Tax and \$2,973 Decrease in Measure G Sales Tax),
 - vi. Business License Tax Revenue Decrease in the Amount of \$133,890,
 - vii. Plan Check Pass Through Service Revenue Increase in the Amount of \$125,000,
 - viii. Map Plan Check Pass Through Service Revenue Increase in the Amount of \$120,000,
 - ix. OPEB Trust Withdrawal Revenue Decrease in the Amount of \$902,579 as Current Year End Estimates FY 2022/23 Surplus,
 - x. Recognize \$140,195 General Fund Salary Reimbursement for Capital Improvement Staff Work,
 - xi. Recognize Additional Police Foundation Donation Received in the Amount of \$50,195, and

- xii. Recognize up to \$20,000 General Fund Salary Reimbursement for Enterprise Resource Upgrade Project Staff Work.
- 2. Expenditure Increases:
 - i. In the Amount of \$140,195 for General Fund Salary Reimbursement for Capital Improvement Staff Work,
 - ii. In the Amount of \$125,000 for Plan Checking Pass Through Services,
 - iii. In the Amount of \$100,000 for Map Plan Checking Pass Through Services,
 - iv. In the Amount of \$50,195 to Authorize the Spending the Additional Police Foundation Donation Received,
 - v. In the Amount of \$32,000 to Cover Third Party Business License Administrator Services, and
 - vi. In the Amount of up to \$20,000 General Fund Salary Reimbursement for Enterprise Resource Upgrade Staff Work.
- 3. Approve American Rescue Plan Act (ARPA) Replacement Revenue Tracking Pass Through Revenue and Expenditures Budget Adjustments in the Amount of \$453,465.

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

- 14. Provide Direction on Terms and Authorize the Town Manager to Execute a Use Agreement with Los Gatos-Saratoga Community Education and Recreation.

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

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

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



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/06/2023

ITEM NO: 1

**DRAFT
Minutes of the Town Council Meeting
Tuesday, May 16, 2023**

The Town Council of the Town of Los Gatos conducted a regular meeting in person and utilizing teleconferencing means on Tuesday, May 16, 2023, at 7:00 p.m.

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

ROLL CALL

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

Absent: None

PLEDGE OF ALLEGIANCE

Team members from the Silicon Valley Basketball Club led the Pledge of Allegiance. The audience was invited to participate.

PRESENTATIONS

Mayor Ristow presented proclamations for Historic Preservation Month and Affordable Housing Month. Community Development Director Joel Paulson accepted the proclamations.

Executive Director for West Valley Community Services, Sujatha Venkatraman, gave a services update presentation.

COUNCIL/TOWN MANAGER REPORTS

Council Matters

- Council Member Hudes stated he met with senior veterans regarding the Veterans Memorial, Friends of Los Gatos Seniors Foundation representatives, an individual from the tech community regarding economic innovation in the Town; participated in the Kiwanis Turnaround Scholarship Awards Luncheon Event and the Community Emergency Response Team (CERT) Earthquake Drill; observed the Finance Commission Meeting; participated in the General Plan Committee, the Cities Association Selection Committee meeting and the League of Cal Cities Legislative Action Committee meeting; and met with the president of the Police Officer's Association (POA).
- Council Member Rennie stated he participated in the CERT Earthquake Drill; attended a Valley Transportation (VTA) Board of Directors meeting, the VTA Policy Advisory Committee meeting, the Finance Commission meeting, the West Valley Sanitation District Authority Board meeting, the Silicon Valley Clean Energy Authority (SVCEA) Board meeting, the Cities Association Board meeting; and met with Mark Robson regarding a proposed development at Surrey Farms.

- Council Member Moore stated he attended the Kiwanis Turnaround Scholarship Awards Luncheon Event and Fisher Middle School Poetry Reading with Mayor Ristow; held a community coffee meeting; attended the Special Olympics of Northern California fundraiser at Campo di Bocce; participated in the CERT Earthquake Drill; met with the Police Officers Association (POA) President, the Executive Director of the West Valley Muslim Association, staff from Assembly Member Gail Pellerin's Office, and Sally Lieber (represents Los Gatos on the State Board of Equalization); observed the Finance Commission meeting; and participated in the General Plan Committee meeting.
- Vice Mayor Badame stated she interviewed applicants for the Youth Commission; attended the West Valley Clean Water Authority Board meeting, the West Valley Solid Waste Management Authority Board meeting; met with the applicant for the proposed development in the Surrey Farms neighborhood; observed the Finance Commission; met with the Board of Directors for the Los Gatos Veterans and Support Foundation and the POA President; and attended the opening day ceremony for Los Gatos Little League.
- Mayor Ristow stated she attended several events already mentioned; stated May is Bike Month and Bike to Wherever Day is Saturday, May 20; announced the next Monday with the Mayor event; attended the Finance Commission meeting, the West Valley Service Providers meeting, and the all Town Employee quarterly meeting; helped teach fifth-grade bike skills; met with the POA President and a Daisy Troop; attended Fischer Middle School STEAM Showcase and Open House; and met with Shannon Road residents.

Manager Matters

- Announced Big Truck Day will be held from 10:00 a.m. to Noon on Saturday, May 20.
- Announced the Adult Board and Commission recruitment is underway, and applications are due May 26 at 4:00 p.m. to the Clerk's Office.
- Announced Assistant Town Manager Katy Nomura will start on June 5, 2023.

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

1. Approve the Draft Minutes of the May 2, 2023 Town Council Meeting.
2. Receive the Monthly Financial and Investment Report (March 2023).
3. Receive FY 2021/22 Federal Single Audit Report.
4. Authorize the Town Manager to Execute a Use Agreement with Los Gatos United Soccer Club.
5. Adopt a Resolution to Adopt a List of Projects for Fiscal Year 2023/24 Funded by the State Senate Bill 1, the Road Repair and Accountability Act of 2017. **RESOLUTION 2023-028**
6. Adopt a Resolution to Extend the Term of the Housing Element Advisory Board.
RESOLUTION 2023-029
7. Ratify a First Amendment to the Axon Body Worn Camera Agreement for an Increase of \$15,095 and Authorize the Town Manager to Execute a Second Amendment for Additional Storage for an increase of \$10,000 for a Total Agreement Not-to-Exceed Amount of \$275,630.

8. Adopt a Resolution to Renew an Ordinance Approving a Military Equipment Funding, Acquisition, and Use Policy Pursuant to Assembly Bill 481 and Affirm that Each Type of Military Equipment Identified in the Annual Report Complies with the Standards Set Forth in the Town's Ordinance on this Matter. **RESOLUTION 2023-030**
9. Authorize the Town Manager to Execute a Notice of Completion and Certificate of Acceptance for Specified Improvements Completed by SummerHill N40 LLC for the North 40 Phase 1 Development at Lark Avenue and Los Gatos Boulevard, and Authorize the Town Clerk to Submit for Recordation.
10. Approve a California State Library Negotiated Contract with Columbia Telecommunications Corporation for Continued Service of the Library's Corporation for Education Network Initiatives in California Broadband Connection and Servicing.

Opened public comment.

Lee Fagot

- Commented on concerns with item five regarding the Shannon Road slurry seal and SB1 funding. Also commented on concerns with item nine regarding a pothole on Lark Avenue near Los Gatos Boulevard and would like to see if it could be fixed with the North 40 street improvements.

Closed public comment.

Council Member Hudes asked to pull items 3, 4, 5, and 9.

MOTION: Motion by **Council Member Hudes** to approve consent items 1-10, with the exception of items 3, 4, 5, and 9. **Seconded by Vice Mayor Badame.**

VOTE: Motion passed unanimously.

VERBAL COMMUNICATIONS

Folake Phillips, Executive Director of AWO

- Commented in support of housing affordability and upcoming educational and awareness events.

Tom Picraux

- Commented on the re-opening of the Live Oak Adult Day Services and the opening reception event on June 1 from 4:00 to 6:00 p.m.

Rachael Martines

- Commented on parking issues on Alpine Avenue and East Main Street, possible pay-to-play parking program, and the price of parking permits for businesses in the Olive Zone.

Bev Batson

- Commented on the smoking ordinance, suggested Los Gatos businesses be closed on Sundays, requested tree trimming on Main Street, and inquired about funds for homeless services.

PUBLIC HEARINGS

11. Consider the Recommendations of the Finance Commission and Staff, and Provide Direction on the Town of Los Gatos Proposed Operating and Capital Budget for Fiscal Year (FY) 2023/24 and on the Proposed Capital Improvement Program for FY 2023/24 – FY 2027/28; Including but Not Limited to:
- a. Provide direction to Balance the FY 2023/24 Proposed Budget;
 - b. Provide Direction on the Proposed Operating Budget;
 - c. Provide Direction on the Proposed Capital Budget; and
 - d. Consider the FY 2023/24 List of Potential Donations Consistent with the Town's Donation Policy

Gitta Ungvari, Finance Director, and Nicolle Burnham, Public Works Director, presented the item.

MOTION: Motion by Council Member Moore to close Item 11 and reopen Verbal Communications. **Seconded by Mayor Ristow.**

VOTE: Motion passed by a unanimous vote.

Opened Verbal Communications.

Emily Ann Ramos, SV@Home

- Commended Town Council on the Affordable Housing Month proclamation and promoted an upcoming event on transit-oriented communities.

Mayor Ristow closed Verbal Communications and reopened Item 11.

Opened Public Comment for Item 11.

Diana Schnabel-Arevalo and Len Connolly

- Commented on the Police Department and requested adequate funding to maintain quality staff.

Peter Hertan, HAM Radio Volunteers

- Commented in support of funding emergency communications and the build-out of Incident Command Posts (ICP).

Diane Chandler, Veterans Memorial and Support Foundation

- Requested financial support to eliminate the construction loan balance of \$270,000 for the Flame of Liberty Memorial.

George Hall, Veterans Memorial and Support Foundation

- Requested funds to support the Veterans Memorial and commented on the Veterans Memorial and Support Foundation services.

Steven Giruyah, Los Gatos Living Magazine

- Commented on the Veterans Memorial and requested financial support.

Dick Scott

- Commented on the Veterans Memorial and requested financial support.

Ron Meyer

- Requested information on funding and expenses for the Diversity, Equity, and Inclusion initiatives and training contained in the budget.

Catherine Somers, Chamber of Commerce

- Commented on the Resource Fair at the Adult Recreation Center, requested American Rescue Plan Act (ARPA) funds for a community center, and requested the funds approved by Council for the visitor and information center and destination marketing come from the General Fund and not from ARPA funds.

-

Patrick Dirks, Amateur Radio Emergency Services (ARES)/Radio Amateur Civil Emergency Services (RACES)

- Commented in support of the emergency communications funds for existing and new ICP, expansion of the CERT trailer with additional radio capabilities, and add new digital communication.

Closed Public Comment.

Recess 8:48 p.m.

Reconvene 9:00 p.m.

Council discussed the matter.

MOTION: Motion by Vice Mayor Badame to approve the FY 2023/24 List of Potential Donations Consistent with the Town's Donation Policy in Attachment 7 of the staff report. Seconded by Council Member Moore.

VOTE: Motion passed by a unanimous vote.

MOTION: Motion by Council Member Rennie to keep the CIP budget as is and add \$35,000 for the ICPs and other equipment in the Emergency Preparedness project.

AMENDMENT: Reallocate \$35,000 of American Rescue Plan Act (ARPA) funds from the Lynn Avenue Pathway project to fund the additional \$35,000. **Seconded by Council Member Hudes.**

VOTE: Motion passed by a unanimous vote.

MOTION: Motion by Council Member Hudes to approve the Finance Commission recommendation to add a vacancy rate of 4.6% to the budget in order to more realistically forecast expected personnel expenses. **AMENDMENT:** Clarifying that staff is authorized to hire up to 152.5 positions for all open positions. **Seconded by Council Member Rennie.**

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

MOTION: Motion by Council Member Hudes to have staff provide further information on ERAF from comparable cities and our auditor, approve what is in the budget, and not accept the Finance Commission recommendation at this time. **Seconded by Council Member Rennie.**

VOTE: Motion passed unanimously.

MOTION: Motion by Council Member Hudes to direct staff to include transparency and the ability to track variants from budget by adjusting schedules C-9, C-10, C-14, and C-26 to show the detail of the salaries and benefits broken out into major categories such as salary, overtime, CalPERS Benefits, all other benefits, and OPEB pay as you go benefits; and that staff shall include this as a separate standalone presentation of the requested information in the budget and redesign the requested table presentation for the FY 2024/25 proposed budget. **Seconded by Mayor Ristow.**

VOTE: Motion passed unanimously.

MOTION: Motion by Council Member Hudes to direct staff to include a capital outlay budget that forecasts the annual capital outlay for each funded project over the five-year planning horizon on pages B-5 and B-6 of the Capital Improvement Budget, and make best efforts to incorporate percent complete, Capital Projects timeline, and Gantt chart in the CIP in the future. **Seconded by Vice Mayor Badame.**

VOTE: Motion passed unanimously.

MOTION: Motion by Council Member Moore to provide \$2,500 to all project-based Town Commissions. **Seconded by Council Member Rennie.**

Recess 11:10 p.m.

Reconvene 11:14 p.m.

Pulled Consent Items

3. Receive FY 2021/22 Federal Single Audit Report.

Gitta Ungvari, Finance Director presented the item.

Council discussed the matter.

MOTION: Motion by Mayor Ristow to approve Item 3 to receive the FY 2021/22 Federal Single Audit Report. **Seconded by Council Member Rennie.**

VOTE: Motion passed unanimously.

4. Authorize the Town Manager to Execute a Use Agreement with Los Gatos United Soccer Club.

Nicolle Burnham, Public Works Director, presented the item.

Council asked questions and discussed the item.

MOTION: Motion by Council Member Moore to approve Item 4 to authorize the Town Manager to execute a Use Agreement with Los Gatos United Soccer Club. **Seconded by Council Member Hudes.**

VOTE: Motion passed unanimously.

5. Adopt a Resolution to Adopt a List of Projects for Fiscal Year 2023/24 Funded by the State Senate Bill 1, the Road Repair and Accountability Act of 2017. **RESOLUTION 2023-028**

Nicolle Burnham, Public Works Director, presented the item.

Council asked questions and discussed the item.

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SUBJECT: Draft Minutes of the Town Council Meeting of May 16, 2023

DATE: May 16, 2023

MOTION: Motion by Council Member Moore to approve Item 5 to adopt a resolution to adopt a list of projects for Fiscal Year 2023/24 funded by State Senate Bill 1, the Road Repair and Accountability Act of 2017. **Seconded by Mayor Ristow.**

VOTE: Motion passed unanimously.

9. Authorize the Town Manager to Execute a Notice of Completion and Certificate of Acceptance for Specified Improvements Completed by SummerHill N40 LLC for the North 40 Phase 1 Development at Lark Avenue and Los Gatos Boulevard and Authorize the Town Clerk to Submit for Recordation.

MOTION: Motion by Mayor Ristow to approve Item 9. **Seconded by Council Member Rennie.**

Council asked questions and discussed the item.

Mayor Ristow withdrew the motion.

MOTION: Motion by Council Member Hudes to continue the item to June 6, 2023. **Seconded by Mayor Ristow.**

VOTE: Motion passed unanimously.

ADJOURNMENT

The meeting adjourned at 11:41 p.m.

Respectfully Submitted:

Jenna De Long, Deputy Clerk



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/06/2023

ITEM NO: 2

DATE: May 23, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Ratify the Town Council Selection Committee's Recommended Youth Commissioner Appointments

RECOMMENDATION:

Ratify the Town Council Selection Committee's recommended Youth Commissioner appointments.

BACKGROUND:

Since June 2004, Council has appointed students in Grades 8 through 12 as members of the Youth Commission. The Youth Commission fosters and encourages civic and neighborhood pride in Los Gatos youth and builds a sense of identity through knowledge, understanding, and involvement in the Town's municipal affairs.

The Town used a variety of mechanisms to recruit for the Youth Commission. Commissioners with terms expiring received notification of the recruitment and notices of the upcoming vacancies were posted at Town Hall. Information regarding the recruitment was distributed on the Town's What's New email blast, the Town's social media accounts, and posted on the Town's website. In addition, the Town also contacted local schools requesting they help promote the Youth Commission opportunities.

DISCUSSION:

The application deadline was April 28, 2023, and the Town received seventeen (17) applications. On May 3, 2023, the Town Council Selection Committee, comprised of Mayor Ristow, Vice Mayor Badame, Chief Field, and Youth Commission Chair Quincy Scott, interviewed fifteen (15) applicants for fifteen (15) available positions. Two of the applicants did not attend the interview and therefore were not considered for appointment.

PREPARED BY: Wendy Wood
Town Clerk

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

PAGE 2 OF 2

SUBJECT: Ratify the Town Council Selection Committee's Recommended Youth Commissioner Appointments

DATE: May 23, 2023

DISCUSSION (continued):

All the applicants demonstrated initiative and community spirit in applying for leadership positions to serve the Los Gatos community, and the Selection Committee's recommended appointments are listed in Attachment 1. Per the Youth Commission enabling resolution (Attachment 2), appointments for the seven (7) newly appointed Commissioners and the three (3) reappointed Commissioner entering the 12th grade will be for a one (1) year term, and appointments for the five (5) reappointed Commissioners not entering the 12th grade will be for a two (2) year term.

CONCLUSION:

The Town Council Selection Committee recommends that Council appoint members as shown in Attachment 1. The recommendations for appointment are based on composite assessments from the interviews and applications.

FISCAL IMPACT:

The Town-wide Commission training budget is available to provide funds as needed.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Recommended Youth Commissioner Appointments
2. Youth Commission Enabling Resolution 2018-008

RECOMMENDED YOUTH COMMISSIONER APPOINTMENTS

NAME	GRADE IN FALL	NEW OR REAPPOINTED	TERM	TERM EXPIRATION
Esha Bagora	12	Reappointed	1 year	6/30/2024
Pravin Balasingam	10	Reappointed	2 years	6/30/2025
Kaedon Chung	11	Reappointed	2 years	6/30/2025
Cody Chen	11	Reappointed	2 years	6/30/2025
Mikaela Hammer-Longosz	12	Reappointed	1 year	6/30/2024
Ryan Idemoto	11	Reappointed	2 years	6/30/2025
Gwyneth Pang	11	Reappointed	2 years	6/30/2025
Aanya Singh	11	Reappointed	2 years	6/30/2025
Saketh Chinnakotla	9	New	1 year	6/30/2024
Yilin Fang	11	New	1 year	6/30/2024
Sophia Krish	10	New	1 year	6/30/2024
Jay Mallugari	11	New	1 year	6/30/2024
Rushil Sharma	11	New	1 year	6/30/2024
Arthur Wang	9	New	1 year	6/30/2024
Lincoln Withrow	12	New	1 year	6/30/2024

ATTACHMENT 1

RESOLUTION 2018-008

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS RESCINDING RESOLUTION 2016-059 AND ESTABLISHING RULES FOR THE YOUTH COMMISSION

WHEREAS, it is recognized that a youth perspective on issues which pertain to the youth in the community is an important part of decision making in Town; and

WHEREAS, there is value in increasing communication between adults and youth; and

WHEREAS, there is value in having a mechanism for youth to have a voice in Town affairs and issues relating to youth; and

WHEREAS, the Town Council of the Town of Los Gatos found and determined that the purpose of the Youth Commission is to foster and encourage civic and neighborhood pride and a sense of identity through the knowledge, understanding, and increased involvement of the Town's youth in the Town's present and future municipal affairs.

NOW THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LOS GATOS THAT:

1. There is a need for a Youth Commission to function in the Town of Los Gatos, which would establish a formal body by which the youth of Los Gatos would have a voice in the community.
2. There is hereby established a Youth Commission which shall generally be responsible for studying various problems, activities and other issues of concern to the youth in general, and for advising Council on matters pertaining to issues involving the youth of Los Gatos.
 - a. Membership/Organization
 - i. The Youth Commission shall consist of twenty (20) members. The members shall be students who are entering grades 8 through 12. Membership for the students requires residency in the incorporated limits of the Town of Los Gatos or residency in the unincorporated areas of the County of Santa Clara, which have a Los Gatos mailing address.
 - ii. Members shall serve a term of two (2) years and until their successors are appointed and qualified. Members who are entering grade 12 when appointed and first time appointees shall serve a term of one (1) year.

ATTACHMENT 2

- iii. The Commission shall appoint one (1) primary member and one (1) alternate to serve as one voting member on the following Town Boards and Commissions:
 - 1. Arts and Culture Commission
 - 2. Bicycle and Pedestrian Advisory Commission
 - 3. Community and Senior Services Commission
 - 4. Library Board
 - 5. Parks Commission
 - 6. Transportation and Parking Commission
 - iv. In addition to all Youth Commission meetings, the primary member shall attend all meetings of the Board or Commission they are appointed to. If the primary member is not able to attend the meeting of the Board or Commission they are assigned, it shall be the responsibility of the alternate to attend the meeting. If the primary member misses three (3) meetings of the Board or Commission the Youth Commission shall appoint a new primary member, and if necessary, a new alternate.
 - v. Liaisons shall provide a monthly report to the Youth Commission and be responsible for conveying the Youth Commission's input to the Board or Commission.
 - vi. A majority of members shall constitute a quorum for the purpose of transacting business.
 - vii. Commission members shall serve without compensation, provided that, with advance budgetary approval of the Town Council, the actual and necessary expenses (if any) incurred by the members in the conduct of Town business shall be reimbursable pursuant to the current Council policy.
- 3. The Commission shall hold a regular meeting at least once each month between September and June. The Commission shall establish a regular time and location for its meetings and shall otherwise call and conduct its meetings in compliance with the provisions of the Ralph M. Brown Act (Government Code Sections 54950 and following.)
 - 4. The Commission shall elect a Chair and Vice-Chair, both of whom shall serve at the pleasure of the Commission. Terms of office shall be for one (1) year and shall begin on the first meeting in September and end the following June.
 - 5. Minutes of the actions taken during its meetings shall be kept and filed with the Town Clerk Administrator.

6. Meeting attendance requirements will conform with all current Town Resolutions and Policies.
7. The duties of the Commission shall include the following:
 - a. Foster greater involvement of youth in municipal government affairs.
 - b. Study problems, activities, and concerns of youth, especially as they relate to municipal programs or projects of the Town of Los Gatos.
 - c. Hold forums on problems, activities and concerns of youth, either alone or in conjunction with other governmental agencies and community organizations, as the Commission deems desirable.
 - d. Review municipal matters referred to the Commission by the Town Council or other Town boards, committees, or commissions and, as appropriate, make recommendations on those matters.

BE IT FURTHER RESOLVED that Resolution 2016-059 is hereby rescinded.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 20th day of March, 2018, by the following vote:

COUNCIL MEMBERS:

AYES: Marcia Jensen, Steve Leonardis, Marico Sayoc, Barbara Spector, Mayor Rob Rennie

NAYS: None.

ABSENT: None.

ABSTAIN: None.

SIGNED:



MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: 3/21/18

ATTEST:



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

DATE: 3/22/18



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/06/2023

ITEM NO: 3

DATE: May 24, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Approve Town Council Meeting Schedule for the 2023/2024 Fiscal Year

RECOMMENDATION:

Staff recommends the Town Council approve the Town Council Meeting Schedule for the 2023/2024 Fiscal Year.

BACKGROUND:

Each year in June, the Town Council adopts the following fiscal year's Town Council Meeting Schedule, including any cancellations and/or meeting exceptions necessary.

DISCUSSION:

In 2004, the Town Council implemented the cancellation of its July meetings for a Summer recess period. In 2005, Council implemented the cancellation of the first meeting in January each year, primarily due to the light level of staffing with the annual year-end closure.

Additionally, on June 2, 2014, the Town Council approved and amended Los Gatos Town Code Section 2.20.010 changing the regular Council meeting day from Mondays to Tuesdays, effective August 2014.

Lastly, both regularly scheduled Council meetings have historically taken place each December, even if the second meeting falls in close proximity to the holidays. For example, in past years going back to 2009, meetings have taken place on December 20 and 21. Staff recommends the current proposed Council meeting date of December 19, 2023 be approved inclusively with the attached schedule.

PREPARED BY: Janette Judd
Executive Assistant

Reviewed by: Town Manager and Town Attorney

PAGE 2 OF 2

SUBJECT: Approve Town Council Meeting Schedule for the 2023/2024 Fiscal Year

DATE: May 24, 2023

CONCLUSION:

The attached schedule reflects the January 2024 cancellation referenced above, with remaining dates reflective of the 1st and 3rd Tuesday schedule per Town Code. The attached schedule does not show dates for any potential Council Retreat, Boards/Commissions Interviews, or Special Meetings of the Town Council. In past years, Retreats have generally been held as-needed, and Special Meetings are held throughout the year on an as-needed basis.

Staff recommends that the Town Council approve the proposed regular Town Council Meeting Schedule for the 2023/2024 Fiscal Year.

Attachments:

1. Town Council Meeting Schedule - 2023/2024 Fiscal Year



TOWN COUNCIL MEETING SCHEDULE 2023/2024 FISCAL YEAR

July 4, 2023	Regular Council Meeting	CANCELLED
July 18, 2023	Regular Council Meeting	CANCELLED
August 1, 2023	Regular Council Meeting	
August 15, 2023	Regular Council Meeting	
September 5, 2023	Regular Council Meeting	
September 19, 2023	Regular Council Meeting	
October 3, 2023	Regular Council Meeting	
October 17, 2023	Regular Council Meeting	
November 7, 2023	Regular Council Meeting	
November 21, 2023	Regular Council Meeting	
December 5, 2023	Regular Council Meeting	
December 19, 2023	Regular Council Meeting	
January 2, 2024	Regular Council Meeting	CANCELLED
January 16, 2024	Regular Council Meeting	
February 6, 2024	Regular Council Meeting	
February 20, 2024	Regular Council Meeting	
March 5, 2024	Regular Council Meeting	
March 19, 2024	Regular Council Meeting	
April 2, 2024	Regular Council Meeting	
April 16, 2024	Regular Council Meeting	
May 7, 2024	Regular Council Meeting	
May 21, 2024	Regular Council Meeting	<i>(Annual Budget Hearing)</i>
June 4, 2024	Regular Council Meeting	
June 18, 2024	Regular Council Meeting	

All Council Meetings Listed on this Meeting Schedule are Regular Meetings as Defined in Municipal Code Section 2.20.010 (Government Code Section 54954)



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/06/2023

ITEM NO: 4

DATE: May 22, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute a First Amendment to a Consultant Services Agreement with AMS Electric LLC (dba Prime Electric LLC) for a Design-Build Project to Install a Battery Storage System at the Library (CIP 821-2502) to Extend the Term and Time of Performance through June 30, 2024.

RECOMMENDATION:

Authorize the Town Manager to execute a first amendment (Attachment 1) to a Consultant Services Agreement with AMS Electric LLC (dba Prime Electric LLC) for a design-build-project to install a battery storage system at the Library (CIP 821-2502) to extend the term and time of performance through June 30, 2024.

BACKGROUND:

In the Fiscal Year (FY) 2020/21-2024/25 Capital Improvement Program, funding was designated for a Library Battery Storage Project (CIP 821-2512). Parks and Public Works staff issues a Request for Proposals and a Consultant Services Agreement (Attachment 2) was executed on December 7, 2021 with an end date of June 30, 2023.

DISCUSSION:

Staff and the contractor have been working to execute the project but due to extended plan review time with Santa Clara County Fire and delays in the manufacturing and delivery of equipment, work has not been completed. This extension of time is needed for installation and completion of project.

PREPARED BY: Dan Keller
Facilities & Environmental Services Manager

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

SUBJECT: Authorize the Town Manager to Execute a First Amendment to a Consultant Services Agreement with AMS Electric LLC dba Prime Electric LLC for a Design-Build Project to Install a Battery Storage System at the Library to Extending the Term and Time of Performance through June 30, 2024.

DATE: May 22, 2023

CONCLUSION:

Authorize the Town Manager to execute a first amendment to Consultant Services Agreement with AMS Electric LLC (dba Prime Electric LLC) for a design-build project to install a battery storage system at the Library (CIP 821-2502) to extend the term and time of performance through June 30, 2024. This will enable the Town to utilize the two grants in place for this project.

FISCAL IMPACT:

No change to the compensation of this project is proposed and adequate funding exists to complete the work.

CIP No. 821-2505		
	Budget	Costs
GFAR	\$ 30,000	
State OES Community Power Resiliency Grant	\$ 300,000	
Silicon Valley Clean Energy Grant	\$ 213,000	
Total Budget	\$ 543,000	
Consultant Services with AMS Electric LLC, dba Prime Electric LLC		\$ 513,000
Misc. Project Costs		\$ 3,865
Total Costs		\$ 516,865
Remaining Balance		\$ 26,135

ENVIRONMENTAL ASSESSMENT:

In accordance with CEQA Guidelines Section 15378(b)(5), approval of this amendment is not a project subject to CEQA because it is an administrative activity that will not impact the environment.

Attachments:

1. First Amendment
2. Agreement for Consultant Services

FIRST AMENDMENT TO AGREEMENT

This FIRST AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES is dated for identification this 6th day of June 2023 and amends that certain Agreement for Consultant Services dated December 7, 2021, made by and between the Town of Los Gatos, ("Town,") and AMS Electric LLC, dba Prime Electric LLC (Consultant") identified as a Partnership and whose address is 1941 Ringwood Avenue Suite 140, San Jose, CA 95131.

RECITALS

- A. Town and Consultant entered into an Agreement for Consultant Services for a Design-Build of Battery Power Supply at the Library on December 7, 2021 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Exhibit A to this Amendment.
- B. Town desires to amend the Agreement to extend the end date of the term and add to the minimum scope of insurance of the agreement.

AMENDMENT

1. Section 2.2 Term and Time of Performance is amended to read:

This contract will remain in effect from December 7, 2021 to June 30, 2024.

2. Section 3.1 Minimum Scope of Insurance is amended to read as follows:

Service Provider agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.

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

ATTACHMENT 1

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

Town of Los Gatos:

Approved as to Consent:

Laurel Prevetti, Town Manager

Brandon Elliot,
Group Executive, Shareholder

Department Approval:

Nicolle Burnham
Director of Parks and Public Works

Approved as to Form:

Attest:

Gabrielle Whelan, Town Attorney

Wendy Wood, CMC, Town Clerk

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on this 7th day of December 2021 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and AMS Electric LLC dba Prime Electric LLC, whose address is 1941 Ringwood Ave. Suite 140, San Jose, CA, 95131. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage Consultant to provide Design-Build services for development of plans and construct a Battery Electrical storage system at the Library.
- 1.2 The Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges Town has relied upon these warranties to retain Consultant.

II. AGREEMENTS

- 2.1 Scope of Services. Consultant shall provide services as described in that certain Proposal sent to the Town on December 1, 2021, which is hereby incorporated by reference and attached as Exhibit A and B.
- 2.2 Term and Time of Performance. This contract will remain in effect from date of execution to June 30, 2023.
- 2.3 Compliance with Laws. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Consultant represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.5 Information/Report Handling. All documents furnished to Consultant by the Town and all reports and supportive data prepared by the Consultant under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Consultant's services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and

the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at Town's risk, unless Consultant expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Consultant which is and has been confirmed in writing by Consultant to be a trade secret of Consultant.

- 2.6 Compensation. Compensation for Consultant's professional services **shall not exceed \$513,000**, inclusive of all costs. Payment shall be based upon Town approval of each task.
- 2.7 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

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

Invoices:

Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

- 2.8 Availability of Records. Consultant shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Consultant shall make these records available to authorized personnel of the Town at the Consultant's offices during business hours upon written request of the Town.
- 2.9 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Consultant. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.10 Independent Contractor. It is understood that the Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Consultant may perform some obligations under this Agreement by subcontracting but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under

this Agreement. Consultant shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Consultant or is based on allegations of Consultant's negligent performance or wrongdoing.

- 2.11 Conflict of Interest. Consultant understands that its professional responsibilities are solely to the Town. The Consultant has and shall not obtain any holding or interest within the Town of Los Gatos. Consultant has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Consultant warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.12 Equal Employment Opportunity. Consultant warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Consultant nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

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

certificates and endorsements are to be received and approved by the Town before work commences.

- iv. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$1,000,000 which is sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this agreement.

General Liability:

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

3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.

3.3 Workers' Compensation. In addition to these policies, Consultant shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.

3.4 Indemnification. The Consultant shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities,

penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant.

IV. GENERAL TERMS

- 4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 Termination of Agreement. The Town and the Consultant shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Consultant shall deliver to the Town all plans, files, documents, reports, performed to date by the Consultant. In the event of such termination, Town shall pay Consultant an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 4.4 Prevailing Wages. This project is subject to the requirements of Section 1720 et seq. of the California Labor Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements. Contractors and all subcontractors who perform work on the project are required to comply with these requirements. Prevailing wages apply to all projects over \$1,000 which are defined as a "public work" by the State of California. This includes: construction, demolition, repair, alteration, maintenance and the installation of photovoltaic systems under a Power Purchase Agreement when certain conditions are met under Labor Code Section 1720.6. This include service and warranty work on public buildings and structures.
 - 4.4.1 The applicable California prevailing wage rate can be found at www.dir.ca.gov and are on file with the Town of Los Gatos Parks and Public Works Department, which shall be available to any interested party upon request. The contractor is also required to have a copy of the applicable wage determination posted and/or available at each jobsite.
 - 4.4.2 Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation

of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime, weekend and holiday pay, and shift pay must be paid pursuant to applicable Labor Code section.

- 4.4.3 The public entity for which work is being performed or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violations identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.
- 4.4.4 As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, the contractor agrees to present to the TOWN, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the Agency or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.
- 4.4.5 In addition to submitting the certified payrolls and related documentation to the TOWN, the contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and final payment.
- 4.4.6 No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- 4.4.7 No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
- 4.4.8 Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the TOWN for any fines assessed by the California Department of

Industrial Relations against the TOWN for such violation, including all staff costs and attorney's fee relating to such fine.

- 4.4.9 The TOWN shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., the TOWN may continue to hold sufficient funds to cover estimated wages and penalties under the contract.
- 4.5 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Consultant.
- 4.6 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.7 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

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

AMS Electric LLC dba Prime Electric LLC
1941 Ringwood Ave.
San Jose, CA, 95131

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

- 4.8 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.
- 4.9 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Consultant. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

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

Town of Los Gatos by:

DocuSigned by:
 2/14/2022
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Laurel Prevetti, Town Manager

AMS Electric LLC dba Prime Electric LLC, by:

DocuSigned by:
 2/7/2022
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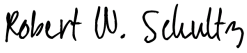
Recommended by:

DocuSigned by:
 2/8/2022
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Matt Morley
Director of Parks and Public Works

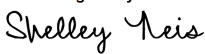
Brandon Elliott, Group Executive, Shareholder

Printed Name and Title

Approved as to Form:

DocuSigned by:
 2/11/2022
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Robert Schultz, Town Attorney

Attest:

DocuSigned by:
 2/14/2022
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Shelley Neis, MMC, CPMC, Town Clerk



OCTOBER 22, 2021

Town of Los Gatos Battery Energy Storage System

ELECTRICAL RFP



PRIME
ELECTRIC



Letter of Interest

October 22, 2021

Town of Los Gatos

41 Miles Avenue
Los Gatos, CA 95030
ATTN: Matt Morley

RE: Town of Los Gatos Battery Energy Storage System
Request for Proposal: Electrical

Dear Matt:

PRIME Electric is pleased to submit our Electrical Proposal for the Town of Los Gatos Battery Energy Storage System project. Our project experience with Design-Build and preconstruction services will bring tremendous value to the Town of Los Gatos team.

Our recent project experience (demonstrated herein) shows our ability to successfully turn over this project. We are comfortable with the Design-Build delivery model for this project and have selected a team that best fits the needs of the Town of Los Gatos Battery Energy Storage System project.

We understand that this project will be highly collaborative. PRIME will bring our lean and innovative practices, lessons learned from successes and challenges in the marketplace, and our strong and collaborative field team consisting of wireman and supervisors.

Additionally, the identified RFP project fundamentals are also core principles at PRIME:

- Proactive approach to preconstruction cost control and project planning
- Willingness to listen and provide project and design advice to the team
- Proven ability to deliver based on project needs
- Customer service focus
- Commitment to safety and quality control
- Commitment to planning and using Lean Planning principles (i.e. Pull Planning)

We are excited about the opportunity to work on this project; the outlined delivery model encompasses all of our best attributes. Performance based criteria and accountability metrics are welcomed by PRIME.

We are committed to adding value to this project. In order to accomplish this, PRIME will be a proactive team member that brings ideas to the table and focuses on solutions rather than problems. PRIME has the organizational depth and resources to assure total control and optimization of cost, quality, and schedule to positively impact the project.

Our project team will assist in developing the best overall solutions for the benefit of the entire project, not just our trade. We believe that the success of the project is best measured as a whole rather than by individual disciplines.

We look forward to demonstrating our ability to accomplish these goals. Thank you for the opportunity to provide this proposal response. We look forward to any questions or feedback.

Best Regards,


Jonathan Graves
PROJECT EXECUTIVE



Meet Your Team



Danny Thomas
CHIEF OPERATING OFFICER



Mike Sanjurjo
EXECUTIVE DIRECTOR
OF SALES



Brandon Elliott
GROUP EXECUTIVE



Jonathan Graves
PROJECT EXECUTIVE



Anthony Pinon
SERVICE & SPECIAL
PROJECTS MANAGER



10/22/2021

Town of Los Gatos
Parks and Public Works
41 Miles Avenue
Los Gatos, CA 95030

Attention: Matt Morley

Reference: Town of Los Gatos – Energy System
Prime Reference #: 21-228

Dear Matt,

Prime Electric is pleased to present this proposal for the electrical work required for the Project Town of Los Gatos – Energy System. This proposal is based on the provided drawings dated 3/15/10 and the scope discussed and detailed below.

Scope of work:

1. Provide Design Engineering and drawings for permitting.
2. Provide excavation and patch back for all underground requirements.
3. Install 125-kilowatt ELM Microgrid Battery Storage System.
 - a. See attached for cutsheet and details.
4. Provide start up, commissioning, and training for new Microgrid Battery Storage system.

Clarifications:

- A. All work shall be completed during normal business hours (7:00am to 4:00pm).
- B. All work shall be installed in compliance with the applicable specifications and all applicable codes.
- C. We have based our proposal on having unrestricted access to all work areas.
- D. We have assumed that the electrical panels have the space and capacity to accommodate the electrical requirements for this installation.

* **NOTE:** Commodities such as wire and conduit cost can fluctuate daily, and equipment pricing generally adjusts quarterly. Significant price increases will result in a request for adjustment of contract price
- E. We have not included the following:
 1. Overtime.
 2. Cut, patch and paint of existing finishes.
 3. Replacement of ceiling tiles.
 4. Provisions for and installation of temporary power and lighting.

5. Provisions for and installation of access panels.
6. Provision for a performance and payment bond.

The total cost to complete this work is \$498,470.00

Thank you for allowing Prime Electric to present this proposal for your review and consideration. This proposal is valid for sixty (60) days. Should you have any questions and/or comments, please feel free to contact me at (925) 961-1600.

Sincerely,

Jonathan Graves

Jonathan Graves
Project Executive
Prime Electric

Approval Signature: _____ Date: _____

Prime Electric - Town of Los Gatos

- Battery Energy Storage System Bid Submittal -

SITE: 100 Villa Ave, Los Gatos, CA 95030

125 kW / 330 kWh ELM BATTERY ENERGY STORAGE SYSTEM

BATTERY ENERGY STORAGE SYSTEM (BESS)

Solar Technologies will design and furnish a 125-kilowatt ELM Microgrid Battery Storage system to provide 100% backup power during grid outage. The ELM Microgrid ESS has been engineered to form a microgrid, and can perform demand response, Time of Use, and self-consumption. The microgrid system integrates an EPC bi-directional inverter (PCS), Kore's UL 9540a lithium-ion battery, ELM Fieldsight energy management software and an energy meter which measures your facility's energy consumption and deploys energy as needed. All of these components are bundled in a pre-engineered NEMA 3R enclosure which includes thermal management.

The system will be designed with a charging or discharging power of 125 KW and an energy storage capacity of 330 kWh. The energy storage capacity is capable of future expansion up to 440 kWh.

The system will include a free standing NEMA 3R battery cabinet inclusive of battery modules, battery racks, integral controls, and fire suppression system. During times the grid is functioning, the system will provide self-consumption, energy arbitrage and demand charge management peak shaving functionality.

Solar Technologies will design, engineer, permit and provide a battery energy storage system described below. ELM will provide battery system commissioning assistance.

- **ELM Microgrid Battery Storage 125 kW / 330 kWh**
- Systems contain the following:
 - 3x 110kWh Kore battery racks and BPU pre-installed
 - Kore BMS
 - EPC 125 kW PCS
 - ELM Microgrid controller
 - ELM Microgrid Switchgear package

- Internal A/C bus for solar, generator, & microgrid loads
- 5 Year ELM Monitoring
- 5 Years OEM Warranty
- 24 Volt DC power supply and UPS
- HVAC/heater (thermal management of batteries)
- NEMA 3R main enclosure
- Junction panel with termination blocks
- Wattnode energy meter
- ELM will provide Annual Report on System Functionality

SYSTEM OPERATION

ELM's Energy storage system can be used in 4 key storage applications for commercial battery systems:

Forms a Microgrid: The system will form a microgrid either for the lifetime of the system or intermittently upon grid failure. Included in the standard microgrid system is a battery, inverter, internal UPS used for system controls, wiring box, grid relay and contactor.

Demand Response: Energy Storage system is used to offset a facilities demand charges by reducing the demand to the local utility by deploying energy from the battery during preset peak demand times

Time of Use Shifting (TOU): This system will store less expensive off-peak energy into the battery and then deploys that energy from the battery during more expensive peak rate times.

Self-Consumption: In markets that do not allow net metering your battery system can store excess PV generation thus preventing the system from back-feeding PV power to the grid.

System Overview & Functionality:

This system will have full Microgrid functionality as well as additional functionality that may be used to add capabilities and decrease electricity costs. Depending on how much electricity is being used, the system will provide power for at least 2 hours and could run infinitely with solar input. An onsite generator could also be used for onsite power. The preferred scenario would be that the generator would only need to be used in rare circumstances during times of especially low solar production (e.g. a large winter storm in January) Below is a typical system of operations.

Sequence of Operations

The two main operational modes are Island (backup) and Grid Tied.

1.1 Island Mode (SO02/SO03)

In this mode, the Microgrid will operate as an island isolated from the utility grid. The goal in this mode is to maximize the use of available battery and PV and minimize the use of the generator. In this mode, there are two operational modes and three sub modes:

- Genset ON (SOO2): When the combined maximum output of the PV array and battery (a minimum SOC threshold for the battery has been reached) is insufficient to support the loads, the site controller should turn ON the genset incorporating a seamless transition. While the genset is ON, the storage inverter will be utilized to support the load and charge the battery in current source mode. The generator will be operating in a constant power mode while charging the batteries with excess power generation. PV will be utilized if available.
- Genset OFF (SOO3): While there is sufficient PV generation and battery capacity available, the generator will remain off and the storage inverter will form the grid and act as the Microgrid master. The PV inverters will sense the AC voltage on their terminals and follow the storage inverter.

1.2 Grid Tied Mode (SOO6/SOO5)

In this mode, the Microgrid will operate in parallel with the utility grid. The goal is to maximize the local consumption of the PV generation and battery while keeping the batteries charged to prepare for an outage. If there is sufficient PV generation, the solar array will power the loads on site. If the load is fully met, PV will prioritize charging the battery bank until the battery state-of-charge (SOC) reaches 100%. If the PV generation exceeds the amount of power the battery can absorb (either due to high SOC or charge power limitations), the Microgrid can either export excess PV generation to the utility grid if allowed or curtail excess PV to prevent from exporting PV power to the grid. The microgrid will never export any battery power to the grid.

- Peak Shaving (SOO6): The Microgrid can be enabled to use PV and the battery up to a specific SOC threshold (configurable) to minimize grid import power by setting a load threshold the user wants to keep the grid power below.
- Demand Response (SOO6): The Microgrid can be enabled to use PV and the battery up to a specific SOC threshold (configurable) to minimize grid import power only during certain times by setting a load threshold the user wants to keep the grid power below.

We will provide equipment cutsheets, shop drawings, factory test reports, wiring diagrams, commissioning reports, as-builts and O&M Data as specified.

PROPOSAL ASSUMPTIONS, CLARIFICATIONS AND EXCLUSIONS

- Building permit fee and PG&E interconnection applications are excluded, to be passed through at direct cost without markup; we will request an estimate from AHJ prior to execution of contracts.
- ~~New concrete pad with steel bollards for protection of energy storage enclosure to be provided by others.~~ **Included.**
- Site preparation, including grading, soil stabilization, removal of landscaping and final grading is excluded and to be performed by others if needed.
- Microgrid control system programming & commissioning is excluded.
- Microgrid metering, relays, critical load panels and other related infrastructure and labor is excluded.
- Proposal assumes the existing Solar PV source circuit can be re-routed to energy storage system bussing.
- Proposal assumes as-built plan sets, C-ALTA, Geotechnical and Title Reports provided by Customer are sufficient for system engineering and permitting approval requirements. Additional studies or engineering reports will be charged in addition to proposal if required.
- ~~On-site construction and labor services are excluded from our quote, prevailing wages would not apply.~~
- Repairs or upgrades to the property not described within this Proposal which are otherwise required or discovered during the project. This can include existing electrical equipment, structural improvements, roof system repairs, etc.
- Utility company interconnection requirements such as NGOM meters or upgrades to Utility company infrastructure or mitigation work required through the utility interconnection application are excluded.
- Any extraordinary engineering, approvals, discretionary reviews, special certification or testing would be charged in addition to this Proposal.
- Costs incurred because of property access restrictions during normal working hours or Buyer's non-standard work hour requirements are excluded.
- Painting or any other "decorative work" on the System is excluded.
- Bid, Price or Performance Bonding is excluded.
- Fire safety and sprinkler systems are excluded.
- Security personnel excluded, securing equipment is the responsibility of Customer upon delivery and installation.
- Repair of damaged underground utilities, power, plumbing or irrigation lines if not provided with plans specifying their location is excluded.
- Remobilization after start of construction is excluded.
- Any work not originally included within this Agreement or specified as an inclusion within this Addendum A will be charged in addition to this Agreement at a labor rate of **\$205** per hour and costs plus 15%.

Price is good for 30 days

SOLAR TECHNOLOGIES CORPORATE QUALIFICATIONS

STE Electric DBA Solar Technologies was founded in 1998. We are a privately held, full design/build, C-10/C-46 licensed contractor with 85+ employees and offices in San Ramon, Campbell and Santa Cruz, California. We focus on grid-tied, behind-the-meter PV solar, energy storage and EV charging station projects for commercial, municipal, non-profit and residential customers.

Over the past 20+ years we have established ourselves as one of the most accomplished and skilled solar design and installation companies in the business by providing customers with the best equipment, people and service at a competitive price. We are ranked among the top 25 commercial solar developers in California and were recognized in 2019 as SunPower's National Dealer of the Year and three times as SunPower Regional Commercial Dealer of the Year.

CALIFORNIA STATE LICENSE BOARD:

License #:	932914
License Type:	C-10 Electrical / C-46 Solar
Expiration:	05/31/2023
DIR Public Works Registration #:	PW-LR-1000460402

INSURANCE:

Broker Name:	Wise Insurance Agency, Inc.
Broker Contact:	415.258.9912
Certificate of Insurance:	Provided Upon Request
Commercial GL:	\$1,000,000 per occurrence, \$2,000,000 general aggregate covering bodily injury, property damage liability, operations and contractual liability.
Commercial Auto:	\$1,000,000 per occurrence covering bodily injury and property damage liability.
Umbrella/Excess Liability:	\$4,000,000 per occurrence and \$4,000,000 general aggregate in excess liability coverage provided by GL and Auto.
Workers Compensation:	\$1,000,000 for bodily injury as required by law.





The ELM Microgrid Turnkey Package is shipped as a self-contained unit and can be installed outdoors or indoors.



MICROGRID 125kW PACKAGE

Turnkey Solution

Factory Assembled
Pre-Engineered
Pre-Wired
Pre-Installed Safety Labels
Pre-Tested

Managed Assets

Solar Generation
Distributed Battery Storage
Diesel, Propane & Nat Gas Generators
CHP Systems
Grid Power

Communications & Control

4G LTE Cellular
Ethernet and Wifi
Building Management
Generator Start and Stop
Optimal Power Forecasting
Power Reliability Alerts
Isochronous Generation Control

The Switch Advantage

Turnkey Solution
Indoor and Outdoor Enclosure Options
Climate Control
Fire Suppression Options
Microgrid Installation and O&M Guides

Electrical Specifications

AC Voltage	480 VAC
AC Input/Output Current	150 A
Max AC Output (<i>discharge</i>)	125kW
Max AC Input (<i>charge</i>)	125kW
Battery Capacity Range	110kWh – 910kWh
AC Frequency (<i>field settable</i>)	60 Hz
Max AC Overcurrent Protection	180 A
Peak Efficiency	98.5%
Power Factor	0 -1.0 Leading or Lagging

Equipment Specifications

External Dimensions (<i>L x W x H</i>)	60" x 36" x 104"
Weight	6100 lbs. (220kWh)
Lifting Provisions	Fork Lift Slots
Paint Tested	1000 Salt Hour Spray
Fire Suppression Options	Hybrid - 3M Novec
Temperature Range	-20°C to 50°C

Transfer to and from Islanded Mode

Upon detecting a grid disturbance, the system disconnects the Microgrid from the grid and seamlessly transitions critical/resiliency loads to Microgrid Islanded mode.

While in Microgrid Islanded mode, the system manages solar, wind and generator assets in order to efficiently support the resiliency loads.

Control Software

ELM Autonomous Microgrid Site Control System
Access & Alerts on Desktop & Mobile 24/7
Asset Monitoring System Level & Individual
Individual Microgrid Component Pages
Local HMI IP 65 Touchscreen
Communications: WiFi, Ethernet, Cellular

Functionality

Islanded MicroGrid	Off-Grid Applications
Grid Tied MicroGrid	AI Machine Learning Demand Charge Mgmt. Peak Shaving Self-Consumption Demand Response
Distributed Generation	Time of Use Operation

Key System Components

NEMA 3R Enclosure
Bi Directional Storage Inverter
DC Disconnect - (Battery)
AC Disconnect (<i>Inverter</i>)
Climate Controls

Certifications

Batteries	UL 1973, UL 9540A
Inverter	UL 1741 SA, IEEE 1547
System	UL 9540

For higher power or storage requirements multiple systems can be paralleled and additional energy storage containers can be added. Please contact Switch Storage for more details.

switch
storage solutions

EXHIBIT B

Los Gatos Library Battery for Electrical Storage Project

The Los Gatos Library is currently equipped with a 40kw solar photovoltaic system and is an ideal site for community energy resilience project. The scope of work for this project includes an evaluation of the existing solar photovoltaic (PV) system, the design of a battery electrical storage system, assembly of specified equipment and connection to the electrical and solar PV systems in the building. The Town of Los Gatos plans on using SVCE grant funding to pay for the consultant portion of the project, which will include the evaluation of existing equipment and design of a battery storage system including battery equipment location. The construction of the battery system will allow for future expansion of the system. The battery in conjunction with the electrical system will be set up to provide backup power to a designated area in the Library which will accommodate patrons with lighting, backup power for electronic device charging and minimal air conditioning to meet the needs of a Community Resource Center.

Los Gatos Library - Battery Storage Project		
Consultant Design Fee	Cal OES Grant	\$200,000
Solar PV System Evaluation	Cal OES Grant	\$9,419
Equipment and construction	SVCE Grant	\$213,842
Final site construction and tracking implementation	Cal OES Grant	\$84,628
Contingency amount – Los Gatos GFAR = \$30,000	Total project cost	\$507,889



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/06/2023

ITEM NO: 5

DATE: May 22, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute a First Amendment to the Agreement with Pacific Water Art for Fountain Maintenance and Repair Services, Extending the Term to June 30, 2024, and to Add to the Compensation \$46,495 for a Total Agreement Amount Not to Exceed \$253,505

RECOMMENDATION:

Authorize the Town Manager to execute a First Amendment to the Agreement with Pacific Water Art for fountain maintenance and repair services (Attachment 1), extending the term to June 30, 2024, and to add to the compensation \$46,495 for a total Agreement amount not to exceed \$253,505.

BACKGROUND:

The Town of Los Gatos has used contract services for the maintenance and repair of the interactive fountain located in Plaza Park for the past 22 years and the Civic Center fountain for the past five years. Staff reviews these maintenance contracts regularly to ensure that the services provided are being performed satisfactorily, are competitively priced, and continue to meet the Town's expectations and contract terms.

Pacific Water Art built the Plaza Fountain 22 years ago as part of a Town Plaza Capital Improvement Project, along with providing ongoing maintenance and repair services. In 2018 the Town issued a Request for Proposals and subsequently entered into an agreement with Pacific Water Art to provide maintenance services for both of these assets following a competitive bidding process (Attachment 2).

PREPARED BY: Jim Harbin
Parks and Public Works Superintendent

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

PAGE 2 OF 2

SUBJECT: Authorize the Town Manager to Execute a First Amendment to the Agreement with Pacific Water Art for Fountain Maintenance and Repair Services, Extending the Term to June 30, 2024, and to Add to the Compensation \$46,495 for a Total Agreement Amount not to Exceed \$253,505.

DATE: May 22, 2023

DISCUSSION:

Pacific Water Art, Inc. is the best qualified vendor to provide the requested services. The extension of the Agreement term would allow for continuity of service and maximizes savings by engaging the vendor for another year. The contract language provides for cancellation should the need arise during the contract term and ties the work to the budget appropriated by the Town Council annually. To accommodate the potential impacts of inflation on the service, the contract allows for annual increases based on the Consumer Price Index (CPI).

The current fountain maintenance and repair contract with Pacific Water Art will expire on June 30, 2023. Due to the extreme storms experienced this year and the damage to the many trees, streets, and sidewalks still outstanding, resources have been shifted to prioritize those efforts and a new Request for Proposals for the fountain maintenance and repair was not able to be issued. As such, staff is requesting the time extension and additional budget required to continue operation of the fountains for one additional year.

CONCLUSION:

Authorize the Town Manager to execute a First Amendment to the Agreement for Services with Pacific Water Art to provide services for fountain maintenance and repair services, extending the term to June 30, 2024, and to add to the compensation \$46,495 for a total agreement amount not to exceed \$253,505.

FISCAL IMPACT:

The Proposed FY 2023/24 Operating Budget includes sufficient funding for these services.

ENVIRONMENTAL ASSESSMENT:

The proposed agreement and related services are not a project defined under CEQA, and no further action is required.

Attachments:

1. First Amendment to Agreement for Services with Pacific Water Art
2. Original Agreement for Services with Pacific Water Art

FIRST AMENDMENT TO AGREEMENT

This FIRST AMENDMENT TO AGREEMENT FOR SERVICES is dated for identification this 6th day of June 2023 and amends that certain AGREEMENT FOR SERVICES dated July 1, 2018, made by and between the Town of Los Gatos, ("Town,") and the Pacific Water Art ("Service Provider") identified as an S Corporation and whose address is 330 Matthew Street, Santa Clara, CA 95050.

RECITALS

- A. Town and Service Provider entered into an Agreement for Services on July 1, 2018 ("Agreement"), copies of which is attached hereto and incorporated by reference as Exhibit A to this Amendment.
- B. Town desires to amend the Agreement for Services to extend the term, add to the compensation and add to the minimum scope of insurance of the agreement.

AMENDMENT

1. Section 2.2 Term and Time of Performance is amended to read:

This contract will remain in effect from July 1, 2018 to June 30, 2024.

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

Compensation for July 1, 2023 through June 30, 2024:

- Routine maintenance and repair services shall not exceed \$19,870.
- Unforeseen repairs to interactive fountain components shall not exceed \$26,625, for a total amount of \$46,495.
- Payment shall be based upon Town approval of each task.

The total agreement amount for years 1-6 **shall not exceed \$253,505**, inclusive of all costs.

3. Section 3.1 Minimum Scope of Insurance is amended to read as follows:

Service Provider agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.

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

ATTACHMENT 1

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

Town of Los Gatos

Approved as to Consent:

By: _____
Laurel Prevetti, Town Manager

By: _____
Name and Title

Department Approval:

Nicolle Burnham
Parks and Public Works Director

Approved as to Form:

Attest:

Gabrielle Whelan, Town Attorney

Wendy Wood, CMC, Town Clerk

Agreement for Services

THIS AGREEMENT is dated for identification this 1st of July 2018 and is made by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and Pacific Water Art, Inc., ("Service Provider"), whose address is 1244 Birchwood Drive, Sunnyvale, CA 94089. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage Service Provider to provide fountain maintenance and repair services.
- 1.2 The Service Provider represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Service Provider warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Service Provider acknowledges Town has relied upon these warranties to retain Service Provider.

II. AGREEMENT

- 2.1 Scope of Services. Service Provider shall provide services as described in that certain Proposal sent to the Town on May 25, 2018, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. The effective date of this Agreement shall begin on **July 1, 2018** and will continue through **June 30, 2023**, subject to appropriation of funds, notwithstanding any other provision in this agreement.
- 2.3 Compliance with Laws. The Service Provider shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Service Provider represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Service Provider to practice its profession. Service Provider shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Service Provider shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.5 Information/Report Handling. All documents furnished to Service Provider by the Town and all reports and supportive data prepared by the Service Provider under this Agreement are the Town's property and shall be delivered to the Town upon the completion of services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Service Provider in connection with the performance of its services pursuant

to this Agreement are confidential until released by the Town to the public, and the Service Provider shall not make any of these documents or information available to any individual or organization not employed by the Service Provider or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Service Provider pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Service Provider in connection with other projects shall be solely at Town's risk, unless Service Provider expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Service Provider which is and has been confirmed in writing by Service Provider to be a trade secret of Service Provider.

2.6 Compensation.

- Compensation for routine maintenance and repairs services for the **first year**:
 - **Shall not exceed \$15,777.** Payment shall be based upon Town approval of each task.
- Compensation for unforeseen repairs to interactive fountain components:
 - **Shall not exceed \$25,625 annually.** Payment shall be based upon Town approval of each task.
- Compensation for routine maintenance and repairs services for **years two through five**:
 - Shall be adjusted upward annually for the remaining term of this Agreement by the change, if any, in the San Francisco – Oakland – San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items (CPI). The adjustment shall be based upon the CPI published on December 31 of the preceding year.
 - If the CPI indicates a downward adjustment, compensation would remain at the base amount.

2.7 Failure to Perform. It is mutually agreed by SERVICE PROVIDER and TOWN that in the event that performance of the work by SERVICE PROVIDER under this Agreement is not completed as scheduled, TOWN will suffer damages and will incur other costs and expenses of a nature and amount which is difficult or impractical to determine. The Parties agree that by way of ascertaining and fixing the amount of damages, costs and expenses, and not by way of penalty, SERVICE PROVIDER shall pay to TOWN the sum of one hundred dollars (\$100.00) per location per scheduled service in liquidated damages for every missed service beyond three missed services in a month in addition to reducing the monthly payment by the cost of that service. In the event that the liquidated damages are not paid, SERVICE PROVIDER agrees that TOWN may deduct the amount of unpaid damages from any money due or that may become due to SERVICE PROVIDER under this Agreement.

2.8 Schedule. Service Provider shall provide a schedule to the Town prior to beginning work. The schedule shall identify dates of service for each location. Schedule changes shall be approved by the Town with 24-hour notice. Each missed location shall be considered a failure to perform, unless the contractor provides advance notice of schedule change.

- 2.9 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

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

Town of Los Gatos
Attn: Accounts Payable
P.O. Box 655
Los Gatos, CA 95031-0655

- 2.10 Availability of Records. Service Provider shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Service Provider shall make these records available to authorized personnel of the Town at the Service Provider offices during business hours upon written request of the Town.
- 2.11 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Service Provider. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.12 Independent Service Provider. It is understood that the Service Provider, in the performance of the work and services agreed to be performed, shall act as and be an independent Service Provider and not an agent or employee of the Town. As an independent Service Provider he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Service Provider may perform some obligations under this Agreement by subcontracting but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Service Provider agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Service Provider shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Service Provider or is based on allegations of Service Provider's negligent performance or wrongdoing.
- 2.13 Conflict of Interest. Service Provider understands that its professional responsibilities are solely to the Town. The Service Provider has and shall not obtain any holding or interest within the Town of Los Gatos. Service Provider has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Service Provider warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Service Provider shall not knowingly and shall take

reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person Service Provider discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement Service Provider shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.

- 2.14 Equal Employment Opportunity. Service Provider warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Service Provider nor its subService Providers do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

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

General Liability:

- i. The Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Service Provider; products and completed operations of Service Provider, premises owned or used by the Service Provider.
- ii. The Service Provider's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any

insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Service Provider's insurance and shall not contribute with it.

- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
- iv. The Service Provider's insurance shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability.

- 3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.
- 3.3 Workers' Compensation. In addition to these policies, Service Provider shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Service Provider shall ensure that all subService Providers employed by Service Provider provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Indemnification. The Service Provider shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Service Provider, or any of the Service Provider's officers, employees, or agents or any subService Provider.

IV. GENERAL TERMS

- 4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.

- 4.3 Termination of Agreement. The Town and the Service Provider shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Service Provider shall deliver to the Town all plans, files, documents, reports, performed to date by the Service Provider. In the event of such termination, Town shall pay Service Provider an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 4.4 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Service Provider.
- 4.5 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.6 Prevailing Wages. In accordance with the provisions of Sections 1770 et seq., of the Labor Code, the Director of the Industrial Relations of the State of California has determined the general prevailing rate of wages applicable to the work to be done. Service Provider will be required to pay to all persons employed on the project by the Service Provider sums not less than the sums set forth in the documents entitled "General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code, part 7, Chapter 1, Article 2, Sections 1770, 1773, 1773.1." These documents may be obtained from the State of California.

Pursuant to Labor Code section 1725.5, no Service Provider or subService Provider may be awarded a contract for public works on a public works project unless registered with the Department of Industrial Relations.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations and/or the Town of Los Gatos.

The Service Provider is required to post notices on Public Works requirements.

- 4.7 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

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

Pacific Water Art, Inc.
1244 Birchwood Drive
Sunnyvale, CA 94089

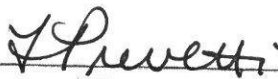
or personally delivered to Service Provider to such address or such other address as Service Provider designates in writing to Town.

- 4.8 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.
- 4.9 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Service Provider. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

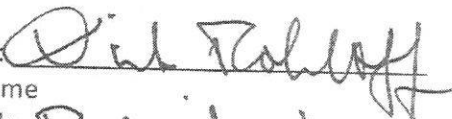
IN WITNESS WHEREOF, the Town and Service Provider have executed this Amendment.

Town of Los Gatos:

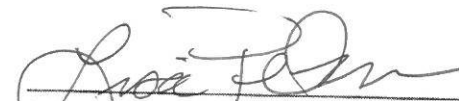
Pacific Water Art, Inc.:



Laurel Prevetti, Town Manager

By: 
Name
Title President

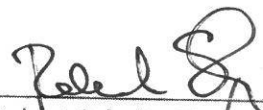
Department Approval:



For Matt Morley
Director of Parks and Public Works

Approved as to Form:

Attest:



Robert Schultz, Town Attorney

 7/23/18
Shelley Neis, CMC,
Clerk Administrator

ATTACHMENT D BID PRICE SHEET

For all services described below, unless excluded by the Town in description of services below, the Town shall consider unit prices below to include all labor, equipment, fees of any kind, overhead, insurance, fuel, materials, surcharges, disposal fees, and any other costs associated with and necessary for the Bidder to perform such service. No qualifications, exemptions, or alterations of services described below will be allowed. Failure to comply will result in disqualification of bid.

A. MAINTENANCE TOWN PLAZA

	DESCRIPTION, WITH UNIT PRICE IN WORDS. (PRICE IS INCLUSIVE OF ALL APPLICABLE TAXES AND FEES)	UNIT PRICE	ESTIMATED HOURS	EXTENDED PRICE
1.	Each site visit, perform a water chemistry test and record results.	Mo.	3	\$ 225.00
2.	Verify water in reservoir is correct.	Mo.	.25	\$ 18.75
3.	Inspect all mechanical equipment, verify equipment functionality, and report any equipment abnormalities to Town staff.	Mo.	2	\$ 150.00
4.	Inspect pump motors and verify pressures and vacuum gauges are within manufacturers prescribed limits.	Mo.	1	\$ 75.00
5.	Inspect water treatment systems, check levels of chemicals in tanks. Refill tanks as required.	Mo.	1	\$ 75.00
6.	Verify pH levels of water per each site visit. Adjust Ph levels as required.	Mo.	1	\$ 75.00
7.	Clean pump strainer baskets to remove accumulated debris.	Mo.	2	\$ 150.00
8.	Inspect and wash/clean cartridge filters.	Mo.	2	\$ 150.00
9.	Inspect pumps for obstructions. Clean as required.	Mo.	.5	\$ 37.50
10.	Inspect and clean vault hatch gutter as required.	Mo.	.5	\$ 37.50
11.	Inspect and clean sensor probes every six months	Mo.	.08	\$ 6.00
12.	Inspect and grease electric motors every six months.	Mo.	.5	\$ 37.50
13.	Take amperage reading of all electric motors on a quarterly basis to ensure peak performance.	Mo.	.5	\$ 37.50
	SUB-TOTAL – GENERAL SERVICES	\$	14.33	\$ 1,074.50
A.	Total Monthly Cost	\$	14.33	\$ 1,074.50

B. MAINTENANCE CIVIC CENTER FOUNTAIN

	DESCRIPTION, WITH UNIT PRICE IN WORDS. (PRICE IS INCLUSIVE OF ALL APPLICABLE TAXES AND FEES)	UNIT PRICE	ESTIMATED HOURS	EXTENDED PRICE
1.	Each site visit, perform a water chemistry test and record results.	Mo.	1.2	\$ 90.00
2.	Verify water level in fountain is correct. Fill fountain as required	Mo.	.25	\$ 18.75
3.	Inspect all mechanical equipment, verify equipment functionality, and report any equipment abnormalities to Town staff.	Mo.	.25	\$ 18.75
4.	Inspect circulation pump motor.	Mo.	1.0	\$ 75.00
5.	Verify pH levels of water per each site visit. Adjust Ph levels as required.	Mo.	.5	\$ 37.50
6.	Clean pump strainer baskets to remove accumulated debris.	Mo.	N/A	\$
7.	Inspect pump for obstructions. Clean as required.	Mo.	N/A	\$
8.	Inspect and grease electric motor every six months.	Mo.	N/A	\$
9.	Take amperage reading of all electric motor on a quarterly basis to ensure peak performance.	Mo.	N/A	\$
	SUB-TOTAL - GENERAL SERVICES	\$	3.20	\$ 240.00
	Total Monthly Cost	\$	3.20	\$ 240.00/mth
B.	Annual Total (A+B) mthly total	\$	17.53	\$ 1,314.75 /mth (both ftns)
				\$15,777.00/yr (both ftns)

C. OTHER COST

	Other cost as defined. Includes all labor, equipment, tool, parts and disposal.	UNIT PRICE	ESTIMATED HOURS	EXTENDED PRICE
1.	Clean water fountain spray jets as needed	Ls.	32	\$ 2,500.00
2.	Refill chemical tanks	Ls.	3	\$ 1,500.00
3.	Replace cartridge filters	Ls.	4	\$ 850.00
4.	Replace UV lamps	Ls.	6	\$ 3,900.00
5.	Replace pH and ORP probes	Ls.	1	\$ 875.00
6.	Replace electric pump motors	Ls.	16	\$ 12,000.00
7.	Civic Center, descale calcium buildup on fountain surfaces.	Ls.	32	\$ 4,000.00
	SUB -TOTAL -OTHER COST	\$	94	\$ 25,625.00
C.	Total Cost	\$	94	\$ 25,625.00



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/06/2023

ITEM NO: 6

DATE: May 12, 2023

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Authorize the Town Manager to Execute a Third Amendment to the Agreement for Services with St. Francis Electric, Inc. for Traffic Signal and Streetlight Maintenance and Underground Service Alert Locating Services to Include:

- a. An Increase to the Contract Amount for Fiscal Year 2022/23 in the Amount of \$53,381, for a Fiscal Year Amount of \$238,381 and a Total Agreement Amount Not to Exceed \$953,948; and
- b. An Expenditure Budget Adjustment in the Amount of \$53,381 from Available Capital/Special Project Reserve.

RECOMMENDATION:

Authorize the Town Manager to execute a third amendment (Attachment 1) to the Agreement for Services with St. Francis Electric, Inc. for traffic signal and streetlight maintenance and underground service alert (USA) locating to include:

- a. An increase to the contract amount for Fiscal Year (FY) 2022/23 in the amount of \$53,381, for a fiscal year amount of \$238,381 and a total agreement amount not to exceed \$953,948; and
- b. An expenditure budget adjustment in the amount of \$53,381 from available Capital/Special Project Reserve.

BACKGROUND:

The Town of Los Gatos utilizes contractual services for the routine maintenance of traffic signals and streetlights, the repair of traffic signals and streetlights, and underground utility locating services relating the electric services within the Town's jurisdiction. Traffic signal and streetlight contractual services include repairs on an as-needed basis, periodic inspections, testing of the equipment, and lamp replacements. Underground utility locating services involve

PREPARED BY: Gary Heap
Town Engineer

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

PAGE 2 OF 3

SUBJECT: Authorize the Town Manager to Execute a Third Amendment to the Agreement for Services with St. Francis Electric, Inc. for Traffic Signal and Streetlight Maintenance and Underground Service Alert Locating Services

DATE: May 12, 2023

BACKGROUND (continued):

responding to Underground Service Alert (USA) requests to identify and mark the Town's underground infrastructure at construction sites prior to any digging operations.

Staff has determined that contractual services are the most cost-effective delivery method due to technical expertise and specialty equipment required for this work.

On September 15, 2020, the Town Council authorized the execution of a five-year Agreement for Services (FY 2020/21 through FY 2024/25) with St. Francis Electric, Inc. (Exhibit A) to provide traffic signal and streetlight repair and maintenance and USA locating services for a total agreement amount not to exceed \$675,000 (\$135,000 per year).

On August 3, 2021, the Town Council authorized a first amendment to the Agreement (Exhibit A) for an increase of \$8,567 for FY 2020/21 to cover the cost overage from a high number of USA requests received for various development and Town capital improvement projects for a total agreement amount not to exceed \$683,567.

On March 15, 2022, the Town Council authorized a second amendment to the Agreement (Exhibit A) for: a) an increase of \$67,000 for FY 2021/22 to cover cost overages for routine and response maintenance and USA requests; and b) an increase of \$50,000 per year to the base compensation of the agreement (\$150,000 total) for remaining three fiscal years. This resulted in a total agreement amount of \$900,567.

DISCUSSION:

The service needs and resulting costs each fiscal year depend on the number of traffic signal and streetlight repair and maintenance calls and USA requests. The budget for response repair and maintenance services has been exhausted for this fiscal year, with pending invoices that need to be paid. The Town encountered numerous traffic signal repair issues during this current fiscal year due to the excessive winter storms and traffic crashes that damaged equipment; more funds are needed to replace and maintain traffic signal cabinets, conduits, wiring, and poles for the remainder of the fiscal year.

This third amendment is for an additional \$53,381 for the response maintenance repairs needed for the remainder of FY 2022/23 to continue the contract services by St. Francis Electric without disruptions.

The table on the next page reflects the amendment amounts, increasing the total five-year contract amount not to exceed \$953,948.

SUBJECT: Authorize the Town Manager to Execute a Third Amendment to the Agreement for Services with St. Francis Electric, Inc. for Traffic Signal and Streetlight Maintenance and Underground Service Alert Locating Services

DATE: May 12, 2023

DISCUSSION (continued):

Original Contract	\$ 675,000	-----
First Amendment	\$ 8,567	For FY20/21 Services
Second Amendment	\$ 67,000	For FY 2021/22 Services
	\$ 150,000	For FY 2022/23 to FY 2024/25 Base Services
Third Amendment (Proposed)	\$ 53,381	For FY 2022/23 Services
Total	\$ 953,948	----

CONCLUSION:

The Town Council's authorization of the third contract amendment for the traffic signal and streetlight repair services would allow St. Francis Electric to continue providing the contract services in FY 2022/23.

COORDINATION:

This report was coordinated with the Finance Department.

FISCAL IMPACT:

The budget adjustment in the amount of \$53,381 from Available Capital/Special Project Reserve will allow for sufficient funds to be available in the FY 2022/23 Parks and Public Works Engineering Program Operating Budget for the contract amendment.

ENVIRONMENTAL ASSESSMENT:

The actions associated with this item are not a project defined under CEQA, and no further action is required.

Attachments:

1. Third Amendment to Agreement for Services with St. Francis Electric, Inc.
2. Exhibit A to Attachment 1 – 2nd Amendment, 1st Amendment, and Original Agreement

THIRD AMENDMENT TO AGREEMENT FOR SERVICES

This THIRD AMENDMENT TO AGREEMENT FOR SERVICES is dated for identification this 6th day of June 2023 and amends that certain SECOND AMENDMENT TO AGREEMENT FOR SERVICES dated March 15, 2012, made by and between the TOWN OF LOS GATOS, ("Town,") and ST. FRANCIS ELECTRIC, ("Service Provider") identified as a Partnership and whose address is 975 Carden Street, San Leandro, CA 94577.

RECITALS

- A. Town and Service Provider entered into an Agreement for Services on September 15, 2020 ("Agreement"), a First Amendment to Agreement for Services on July 22, 2021, a Second Amendment to Agreement for Services on March 15, 2022, copies of which is attached hereto and incorporated by reference as Exhibit A to this Amendment.
- B. Town desires to amend the Agreement to increase the compensation and to add the minimum scope of insurance of the agreement.

AMENDMENT

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

Additional compensation for Response Maintenance Repair Services for Fiscal Year 2022/23 shall be increased by \$53,381 for a total agreement amount **not to exceed \$953,948**. Payment shall be based upon Town approval of each task.

- 2. Section 3.1 Minimum Scope of Insurance is amended to read as follows:

Service Provider agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.

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

ATTACHMENT 1

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

Town of Los Gatos by:

St. Francis Electric, by:

Laurel Prevetti, Town Manager

Guy Smith, Vice President

Recommended by:

Approved as to Form:

Nicolle Burnham
Parks and Public Works Director

Gabrielle Whelan, Town Attorney

Attest:

Wendy Wood, CMC, Town Clerk

SECOND AMENDMENT TO AGREEMENT FOR SERVICES

This SECOND AMENDMENT TO AGREEMENT FOR SERVICES is dated for identification this 15th day of March 2022 and amends that certain AGREEMENT FOR SERVICES dated September 15, 2020, and FIRST AMENDMENT TO AGREEMENT dated July 22, 2021, made by and between the **TOWN OF LOS GATOS**, ("Town,") and **ST. FRANCIS ELECTRIC**, ("Service Provider").

RECITALS

- A. Town and Service Provider entered into an Agreement for Services on November 1, 2020 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town and Service Provider entered into First Amendment to the Agreement for Services on August 3, 2021 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 2 to this Amendment.
- C. Town desires to make second amendment to the Agreement to the compensation for Services in Fiscal Year 2021/22 and Fiscal Years 2022/23 through Fiscal Year 2024/25.

AMENDMENT

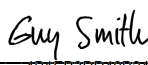
1. 2.6 Compensation is amended to read as follows:
 - For Fiscal year 2021/22, the annual compensation for Services shall be increased by \$67,000 for a total annual amount of \$202,000; and
 - For Fiscal Year 2022/23 to Fiscal Year 2024/25, the annual compensation for Services shall be increased by \$50,000 for a total annual amount of \$185,000 for the three fiscal years, for a total revised contract amount not to exceed \$900,567.
2. All other terms and conditions of the Agreement remain in full force and effect.

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

Town of Los Gatos, by:

DocuSigned by:
 4/25/2022
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Laurel Prevetti
Town Manager

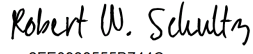
St. Francis Electric, by:

DocuSigned by:
 4/15/2022
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Guy Smith / Vice President
Name/Title

Recommended by:

DocuSigned by:
 4/16/2022
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Timm Borden
Interim Director of Parks and Public Works

Approved as to Form:

DocuSigned by:
 4/22/2022
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Robert Schultz, Town Attorney

Attest:

DocuSigned by:
 4/25/2022
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Shelley Neis, MMC, CPMC, Town Clerk

FIRST AMENDMENT TO AGREEMENT FOR SERVICES

This FIRST AMENDMENT TO AGREEMENT FOR SERVICES is dated for identification this 22nd day of July 2021 and amends that certain AGREEMENT FOR SERVICES dated June 5, 2018, made by and between the **TOWN OF LOS GATOS**, ("Town,") and **ST. FRANCIS ELECTRIC**, ("Service Provider").

RECITALS

- A. Town and Service Provider entered into an Agreement for Services on November 1, 2020 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town desires to amend the Agreement to the compensation of the agreement for Fiscal Year 2020/21 for Underground Service Alert (USA) Locating Services.

AMENDMENT

1. **2.6 Compensation** is amended to read as follows:
 - Compensation for Underground Service Alert (USA) Locating Services for Fiscal Year 2020/21 shall be increased in an amount of \$8,567, for a total of \$143,567, for a total revised contract amount not to exceed \$683,567.
2. All other terms and conditions of the Agreement remain in full force and effect.

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

Town of Los Gatos, by:

St. Francis Electric, by:

DocuSigned by:



8/3/2021

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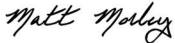
Laurel Prevetti

Town Manager



Recommended by:

DocuSigned by:



8/3/2021

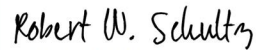
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Matt Morley

Director of Parks and Public Works

Approved as to Form:

DocuSigned by:



8/3/2021

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Robert Schultz, Town Attorney

Attest:

DocuSigned by:



8/4/2021

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Shelley Neis, MMC, CPMC, Town Clerk

AGREEMENT FOR SERVICES

THIS AGREEMENT is dated for identification this 15th of September 2020, and is made by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and St. Francis Electric ("Service Provider"), whose address is 975 Carden St., San Leandro, CA. 94577. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 Town sought quotations for the services described in this Agreement, and Service Provider was found to be the lowest responsible supplier for this purchase.
- 1.2 Service Provider represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Town desires to engage Service Provider to provide a comprehensive Street Lighting and Traffic Signal Preventive Maintenance and Repair Services.
- 1.4 Service Provider warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Service Provider acknowledges Town has relied upon these warranties to retain Service Provider.

II. AGREEMENT

- 2.1 Scope of Services. Service Provider shall provide services as described in that certain Proposal sent to the Town on August 26, 2020, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. The effective date of this Agreement shall begin November 1, 2020 and will continue through June 30, 2025, subject to appropriation of funds, notwithstanding any other provision in this agreement.
- 2.3 Compliance with Laws. The Service Provider shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Service Provider represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Service Provider to practice its profession. Service Provider shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Service Provider shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.

2.5 Information/Report Handling. All documents furnished to Service Provider by the Town and all reports and supportive data prepared by the Service Provider under this Agreement are the Town's property and shall be delivered to the Town upon the completion of services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Service Provider in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Service Provider shall not make any of these documents or information available to any individual or organization not employed by the Service Provider or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Service Provider pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Service Provider in connection with other projects shall be solely at Town's risk, unless Service Provider expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Service Provider which is and has been confirmed in writing by Service Provider to be a trade secret of Service Provider.

2.6 Compensation:

Compensation for year one shall not exceed \$135,000. Compensation for future years will be the base cost of \$135,000 and shall be adjusted upward annually for the remaining term of this agreement by the change, if any, in the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items (CPI). The adjustment shall be based upon the CPI published on December 31 of the preceding year. If the CPI indicates a downward adjustment, compensation would remain at the base amount. Payment shall be based upon Town approval of each task.

2.7 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

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

Invoices:

Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

- 2.8 Availability of Records. Service Provider shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Service Provider shall make these records available to authorized personnel of the Town at the Service Provider offices during business hours upon written request of the Town.
- 2.9 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Service Provider. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.10 Independent Contractor. It is understood that the Service Provider, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Service Provider may perform some obligations under this Agreement by subcontracting but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Service Provider agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Service Provider shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Service Provider or is based on allegations of Service Provider's negligent performance or wrongdoing.
- 2.11 Conflict of Interest. Service Provider understands that its professional responsibilities are solely to the Town. The Service Provider has and shall not obtain any holding or interest within the Town of Los Gatos. Service Provider has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Service Provider warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Service Provider shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person Service Provider discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement Service Provider shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.12 Equal Employment Opportunity. Service Provider warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Service Provider nor its subcontractors do and neither shall

discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

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

General Liability:

- i. The Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Service Provider; products and completed operations of Service Provider, premises owned or used by the Service Provider.
- ii. The Service Provider's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Service Provider's insurance and shall not contribute with it.

- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
 - iv. The Service Provider's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.
- 3.3 Workers' Compensation. In addition to these policies, Service Provider shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Service Provider shall ensure that all subcontractors employed by Service Provider provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Indemnification. The Service Provider shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Service Provider, or any of the Service Provider's officers, employees, or agents or any subcontractor.

IV. GENERAL TERMS

- 4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 Termination of Agreement. The Town and the Service Provider shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15)

written notice of termination. In the event of termination, the Service Provider shall deliver to the Town all plans, files, documents, reports, performed to date by the Service Provider. In the event of such termination, Town shall pay Service Provider an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.

4.4 Prevailing Wages. This project is subject to the requirements of Section 1720 et seq. of the California Labor Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements. Contractors and all subcontractors who perform work on the project are required to comply with these requirements. Prevailing wages apply to all projects over \$1,000 which are defined as a “public work” by the State of California. This includes: construction, demolition, repair, alteration, maintenance and the installation of photovoltaic systems under a Power Purchase Agreement when certain conditions are met under Labor Code Section 1720.6. This include service and warranty work on public buildings and structures.

4.4.1 The applicable California prevailing wage rate can be found at www.dir.ca.gov and are on file with the Town of Los Gatos Parks and Public Works Department, which shall be available to any interested party upon request. The contractor is also required to have a copy of the applicable wage determination posted and/or available at each jobsite.

4.4.2 Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime, weekend and holiday pay, and shift pay must be paid pursuant to applicable Labor Code section.

4.4.3 The public entity for which work is being performed or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violations identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.

4.4.4 As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, the contractor agrees to present to the TOWN, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such

payment request. The term “certified payroll” shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the Agency or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

- 4.4.5 In addition to submitting the certified payrolls and related documentation to the TOWN, the contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and final payment.
 - 4.4.6 No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
 - 4.4.7 No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered “public works contractor” with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
 - 4.4.8 Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the TOWN for any fines assessed by the California Department of Industrial Relations against the TOWN for such violation, including all staff costs and attorney’s fee relating to such fine.
 - 4.4.9 The TOWN shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., the TOWN may continue to hold sufficient funds to cover estimated wages and penalties under the contract.
- 4.5 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Service Provider.

- 4.6 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.7 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

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

Service Provider:
St. Francis Electric
975 Carden St.
San Leandro, CA. 94577

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

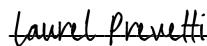
- 4.8 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.
- 4.9 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Service Provider. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

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

Town of Los Gatos by:

DocuSigned by:

10/6/2020

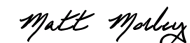


Laurel Provetti, Town Manager

Recommended by:

DocuSigned by:

9/30/2020

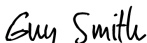


Matt Morley, Director of Parks and Public Works

St. Francis by:

DocuSigned by:

9/30/2020



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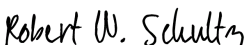
Vice President

Title

Approved as to Form:

DocuSigned by:

10/6/2020



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Robert Schultz, Town Attorney

Attest:

DocuSigned by:

10/6/2020



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Shelley Neis, MMC, CPMC, Town Clerk



Signals Streetlights RFP Cost Summary 2020

Attachment 2: Signals/Streetlights Quote Summary 2020			St. Francis Electric		
Basic Services					
Bid Item	Location	Description	Unit Price	Quantity	Monthly Cost
1	Los Gatos	Street Light Maintenance	\$1.10	1600	\$1,760
2	Los Gatos	Traffic Signal PM	\$120.00	31	\$3,720
3	Los Gatos	Parking Lot Light Maintenance	\$1.10	119	\$131
4	Los Gatos	USA Locating	\$140.00		
5					
6					
7					
8					
9					
			Monthly	Total	\$5,611
			Annual	Total	\$67,331
Additional Services T & M			Per Hour		
10					
11					
12					
13					



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/06/2023

ITEM NO: 7

DATE: May 22, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute a Revised Use Agreement with West Valley Red Hawks Lacrosse Club

RECOMMENDATION:

Authorize the Town Manager to execute a revised Use Agreement with West Valley Red Hawks Lacrosse Club (Attachment 3).

BACKGROUND:

West Valley Red Hawks Lacrosse Club (the Club) executed a use agreement in 2014 with the Town of Los Gatos for Creekside Sports Park. One amendment to the agreement was executed to extend the expiration to June 30, 2020. Attachment 1 includes a copy of the original agreement and amendment. Due to COVID-19 restrictions and changes in park use during the COVID-19 pandemic, the agreement lapsed.

At its February 21, 2023 meeting, Town Council authorized the Town Manager to execute a new use agreement with the Club (Item 7). In executing the agreement after Councils' action, the Club requested changes to the terms of the Use Agreement. The requested changes include (see Attachment 2 redlined agreement):

- Section 1.3, a new affiliation
- Section 2.4, 10% decrease in the Annual Use Fee
- Section 2.6, a good faith clause
- Section 3.1, removal of automobile coverage
- Section 4.6, an address change

PREPARED BY: Meredith Johnston
Administrative Technician

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

SUBJECT: Authorize the Town Manager to Execute a Revised Use Agreement with West Valley Red Hawks Lacrosse Club

DATE: May 22, 2023

BACKGROUND (continued):

The Parks and Public Works Department was recently informed that the Club have programmed with Los Gatos-Saratoga Community Education Recreation for youth lacrosse programs at Creekside Sports Park. This additional information has been added to Section 2.2 of the Use Agreement.

All other terms of the Use Agreement have remained the same.

DISCUSSION:

The Club is interested in continuing to use the Creekside Sports Park and an updated draft use agreement is included as Attachment 3 (clean version of changes noted in Attachment 2). The terms are similar to the recently approved agreement with the Red Hawks, with the main terms as follows:

1. The term of the agreement is five years and may be extended for up to two additional five-year periods upon mutual written consent of the parties.
2. The Club shall have exclusive use of the Premises, except bathrooms and parking, which are open to the public at large, only during those times and dates as shown on "Annual Schedules". The Annual Schedule shall cover camps and classes for the Winter, Spring, Summer, and Fall sessions.
3. Saturdays, the Club has programmed with Los Gatos-Saratoga Community Education Recreation for youth lacrosse programs at Creekside Sports Park. The use hours and Facility Maintenance Fee will be paid by the Club through this Use Agreement.
4. The Club shall pay the Town of Los Gatos an Annual Use Fee of \$5,850 for the use of the Premises which will escalate annually. Table 1 provides a comparison in the use fee for groups with which the Town has Park Use Agreements.

Table 1. Park Use Fees by User Group

User Name	Annual Use Fee (\$)	Annual Total Use Hours	Annual Fee Per Hour (\$/Hour)
Los Gatos United Soccer	\$21,590	1,865	\$11.58
Red Hawks Lacrosse Club (the Club)	5,850	253	23.12
Los Gatos Little League	6,600	1,216	5.43
Los Gatos Saratoga Recreation	15,500	4,607	3.36

SUBJECT: Authorize the Town Manager to Execute a Revised Use Agreement with West Valley Red Hawks Lacrosse Club

DATE: May 22, 2023

DISCUSSION (continued):

5. The Club shall pay the Town of Los Gatos a Facility Maintenance Fee (FMF) of \$4.00 per participant per program or class offered by the Club at Creekside Sports Park. This is consistent with all other user groups, with the possible exception of Los Gatos Saratoga Recreation who have requested a \$2.00 per participant per session fee. That fee reduction is under consideration as another item on this Council Agenda for June 6, 2023.
6. The Club shall perform maintenance as set forth in the Maintenance Responsibilities section of the Agreement.
7. The Club shall comply, without limitation, with all applicable provisions of the Los Gatos Town Code, with special attention to Chapter 19, Parks and Recreation provisions. The Club shall also comply with any park rules and regulations established by the Director of Parks and Public Works pursuant to Section 19.10.025(17) of the Town Code, including those rules set forth in Town of Los Gatos Park Rules and Regulations and Town of Los Gatos Creekside Sports Park Special Use Policies.

Creekside Sports Park offers a large artificial turf field for year-round sporting activities. Creekside is open to the general public Monday – Friday from 7:00 a.m. to 3:00 p.m. After 3:00 p.m. and on the weekends the field is exclusively used by the Club and Los Gatos United Soccer Club (LGUSC). The field use schedule meets the needs of the Club, as well as provides designated hours for youth soccer. The allotted field use is divided into 20% for the Red Hawks and 80% for LGUSC. This ratio is adjusted yearly between the clubs and the Town based on an agreed schedule.

CONCLUSION:

Staff is recommending that the Town Council authorize the Town Manager to execute the revised Use Agreement between the Town of Los Gatos and West Valley Red Hawks Lacrosse Club (Attachment 3).

FISCAL IMPACT:

Approval of the use agreement with the Club for the use of Creekside Sports Park would result in annual revenue of \$5,850 and on July 1, 2024, and each anniversary thereafter, the Annual User Fee shall be adjusted according to the percent change in the U. S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Items, All Urban Consumers, San Francisco-Oakland-San Jose, 1982-84-100 Index, plus \$4.00 per participant per class or program. Payments will be made to the Town of Los Gatos by Red Hawks on an annual basis.

PAGE 4 OF 4

SUBJECT: Authorize the Town Manager to Execute a Revised Use Agreement with West Valley Red Hawks Lacrosse Club

DATE: May 22, 2023

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Prior Use Agreement
2. Redlined Use Agreement
3. Proposed Use Agreement between the Town of Los Gatos and West Valley Red Hawks Lacrosse Club (Clean)

**FIRST AMENDMENT
TO
USE AGREEMENT
BETWEEN THE TOWN OF LOS GATOS AND WEST VALLEY RED HAWKS LACROSSE
CLUB
FOR USE OF THE LOS GATOS CREEKSIDE SPORTS PARK**

This FIRST AMENDMENT to USE AGREEMENT is entered into this 17th day of May, 2018, by and between the **TOWN OF LOS GATOS**, State of California ("Town"), and **WEST VALLEY RED HAWKS LACROSSE CLUB**, a California nonprofit corporation ("Red Hawks").

RECITALS

- A. Town and Red Hawks entered into a Use Agreement on July 16, 2014, for use of the Los Gatos Creekside Sports Park, a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town and Red Hawks mutually desire to extend the term of the existing Use Agreement for one three-year period.

FIRST AMENDMENT

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. The term of this Agreement shall be extended for one additional three-year term as outlined in section 3 of the Use Agreement from July 1, 2017 through June 30, 2020.
2. All other Terms and Conditions of the Use Agreement shall remain in effect.

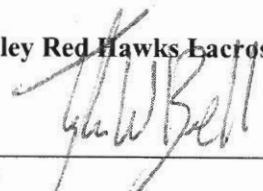
IN WITNESS WHEREOF:

Town of Los Gatos, by:



Laurel Prevetti, Town Manager

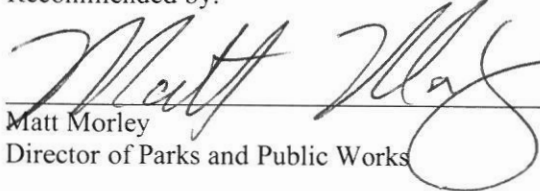
West Valley Red Hawks Lacrosse Club, by:



Signature
Tyler Bell, President, West Valley Red Hawks

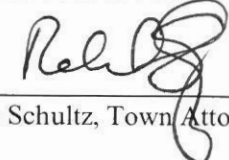
Print Name and Title

Recommended by:



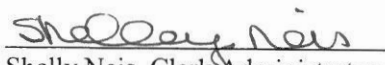
Matt Morley
Director of Parks and Public Works

Approved as to Form:



Rob Schultz, Town Attorney

Attest:

 2/5/19

Shelly Neis, Clerk Administrator
Town

**USE AGREEMENT
BETWEEN THE TOWN OF LOS GATOS
AND
WEST VALLEY RED HAWKS LACROSSE CLUB**

This USE AGREEMENT is entered into this 7/16 day _____, 2014, by and between the **TOWN OF LOS GATOS**, State of California ("Town"), and **WEST VALLEY RED HAWKS LACROSSE CLUB** ("Red Hawks")

RECITALS

- A. Town is the owner of Creekside Sports Park, located at 930 University Avenue, Los Gatos, California.
- B. The Red Hawks is a non-profit, club sponsored program run by volunteers and parent coaches established in 2004 to bring the sport of lacrosse to the Los Gatos-Saratoga area, with boys teams ranging from 2nd through 8th grade and girls teams from 2nd through 6th grade, which will expand to 7th and 8th grade in the future.
- C. Red Hawks is an affiliate of the Northern California Junior Lacrosse Association (NCJLA) and as such, its coaches, players, officials and parents are required to abide by the United States Lacrosse "Code of Conduct" that embodies basic common sense principles, demonstrates consideration of others, and projects a positive image to the boys and girls that participate in their programs.
- D. The Red Hawks were one of the community partners that supported the acquisition and development of the Creekside Sports Park.
- E. Town and Red Hawks each desire an agreement between them setting forth the specific terms and conditions under which the Red Hawks may use the Creekside Sports Park, including: hours of use; responsibility for maintenance of the fields and adjacent grounds; use and maintenance of associated facilities and structures, storage of Red Hawks goods and equipment; and other related items.

AGREEMENT

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

- 1. Subject Premises. The Premises covered by this Agreement is the Creekside Sports Park, located at 930 University Avenue, Los Gatos, California. A drawing depicting the Premises is attached hereto and incorporated by reference (Attachment A).
- 2. Use of Premises. Red Hawks shall have exclusive use of the Premises, except bathrooms and parking, which are open to the public at large, only during those times and dates as shown on Attachment B, "Annual Schedule". No later than October 15th of each year this Agreement is in force, Red Hawks and Town staff shall meet to develop an Annual Schedule for the following calendar year. Town retains the right to use or authorize the use of the Premises for all dates and times not allocated to Red Hawks in the Annual Schedule.

Red Hawks may request changes to the Annual Schedule by written notification to the Department of Parks and Public Works, but shall endeavor to minimize changes to the schedule

during each calendar year. All changes should be made in writing no less than 30 days prior to the effective date of the change. The Town of Los Gatos shall have sole authority to approve the Annual Schedule and any requested changes to the Annual Schedule.

3. Term of Agreement. Unless terminated sooner pursuant to Section 16 of this Agreement, this Agreement shall expire on June 30, 2017. The term of this Agreement may be extended for up to two additional three year periods upon mutual written consent of the parties.
4. Annual Use Fee. Beginning July 1, 2014, and every year thereafter, Red Hawks shall pay the Town of Los Gatos an Annual Use Fee for the use of the Premises. The initial Annual Use Fee shall be \$5,000. The Annual Use Fee shall be considered full and fair compensation for exclusive use of the facility for those days and times indicated on the Annual Schedule. On July 1, 2015, and each anniversary thereafter, the Annual User Fee shall be adjusted according to the percent change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, *All Items, All Urban Consumers, San Francisco-Oakland-San Jose, 1982-84-100 Index*.
5. Facility Maintenance Fee. Beginning July 1, 2014, and continuing for the full term of this agreement, including any extensions, each participant in the Red Hawks Lacrosse program using the Creekside Sports Park will be charged a \$2.00 Facility Maintenance Fee (FMF) per season. The Facility Maintenance Fee shall be assessed by the Red Hawks at the time of registration or and payment of program fees, and shall be retained by the Red Hawks in a separate account and remitted to the Town annually in conjunction with payment of the Annual Use Fee, no later than July 1 of each year this agreement is in force. Participants shall be charged a FMF for each distinct season at which registration and fees are typically collected by the Red Hawks.

FMF revenue received by the Town from the Red Hawks shall be used solely to fund the cost of maintenance and operations of the Premises.
6. Additional Annual Use Fee Adjustment. Should Red Hawks increase or decrease its requested hours of use as set forth in Attachment B, Annual Schedule, by 5% or more, the Annual Use Fee shall be adjusted proportionally based on the percentage change in hours. In no case shall the Annual Use Fee be decreased by more than 10% below the initial Annual Use Fee set forth in Section 4.
7. Maintenance. Red Hawks shall be responsible for the maintenance responsibilities set forth in Attachment C, Maintenance Responsibilities.
8. Facility Use Policies. Red Hawks shall comply, without limitation, to all applicable provisions of the Los Gatos Town Code, with special attention to the provisions of Chapter 19, Parks and Recreation. Red Hawks shall also comply with any park rules and regulations established by the Director of Parks and Public Works pursuant to Section 19.10.025(17) of the Town Code, including those rules set forth in Attachment D, Town of Los Gatos Park Rules and Regulations, and Attachment E, Town of Los Gatos Creekside Sports Park Special Use Policies. Failure to comply with these policies may result in suspension and/or termination of this agreement.
9. Payment. Red Hawks shall make all payments required pursuant to this Agreement, whether or not invoiced by Town, no later than July 1 of each year payments are due. All payments shall be mailed by first class mail or delivered in person at Town offices and addressed as follows:

Town of Los Gatos Finance Department
P.O. Box 655
Los Gatos, California 95030

10. Assignment. Red Hawks shall not assign any portion of this Agreement, or allow any use of the Premises by any other person or entity contrary to the terms of this Agreement, without prior written approval of Town. Red Hawks is expressly prohibited from use of the Premises for any activity other than activities sanctioned and associated with Red Hawks.
11. Personal Property. Personal property of Red Hawks shall be Red Hawks' sole responsibility to acquire, repair, replace and store. Red Hawks shall remove its personal property at the expiration or termination of this Agreement. Any personal property not so removed shall become the sole property of Town with no compensation.
12. Insurance.
 - (a) Minimum Scope of Insurance:
 - (i) Red Hawks agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring the Red Hawks, its officers and employees to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage. Insurance is to be placed with insurers with a current Best's rating of no less than B+.
 - (ii) Red Hawks agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy insuring the Red Hawks, its officers and employees to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
 - (iii) Red Hawks shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Red Hawks shall provide all certificates and endorsements before term of Agreement begins.
 - (b) General Liability:
 - (i) The Town, its officers, employees and volunteers are to be covered as additional insured as respects to liability arising out of activities occurring on or related to the occupancy and use of the Premises by the Red Hawks.
 - (ii) The Red Hawks insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town, its officials, employees or volunteers shall be excess of the Red Hawks insurance and shall not contribute with it.
 - (iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
 - (iv) The Red Hawks insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- (c) All Coverages. Each insurance policy required in this Paragraph 12 shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. The Red Hawks shall ensure that current certification of such insurance is on file at all times with the Town Clerk during the term of this agreement.
 - (d) Workers' Compensation. In addition to these policies, Red Hawks shall have and maintain Workers' Compensation insurance as required by California law. Further, Red Hawks shall ensure that all contractors employed on the Premises by the Red Hawks provide the required Workers' Compensation insurance for their respective employees.
 - (e) Property Insurance. Town shall have no obligation to maintain any insurance of the Premises or any personal property placed on the Premises. Red Hawks shall be solely responsible for obtaining whatever insurance coverage that the Red Hawks believes may be appropriate to protect and indemnify the Red Hawks for loss to the Premises or to any personal property that the Red Hawks may place on the Premises.
- 13. Indemnification. Red Hawks agrees to indemnify, hold harmless, and defend the Town, its officers, employees, volunteers, and agents, from and against any and all damages, claims or liability, penalties, costs or expenses in law or equity that may at any time arise from any loss, damage, or injury to persons or property occurring in or about the Premises that arises out of or incident to the Red Hawks' use of the Premises, including use by anyone that the Red Hawks has permitted or allowed to use the Premises. This obligation to indemnify, hold harmless, and defend applies whether or not the incident or claim or liability is or may be related to negligence on the part of the Town.
- 14. Damage and Destruction.
 - (a) Damage or destruction of any portion of the Premises by any cause shall not terminate this Agreement or otherwise affect the respective obligations of the two parties, any present or future law to the contrary notwithstanding, except pursuant to the provisions of this Paragraph 13.
 - (b) If because of the destruction or damage to the Premises, the Premises is entirely unsuitable or inadequate for the use specified herein, Red Hawks shall be entitled to a pro rata rebate of the fee paid to the Town calculated by dividing the Annual User Fee by the total number of hours of exclusive use as shown in Attachment A, Annual Schedule and then multiplying this calculated hourly rate by the number of hours remaining on the Annual Schedule after the date of the damage or destruction of the Premises.
 - (c) Under no circumstances does the Town have any obligation to provide the Red Hawks with an alternative property to conduct its operations, and the Red Hawks is solely responsible for obtaining such insurance as the Red Hawks deems appropriate to protect its interests should damage or destruction to the Premises occur.
 - (d) Red Hawks shall be liable for any loss, damage or injury to the field and/or Sports Park premises as a result of the direct or indirect use of the premises by Red Hawks under this agreement.
- 15. Compliance with Town Code. Red Hawks shall comply with all provisions of the Town Code, including the provisions of Chapter 19 of the Code concerning Parks and Recreation.

16. Termination.

- (a) Should Town terminate prior to the end of the term of this Agreement, Red Hawks shall be entitled to a pro rata rebate of the Annual Use Fee calculated by dividing the Annual User Fee by the total number of hours of exclusive use as shown in Attachment B, Annual Schedule and then multiplying this calculated hourly rate by the number of hours remaining on the Annual Schedule after the effective date of termination.
- (b) Red Hawks shall promptly terminate its use of the Premises at the termination of this Agreement, leaving the Premises in the same condition it was received, in good order and repair, reasonable wear and tear and damage by the elements excepted. All improvements and alterations made by the Red Hawks shall become the property of the Town upon termination of the Agreement without compensation by Town. Any personal property not removed by the Red Hawks within thirty (30) days of the termination of this License Agreement shall become the property of the Town and may be disposed of as the Town in its sole discretion deems advisable.
- (c) This Agreement shall continue in full force and effect unless prior to February 1st of any calendar year, either Party provides written notice to the other Party that it desires to terminate the Agreement for convenience and, upon such notice, the Agreement shall terminate on June 30th of the same calendar year.
- (d) If Town in its sole discretion determines that it requires the Premises for any public purpose, Town may terminate this Agreement upon one hundred eighty (180) days written notice. In the event of an emergency, Town may terminate this Agreement upon five (5) days written notice. "Emergency," for the purposes of this paragraph, is defined as when the Town Council declares a State of Emergency. Upon termination of this Agreement in the event of an Emergency, Town and Red Hawks will work cooperatively to develop a written plan for transition of services and vacation of Premises by Red Hawks.
- (e) In the event of any material default or breach by Red Hawks, Town may at any time thereafter, following any notice required by statute, and without limiting Town in the exercise of any right or remedy which may have reason of such default or breach:
 - a. Terminate Red Hawks' right to possession of the Premises by any lawful means, in which case this Agreement shall terminate and Red Hawks shall immediately surrender possession of the Premises to Town. In such event, Town shall be entitled to recover from Red Hawks any damages incurred by Town by reason of Red Hawks' default including but not limited to: the cost of recovering possession of the Premises and reasonable attorneys' fees.
 - b. Pursue any other remedy now or hereafter available to Town under the laws of the State of California. Town shall have all remedies provided in law and equity.
- (f) Red Hawks waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and 1179, and any other present and future law, in the event Red Hawks is evicted or Town otherwise lawfully takes possession of the Premises by reason of any default or breach of this Agreement by Red Hawks.
- (g) If Red Hawks fails to remove any personal property belonging to Red Hawks from the Premises after forty-five (45) days of the expiration or termination of this Agreement, such

property shall at the option of the Town be deemed to have been transferred to Town. Town shall have the right to remove and to dispose of such property without liability to Red Hawks or to any person claiming under Red Hawks, and the Town shall have no need to account for such property.

17. No Property Rights. Nothing in this Agreement is in any way intended to establish, convey, create or otherwise grant to Red Hawks any form of property rights in the Premises, nor shall such rights be established, conveyed, created or otherwise granted by Red Hawks's use of the Premises pursuant to this Agreement. Red Hawks hereby acknowledges that it currently has no property interest in the Premises or any improvements thereto or fixtures location thereon, and that any claim it may have to same is hereby and forever waived.

18. Notices. Any written correspondence or Notices given under this Agreement shall be addressed as follows:

To the Red Hawks:
President
West Valley Red Hawks Lacrosse Club
126 Twin Oaks Drive
Los Gatos, CA 95032

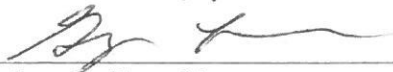
To the Town:
Director
Department of Parks and Public Works
Town of Los Gatos
41 Miles Avenue
Los Gatos, CA 95030

Notices shall be delivered by first class, postage prepaid mail or in person. If mailed, a notice shall be deemed effective on the fifth day following deposit in the U.S. Mail.

19. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this License Agreement.
20. Entire Agreement. This Agreement constitutes the complete and exclusive statement of the Agreement between Town and Red Hawks. No terms, conditions, understanding or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

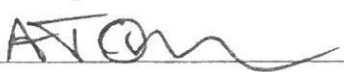
IN WITNESS WHEREOF:

Town of Los Gatos, by:

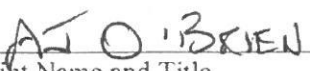


Greg Larson, Town Manager

West Valley Red Hawks Lacrosse Club, by:

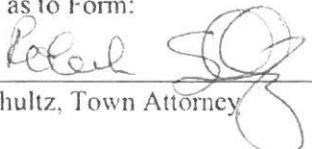


Signature

 AJ O'BRIEN, PRESIDENT

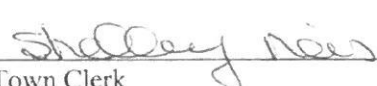
Print Name and Title

Approved as to Form:



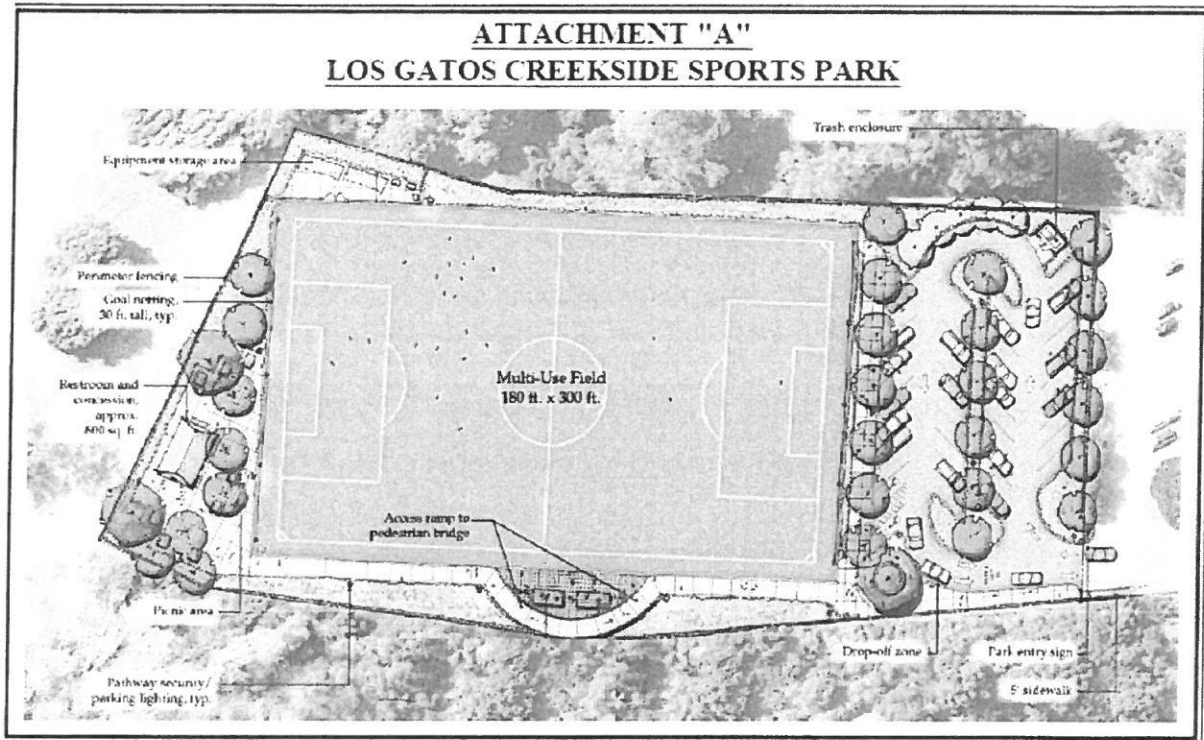
Robert Schultz, Town Attorney

Attest:



Town Clerk

ATTACHMENT A
CREEKSIDE SPORTS PARK



ATTACHMENT B
ANNUAL USE SCHEDULE

January 2015

January 2015						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

February 2015						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Dec 28	29	30	31	Jan 1, 15	2	3
Dec 28 - Jan 3							
	4	5	6	7	8	9	10
Jan 4 - 10		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)			9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)
	11	12	13	14	15	16	17
Jan 11 - 17		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)			9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)
	18	19	20	21	22	23	24
Jan 18 - 24		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)			9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)
	25	26	27	28	29	30	31
Jan 25 - 31		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)			9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)

Dorrie Romero

February 2015

February 2015						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

March 2015						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Feb 1 - 7	Feb 1	2 3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)	3	4 3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)	5	6	7 9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)
	8	9 3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)	10	11 3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)	12	13	14 9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)
Feb 8 - 14	15	16 3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)	17	18 3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)	19	20	21 9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)
	22	23 3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)	24	25 3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)	26	27	28 9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)
Feb 22 - 28							

Dorrie Romero

March 2015

March 2015						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

April 2015						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Mar 1 - 7	Mar 1	2	3	4	5	6	7
		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)			9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)
Mar 8 - 14	8	9	10	11	12	13	14
		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)			9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)
Mar 15 - 21	15	16	17	18	19	20	21
		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)			9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)
Mar 22 - 28	22	23	24	25	26	27	28
		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)			9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)
Mar 29 - Apr 4	29	30	31	Apr 1	2	3	4
		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)					

Dorrie Romero

April 2015

April 2015						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

May 2015						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Mar 29	30	31	Apr 1	2	3	4
Mar 29 - Apr 4				3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)			9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)
	5	6	7	8	9	10	11
Apr 5 - 11		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)			9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)
	12	13	14	15	16	17	18
Apr 12 - 18		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)			9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)
	19	20	21	22	23	24	25
Apr 19 - 25		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)			9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)
	26	27	28	29	30	May 1	2
Apr 26 - May 2		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)			

Dorrie Romero

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May 2015

May 2015						
Su	Mo	Tu	We	Th	Fr	Sa
3	4	5	6	7	1	2
10	11	12	13	14	8	9
17	18	19	20	21	15	16
24	25	26	27	28	22	23
31					29	30

June 2015						
Su	Mo	Tu	We	Th	Fr	Sa
7	1	2	3	4	5	6
14	8	9	10	11	12	13
21	15	16	17	18	19	20
28	22	23	24	25	26	27
	29	30				

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Apr 26	27	28	29	30	May 1	2
4/26 - 5/1							9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)
	3	4	5	6	7	8	9
5/3 - 8		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)			9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)
	10	11	12	13	14	15	16
5/10 - 15		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)			9:00am 1:00pm WVRHL Games (Los Gatos Creekside Sports Park)
	17	18	19	20	21	22	23
5/17 - 22		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)		3:30pm 7:00pm WVRHL Practice (Los Gatos Creekside Sports Park)			
	24	25	26	27	28	29	30
5/24 - 29							
	31	Jun 1	2	3	4	5	6
5/31 - 6/5							

Dorrie Romero

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June 2015

June 2015						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

July 2015						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	May 31	Jun 1	2	3	4	5	6
May 31 - Jun 6							
	7	8	9	10	11	12	13
Jun 7 - 13							
	14	15	16	17	18	19	20
Jun 14 - 20							
	21	22	23	24	25	26	27
Jun 21 - 27							
	28	29	30	Jul 1	2	3	4
Jun 28 - Jul 4							

July 2015

July 2015						
Su	Mo	Tu	We	Th	Fr	Sa
5	6	7	1	2	3	4
12	13	14	8	9	10	11
19	20	21	15	16	17	18
26	27	28	22	23	24	25
			29	30	31	

August 2015						
Su	Mo	Tu	We	Th	Fr	Sa
2	3	4	5	6	7	1
9	10	11	12	13	14	8
16	17	18	19	20	21	15
23	24	25	26	27	28	22
30	31					29

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Jun 28	29	30	Jul 1	2	3	4
Jun 28 - Jul 4							
	5	6	7	8	9	10	11
Jul 5 - 11							
	12	13	14	15	16	17	18
Jul 12 - 18	9:00am 1:00pm WVRHL Field Time (Los Gatos Creekside Sports Park)						
	19	20	21	22	23	24	25
Jul 19 - 25	9:00am 1:00pm WVRHL Field Time (Los Gatos Creekside Sports Park)						
	26	27	28	29	30	31	Aug 1
Jul 26 - Aug 1	9:00am 1:00pm WVRHL Field Time (Los Gatos Creekside Sports Park)						

Dorrie Romero

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August 2015

August 2015							September 2015						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
2	3	4	5	6	7	1	6	7	1	2	3	4	5
9	10	11	12	13	14	8	13	14	8	9	10	11	12
16	17	18	19	20	21	15	20	21	15	16	17	18	19
23	24	25	26	27	28	22	27	28	22	23	24	25	26
30	31					29			29	30			

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Jul 26	27	28	29	30	31	Aug 1
7/26 - 31							
	2	3	4	5	6	7	8
8/2 - 7	9:00am 1:00pm WVRHL Field Time (Los Gatos Creekside Sports Park)						
	9	10	11	12	13	14	15
8/9 - 14	9:00am 1:00pm WVRHL Field Time (Los Gatos Creekside Sports Park)						
	16	17	18	19	20	21	22
8/16 - 21	9:00am 1:00pm WVRHL Field Time (Los Gatos Creekside Sports Park)						
	23	24	25	26	27	28	29
8/23 - 28							
	30	31	Sep 1	2	3	4	5
8/30 - 9/4							

Dorrie Romero

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September 2015

September 2015						
Su	Mo	Tu	We	Th	Fr	Sa
6	7	1	2	3	4	5
13	14	8	9	10	11	12
20	21	15	16	17	18	19
27	28	22	23	24	25	26

October 2015						
Su	Mo	Tu	We	Th	Fr	Sa
4	5	6	7	1	2	3
11	12	13	14	8	9	10
18	19	20	21	15	16	17
25	26	27	28	22	23	24
			29	30	31	

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Aug 30	31	Sep 1	2	3	4	5
Aug 30 - Sep 5							
	6	7	8	9	10	11	12
Sep 6 - 12							
	13	14	15	16	17	18	19
Sep 13 - 19							
	20	21	22	23	24	25	26
Sep 20 - 26							
	27	28	29	30	Oct 1	2	3
Sep 27 - Oct 3							

Dorrie Romero

October 2015

October 2015							November 2015						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3	1	2	3	4	5	6	7
4	5	6	7	8	9	10	8	9	10	11	12	13	14
11	12	13	14	15	16	17	15	16	17	18	19	20	21
18	19	20	21	22	23	24	22	23	24	25	26	27	28
25	26	27	28	29	30	31	29	30					

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Sep 27 - Oct 3	Sep 27	28	29	30	Oct 1	2	3
Oct 4 - 10	4	5	6	7	8	9	10
Oct 11 - 17	11	12	13	14	15	16	17
Oct 18 - 24	18	19	20	21	22	23	24
Oct 25 - 31	25	26	27	28	29	30	31

November 2015

November 2015						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

December 2015						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Nov 1 - 7	Nov 1	2	3	4	5	6	7
Nov 8 - 14	8	9	10	11	12	13	14
Nov 15 - 21	15	16	17	18	19	20	21
Nov 22 - 28	22	23	24	25	26	27	28
Nov 29 - Dec 5	29	30	Dec 1	2	3	4	5
	3:00pm 5:00pm WVRHL Field Time (Los Gatos Creekside Sports Park)						

Dorrie Romero

December 2015

December 2015

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

January 2016

Su	Mo	Tu	We	Th	Fr	Sa
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Nov 29	30	Dec 1	2	3	4	5
Nov 29 - Dec 5							
	6	7	8	9	10	11	12
Dec 6 - 12	3:00pm 5:00pm WVRHL Field Time (Los Gatos Creekside Sports Park)						
	13	14	15	16	17	18	19
Dec 13 - 19	3:00pm 5:00pm WVRHL Field Time (Los Gatos Creekside Sports Park)						
	20	21	22	23	24	25	26
Dec 20 - 26	3:00pm 5:00pm WVRHL Field Time (Los Gatos Creekside Sports Park)						
	27	28	29	30	31	Jan 1, 16	2
Dec 27 - Jan 2							

Dorrie Romero

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ATTACHMENT C

MAINTENANCE RESPONSIBILITIES

Red Hawks shall be responsible for the following:

1. Following each scheduled use, pick up and deposit in receptacles or dumpsters all recyclables, litter and trash from field, walkways, building areas and parking lot.
2. Emptying of receptacles and recycling containers on an "as-needed" basis during or following scheduled use, particularly during tournaments or other heavy use events.
3. Maintaining all lacrosse goals and associated equipment, and ensuring that they are used in a safe and secure manner.

The Town of Los Gatos shall be responsible for the following:

1. Opening and closing of premises and restrooms.
2. Cleaning and restocking of restrooms on a daily basis.
3. Providing extra liners for garbage and recycling receptacles as may be needed by Red Hawks.
4. Maintenance of building, parking lot and security lighting.
5. Landscape and irrigation maintenance.
6. Maintenance of all structures, walkways, hardscape, fencing, gates and other surfaces.
7. Field maintenance including twice-a-year relining of the field, once prior to February 20th, and the second time at the discretion of the Town.
8. Parking lot sweeping.
9. Graffiti abatement.

ATTACHMENT D

TOWN OF LOS GATOS PARK RULES AND REGULATIONS

All park users shall comply with the provisions of Chapter 19, Parks and Recreation of the Los Gatos Town Code, and the these Park Rules and Regulations established by the Director of Parks and Public Works pursuant to Section 19.10.025(17) of the Los Gatos Town Code

General

Hours: Parks and trails are open from official sunrise to one-half hour after sunset, unless posted otherwise.

Parking at Oak Meadow Park:	<u>Residents of Los Gatos</u> (all residents living in 95030 & 95032 zip codes)	FREE
	<u>Non-Residents</u> (includes people living in 95033 zip code)	\$6.00 per vehicle

Parking at all other Parks: Free

No Smoking

- Smoking is prohibited within any park or on any trail.

Food & Alcohol

- Beer and wine are allowed with a picnic meal but must not leave the picnic site.
- A Vehicle Escort Permit is required when a caterer delivers food to a picnic site.
- Barbecues are not allowed at Belgatos Park.

Decorations & Signs

- Decorations must not interfere with other picnic sites.
- Decorations must be cleaned up and removed before leaving the park.
- Directional signs may be posted in designated areas, but must be removed before leaving.
- No tacks, nails or staples on park signs, tables or trees.
- No confetti, Egg toss or piñatas are allowed.

Dogs

- A six (6) foot leash is required at all times and dogs must be kept under physical control.
- Pet owners are required to immediately clean-up after their pets.

Miscellaneous

- Portable BBQs (gas or charcoal) are allowed in picnic areas only.
- Portable radios are allowed.
- Loud music is not allowed at any hour.
- Volleyball and Badminton nets are allowed.
- Portable toilets are not allowed.
- Petting zoos and pony rides are not allowed.
- Water slides and "Slip-n-Slides" are not allowed.
- Organized sports activities are not allowed without a permit.
- No golfing within any park.
- No overnight camping allowed.
- No sale or vending or other commercial activity except by permit.

Clean-Up

- Facilities rented and used must be left in clean condition. A fee will be assessed to you for leaving the picnic area unclean or damaged.
- Applicant should provide means to clean up site, including extra trash bags.
- Pick-up and dispose of all trash and food waste materials at reserved park site.
- Remove cans, bottles, bags, decorations, balloons, food and debris from park site. Use trash cans.
- Allow fires in barbecue pits to burn out. Do not use water because it will damage the grill and pit.

Reservations

- Prior to selecting and reserving any picnic area or bandstand/gazebo, we recommend that the applicant visit the park facility in advance or view [Parks & Trails Map](#) to obtain details of each of Town's parks and trails, including maps and driving directions. A [Park and Trails Map](#) is available online and at Town offices.
- The Parks and Public Works Department staff will finalize your reservation request once you have completed the [on-line reservation](#) process and payment by credit card in full is received. Checks will no longer be accepted. A reservation fee will be charged for each site you reserve. If you reserve two or more sites, a fee will be assessed for each site, as applicable. Park reservations do not include parking. Please view the [Fee Schedule](#) for current charges.
- Requests to reserve a picnic area should not be submitted with less than 48 hours of advance notice prior to the requested reservation date. All reservation requests must be completed through the on-line reservation process. Reservations by phone will not be accepted.
- All information collected is only for the use of the Town of Los Gatos Parks and Public Works Department for park reservations and will not be sold or shared with

outside vendors. Also be assured that all data you send as part of this reservation process is through a secure server and the data is encrypted for transmission. We do not keep any of your credit card information on our system.

Permits

- Special Use Permits are required for the following:
 1. Use of a group area for 25 people or more.
 2. Use of a jump house at any park in Los Gatos.
 3. Use of a vehicle escort at any park.
 4. Use of Bocce ball Courts at Oak Meadow Park.
 5. Use of Gazebo/Bandstand at Oak Meadow Park.
 6. For any organized recreational activities, such as formal classes or other similar activities.
- The permittee, under Town Municipal Code, Section 19.30.025, shall be bound by all park rules and regulations, and all applicable ordinances. The person to whom such permit is issued shall be liable for any loss, damage or injury sustained by the Town or by any person whomsoever by reason of the negligence of the person to whom such permit shall have been issued.
- Special Use Permit is approved by the Parks & Public Works Department upon review of reservation request and payment of applicable deposit.
- Use of a disc jockey (DJ) at the Gazebo/Bandstand at Oak Meadow Park is allowed only after receiving a Special Events Permit from the Los Gatos-Monte Sereno Police Department. The Police Department number is (408) 354-8600.
- An insurance certificate in the amount of \$1 million, naming the Town of Los Gatos, its Council members, Boards, Commissions, employees and agents as additionally insured is required for groups of over 100 people (reservations for events such as weddings, reunions and company picnics).
- Permits cannot be transferred, assigned or sublet.

Jump Houses

- Use of a jump house requires a Special Use Permit. At Oak Meadow Park, a Special Use Permit for jump houses can be requested only if the associated picnic area is reserved concurrently.
- Jump houses can be rented only from companies that have provided proof of liability insurance naming the Town of Los Gatos as the additional insured. The following companies have registered with the Clerk's Office and have provided the required certificate:

Astro Events & Jump	(800) 300-0922
Bali Baly Jump	(408) 226-2706
Jump For Fun	(800) 281-6792
Bay Area Jump	(800) 514-5867
Jump For Joy	(800) 418-5867

- Any jump house company not listed above must provide insurance to the Town of Los Gatos Clerk's Office for consideration. A permit will not be issued to an applicant without providing proof of insurance from the vendor.

- Jump houses must be hand carried in to the park and placed in the area specified by the Parks Service Officer.
- No electricity is provided at the park for jump houses.
- Jump houses with combined features such as a jumper and a slide and/or obstacle course, and features containing water are not allowed.
- Personally owned jump houses are not allowed.
- Jump house fees for residents are \$95. Non-resident fees are \$125.
- A Jump House Permit does not include Picnic Area Use Permit. Each must be obtained separately.

Vehicle Escort

Individuals renting a park facility can request a staff vehicle escort to assist with the transport of supplies to/from a designated picnic area. Reservations must be made five (5) business days in advance of the event date for this service.

- No vehicles are allowed beyond designated public parking lots. If an individual would like to drop off supplies or equipment beyond these areas in a vehicle, a vehicle escort is required.
- Vehicle escorts conducted by a Park Service Officer must be scheduled in advance.
- Vehicle escorts are not available for Picnic Areas 1, 2, & 7 at Oak Meadow Park.

ATTACHMENT E

TOWN OF LOS GATOS CREEKSIDE SPORTS PARK SPECIAL USE POLICIES

All park users shall comply with the provisions of Chapter 19, Parks and Recreation of the Los Gatos Town Code; Park Rules and Regulations established by the Director of Parks and Public Works pursuant to Section 19.10.025(17) of the Los Gatos Town Code; and these Special Rules and Regulations, also established pursuant to Section 19.10.025(17) of the Los Gatos Town Code. Permitted groups have priority use and other users shall promptly vacate field upon request by permitted users

No Smoking

- Smoking of any substance and use of any tobacco product, including chewing tobacco, is prohibited.

Artificial Turf Field and Warm Up Area Use

- No metal cleats or spikes allowed.
- No metal stakes, such as umbrellas or shade structures permitted.
- No bare feet.
- No spitting on artificial turf surfaces.
- No vehicles allowed on field or warm-up area
- No marking or painting of turf unless approved by the Town of Los Gatos.
- No golfing or use of golf clubs.
- No discus, hammer, javelin or other field events permitted.

Food & Beverages

- No alcoholic beverages permitted within Creekside Sports Park.
- No open fires, flames or portable barbecues (gas or charcoal) permitted.
- No chewing gum or sunflower seeds allowed within Creekside Sports Park.
- No food or beverages allowed on playing field other than water.
- No glass bottles or containers allowed on field or warm-up areas.

Dogs and Other Animals

- No dogs or other animals allowed except for certified guide animals.

Signage

- Signs may be affixed with string, rope or ties only. No tape, tacks, staples, or nails allowed.
- All signage and ties must be removed after use.
- No staking of any team signs or banners allowed.

**USE AGREEMENT
BETWEEN THE TOWN OF LOS GATOS
AND
WEST VALLEY RED HAWKS LACROSSE CLUB**

THIS AGREEMENT is dated for identification this 1st day of July 2022 and is made by and between TOWN OF LOS GATOS, State of California ("Town") and WEST VALLEY RED HAWKS LACROSSE CLUB ("Red Hawks") identified as a nonprofit organization and whose address is ~~15151 Old Ranch Road~~ **18921 Bear Creek Road**, Los Gatos, California 95033.

I. RECITALS

- 1.1 Town is the owner of Creekside Sports Park, located at 930 University Avenue, Los Gatos, California.
- 1.2 The Red Hawks is a non-profit, club-sponsored program run by volunteers and parent coaches established in 2004 to bring the sport of lacrosse to the Los Gatos-Saratoga area.
- 1.3 Red Hawks is an affiliate of the ~~Northern California Junior Lacrosse Association (NCJLA)~~ **South Bay Consortium of teams** and as such, its coaches, players, officials, and parents are required to abide by the United States Lacrosse "Code of Conduct" that embodies basic common-sense principles, demonstrates consideration of others, and projects a positive image to the boys and girls that participate in their programs.
- 1.4 The Red Hawks were one of the community partners that supported the acquisition and development of the Creekside Sports Park.
- 1.5 Town and Red Hawks each desire an agreement between them setting forth the specific terms and conditions under which the Red Hawks may use the Creekside Sports Park, including hours of use; responsibility for maintenance of the fields and adjacent grounds; use and maintenance of associated facilities and structures; storage of Red Hawks goods and equipment; and other related items.

II. AGREEMENTS

- 2.1 Subject Premises. The Premises covered by this Agreement is the Creekside Sports Park, located at 930 University Avenue, Los Gatos, California. A drawing depicting the Premises is attached hereto and incorporated by reference (Attachment A).
- 2.2 Use of Premises. Red Hawks shall have exclusive use of the Premises, except bathrooms and parking, which are open to the public at large, only during those times and dates as shown on "Annual Schedules". The Annual Schedule shall cover camps and classes for the Winter, Spring, Summer, and Fall sessions. No later than October 1st of each year this Agreement is in force, Red Hawks and Town staff shall meet to develop an Annual Schedule for the following calendar year. Town has the final say in establishing the master

ATTACHMENT 2

schedule. Town will attempt to accommodate user groups at their requested time but reserves the right to propose use hours that balance the needs of all user groups equitably. Town retains the right to use or authorize the use of the Premises for all dates and times not allocated to Red Hawks in the Annual Schedule.

Red Hawks may request changes to the Annual Schedule by written notification to the Department of Parks and Public Works but shall endeavor to minimize changes to the schedule during each calendar year. All changes should be made in writing no less than 30 days prior to the effective date of the change. The Town of Los Gatos shall have sole authority to approve the Annual Schedule and any requested changes to the Annual Schedule.

Saturdays, the Red Hawks have programmed with Los Gatos-Saratoga Community Education Recreation for youth lacrosse programs at Creekside Sports Park. The use hours and Facility Maintenance Fee will be captured under the Red Hawks Use Agreement.

- 2.3 Term of Agreement. Unless terminated sooner pursuant to Section 4.3 of this Agreement, the Use Agreement remains in effect from July 1, 2022 through June 30, 2027. The term of this Agreement may be extended for up to two additional five-year periods upon mutual written consent of the parties.
- 2.4 Annual Use Fee. Beginning July 1, 2022, and every year thereafter, Red Hawks shall pay the Town of Los Gatos an Annual Use Fee for the use of the Premises. The initial Annual Use Fee shall be ~~\$6,500~~ \$5,850. The Annual Use Fee shall be considered full and fair compensation for the exclusive use of the facility for those days and times indicated on the Annual Schedule. On July 1, 2023, and each anniversary thereafter, the Annual User Fee shall be adjusted according to the percent change in the U. S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Items, All Urban Consumers, San Francisco-Oakland-San Jose, 1982-84-100 Index.
- 2.5 Facility Maintenance Fee. Beginning July 1, 2022, and continuing for the full term of this agreement, including any extensions, each participant in the Red Hawks Lacrosse program using Creekside Sports Park will be charged a \$4.00 Facility Maintenance Fee (FMF) per season. The Facility Maintenance Fee shall be assessed by the Red Hawks at the time of registration or any payment of program fees and shall be retained by the Red Hawks in a separate account and remitted to the Town annually in conjunction with payment of the Annual Use Fee, no later than July 1 of each year this agreement is in force. Participants shall be charged an FMF for each distinct season at which registration and fees are typically collected by the Red Hawks.

FMF revenue received by the Town from the Red Hawks shall be used solely to fund the cost of maintenance and operations of the Premises.

- 2.6 Additional Annual Use Fee Adjustment. Should Red Hawks increase or decrease its requested hours of use as set forth in the Annual Schedule, by 5% or more, the Annual Use

ATTACHMENT 2

Fee shall be adjusted proportionally based on the percentage change in hours. In no case shall the Annual Use Fee be decreased by more than 10% below the initial Annual Use Fee set forth in Section 2.4. **Town will adjust use hours and Annual Use Fee per calendar year upon agreed schedule between the Town and Red Hawks.**

- 2.7 Maintenance. Red Hawks shall be responsible for the maintenance responsibilities set forth in Attachment B, Maintenance Responsibilities.
- 2.8 Facility Use Policies. Red Hawks shall comply, without limitation, with all applicable provisions of the Los Gatos Town Code, with special attention to Chapter 19, Parks and Recreation provisions. Red Hawks shall also comply with any park rules and regulations established by the Director of Parks and Public Works pursuant to Section 19.10.025(17) of the Town Code, including those rules set forth in Attachment C, Town of Los Gatos Park Rules and Regulations, and Attachment D, Town of Los Gatos Creekside Sports Park Special Use Policies. The Red Hawks agrees to apply with the current rules and regulations available at www.losgatosca.gov/parkres as well as any future amendments to those rules and regulations. Failure to comply with these policies may result in suspension and/or termination of this Agreement.

Red Hawks agrees to comply with the state "Fair Play in Community Sports Act." Red Hawks will not discriminate on the basis of gender and boys' and girls' teams will have equal access to the facilities.

- 2.9 Payment. Red Hawks shall make all payments, whether or not invoiced by Town, required pursuant to this Agreement no later than February 1 of each year payments are due. All payments shall be mailed by first class mail or delivered in person at the Town office and addressed as follows:

Town of Los Gatos
Attn: Finance Department
P.O. Box 697
Los Gatos, California 95031

- 2.10 Assignment. Red Hawks shall not assign any portion of this Agreement or allow the use of the Premises by any other person or entity contrary to this Agreement's terms, with the out Town's prior written approval. Red Hawks is expressly prohibited from use of the Premises for any activity other than activities sanctioned and associated with Red Hawks.
- 2.11 Personal Property. Personal property of Red Hawks shall be Red Hawks' sole responsibility to acquire, repair, replace and store. Red Hawks shall remove its personal property at the expiration or termination of this Agreement. Any personal property not so removed shall become the sole property of Town with no compensation

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. Red Hawks agrees to have and maintain for the duration of this Agreement, General Liability insurance policies insuring Red Hawks, its elected and appointed officials, employees, and agents to an amount not less than two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage. Insurance is to be placed with insurers with a current Best's rating of no less than B+.
- ii. ~~Red Hawks agrees to have and maintain for the duration of this Agreement, an Automobile Liability insurance policy insuring the Red Hawks, its elected and appointed officials, employees, and agents to an amount not less than one million (\$1,000,000) combined single limit per accident for bodily injury and property damage.~~
- iii. Red Hawks shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Red Hawks shall provide all certificates and endorsements before term of Agreement begins.

General Liability:

- i. The Town, its elected and appointed officials, employees, and agents are to be covered as additional insured as respects to liability arising out of activities occurring on or related to the occupancy and use of the Premises by Red Hawks.
- ii. Red Hawks insurance coverage shall be primary insurance as respects the Town, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the Town, its elected and appointed officials, employees, or agents shall be excess of the Red Hawks' insurance and shall not contribute with it.
- iii. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the Town, its elected and appointed officials, employees or volunteers.
- iv. Red Hawks insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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

ATTACHMENT 2

been given to the Town. The Red Hawks shall ensure that current certification of such insurance is on file at all times with the Town Clerk during the term of this agreement.

- 3.3 Workers' Compensation. In addition to these policies, Red Hawks shall have and maintain Workers' Compensation insurance as required by California law. Further, Red Hawks shall ensure that all contractors employed on the Premises by the Red Hawks provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Property Insurance. Town shall have no obligation to maintain any insurance of the Premises or any personal property placed on the Premises. Red Hawks shall be solely responsible for obtaining whatever insurance coverage that Red Hawks believes may be appropriate to protect and indemnify Red Hawks for loss to the Premises or to any personal property that Red Hawks may place on the Premises.
- 3.5 Indemnification. Red Hawks agrees to indemnify, hold harmless, and defend the Town, its elected and appointed officials, employees, and agents, from and against any and all damages, claims or liability, penalties, costs or expenses in law or equity that may at any time arise from any loss, damage, or injury to persons or property occurring in or about the Premises that arises out of or incident to the Red Hawks' use of the Premises, including use by anyone that the Red Hawks has permitted or allowed to use the Premises. This obligation to indemnify, hold harmless, and defend applies whether or not the incident or claim or liability is or may be related negligence on the part of the Town.

IV. GENERAL TERMS

- 4.1 Damage and Destruction. Damage or destruction of any portion of the Premises by any cause shall not terminate this Agreement or otherwise affect the respective obligations of the two parties, any present or future law to the contrary notwithstanding, except pursuant to the provisions of this Section 4.1.

If because of the destruction or damage to the Premises, the Premises is entirely unsuitable or inadequate for the use specified herein, Red Hawks shall be entitled to a pro rata rebate of the fee paid to the Town calculated by dividing the Annual User Fee by the total number of hours of exclusive use as listed in, Annual Schedule and then multiplying this calculated hourly rate by the number of hours remaining on the Annual Schedule after the date of the damage or destruction of the Premises.

Under no circumstances does the Town have any obligation to provide Red Hawks with an alternative property to conduct its operations, and Red Hawks is solely responsible for obtaining such insurance as Red Hawks deems appropriate to protect its interests should damage or destruction to the Premises occur.

Red Hawks shall be liable for any loss, damage or injury to the field and/or Premises as a result of the direct or indirect use of the Premises by Red Hawks under this agreement.

ATTACHMENT 2

Compliance with Town Codes. Red Hawks shall comply with all provisions of the Town Code, including the provisions of Chapter 19 of the Code concerning Parks and Recreations.

4.2 Compliance with Town Codes. Red Hawks shall comply with all provisions of the Town Code, including the provisions of Chapter 19 of the Code concerning Parks and Recreations.

4.3 Termination of Agreement. Should Town terminate prior to the end of the term of this Agreement, Red Hawks shall be entitled to a pro rata rebate of the Annual Use Fee calculated by dividing the Annual User Fee by the total number of hours of exclusive use as shown in, Annual Schedule and then multiplying this calculated hourly rate by the number of hours remaining on the Annual Schedule after the effective date of termination.

Red hawks shall promptly terminate its use of the Premises at the termination of this Agreement, leaving the Premises in the same condition it was received, in good order and repair, reasonable wear and tear and damage by the elements excepted. All improvements and alterations made by Red Hawks shall become the property of the Town upon termination of the Agreement without compensation by Town. Any personal property not removed by Red Hawks within thirty (30) days of the termination of this Use Agreement shall become the property of the Town and may be disposed of as the Town in its sole discretion deems advisable.

This Agreement shall continue in full force and effect unless prior to February 1st of any calendar year, either Party provides written notice to the other Party that it desires to terminate the Agreement for convenience and, upon such notice, the Agreement shall terminate on June 30th of the same calendar year.

If Town in its sole discretion determines that it requires the Premises for any public purpose, Town may terminate this Agreement upon one hundred eighty (180) days written notice. In the event of an emergency, Town may terminate this Agreement upon five (5) days written notice. "Emergency," for the purpose of this paragraph, is defined as when the Town Council declares a State of Emergency. Upon termination of this Agreement in the event of an Emergency, Town and Red Hawks will work cooperatively to develop a written plan for transition of services and vacation of Premises by Red Hawks.

In the event of any material default or breach by Red Hawks, Town may at any time, thereafter, following any notice required by statute, and without limiting Town in the exercise of any right or remedy which may have reason of such default or breach:

Terminate Red Hawks' right to possession of the Premises by any lawful means, in which case this Agreement shall terminate, and Red Hawks shall immediately surrender possession of the Premises to Town. In such event, Town shall be entitled to recover from Red Hawks any damages incurred by Town by reason of RedHawks' default including but

ATTACHMENT 2

not limited to the cost of recovering possession of the Premises and reasonable attorneys' fees.

Pursue any other remedy now or hereafter available to Town under the laws of the State of California. Town shall have all remedies provided in law and equity.

Red Hawks waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and 1179, and any other present, and future law, in the event Red Hawks is evicted or Town otherwise lawfully takes possession of the Premises by reason of any default or breach of this Agreement by Red Hawks.

If Red Hawks fails to remove any personal property belonging to Red Hawks from the Premises after forty-five (45) days of the expiration or termination of this Agreement, such property shall at the option of the Town be deemed to have been transferred to Town. Town shall have the right to remove and dispose of such property without liability to Red Hawks or to any person claiming under Red Hawks, and the Town shall have no need to account of such property.

4.4 No Property Rights. Nothing in this Agreement is in any way intended to establish, convey, create or otherwise grant to Red Hawks any form of property rights in the Premises, nor shall such rights be established, conveyed, created or otherwise granted by Red Hawks use of the Premises pursuant to the Agreement. Red Hawks hereby acknowledges that it currently has no property interest in the Premises or any improvements thereto or fixture's location thereon, and that any claim it may have to same is hereby and forever waived.

4.5 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.

4.6 Notices. Any written correspondence or Notices given under this Agreement shall be addressed as follows:

To Red Hawks:
President
West Valley Red Hawks Lacrosse Club
~~15151 Old Ranch Road~~
18921 Bear Creek Road
Los Gatos, CA 95033

To the Town:
Director
Department of Parks and Public Works
Town of Los Gatos
41 Miles Avenue
Los Gatos, CA 95030

Notices shall be delivered by first class, postage prepaid mail or in person. If mailed, a notice shall be deemed effective on the fifth day following in the U.S. Mail.

4.7 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of

ATTACHMENT 2

subsequent breach of the same or any other provision of this License Agreement.

- 4.8 Entire Agreement. This Agreement constitutes the complete and exclusive statement of the Agreement between Town and Red Hawks. No terms, conditions, understanding, or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the Town and Red Hawks have executed this Use Agreement.

Town of Los Gatos:

West Valley Red Hawks Lacrosse Club:

Laurel Prevetti, Town Manager

~~Robert H. Bohn, Jr., President~~
Patrick Sweeney, President

Recommended by:

Nicolle Burnham
Director of Parks and Public Works

Approved as to Form:

Gabrielle Whelan, Town Attorney

Attest:

Wendy Wood, CMC, Town Clerk

ATTACHMENT 2

**USE AGREEMENT
BETWEEN THE TOWN OF LOS GATOS
AND
WEST VALLEY RED HAWKS LACROSSE CLUB**

THIS AGREEMENT is dated for identification this 1st day of July 2023 and is made by and between TOWN OF LOS GATOS, State of California ("Town") and WEST VALLEY RED HAWKS LACROSSE CLUB ("Red Hawks") identified as a California nonprofit corporation and whose address is 18921 Bear Creek Road, Los Gatos, California 95033.

I. RECITALS

- 1.1 Town is the owner of Creekside Sports Park, located at 930 University Avenue, Los Gatos, California.
- 1.2 The Red Hawks is a non-profit, club-sponsored program run by volunteers and parent coaches established in 2004 to bring the sport of lacrosse to the Los Gatos-Saratoga area.
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schedule. Town will attempt to accommodate user groups at their requested time but reserves the right to propose use hours that balance the needs of all user groups equitably. Town will adjust use hours and payment per calendar year upon agreed schedule between the Town and Red Hawks. Town retains the right to use or authorize the use of the Premises for all dates and times not allocated to Red Hawks in the Annual Schedule.

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FMF revenue received by the Town from the Red Hawks shall be used solely to fund the cost of maintenance and operations of the Premises.

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Town of Los Gatos
Attn: Finance Department
P.O. Box 697
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III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. Red Hawks agrees to have and maintain for the duration of this Agreement, General Liability insurance policies insuring Red Hawks, its elected and appointed officials, employees, and agents to an amount not less than two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage. Insurance is to be placed with insurers with a current Best's rating of no less than B+.
- ii. Red Hawks shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Red Hawks shall provide all certificates and endorsements before term of Agreement begins.

General Liability:

- i. The Town, its elected and appointed officials, employees, and agents are to be covered as additional insured as respects to liability arising out of activities occurring on or related to the occupancy and use of the Premises by Red Hawks.
- ii. Red Hawks insurance coverage shall be primary insurance as respects the Town, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the Town, its elected and appointed officials, employees, or agents shall be excess of the Red Hawks' insurance and shall not contribute with it.
- iii. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the Town, its elected and appointed officials, employees or volunteers.
- iv. Red Hawks insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- 3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. The Red Hawks shall ensure that current certification of such insurance is on file at all times with the Town Clerk during the term of this agreement.

- 3.3 Workers' Compensation. In addition to these policies, Red Hawks shall have and maintain Workers' Compensation insurance as required by California law. Further, Red Hawks shall ensure that all contractors employed on the Premises by the Red Hawks provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Property Insurance. Town shall have no obligation to maintain any insurance of the Premises or any personal property placed on the Premises. Red Hawks shall be solely responsible for obtaining whatever insurance coverage that Red Hawks believes may be appropriate to protect and indemnify Red Hawks for loss to the Premises or to any personal property that Red Hawks may place on the Premises.
- 3.5 Indemnification. Red Hawks agrees to indemnify, hold harmless, and defend the Town, its elected and appointed officials, employees, and agents, from and against any and all damages, claims or liability, penalties, costs or expenses in law or equity that may at any time arise from any loss, damage, or injury to persons or property occurring in or about the Premises that arises out of or incident to the Red Hawks' use of the Premises, including use by anyone that the Red Hawks has permitted or allowed to use the Premises. This obligation to indemnify, hold harmless, and defend applies whether or not the incident or claim or liability is or may be related negligence on the part of the Town.

IV. GENERAL TERMS

- 4.1 Damage and Destruction. Damage or destruction of any portion of the Premises by any cause shall not terminate this Agreement or otherwise affect the respective obligations of the two parties, any present or future law to the contrary notwithstanding, except pursuant to the provisions of this Section 4.1.

If because of the destruction or damage to the Premises, the Premises is entirely unsuitable or inadequate for the use specified herein, Red Hawks shall be entitled to a pro rata rebate of the fee paid to the Town calculated by dividing the Annual User Fee by the total number of hours of exclusive use as listed in, Annual Schedule and then multiplying this calculated hourly rate by the number of hours remaining on the Annual Schedule after the date of the damage or destruction of the Premises.

Under no circumstances does the Town have any obligation to provide Red Hawks with an alternative property to conduct its operations, and Red Hawks is solely responsible for obtaining such insurance as Red Hawks deems appropriate to protect its interests should damage or destruction to the Premises occur.

Red Hawks shall be liable for any loss, damage or injury to the field and/or Premises as a result of the direct or indirect use of the Premises by Red Hawks under this agreement.

Compliance with Town Codes. Red Hawks shall comply with all provisions of the Town Code, including the provisions of Chapter 19 of the Code concerning Parks and Recreations.

- 4.2 Compliance with Town Codes. Red Hawks shall comply with all provisions of the Town Code, including the provisions of Chapter 19 of the Code concerning Parks and Recreations.
- 4.3 Termination of Agreement. Should Town terminate prior to the end of the term of this Agreement, Red Hawks shall be entitled to a pro rata rebate of the Annual Use Fee calculated by dividing the Annual User Fee by the total number of hours of exclusive use as shown in, Annual Schedule and then multiplying this calculated hourly rate by the number of hours remaining on the Annual Schedule after the effective date of termination.

Red Hawks shall promptly terminate its use of the Premises at the termination of this Agreement, leaving the Premises in the same condition it was received, in good order and repair, reasonable wear and tear and damage by the elements excepted. All improvements and alterations made by Red Hawks shall become the property of the Town upon termination of the Agreement without compensation by Town. Any personal property not removed by Red Hawks within thirty (30) days of the termination of this Use Agreement shall become the property of the Town and may be disposed of as the Town in its sole discretion deems advisable.

This Agreement shall continue in full force and effect unless prior to February 1st of any calendar year, either Party provides written notice to the other Party that it desires to terminate the Agreement for convenience and, upon such notice, the Agreement shall terminate on June 30th of the same calendar year.

If Town in its sole discretion determines that it requires the Premises for any public purpose, Town may terminate this Agreement upon one hundred eighty (180) days written notice. In the event of an emergency, Town may terminate this Agreement upon five (5) days written notice. "Emergency," for the purpose of this paragraph, is defined as when the Town Council declares a State of Emergency. Upon termination of this Agreement in the event of an Emergency, Town and Red Hawks will work cooperatively to develop a written plan for transition of services and vacation of Premises by Red Hawks.

In the event of any material default or breach by Red Hawks, Town may at any time, thereafter, following any notice required by statute, and without limiting Town in the exercise of any right or remedy which may have reason of such default or breach:

Terminate Red Hawks' right to possession of the Premises by any lawful means, in which case this Agreement shall terminate, and Red Hawks shall immediately surrender possession of the Premises to Town. In such event, Town shall be entitled to recover from Red Hawks any damages incurred by Town by reason of Red Hawks' default including but

not limited to the cost of recovering possession of the Premises and reasonable attorneys' fees.

Pursue any other remedy now or hereafter available to Town under the laws of the State of California. Town shall have all remedies provided in law and equity.

Red Hawks waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and 1179, and any other present, and future law, in the event Red Hawks is evicted or Town otherwise lawfully takes possession of the Premises by reason of any default or breach of this Agreement by Red Hawks.

If Red Hawks fails to remove any personal property belonging to Red Hawks from the Premises after forty-five (45) days of the expiration or termination of this Agreement, such property shall at the option of the Town be deemed to have been transferred to Town. Town shall have the right to remove and dispose of such property without liability to Red Hawks or to any person claiming under Red Hawks, and the Town shall have no need to account of such property.

4.4 No Property Rights. Nothing in this Agreement is in any way intended to establish, convey, create or otherwise grant to Red Hawks any form of property rights in the Premises, nor shall such rights be established, conveyed, created or otherwise granted by Red Hawks use of the Premises pursuant to the Agreement. Red Hawks hereby acknowledges that it currently has no property interest in the Premises or any improvements thereto or fixture's location thereon, and that any claim it may have to same is hereby and forever waived.

4.5 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.

4.6 Notices. Any written correspondence or Notices given under this Agreement shall be addressed as follows:

To Red Hawks:
President
West Valley Red Hawks Lacrosse Club
18921 Bear Creek Road
Los Gatos, CA 95033

To the Town:
Director
Department of Parks and Public Works
Town of Los Gatos
41 Miles Avenue
Los Gatos, CA 95030

Notices shall be delivered by first class, postage prepaid mail or in person. If mailed, a notice shall be deemed effective on the fifth day following in the U.S. Mail.

4.7 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of

subsequent breach of the same or any other provision of this License Agreement.

- 4.8 Entire Agreement. This Agreement constitutes the complete and exclusive statement of the Agreement between Town and Red Hawks. No terms, conditions, understanding, or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the Town and Red Hawks have executed this Use Agreement.

Town of Los Gatos:

West Valley Red Hawks Lacrosse Club:

Laurel Prevetti, Town Manager

Patrick Sweeney, President

Recommended by:

Nicolle Burnham
Director of Parks and Public Works

Approved as to Form:

Gabrielle Whelan, Town Attorney

Attest:

Wendy Wood, CMC, Town Clerk



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/06/2023

ITEM NO: 8

DATE: May 22, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Accept the Holiday Light Displays as Donations to the Town From the Los Gatos Chamber of Commerce

RECOMMENDATION:

Authorize the Town Manager to accept the holiday light displays (Attachment 1) as donations to the Town from the Los Gatos Chamber of Commerce.

BACKGROUND:

In response to the COVID-19 pandemic beginning in March of 2020, Town Council has been supportive of efforts to improve economic recovery and community vitality to the downtown stakeholders. One of the steps was granting the Chamber of Commerce up to \$150,000 to partner with the Town on holiday light displays installed throughout the Town.

DISCUSSION:

While the Town purchased most of the holiday light displays during this effort, the Chamber of Commerce purchased approximately \$5,700 of the displays. The Chamber of Commerce would like to donate the balance of these displays to the Town so that the Town can include them in maintenance and storage with the rest of the displays and continue to use them in future years.

This action complies with the Town's Solicitation and Donation Policy (Attachment 2).

PREPARED BY: Jim Harbin
Parks and Public Works Superintendent

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

PAGE 2 OF 2

SUBJECT: Authorize the Town Manager to Accept the Holiday Light Displays as Donations to the Town From the Los Gatos Chamber of Commerce.

DATE: May 22, 2023

CONCLUSION:

Authorize the Town Manager to accept the holiday light displays as donations to the Town from the Los Gatos Chamber of Commerce.

FISCAL IMPACT:

There is no fiscal impact associated with this action. The Proposed FY 2023/24 Operating Budget includes funding for the holiday lights storage rental and light supplies.

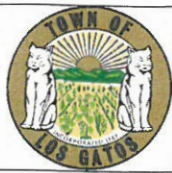
ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Holiday Light Displays Inventory
2. Solicitation and Donation Policy

Light Inventory	Qty	Vendor
Light strands to wrap trees at Town Plaza		Christmas Light Pros
Lights on the bridge (twice)		Christmas Light Pros
Supplemented by the Chamber after Dec. 2020		
4' Stars	4	Wintergreen Corporation
Spheres (to replace cut or broken)	4	Wintergreen Corporation



Title: Solicitation and Donation Policy

Policy Number: 2-17

Effective Date: 10/6/15

Pages: 4

Enabling Actions:

Revised Date:

Approved:

PURPOSE

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

SOLICITATION GUIDELINES

Targeted Solicitation

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

BROAD OUTREACH GUIDELINES

Broad Outreach

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

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

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

PROCEDURE FOR ESTABLISHING COUNCIL APPROVED TOWN NEEDS

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

DONATION ACCEPTANCE GUIDELINES

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

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

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

AUTHORITY TO ACCEPT DONATIONS

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

Donations \$25,000 and Under

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

Donations over \$25,000

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

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

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

PROCEDURES FOR ACCEPTING MAJOR DONATIONS

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

DONOR RECOGNITION GUIDELINES

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

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

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

Title: Solicitation and Donation	Page: 4 of 4	Policy Number: 2-17
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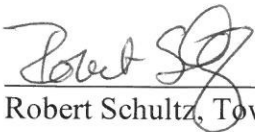
Plaques may be used to commemorate donations accepted by the Town from persons, businesses, and organizations according to the following standards:

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

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

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

APPROVED AS TO FORM:



Robert Schultz, Town Attorney



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/06/2023

ITEM NO: 9

DATE: May 22, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute a First Amendment to the Agreement for Consultant Services with Kier and Wright Civil Engineers and Surveyors, Inc. to Provide Services as the “Acting Town Surveyor” for Various Land Development Mapping Services, Extending the Term to June 30, 2024

RECOMMENDATION:

Authorize the Town Manager to execute a First Amendment to the Agreement for Consultant Services with Kier and Wright Civil Engineers and Surveyors, Inc. (Attachment 1) to provide services as the “Acting Town Surveyor” for various land development mapping services, extending the term to June 30, 2024.

BACKGROUND:

As part of its Engineering Development Services, the Town conducts various mapping, map check review, and land surveying services. The Parks and Public Works Department does not have a Town Surveyor on staff, so these services are performed by a consultant who acts as the Town Surveyor. This includes the review of parcel maps and final maps; legal descriptions and plats for lot line adjustments, easements, and rights-of-way dedications; certificates of compliance; and other documents for technical correctness, adherence to codes, ordinances, the Professional Land Surveyor’s Act, and the Subdivision Map Act.

Several complicated and sometimes invalid requests for lot line adjustments and map approvals come from developers looking to create new developable lots in the Town. These requests require review by an experienced survey consultant with extensive knowledge in the field of historical chain of title review to verify the validity of these requests.

PREPARED BY: Gary Heap
Town Engineer

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

PAGE 2 OF 3

SUBJECT: Authorize the Town Manager to Execute a First Amendment to the Agreement for Consultant Services with Kier and Wright Civil Engineers and Surveyors, Inc. to Provide Services as the “Acting Town Surveyor” for Various Land Development Mapping Services, Extending the Term to June 30, 2024

DATE: March 22, 2023

BACKGROUND (continued):

In 2018, the Town Council authorized a five-year agreement with Kier and Wright Civil Engineers and Surveyors, Inc. (Exhibit A) to serve as the Town’s Surveyor, which will expire June 30, 2023.

The Town is required to use a licensed surveyor by California’s Subdivision Map Act Law for review and signing of development maps and other land development documents. The Engineering Division has staff shortages and currently does not have the staff capacity to issue a new Request for Qualifications (RFQ) prior the expiration of the current agreement term.

DISCUSSION:

In addition to their previous experience completing challenging mapping services for the Town, Kier and Wright has a total of 12 California registered land surveyors on staff and available to assist the Town with complicated land development applications. This contract extension to June 30, 2024 will allow Kier and Wright to continue to review and sign the development maps and other land development documents, allowing engineering staff to develop a new RFQ and put a new contract with a qualified firm into effect by July 1, 2024.

CONCLUSION:

Authorize the Town Manager to execute a First Amendment to the Agreement for Consultant Services with Kier and Wright to provide services as the “Acting Town Surveyor” for various land development mapping services extending the term to June 30, 2024.

FISCAL IMPACT:

This agreement is based a cost recovery activity as part of the development review process in which the Town uses fees and deposits collected from various development applications to pay for these services.

The original agreement was written with a ‘not to exceed’ amount of \$125,000; however, the First Amendment will reflect the following for compensation language:

Compensation for Consultant’s professional services shall not exceed the established hourly rates and payment shall be based upon Town approval of each task.

PAGE 3 OF 3

SUBJECT: Authorize the Town Manager to Execute a First Amendment to the Agreement for Consultant Services with Kier and Wright Civil Engineers and Surveyors, Inc. to Provide Services as the "Acting Town Surveyor" for Various Land Development Mapping Services, Extending the Term to June 30, 2024

DATE: March 22, 2023

ENVIRONMENTAL ASSESSMENT:

The proposed agreement and related services are not a project defined under CEQA, and no further action is required.

Attachments:

1. First Amendment with Exhibit A - Agreement for Consultant Services with Kier & Wright Civil Engineers and Surveyors, Inc., and Exhibit B - Rate Sheet

FIRST AMENDMENT TO AGREEMENT

This FIRST AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES is dated for identification this 6th day of June 2023 and amends that certain AGREEMENT FOR CONSULTANT SERVICES dated August 7, 2018, made by and between the Town of Los Gatos, ("Town,") and the Kier & Wright Civil Engineers and Surveyors, Inc. ("Consultant") identified as a C Corporation and whose address is 2850 Collier Canyon Road, Livermore, CA 94551.

RECITALS

- A. Town and Consultant entered into a Consultant Services Agreement on August 7, 2018 ("Agreement"), copies of which is attached hereto and incorporated by reference as Exhibit A to this Amendment.
- B. Town desires to amend the Agreement for Consultant Services to extend the term, to add to the compensation and the add to the minimum scope of insurance of the agreement.

AMENDMENT

1. Section 2.2 Term and Time of Performance is amended to read:

This contract will remain in effect from August 7, 2018, to June 30, 2024.

2. Section 2.6 Compensation is amended to read:

Compensation for Consultant's professional services shall not exceed the established hourly rates, as set forth in the Fee Schedule (Exhibit B), which is attached hereto and incorporated herein by reference. Payment shall be based upon Town approval of each task.

3. Section 3.1 Minimum Scope of Insurance is amended to read as follows:

Service Provider agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.

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

ATTACHMENT 1

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

Town of Los Gatos

Approved as to Consent:

By: _____

Laurel Prevetti, Town Manager

By: _____

Joe Thompson, Principal

Department Approval:

Nicolle Burnham

Parks and Public Works Director

Approved as to Form:

Attest:

Gabrielle Whelan, Town Attorney

Wendy Wood, CMC, Town Clerk

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on August 7, 2018 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and Kier & Wright Civil Engineers and Surveyors, Inc., ("Consultant"), whose address is 2850 Collier Canyon Road, Livermore, CA 94551. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage Consultant to provide services as the designated "Acting Town Surveyor" for various land development mapping services as needed.
- 1.2 The Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges Town has relied upon these warranties to retain Consultant.

II. AGREEMENTS

- 2.1 Scope of Services. Consultant shall provide services as described in that certain Request for Statement of Qualifications for Town Surveyor Consultant Services 2018, which is hereby incorporated by reference and attached as Exhibit A. Services will include lot line adjustments, map review, vacations, review of right of way, Certificates of Compliance, plats and legals, dedications/proposed easements, easement abandonment, lot mergers and general land surveying services. The Consultant will review, sign and stamp documents as needed and identified in the State of California Subdivision Map Act on behalf of the Town.
- 2.2 Term and Time of Performance. This contract will remain in effect from August 7, 2018 to June 30, 2023.
- 2.3 Compliance with Laws. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Consultant represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.5 Information/Report Handling. All documents furnished to Consultant by the Town and all reports and supportive data prepared by the Consultant under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Consultant's services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services

pursuant to this Agreement are confidential until released by the Town to the public, and the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at Town's risk, unless Consultant expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Consultant which is and has been confirmed in writing by Consultant to be a trade secret of Consultant.

2.6 Compensation. Compensation for Consultant's professional services **shall not exceed \$125,000**, inclusive of all costs. Payment shall be based upon Town approval of each task.

2.7 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

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

Invoices:

Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

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

2.9 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Consultant. No portion of these services shall be assigned or subcontracted without the written consent of the Town.

2.10 Independent Contractor. It is understood that the Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Consultant may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Consultant shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is

brought by Consultant or is based on allegations of Consultant's negligent performance or wrongdoing.

- 2.11 Conflict of Interest. Consultant understands that its professional responsibilities are solely to the Town. The Consultant has and shall not obtain any holding or interest within the Town of Los Gatos. Consultant has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Consultant warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.12 Equal Employment Opportunity. Consultant warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Consultant nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

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

- iv. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$1,000,000 which is sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this agreement.

General Liability:

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

3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.

3.3 Workers' Compensation. In addition to these policies, Consultant shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.

3.4 Indemnification. The Consultant shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant.

IV. GENERAL TERMS

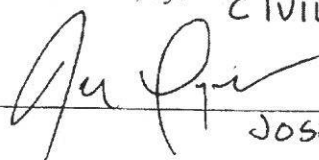
- 4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 Termination of Agreement. The Town and the Consultant shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Consultant shall deliver to the Town all plans, files, documents, reports, performed to date by the Consultant. In the event of such termination, Town shall pay Consultant an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 4.4 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Consultant.
- 4.5 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.6 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:
- | | |
|---------------------|-----------------------------------|
| Town of Los Gatos | Kier & Wright Civil Engineers and |
| Attn: Town Clerk | Surveyors, Inc. |
| 110 E. Main Street | 2850 Collier Canyon Road |
| Los Gatos, CA 95030 | Livermore, CA 94551 |
- or personally delivered to Consultant to such address or such other address as Consultant designates in writing to Town.
- 4.7 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.
- 4.8 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Consultant. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement,

unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

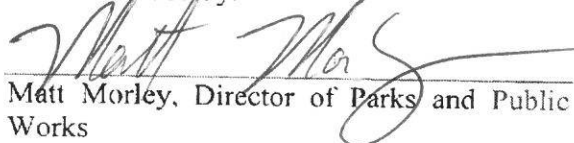
IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement.

Town of Los Gatos by:


Laurel Prevetti, Town Manager

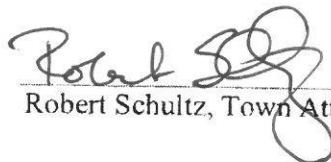
Consultant, by: KIER & WRIGHT
CIVIL ENGINEERS AND
SURVEYS, INC.

JOSEPH THOMPSON

Recommended by:


Matt Morley, Director of Parks and Public
Works

VICE PRESIDENT
Title

Approved as to Form:


Robert Schultz, Town Attorney



PROPOSAL FOR TOWN OF LOS GATOS RFQ
FOR TOWN SURVEYOR SERVICES

PREPARED BY
KIER & WRIGHT CIVIL ENGINEERS AND SURVEYORS, INC.
MAY 17th, 2018



2850 Collier Canyon Rd - Livermore, California 94551 - (925) 245-8788 - FAX (925) 245-8796

COVER LETTER

May 17, 2018

Town of Los Gatos
Lisa Petersen, Assistant Director/Town Engineer
41 Miles Avenue
Los Gatos, CA 95030

RE: REQUEST FOR QUALIFICATIONS FOR TOWN SURVEYOR SERVICES

Dear Ms. Petersen,

We are pleased to present the following qualifications to provide the Town of Los Gatos with on-call land surveying consulting services. As a local Bay Area firm, we are extensively experienced in providing efficient, cost-effective surveying services for a wide variety of projects throughout the Bay Area and its surrounding regions, and are providing services similar as those requested in the Town's RFQ for many agencies and municipalities. Since 1972, Kier & Wright has completed thousands of projects throughout the Bay Area. We are confident that we will continue be a good fit for the Town's projects, as we have in the past, and we look forward to this opportunity to continue working with you.

We currently have offices in Livermore, Santa Clara, Ventura, Manteca, and Rancho Cordova. Services for the Town will be managed and provided out of our corporate headquarters in **Livermore**.

With a team of 35 technical land surveying staff based in our Livermore office and 20 additional supporting staff, including a fully equipped team of union field survey crews available for dispatch from this location, we are confident that we have the resources to manage and perform any and all survey tasks for the Town out of our headquarters. However, in the event that the Town's preferred schedule would be better served by concurrent dispatch of field survey crews to all survey sites within the Town, the Town may also utilize the team of 37 technical land surveying staff based 12 miles from the Town offices in Kier & Wright's Santa Clara office. The Santa Clara survey team includes an additional fully equipped team of field survey crews available for dispatch to the Town of Los Gatos.

I, Joe Thompson, a California licensed land surveyor and a principal of the firm, will serve as the primary point of contact for this submission and any resulting project-specific requests for proposals, and will manage and oversee Kier & Wright land surveying projects for the Town. The following is a brief introduction to myself and the other key personnel on our proposed project team.

We appreciate the opportunity to provide you with our qualifications. We look forward to continuing our work with you on future projects and we hope this submission meets with your approval. Please feel free to contact me directly with any questions, comments, or requests for additional information.

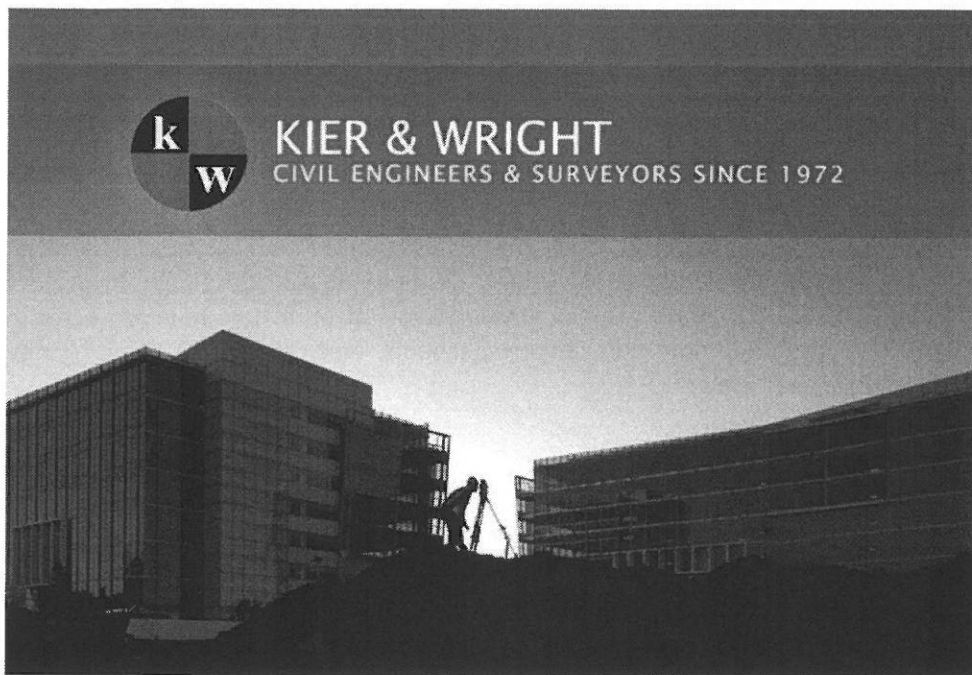
Sincerely,
KIER & WRIGHT, CIVIL ENGINEERS AND SURVEYORS, INC.



Joe Thompson, PLS | Vice President
Phone: 925.245.8788
Email: jthompson@kierwright.com

2850 Collier Canyon Rd · Livermore, California 94551 · (925) 245-8788 · FAX (925) 245-8796

FIRM INTRODUCTION



FIRM PROFILE

KIER & WRIGHT | California Corporation | EST. 1972

Kier & Wright is a civil engineering and land surveying firm specializing in land development. As a firm that provides civil design services, we understand the importance of having high-quality, accurate, design-level topographic surveys. Our land surveying department produces topographic surveys for use in our own civil engineering plans. Through this coordination with our in-house civil design professionals, our surveying personnel have an in-depth understanding of the user experience, and know how to produce the optimal product showing the desired level of detail for utilization in the design process. In addition to providing these services for our own design work, Kier & Wright's client base includes numerous architects and engineers who rely on Kier & Wright to provide them with base mapping and design-level topographic surveying for their projects.



Kier & Wright Civil Engineers & Surveyors has been committed to providing both public and private sector clients with high-quality, cost-effective, efficient civil engineering and land surveying services since 1972. Services offered include street and highway design, municipal consultation, utility engineering and the preparation of civil engineering plans for residential, commercial and industrial site developments. Kier & Wright is a California corporation with offices located in Santa Clara, Livermore, Ventura, Manteca, and Rancho Cordova.

The firm is currently staffed by 160 employees, including 17 registered civil engineers and 14 licensed land surveyors. Additional staff includes 72 civil engineering and land surveying technical personnel, 27 administrative and financial support staff and, depending on construction staking demands throughout the year, 20-35 field survey personnel.

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Kier & Wright has extensive experience in the following categories of civil engineering and land surveying services:

- Topographic, A.D.A. and boundary surveys.
- Map checking.
- ALTA property surveys.
- "Due Diligence" site investigations.
- Street and highway design.
- Civil Engineering for site development of virtually all types of land development projects. Types of projects designed include corporate campus developments at up to two hundred acres in size, retail shopping centers, apartment complexes, airports, schools, medical facilities, housing developments, parks and automotive dealerships.
- Construction Staking.

Kier & Wright is committed to providing efficient, cost effective services to our clients. Growth of the firm has been due entirely to referrals, repeat business, and the firm's underlying philosophy that demands the highest quality professional service, responsibility to client needs, timeliness and efficiency. Kier & Wright's principals review plans and project schedules continually and are actively involved in the design of all projects prepared by the firm. Our principals and senior staff are well-known in city and county public works departments throughout the San Francisco Bay Area and strive to maintain cooperative and friendly working relationships with public staff.

OUR RESOURCES

Kier & Wright civil and survey staff are experts in CAD drafting and design, and have extensive experience with AutoCAD Civil3D applications. Our civil and survey technicians and staff run Autodesk Civil 3D 2018 on custom-built Dell Workstation Computers with Intel Xeon Processors. All files and data are stored and backed up to secure, off-site data servers.

Kier & Wright field survey crews have the training, experience, and gear necessary to accurately, efficiently, and safely perform all types of field surveying, including boundary and topographic surveys, ALTA surveys and construction staking. Each crew is equipped with a fully stocked truck, digital levels, rods, layout staffs and a Trimble S-series Robotic Total Station with a Trimble TSC3 Data Collector, running the latest Trimble Access software. Our crews use Trimble R-8 and R-10 GNSS receivers and Trimble Business Center Software to adjust traverses by both conventional and GPS methods.

Our field survey operation is one of the most prolific in Northern California. Kier & Wright was the recipient of the California Civil Engineers and Land Surveyors Association's Survey Hours Champion award in 2017, 2015, 2014, 2012, 2011, 2009, 2008 and 2007.

Below are examples of recent on-call surveying contracts for which this proposed staff is successfully providing similar services listed in this RFQ:

- Surveying Services for Alameda County Public Works Agency (2001-Present)
- Surveying services for Alameda County Zone 7 Water Agency (2002-Present)
- Surveying services for City of Pleasanton (1998-Present)
- Surveying services for City of Hayward (2000-Present)
- Surveying services for City of Fremont (1998-Present)
- Surveying services for City of San Leandro (1994-Present)
- Surveying services for City of Dublin (2014-Present)
- Surveying services for City of Walnut Creek (2016-Present)
- Surveying services for City of Milpitas (2017-Present)

REFERENCES AND SIMILAR PROJECTS

REFERENCE: CITY OF FREMONT ON-CALL SURVEYING EXPERIENCE

Client: City of Fremont, Public Works / Engineering Division
Year: 1998-Present
Contact: Tom Dougherty, City Surveyor
Phone: (510) 494-4715
Managers: Joe Thompson, PLS
Surveyors: Rod Stewart II, PLS



Project Description:

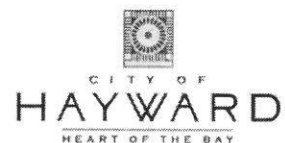
Kier & Wright has been providing on-call surveying services to the city of Fremont since 1998. We have completed over 117 task orders for the City to date. Over our long history with the City of Fremont, we have consistently performed our work on-time and on or under budget. Below are a few examples.

Services Performed Include:

- Topographic survey and area wide Right of Way mosaic compilation for redevelopment and project feasibility studies of the Main Street at Washington neighborhood.
- Professional Land Surveyor for the City of Fremont handling the finalization of the documentation for the Bart Warm Springs extension. This task included the preparation of plats and legal descriptions for City parcels, right of way record maps
- The initial set-up and on-going slide monitoring survey for a street section in the Fremont hills
- Preparation of right of way record maps for Caltrans for the Auto Mall Parkway/Interstate 880 interchange modification project.
- Parcel and Subdivision map checking services and map boundary review service.

REFERENCE: CITY OF HAYWARD ON CALL SURVEYING EXPERIENCE

Client: City of Hayward, Public Works, Engineering and Transportation
Year: 2000 - Present
Contact: Dan S. Scott III, City Surveyor
Phone: (510) 583-4796
Manager: Joe Thompson, PLS
Surveyors: Rod Stewart II, PLS



Project Description:

Kier & Wright has been providing both individual project surveying services and on call surveying services to the city of Hayward since 2000. Over the years we have completed numerous contracts for the City. Two of these projects are the Hayward Cannery Project and the B Street at Foothill Projects.

The Hayward Cannery Project scope included topographic and boundary surveys for the initial feasibility study and partial final City design documents on a 70-acre site. The Boundary Survey included the resolution of numerous commercial and residential parcels.

The B Street at Foothill site scope included extensive topographic surveying and boundary resolution for two adjacent smaller sites in the formal downtown portion of the City. All sites had a large amount of improvement and property transfer history that had to be unraveled in order to provide the City with a current platform for orderly development.



Services Performed Include:

- Boundary Surveys that included the resolution of numerous commercial and residential parcels.
- Record of Surveys of the Cannery Redevelopment Area that was used to set the stage for a multifaceted redevelopment project.
- Topographic Surveys for the initial feasibility study and partial final City design documents on a 70-acre site in an older industrial area of the City.
- Parcel mapping services to re-subdivide portions of the Cannery Project.
- Accounting for vast histories of improvement and property transfers for numerous agencies at each site.
- Review of Parcel Maps, Condominium Maps and Tract Maps for technical correctness.
- Review of Legal Descriptions and Plats for Lot Line Adjustments, Misc. Easements and Street Dedications.

REFERENCE: ALAMEDA COUNTY PUBLIC WORKS AGENCY ON CALL SURVEYING EXPERIENCE

Client: Alameda County Public Works Agency
Year: 2001-2004, 2010-2013, 2015 – Present
Contact: Bob Machado, (510) 670-5792
Contact: Michael Rubner, (510) 670-5495
Manager: Joe Thompson, PLS
Surveyor: Rod Stewart II, PLS



Project Description

This project was a design level topographic survey of approximately 2.5 miles of the Alameda Creek Channel from southerly of the Bart Bridge to Decoto road (See Exhibit 1: Alameda Creek Channel). This survey was completed under a compressed schedule and the final delivery was made on a 29 day schedule.

Services Performed Include:

- Deliverables were prepared using AutoCAD Civil 3D formatting
- Creating a precise control network for the survey work to be performed including utilizing a digital level to establish elevations on all survey control points
- Implementing four (4) survey crews all working together at the same time to expedite timing.
- Utilizing four (2) Trimble R-8 GPS rovers from the same base station in order to expedite timing.

REFERENCE: CITY OF DUBLIN ON CALL SURVEYING EXPERIENCE

Client: City of Dublin, Public Works Department
Year: 2014 - Present
Contact: Laurie Sucgang, P.E.
Phone: (925) 833-6630
Manager: Joe Thompson, PLS
Surveyor: Dean Jurado, PLS



Project Description:

Kier & Wright has been providing both individual project surveying services and on call surveying services to the City of Dublin since 2014 and has ensured that each project is prioritized to deliver on-time.



Services Performed Include:

- Review of Parcel Maps, Condominium Maps and Tract Maps for technical correctness.
- Assist with rewriting Subdivision Mapping review requirements, Subdivision Ordinance Chapters and other Ordinances as requested.
- Review of Parcel Maps, Condominium Maps and Tract Maps for technical correctness.
- Review of Legal Descriptions and Plats for Lot Line Adjustments, Misc. Easements and Street Dedications.

REFERENCE: CITY OF WALNUT CREEK ON CALL SURVEYING EXPERIENCE AND MAP CHECKING

Client: City of Walnut Creek, Public Works Department

Year: 2016 - Present

Contact: Kirsten Hanson, P.E.

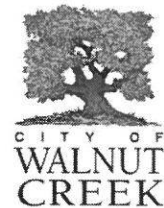
Phone: (925) 943-5899 (ext. 2266)

Contact: Cathleen Terentieff, P.E.

Phone: (925) 943-5899 (ext. 2241)

Manager: Joe Thompson, PLS

Surveyor: Dean Jurado, PLS



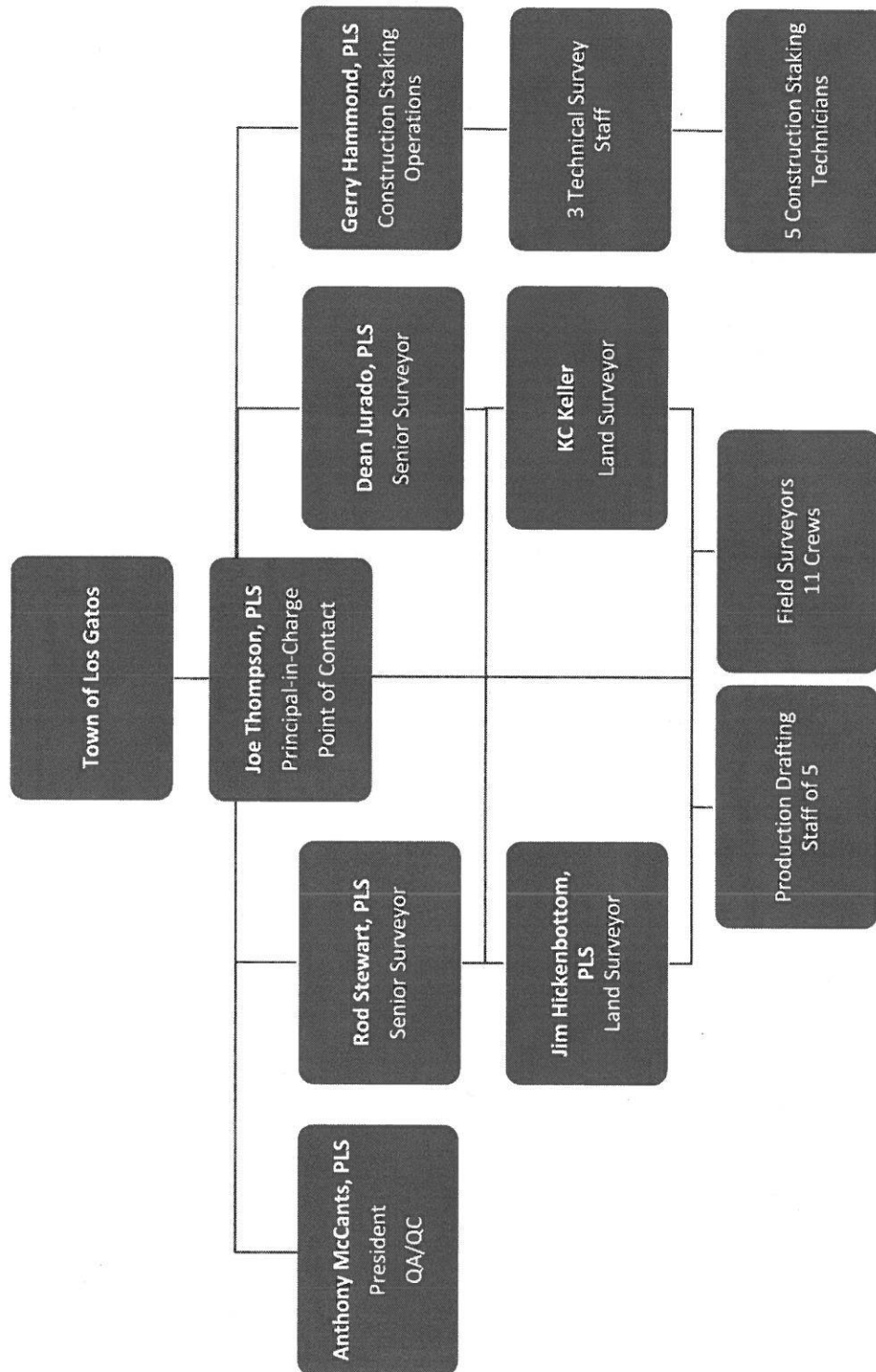
Project Description:

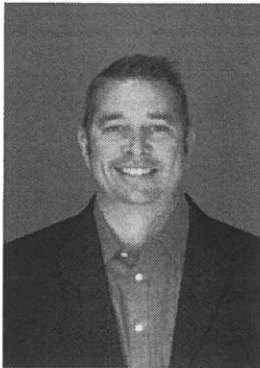
Kier & Wright has been providing both individual project surveying services and on call surveying services to the City of Walnut Creek since 2016.

Services Performed Include:

- Review of Parcel Maps, Condominium Maps and Tract Maps for technical correctness.
- Review of Legal Descriptions and Plats for Lot Line Adjustments, Misc. Easements and Street Dedications.

ORGANIZATION CHART





JOE THOMPSON, PLS

Vice President, Project Manager

EXPERTISE

Right-of-Way surveys, parcel maps, record of surveys, Land title surveys, topographic surveys, well surveys, boundary resolution, condominium maps, and ALTA surveys.

BACKGROUND

Mr. Thompson, California P.L.S. 8121, was licensed as a Land Surveyor in July of 2006 and has 20 years of professional experience in the land development field. He is proficient in boundary resolution, mapping, A.L.T.A. Surveys, legal descriptions, monitoring surveys for horizontal and vertical movements, analysis and resolution of public and private title issues, construction setup, monumentation, and topographic surveys. Mr. Thompson is well-versed in the processing and adjusting of control data for GPS static surveys and conventional surveys. Mr. Thompson provides project planning, management, and coordination along with the review of project deliverables and ensures clients are informed on the status of their projects. While at another firm, he was heavily involved in the success of the ADA upgrades at the Google Campus in Mountain View where he performed utility research, base mapping, control surveying, and topographic mapping for several building sites.

REPRESENTATIVE PROJECT EXPERIENCE

- Alameda Creek Bridge – Pleasanton, CA
- Alameda County Water District – Large Diameter Hayward Fault Pipeline Retrofit Project
- Airport Flood Protection Project – Livermore, CA
- Zone 7 Water Agency – Del Valle Water Treatment Plant Superpulsator Rehabilitation Project
- Topographic Survey of De La Salle High School Gym & Theater Areas, Concord, CA
- Tennyson High School High School Design-Level Topographic & Boundary Survey
- Livermore Valley Performing Arts Center – Livermore, CA
- City of Pleasanton I-680 Sewer Project
- City of Pleasanton Vineyard Avenue Sewer Project
- City of Pleasanton Map Review for various Parcel Maps and Tract Maps
- Zone 7 Water Agency – Arroyo Mocho Topographic and Cross Section Survey
- Zone 7 Water Agency – UPRR Parcel Topographic Survey, Plat & Legal Desc., & Site Plan
- Zone 7 Water Agency – Cope Lake Water Transfer Survey Control, Topographic Survey, and Staking
- Alameda County Water District – Large Diameter Hayward Fault Pipeline Retrofit Project
- Various on-call projects for the Cities of Hayward and San Leandro.
- Rosita Park – City of Los Altos, CA

REGISTRATION

- Professional Land Surveying License (PLS) State of California L 8121



ANTHONY MCCANTS, PLS

President, QA/QC

EXPERTISE

Right-of-Way surveys, parcel maps, record of surveys, Land title surveys, topographic surveys, well surveys, boundary resolution, condominium maps, and ALTA surveys.

BACKGROUND

Mr. McCants, California P.L.S. 5944, joined the Kier & Wright team in March of 1979. He was registered as a Land Surveyor in 1988, and is the firm's corporate president. Mr. McCants has decades of varied experience in land surveying, including extensive construction staking experience. In addition to his experience at Kier & Wright, while working with another local land surveying firm, Mr. McCants was responsible for several large United States Army Corps of engineers mapping projects in Utah and in Merced County, California. Mr. McCants is on the Board of Directors and is a past President of the California & Nevada Civil Engineers & Land Surveyors Association (CELSA). He is currently the co-chairman of the Northern California Surveyors Joint Apprenticeship Committee. As chairman of the NCSJAC, he is involved in charting the future for the Surveyors Apprenticeship program in a direction that will move the next generation of surveying professionals in the direction of a professional surveying career. The program emphasizes a combination of hands on training, a common-sense approach to surveying, professional education and career discipline that provides apprentices with a solid foundation upon which to build a land surveying career. As a working principal, he is actively involved in the day-to-day operations of the firm. He has been honored by the CELSA as having the largest field surveying operation in the northern 46 California counties for 8 out of the last 13 years.

REPRESENTATIVE PROJECT EXPERIENCE

- City of Hayward – Record of Survey and Parcel Map for the Cannery redevelopment area (21-acre site)
- Topographic Survey for De La Salle Track & Practice Field Areas, Concord, CA
- Topographic Survey for De La Salle Swimming Pool, Concord, CA
- Home Depot distribution facility in Tracy for AMB Property (44-acre site)
- Rossmoor Retail Center in Walnut Creek for Washington Capital Management (15-acre site)
- Costco in Danville for Costco Wholesale Corp. (10-acre site)
- Cordes Ranch Project for Prologis in Tracy- survey boundary mapping and supervision (2,300-acre site)
- I-580/I-205 at Mountain House Parkway overpass improvement mapping projects Tracy
- Arch Road Logistics Center, Stockton overall site Record of Survey mapping and Mariposa Road historic alignment retracement.
- Crossroads Business Park, Lathrop onsite survey support for the development team projects.
- Lathrop Industrial Project, Lathrop provided all mapping and survey support for the development team
- Various Surveys for the El Charro Specific Plan Area for the City of Livermore – Livermore, CA
- Alameda Creek Topographic survey for the City of Fremont – Fremont, CA
- Topographic & Cross Section Surveys of East 14th Street & 150th Avenue for the City of San Leandro – San Leandro, CA
- Alameda County Surveyors Office On-Call Contract Manager

REGISTRATION

- Professional Land Surveying License (PLS) State of California L 5944



DEAN JURADO, PLS

Senior Surveyor

Years of Experience: 33

EXPERTISE

Mr. Jurado specializes in all surveying services such as map checking, right of way surveys, record of surveys, land title surveys, topographic surveys, well surveys, boundary resolutions, condominium maps, and ALTA surveys. He excels in AutoCAD Land desktop, AutoCAD Civil 3D, MS Word, MS Excel, and Trimble Business Center.

BACKGROUND

Mr. Jurado, PLS, has 32 years of experience in land surveying. He has been associated with Kier & Wright since 2012 and has extensive experience in land surveying for public and private developments. His specialties include map reviewing and on-call map checking services and well as general land surveying expertise such as topographic surveying and ALTA surveying.

REPRESENTATIVE PROJECT EXPERIENCE

- City of Tracy On-Call Maps & Plat Checking – Tracy, CA
- City of Merced On-Call Map Checking – Merced, CA
- City of Livingston On-Call Maps & Plat Checking – Livingston, CA
- Cisco Campus – San Jose, CA
- Costco Depot – Tracy, CA
- Coleman-Highline (Avaya Stadium) – San Jose, CA
- NVIDIA Campus – Santa Clara, CA
- Santa Clara Town Centre – Santa Clara, CA

REGISTRATIONS

- California Licensed Land Surveyor, PLS 9032

EDUCATION

- General Education and Engineering – San Joaquin Delta College, Merced Junior College, Modesto Junior College

PROFESSIONAL HISTORY

- 33 Years Professional Experience in the Land Development Field since 1985,
- Joined Kier & Wright in 2012



ROD STEWART II, PLS

Senior Surveyor

EXPERTISE

Right-of-way surveys, Parcel Maps, Record of Surveys, Topographic Surveys, Monitoring Well Surveys, Boundary Resolution, bridge surveying, ALTA surveys, Subsidence Monitoring Surveys and Construction Staking Calculations.

BACKGROUND

Mr. Stewart has 18 years of experience in the surveying including 8 years in the field. His experience includes construction surveying, boundary surveying, mapping, and subdivision work related to land development. Specific survey experience includes construction staking, topographic surveys, benchmark level circuits, elevation monitoring surveys, tentative maps, parcel maps, final maps, condominium plans, plats and legal descriptions, lot line adjustments, lot combinations, and ALTA/ACSM Land Title Surveys. Mr. Stewart is proficient in AutoCAD Civil 3D 2016, Trimble Business Center and fluent with Trimble and Topcon GPS and Total Station field Survey equipment.

REPRESENTATIVE PROJECT EXPERIENCE

- Bay Bridge Demolition Project – Construction Calculations, 3D modeling and Topo – California Engineering Contractors – San Francisco, CA
- Premium Outlets – Construction Calculations Topo, Mapping and Project Management – Livermore, CA
- Pleasanton Subsidence Monitoring – Monitoring Program Management – Zone 7 – Pleasanton, CA
- Oaks Business Park – Construction Calculations, Topo & Mapping – Livermore, CA
- International Park of Commerce – Topo and Boundary – Tracy, CA
- Clorox Campus – Construction Calculations and Project Management – XL Construction – Pleasanton, CA
- Stagg High School Phase 1 Topographic Survey for Stockton Unified School District, Stockton, CA
- Hayward High School Design-Level Topographic & Boundary Survey
- Mt. Eden High School Design-Level Topographic & Boundary Survey
- Tennyson High School High School Design-Level Topographic & Boundary Survey
- Holly Street Interchange – Topo, Boundary and Mapping – San Carlos, CA
- Arch Road Business Park – Topo & Mapping – Opus – Stockton, CA
- Construction Staking Services for Washington High School Improvements, Fremont, CA

REGISTRATION

- Professional Land Surveying License (PLS) State of California L 9225

PROFESSIONAL HISTORY

- 1998 – Present, Kier & Wright Civil Engineers and Surveyors, Livermore, CA



RICHARD J. HICKENBOTTOM, PLS

Project surveyor

Mr. Hickenbottom earned his Professional Land Surveyors License in 2009 and holds over 17 years of combined field and office surveying experience. He has been associated with Kier & Wright since 2013. During this time he has performed surveys for the Alameda County Flood Control & Water Conservation Distirct Zone 7 for level runs and flood channel topographic surveys for District Zones 5 and 6. Mr. Hickenbottom also worked on the yearly level runs for the Santa Clara Valley Water District Alum Rock Loop in San Jose.

KC KELLER

Survey Technician

Mr. Keller became a Kier & Wright team member in 2013 after interning for us. He graduated from Fresno State's Gematics Engineering program in 2012 and holds 8 years of construction staking field experience. Additionally, he has 9 years of experience working with various versions of AutoCAD. Mr. Keller is well versed in the surveying of ALTA's and is skilled in mapping research including parcel maps, property corners, and records of survey. Recently, he has been the survey technician for the Skylark project in Tracy and has been providing conformance surveys for various track projects throughout the Bay Area.

GERRY HAMMOND, PLS

Senior Land Surveyor, Construction Staking Manager

Mr. Hammond, California P.L.S. 8166, was licensed as a Land Surveyor in July of 2006. He is proficient in various construction projects including: residential, mid-rise, shoring, commercial, industrial, transportation, infrastructure projects, boundary resolution, mapping, A.L.T.A. Surveys, legal descriptions, monitoring surveys for horizontal and vertical movements, analysis and monumentation, and topographic surveys. Mr. Hammond is well versed in the processing and adjusting of control networks for conventional and GPS surveys. As Senior Surveyor Mr. Hammond provides project planning, management, and coordination along with the review of project deliverables and ensures clients are informed on the status of their projects. In addition to managing field and office staff, Mr. Hammond also one of Kier & Wright's top performing estimators, providing competitive costs while maintaining Kier & Wright's impressive quality of work.



SUB-CONSULTANTS

Cooper Aerial Surveys Co. (Aerial Surveying)

Cooper Aerial Surveys Co., est. 1966, has provided leading-edge aerial mapping solutions for over fifty years. Their team applies extensive knowledge of computer science to bring Cooper to new heights in technology and innovation. Cooper's approach employs the best of leading-edge technology, the experience of their seasoned team, and incorporates sound aerial mapping best practices.

With an average employee tenure of over 15 years, Cooper Aerial depends on the experience of its seasoned professionals to ensure the balance between best-practice, practical solutions and leading-edge technology. This approach enables them to meet the needs of their clients and deliver successful projects based on their priorities; be it cost- effectiveness, speed of delivery, or levels of data collected.

The Cooper Aerial team offers unparalleled expertise and knowledge of data collection for urban and rural communities as well as vast natural environments.

Cooper's expertise includes but is not limited to:

- Terrestrial, Aerial & Photogrammetric Mapping
- Topographic & Planimetric Survey
- Ortho-Photography
- LiDAR
- Oblique Imagery
- Remote Sensing
- Volume Surveys
- Historic Aerial
- GIS
- Geodata Processing
- Erosion Surveys
- Large-Scale Printing & Plotting
- UAV/Drones



Safe2Core (Underground Utility Locating)

SAFE2CORE personnel have more than 40 years of combined experience in Concrete Scanning, Concrete Cutting, Utility Locating, and CCTV Pipeline Inspection. Their technicians have inspected a wide array of concrete structures, varying from simple inspections, such as locating rebar on concrete walls, to locating post-tension cables in highly complex structural concrete slabs. Their Concrete Cutting operators work in tandem with their Concrete Scanning technicians to insure that no damage is caused to any structural reinforcement or any other embedded targets when destructive work is performed. Their Utility Locating staff is well trained to map underground utility lines prior to excavation or concrete cutting using: GPR Locating, Electromagnetic Detection (EM), and Magnetometers (MAG). Safe2core's CCTV Pipeline inspection technicians hold PACP/MACP/LACP certifications through NASSCO and can help you code defects, assess asset conditions and plan for rehab replacements of your water, drainage, and sewer systems. Safe2core CCTV vans are equipped with the latest Sonde Enabled Main Line and Push Cameras available.



RATE SHEET

HOURLY RATE SCHEDULE

Effective March 1, 2018 through February 28, 2019

PRINCIPAL	\$ 243.00/Hour
PRINCIPAL ENGINEER/SURVEYOR	\$ 221.00/Hour
SENIOR ENGINEER	\$ 192.00/Hour
PROJECT ENGINEER	\$ 179.00/Hour
ENGINEER II	\$ 149.00/Hour
ENGINEER I	\$ 124.00/Hour
SENIOR SURVEYOR	\$ 199.00/Hour
PROJECT SURVEYOR	\$ 177.00/Hour
SURVEY COORDINATOR	\$ 170.00/Hour
SURVEYOR II	\$ 143.00/Hour
SURVEYOR I	\$ 122.00/Hour
ENGINEERING TECH II	\$ 162.00/Hour
ENGINEERING TECH I	\$ 145.00/Hour
SENIOR DRAFTSMAN	\$ 124.00/Hour
DRAFTSMAN II	\$ 103.00/Hour
DRAFTSMAN I	\$ 93.00/Hour
SURVEY TECH	\$ 95.00/Hour
1-MAN SURVEY CREW	\$ 170.00/Hour
2-MAN SURVEY CREW	\$ 275.00/Hour
3-MAN SURVEY CREW	\$ 350.00/Hour
TESTIMONY (TRIAL OR DEPOSITION)	\$ 475.00/Hour
PROJECT COORDINATOR	\$ 102.00/Hour
ENGINEERING COORDINATOR	\$ 88.00/Hour
ENGINEERING / SURVEY INTERN	\$ 51.00/Hour

All blueprinting and reproduction will be billed at cost plus 10%. Time spent for preparation for testimony will be billed in accordance with the above hourly rates



HOURLY RATE SCHEDULE

Effective March 1, 2023 through February 29, 2024

Principal.....	\$ 293.00 / Hour
Principal Engineer.....	\$ 266.00 / Hour
Senior Engineer Manager.....	\$ 245.00 / Hour
Technical Manager	\$ 245.00 / Hour
Senior Engineer	\$ 232.00 / Hour
Engineer III.....	\$ 216.00 / Hour
Engineer II	\$ 180.00 / Hour
Engineer I	\$ 150.00 / Hour
Senior Survey Construction Manager	\$ 239.00 / Hour
Senior Land Surveyor.....	\$ 239.00 / Hour
Project Surveyor III	\$ 214.00 / Hour
Project Surveyor II.....	\$ 173.00 / Hour
Project Surveyor I.....	\$ 148.00 / Hour
Survey Coordinator.....	\$ 204.00 / Hour
Engineering Tech III.....	\$ 194.00 / Hour
Engineering Tech II.....	\$ 176.00 / Hour
Engineering Tech I.....	\$ 164.00 / Hour
Draftsman / Survey Tech III	\$ 150.00 / Hour
Draftsman / Survey Tech II.....	\$ 124.00 / Hour
Draftsman / Survey Tech I.....	\$ 114.00 / Hour
3-Man Survey Crew	\$ 420.00 / Hour
2-Man Survey Crew	\$ 332.00 / Hour
1-Man Survey Crew.....	\$ 205.00 / Hour
Testimony (Trial or Deposition)	\$ 572.00 / Hour
Project Coordinator III	\$ 140.00 / Hour
Project Coordinator II.....	\$ 123.00 / Hour
Project Coordinator I.....	\$ 107.00 / Hour
Engineering / Survey Intern.....	\$ 62.00 / Hour
3D Laser Scanning Crew	\$ 409.00 / Hour

All blueprinting and reproduction will be billed at cost plus 10%.

Time spent for preparation for testimony will be billed in accordance with the above hourly rates.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 6/6/2023

ITEM NO: 10

DATE: May 31, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute a Grant Agreement with KCAT for "The Producers" 55+ Volunteer Program for \$100,000 and Authorize an Expenditure Budget Adjustment of \$100,000 from the Available General Fund in the Council Priorities-Economic Recovery Reserve

RECOMMENDATION:

Authorize the Town Manager to execute a grant agreement with KCAT for "The Producers" 55+ volunteer program for \$100,000 and authorize an expenditure budget adjustment of \$100,000 from the available General Fund in the Council Priorities-Economic Recovery Reserve.

BACKGROUND:

On September 7, 2021, the Town Council approved allocating \$100,000 of American Rescue Plan Act (ARPA) funding to KCAT to develop a community of 55+ volunteers who would help create and run local public access TV and internet radio. The program was designed to help ease senior isolation through increased senior engagement.

As the guidelines for the use of ARPA funds evolved, the Town has subsequently used the "simplified" approach by allocating ARPA funding to qualifying expenditures specifically to cover Police staffing costs. This has subsequently freed other General Fund dollars for Council priorities. For auditing and other purposes, staff is tracking these General Fund dollars to ensure that grant recipients provide appropriate documentation for the use of the funds. The unallocated proceeds are in the Council Priorities-Economic Recovery Reserve.

PREPARED BY: Gitta Ungvari
Finance Director

Reviewed by: Town Manager and Town Attorney

PAGE 2 OF 2

SUBJECT: Agreement with KCAT and Expenditure Budget Adjustment of \$100,000

DATE: May 31, 2023

DISCUSSION:

On February 21, 2023, the Town Council directed staff to allocate \$100,000 from the unallocated proceeds to KCAT for to continue 55+ programing for one year. Staff is bringing forward a new agreement for this additional funding. KCAT is requesting funding in fiscal year 2022/23 which requires a budget expenditure adjustment.

CONCLUSION:

Authorize the Town Manager to execute a grant agreement with KCAT for “The Producers” 55+ volunteer program for \$100,000.

FISCAL IMPACT:

There is sufficient funding in the Council Priorities-Economic Recovery Reserve to cover the proposed grant and its budget expenditure adjustment.

ENVIRONMENTAL ASSESSMENT:

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

Attachment:

1. Draft Agreement with Exhibit A – Grantee’s Proposal and Exhibit B – Final Reporting Form

TOWN OF LOS GATOS GRANT AGREEMENT

Summary:

The Town of Los Gatos ("Town") has awarded a grant to **KCAT** ("Grantee") in the total amount not to exceed **\$100,000** for the period from **June __, 2023** to **June 30, 2024**. This letter ("Agreement") sets forth the terms and conditions of the grant award.

Payment Terms and Use of Funds:

Grantee must accept the terms of this Agreement prior to disbursement of grant funds. Grant disbursement to the Grantee shall be made after receipt of the grant claim form and the countersigned original of this Agreement. Please submit award claim and signed copy of this agreement to: Town of Los Gatos, Town Manager's Office, Attention: Town Clerk, 110 E. Main Street, Los Gatos, CA 95030.

Grant funds shall be used exclusively to support the project(s) as set forth in the Grantee's proposal, which is attached as Exhibit A and incorporated by reference, with the exception of funding for print or community outreach proposals. Any use of funds for a purpose other than that described in the Grantee's original proposal requires the Town's prior written consent.

Unused Funds:

At the conclusion of the grant period, Grantee agrees to return any unexpended or unaccounted for funds to the Town. Grantee agrees to return all disbursed funds if (1) grant funds have not been used for their intended purpose, or (2) have been used inconsistently with the terms of this Agreement, or (3) if the activities or outputs funded by the grant are materially incomplete by the end of the grant period, as determined by the Town in its sole discretion.

No Pledge:

This Agreement shall not be interpreted to create any pledge or any commitment by the Town to make any further grants or contributions to Grantee or any other person or entity for this or any other project.

Reporting and Records:

Grantee agrees to deliver to the office of the Town Clerk a final written report in the form attached as Exhibit B to this Agreement by **July 31, 2024**. The written report must include copies of completed contracts, paid invoices, timecards, payroll check register report, cash receipts, vouchers, cancelled checks, bank statements and/or other official documentation to show the Town how the grant funds were expended. This documentation shall explain how each expense is related to the approved purpose of the grant. The final written report is a publicly accessible document.

Original receipts and invoices must be maintained by Grantee for five years and shall be made available to the Town upon request. Grantee agrees to maintain adequate financial records consistent with generally accepted accounting practices, and to retain such records for at least five years after the

ATTACHMENT 1

conclusion of the grant period. The Town may monitor and conduct an evaluation of the Grantee's operation to ensure compliance with this Agreement.

Grantee will provide a minimum of one site visit or project observation at a mutually agreed upon time during the grant period to a Town staff representative. An interim check-in by phone, video meeting or email may also be requested at any time during the grant period by either the Town or the Grantee.

Publicity Acknowledgement:

Grantee will acknowledge the Town's support in any publications or materials related to the project, as follows: "Supported in part by a grant from the Town of Los Gatos". Grantee agrees that The Town may include information about the Grantee and its activities in its own reports and publications and may distribute such information to third parties.

No Agency:

Grantee is solely responsible for the results of its services, compliance with the terms of this Agreement, and for all activities supported by the grant. Nothing in this Agreement creates a partnership, agency, joint venture, employment, or any other type of relationship between the Grantee and the Town. The Grantee shall not represent itself as an agent of the Town for any purpose and has no authority to bind the Town in any manner whatsoever.

No Lobbying:

Grantee confirms that the grant funds will not be used for the purpose of lobbying, carrying on propaganda or otherwise attempting to influence legislation as defined by the United States Internal Revenue Code of 1986.

No Assignment:

Grantee may not assign this Agreement or delegate performance of the terms of this Agreement or of the project to any other person or entity without the prior written consent of the Town.

Indemnity:

Grantee agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Town, its elected and appointed officials, employees, and agents, from any and all claims, injury, liabilities, losses and expenses (including attorney's fees) directly, indirectly wholly or partially arising from or in connection with any act or omission of Grantee, its employees or agents, in applying for or accepting the grant, in expending or applying grant funds, or in carrying out the project as set forth in the proposal. Grantee shall defend Town, its elected and appointed officials, employees, and agents, against any such claims.

Compliance with Law:

Grantee shall comply with and cause all its contractors and employees, if any, to comply with all applicable federal, state and local laws, ordinances, codes, regulations.

Contact and Notices:

All notices, reports, or other correspondences related to this Agreement shall be sent to the following Addresses:

TOWN

Town of Los Gatos Town
Manager's Office 110 E.
Main St
Los Gatos CA 95030

GRANTEE

KCAT
Melissa Toren, Executive Director
15466 Los Gatos Blvd., #109-233
Los Gatos CA 95032

Agreement and Authority:

Grantee acknowledges and agrees that this Agreement represents the entire agreement between the Grantee and the Town with respect to the subject matter addressed herein. The terms of this Agreement may be modified only by writing signed by duly authorized representatives of both parties. The person(s) signing this Agreement on behalf of the Grantee represents and warrants to the Town that they have the requisite legal authority and power to execute this Agreement, and to bind Grantee to the obligations contained herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first herein above set forth.

TOWN OF LOS GATOS

Laurel Prevetti, Town Manager

Date

Organization Name

Signature of grant representative

Date

Printed name of grant representative

Title of grant representative

APPROVED AS TO FORM:

Gabrielle Whelan, Town Attorney

Date

Attest:

Wendy Wood, Town Clerk

Exhibits:

- A. Grantee's original proposal
- B. Final Grant Report Template

Los Gatos Grant Agreement. KCAT



On behalf of the Board of Directors of KCAT TV15, the Los Gatos-based nonprofit community access television station, I am pleased to present the following proposal for consideration of American Rescue Plan Act funding by the Community Health and Senior Service Commission (CHSSC) on a new, impactful and, once established, sustainable TV and radio production program for the betterment of our senior "55 plus" community.

"THE PRODUCERS" PROGRAM OVERVIEW

KCAT is excited to build a community of age 55+ volunteers who are post-career, into retirement and beyond with an interest in running our growing local public access TV and, new this year, internet radio station. We are calling this program THE PRODUCERS. With this program, KCAT will empower our community's valued seniors to share their voice and perspective on issues, challenges and joys of our community, via TV, film and radio broadcast production.

Having watched and learned about the successes of senior-produced programming from colleagues at other public stations around the Bay Area, the KCAT board and I have wanted to offer this to the Los Gatos community for years. KCAT staff has deep expertise in teaching and training community members how to produce, film, edit and broadcast video, TV shows and now radio. With support from this short-term Town-affiliated ARPA funding, KCAT will be able to launch a sustainable program for senior producers, cinematographers, editors and on-air talent!

THE PRODUCERS will bring a wealth of value and skills to KCAT and our community in a fun, exciting and innovative way for them and for us. The positives are abundant: a proven business model with an immediate program implementation; inclusive and creative environment; ongoing results and measurements; camaraderie; and a "plug and play" TV and radio studio!

ABOUT LOS GATOS PUBLIC MEDIA INC. / KCAT TV15

Los Gatos Public Media Inc. is a 501(c)(3) nonprofit public benefit corporation providing public, educational and community access cable television and internet radio facilities via its KCAT TV station (on Comcast channel 15) and digital media center. Located on the Los Gatos High School campus, KCAT offers the community an interactive platform for collaboration, connection and engagement. We enable everyone to share stories, amplify messages and raise visibility through TV, streaming, on-demand videos, social media channels and internet radio. In addition to teaching year-round multimedia classes for youth, our in-house staff provides professional screenwriting, filming, podcasting, editing and video production services for individuals, organizations and businesses; recording, broadcasting, and streaming of local government meetings; and public access to media tools, equipment, training, and low-cost studio facilities. Celebrating 38 years of service, KCAT TV & Radio enables opportunities to create deeper connections by bringing together diverse communities. Our nine-member board of directors sincerely appreciates its viewers, staff and the incredible support of the Town of Los Gatos, City of Monte Sereno, Los Gatos Unified School District, wonderful sponsors and generous foundations and donors.

ENDLESS OPPORTUNITIES FOR EVERYONE

THE PRODUCERS program is intended to be a new, impactful and, once established, sustainable TV and radio production program for the betterment of our senior “55 plus” community. Implementation of THE PRODUCERS will contribute to decreasing senior isolation and increasing senior engagement and programming, noted issues of concern to CHSSC.

Conveniently located on the Los Gatos High School campus, the KCAT TV studio, Control Room and Podcast/Radio studio provides an additional venue and workspace for Los Gatos seniors to gather while sharing their talents and learning new skills; creating; socializing; and enjoying accomplishments with friends and neighbors.

We know that television remains a beloved platform to all for news and entertainment, particularly in our current digital media environment. In that spirit and as a local public access station, KCAT is seeking volunteer adults aged 55+ (individuals and teams) to learn about and then focus on the entire TV and radio on-location and in-studio production process, from talent searching, technical operations, directing and scheduling to developing original content, scriptwriting, set design, curating shows, running news and sports, and organizing a solid business model consisting of advertising and revenue streams.

We’ve seen this model work at other Bay Area public access TV stations and believe that by empowering our seniors, we’ll create a dynamic new program for our community!

INCLUSIVITY: SIMPLY BRING YOUR LIFE EXPERIENCE

THE PRODUCERS program will include seniors of any age, active/non-active, skill set, time limitation or desired role. The beauty of KCAT’s model is everyone is free to incorporate their everyday interests, skills and talents in a fun and meaningful way while meeting new people and creating community. Every PRODUCER will be a valued participant, have clear expectations and the resources to be successful in a collaborative, fun, creative and fulfilling environment.

KCAT envisions a stream of individuals and groups of seniors coming in-studio to develop and produce entire seasons of shows on an on-going, “rolling” basis, with one group following and coordinating with the other as they navigate the production process together.

Examples of identifiable personality traits that can be transformed into exciting roles at the TV & Radio station:

- Love to write...letters, notes, anything? We can offer feature story writing and advertising copywriting, scriptwriting, cue cards
- Have the gift of gab? Be an actor, floor director, podcast host, news anchor
- Good with numbers? We have budgeting opportunities, TV scene schedules, equipment orders, viewership ratings and metrics
- Organizing a passion? Organize our production schedule, develop workflows, keep equipment in order

- Engineering/technical your thing? Then a TV station is a paradise for you!
- Strategic thinker? Brainstorm and develop plans for ad campaigns to market the new shows
- Love marketing and revenue? Bring your business acumen to drive sales and sponsorship opps

As a community access TV station, we are always looking for local content. Here are some ideas that THE PRODUCERS could embrace when brainstorming to create a TV show with an entire season of episodes:

- Cooking, Favorite Local Restaurants, Farm to Table,
- Painting, Crafts, Art History, Intro to Art and Wine, Antiques
- Gardening, Planting an Herb Garden, Bird Watching
- Road Tripping in the USA, Best Local Trails, Health & Wellness
- Local News, In-depth Stories and Interviews, Trivia, documentaries

THE PRODUCERS will have complete freedom to bring their ideas to life and create shows of interest to them and the community. Here is an example of how large groups with a variety of talents can produce a show:

Let's say someone identifies as having "the gift of gab" from the list above. That same individual also loves to bake and has a friend who bakes as well. They would have a great time as hosts of a new cooking show! KCAT would then assist in finding other individuals to produce, direct, write scripts, film, edit and market an endless amount of episodes. As a team, everyone involved shares in the pride of creating "The Baking Show" and seeing their names in the credits as their production comes to life through the magic of television! What could be a more exciting reason to celebrate our volunteers!

SUSTAINABILITY AND REACH

With the support from ARPA seed funding, KCAT will take its training expertise to local seniors. THE PRODUCERS will be certified as qualified to use KCAT's equipment, in studio or on location. Importantly, after training and with experience, THE PRODUCERS will have the skills necessary to continue to produce their own shows for broadcast and internet distribution in the years to come. Participants in KCAT's inaugural year of THE PRODUCERS program will be able to pass on their knowledge to incoming seniors.

Our Comcast TV Channel 15 geographical area served includes Los Gatos and Monte Sereno, California; however, because we offer streaming and on-demand programming at www.kcat.org, Apple TV or Roku, our geographical area extends to Silicon Valley, the Bay Area and beyond—essentially, we're viewable worldwide through our website. The same can be said for our new KCAT internet radio, which will be available via an internet radio website and through Spotify and other streaming services.

CROSS-GENERATIONAL

KCAT has a substantial presence on the Los Gatos High School campus and works closely with middle, high school and college students throughout the community. We intend to foster and encourage an atmosphere of collaboration and learning experiences shared by seniors and our youth. This is a win-win environment: THE

PRODUCERS will benefit by new digital/social media and mobile approaches familiar to youth, and the youth will be able to leverage the experience and skill set of THE PRODUCERS.

BRING BACK LOCAL INITIATIVE

KCAT will encourage THE PRODUCERS to help fill the local news gap by embracing a “Bring Back Local” initiative. We’ll inspire the kind of locally sourced TV and podcast content that our community desperately misses. THE PRODUCERS volunteers will help spread the word about this unique new senior program by contributing feature stories and news articles to local publications that seniors read. Additionally, our senior volunteers who are trained for on-location filming and interview technique will themselves become valuable resources and ambassadors within our community: They will be able to film community events, LGS Recreation programs, ribbon cuttings and service club projects, for example.

THE PRODUCERS ROLL-OUT PLAN & BUDGET

The requested short-term funding of \$200,000 will be allocated as follows:

\$60,000	THE PRODUCERS Program Engagement & Marketing Manager Develop an ongoing and adaptive plan to recruit seniors 55+; implement an ongoing marketing strategy that results in measurement, such as number of volunteers recruited and active; identify, develop and match people’s skills and interests to roles, create and manage database, implement programs, such as friends bring friends, etc.
\$20,000	Program Volunteer Coordinator Supports the manager: admin, scheduling, follow-up, meetings, coordinating events
\$40,000	Tech Support & Training Ongoing classes/training by KCAT staff and outside resources for seniors to learn the TV station, become proficient in using equipment and develop skills and interests
\$30,000	Marketing and engagement - Create an exciting video outlining THE PRODUCERS program and distribute it to all senior living facilities, active adult groups, Nextdoor, TV before Council meetings, etc. - Continual distribution of print ads and articles (The Outlook), TV, and Radio ads, flyers, social media platforms; social activities, volunteer recognition events
\$10,000	Content curation and programming In addition to producing new content, curating content for KCAT TV is another exciting project for seniors, for example researching and purchasing documentaries, student films or other shows from around the Bay that would draw community interest on TV
\$40,000	Program-specific equipment - Purchase program-related and user-friendly equipment beyond the full KCAT inventory - In support of programs, software and license subscriptions will be purchased that are necessary to produce a show, for example: editing, graphic templates, music, etc.

KCAT management will oversee THE PRODUCERS program budget. KCAT adheres to strict accounting of employee hours and will be happy to provide programmatic expenses or performance reports as agreed upon.

IMPLEMENTATION PLAN

PHASE ONE: RECRUITING VOLUNTEERS

- Host an event with Town Council members, all Los Gatos Commissioners, community members to create “buzz,” raise awareness of the program, and kickstart outreach to our senior community for the THE PRODUCERS. An exciting recruitment video will be shown as well as distributed on key platforms
- Event will feature a tour of KCAT TV & Radio facilities, presentation of THE PRODUCERS program and a demonstration of equipment available to seniors 55+.
- Initial marketing campaign to promote THE PRODUCERS: distribute flyers, posters, TV and radio ads; post on Nextdoor, social media; connect with community partners, nonprofit groups; word of mouth; contribute feature stories and news articles to local senior print publications such as The Outlook.

PHASE TWO: MATCH GAME

- Onboarding, matching and prioritizing participant skills with roles, introducing creative process to produce shows and create content.
- Volunteers will begin classes taught by KCAT staff to learn studio and on-location equipment operation, scriptwriting, acting techniques, editing, etc.
- Timelines will be created for THE PRODUCERS team to begin the journey of producing their shows

PHASE THREE: LIGHTS, CAMERA, ACTION!

- We will have a Watch Party and Celebration event for THE PRODUCERS show!
- Spread the word and let family, friends and the community know when and how to watch new shows on KCAT TV by THE PRODUCERS

DATA / TRACKING / MEASUREMENT

THE PRODUCERS program is intended to be a new, impactful and, once established, sustainable TV and radio production program for the betterment of our senior “55 plus” community. Our long-term goal is having individuals and groups of seniors become KCAT TV and radio producers, developing and directing entire seasons of shows on an on-going, “rolling” basis.

During this inaugural year, THE PRODUCERS program’s effectiveness will be evaluated in the following ways:

- Satisfaction of the senior participants: 100% of the seniors participating in the THE PRODUCERS will say that they have gained valuable skills and experiences
- Participants will enjoy the program which will encourage them to bring others to join the fun.
- Number of active THE PRODUCERS groups: Our goal isn’t so much the quantity of shows but having multiple groups of seniors getting together to learn and implement the TV, podcast or radio entire production process: brainstorming, scriptwriting/storyboarding, producing, directing, filming, acting, tech, editing, marketing, and sponsorship/business planning. KCAT intends to create 5-10 such groups, approx. 30-50 active participants, during the inaugural year.

- KCAT will measure audience viewership, listenership and engagement through analytics, ratings providers, surveys, targeted advertising, and online and social media strategies to drive viewers, and possibly subscription services.
- Percentage of participants that join a post-inaugural year production team: KCAT will strive to have 50% or more of the participants continue on to produce original broadcast content past THE PRODUCERS' inaugural year which will be sustained through show sponsorships, fundraising and grants secured by THE PRODUCERS and KCAT staff.

Thank you for your strong consideration to fund this exciting new program that will benefit our Adult 55+ community in so many ways.

If you have further questions or thoughts, please feel free to reach out to me anytime.

Melissa Toren
Executive Director
KCAT TV15
melissa@kcat.org

TOWN OF LOS GATOS

GRANTS REPORT



Instructions

1. This report must be submitted to the Town of Los Gatos by July 31, 2023.
2. Any unused grant funding must be returned to the Town of Los Gatos.
3. Submit final report to:
Town Manager's Office
Attn: Town Clerk
110 E. Main St, Los Gatos, CA 95030

Grantee Information

Organization:	
Mailing Address:	
Program Coordinator:	
Contact Email:	
Contact Phone:	

Program Information

Program Title:	
Date/s of Program:	
Total Program Attendance:	
Number of Los Gatos Residents participating:	

Budget

Total Grant Funds Awarded:	
Total Grant Funds Spent:	

Itemize all grant fund expenditures (use additional pages as needed):	Amount
Total	

Program Summary

Please provide an overview of the program as it was implemented during the grant period:

Program Summary cont.

Please tell us about the population that this program served and any direct impacts that your organization observed as a result of the program:

Program Summary cont.**Program Summary cont.**

Please provide any additional statistics that you feel would highlight your program:

Signatures

I certify that the information provided in this report is true and correct to the best of my knowledge.

Event Coordinator:

Date:

(Name Printed):

Organization's Director:

Date:

(Name Printed):



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/06/2023

ITEM NO: 11

DATE: May 26, 2023

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Authorize the Town Manager to Close the Winchester Boulevard Complete Streets Project (CIP No. 813-0238) and:

- a. Request that VTA Reallocate Measure B \$1,734,250 Funding;
- b. Authorize an Expenditure Budget Transfer in an Amount of \$169,000 from Available General Fund Appropriated Reserve (GFAR) Funds in Project No. 813-0238 to Project No. 832-4505 - Los Gatos Creek Trail to Highway 9 Connector Project; and
- c. Authorize an Expenditure Budget Transfer in an Amount of \$432,926 from Available GFAR Funds in Project No. 813-0238 to Project No. 813-0241 - Kennedy Sidewalk - Los Gatos Boulevard

RECOMMENDATION:

Authorize the Town Manager to Close the Winchester Boulevard Complete Streets Project (CIP No. 813-0238) and:

- a. Request that VTA reallocate Measure B \$1,734,250 funding;
- b. Authorize an expenditure budget transfer in an amount of \$169,000 from available General Fund Appropriated Reserve (GFAR) funds in Project No. 813-0238 to Project No. 832-4505 - Los Gatos Creek Trail to Highway 9 Connector Project; and
- c. Authorize an expenditure budget transfer in an amount of \$432,926 from available GFAR funds in Project No. 813-0238 to Project No. 813-0241 - Kennedy Sidewalk - Los Gatos Boulevard.

BACKGROUND:

In June 2020, the Town of Los Gatos was awarded a Measure B grant from the Valley Transit Authority (VTA) in the amount of \$1,734,250 for the design and construction of the Winchester Boulevard Complete Streets Project. In addition, the Town has allocated a total of \$743,251

PREPARED BY: Nicolle Burnham
Director, Parks and Public Works

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

SUBJECT: Authorize the Town Manager to Request VTA Reallocate Measure B Funding and Approve the Reallocation GFAR Associated with the Winchester Boulevard Complete Streets Project (CIP No. 813-0238)

DATE: May 26, 2023

BACKGROUND (continued):

from the General Fund Appropriated Reserve (GFAR) for this project, of which \$601,926 remains. The total engineer's estimate for this project is in excess of \$72 million.

During development of the Capital Improvement Program (CIP) budget for 2023/24 – 2027/28, staff suggested that design and construction of the Winchester Boulevard Complete Streets Project not be pursued at this time and that the existing funds be reallocated to other projects that are in process but not fully funded. At its March CIP discussion, the Town Council agreed.

DISCUSSION:

Parks and Public Works staff has reviewed the existing project inventory and considered potential uses for the Measure B and GFAR Funding. Measure B funding can only be allocated to projects that were submitted by the Town during the call for projects. The Town has four projects on the Measure B list, including the Winchester Complete Streets Project. The three other project eligible for Measure B funding are:

1. Los Gatos Creek Trail Connector at Highway 9 (CIP No. 832-4505). This project was bid for construction in April 2023 and costs were higher than anticipated. Staff has been able to identify funding except for \$576,672. The existing project funding already includes \$693,500 in Measure B funding. Construction awards for this project must be made by August 4, 2023 to prevent the need to rebid the project.
2. Kennedy Road Sidewalks Los Gatos Boulevard to Englewood (CIP No. 813-0241). This project will improve pedestrian and bicycle connectivity to Van Meter Elementary School, Fisher Middle School, and Los Gatos High School. Construction is expected to include Class II bike lanes and sidewalks along the approximately 2,100 feet of Kennedy Road in the project reach. The projected cost of design and construction is estimated to be \$3,000,000 to \$3,300,000 based on concept planning. The project has existing Measure B funding of \$832,300, plus GFAR of \$59,400. This leaves a projected funding gap of \$2,108,600 to \$2,408,300.
3. Highway 17 Bicycle and Pedestrian Overcrossing (CIP No. 818-0803). The design of this project is fully funded through construction. Design funding included \$2,754,990 of Measure B funding. At this time there is no funding allocated for construction. The current funding gap for this project therefore is approximately \$25 million.

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SUBJECT: Authorize the Town Manager to Request VTA Reallocate Measure B Funding and
Approve the Reallocation GFAR Associated with the Winchester Boulevard
Complete Streets Project (CIP No. 813-0238)

DATE: May 26, 2023

DISCUSSION (continued):

Staff recommends that the Town request that VTA Board of Directors approve reallocation of all Winchester Boulevard Complete Streets Measure B funds to the Kennedy Road Sidewalks project. Using this Measure B funding for the Los Gatos Creek Trail Connector project is not possible since the reallocation of Measure B funding requires an act of the VTA Board of Directors. Such action cannot be taken before the August 4 deadline for construction award.

Staff is recommending that the GFAR associated with the Winchester Boulevard Complete Streets project be split, with \$169,000 allocated to the Los Gatos Creek Trail Connector at Highway 9, and the remaining \$432,926 allocated to the Kennedy Road Sidewalks project. This action will fill the funding gap for the Trail Connector Project and allow the proposed construction award to be presented to Town Council at its meeting for August 1, 2023.

CONCLUSION:

The Winchester Boulevard Complete Streets project is an important element of the Bicycle and Pedestrian Master Plan, but the limited PPW staffing available for capital projects has prevented the project from moving forward. In addition, the total cost for design and construction exceeds a reasonable amount that the Town currently has available. Therefore, staff recommends that a request be submitted to the VTA to reallocate all Measure B funds from the Winchester Complete Streets Project to the Kennedy Road Sidewalks project. If approved by the VTA Board, a subsequent Town Council action will be needed for the allocation to the Kennedy Road Sidewalks project. Staff recommends that the GFAR associated with the Winchester Complete Streets Project be allocated to Los Gatos Creek Trail Connector and Kennedy Road Sidewalks Project.

COORDINATION:

This memorandum has been coordinated with the Finance Department, Attorney's Office and VTA staff.

FISCAL IMPACT:

The proposed action calls for reallocating existing funding between existing projects. There is no net increase or decrease to overall funding in the capital program as a result of this request.

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SUBJECT: Authorize the Town Manager to Request VTA Reallocate Measure B Funding and
Approve the Reallocation GFAR Associated with the Winchester Boulevard
Complete Streets Project (CIP No. 813-0238)

DATE: May 26, 2023

FISCAL IMPACT (continued):

Winchester Boulevard Complete Streets Final Design CIP No. 813-0238		
	Budget	Costs
GFAR	\$ 601,926	
Total Budget	\$ 601,926	
Budget Transfer to CIP No. 832-4505		\$ 169,000
Budget Transfer to CIP No. 813-0241		\$ 432,926
Total Costs		\$ 601,926
Remaining Balance		\$ -

ENVIRONMENTAL ASSESSMENT:

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



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/06/2023

ITEM NO: 12

DATE: May 26, 2023

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Approve a Funding Plan for Construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505) and take the following actions:

- a. Authorize the Town Manager to Execute Supplement 2 to the Agreement for One Bay Area Grant Program (OBAG II) Grant Funds for Total Compensation of \$6,193,000 from the Department of Transportation (Caltrans); and
- b. Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$2,842,000 to Recognize the Receipt and the Spending of the Additional OBAG II Grant; and
- c. Adopt a Resolution Authorizing Receipt of \$68,884 from the Transportation Development Act Article 3 (TDA3) Funding Program; and
- d. Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$68,884 to Recognize the Receipt and the Spending of the TDA3 Funding

RECOMMENDATION:

Approve a Funding Plan for Construction of the Los Gatos Creek Trail to Highway 9 Trailhead Connector Project (CIP No. 832-4505) and take the following actions:

- a. Authorize the Town Manager to Execute Supplement 2 to the Agreement for One Bay Area Grant Program (OBAG II) Grant Funds for Total Compensation of \$6,193,000 from the Department of Transportation (Caltrans); and
- b. Authorize revenue and expenditure budget adjustments in the amount of \$2,842,000 to recognize the receipt and the spending of the additional OBAG II Grant; and
- c. Adopt a Resolution Authorizing Receipt of \$68,884 from the Transportation Development Act Article 3 (TDA3) Funding Program (Attachment 3).
- d. Authorize revenue and expenditure budget adjustments in the amount of \$68,884 to recognize the receipt and the spending of the TDA3 Funding

PREPARED BY: Nicolle Burnham
Director, Parks and Public Works

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

SUBJECT: Approve a Funding Plan for Construction of the Los Gatos Creek Trail to Highway 9 Project (CIP No. 832-4505)

DATE: May 26, 2023

BACKGROUND:

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

On January 17, 2023, Town Council authorized staff to issue two bids for the Project: one for construction and a second for construction management, inspection, and material testing services. Construction bids were opened on April 6, 2023 and a total of five bids were received. Bids for construction management, inspection, and material testing were based on qualifications, and cost negotiations with the preferred consultant are still in progress. For both bids, preliminary review is ongoing and a bid award memo will be brought to Town Council on August 1, 2023; however, initial analysis of the bids suggests that the construction costs for the project will exceed the total project cost presented in the January 17, 2023 report.

DISCUSSION:

Table 1 compares the costs presented in January 2023 with the updated costs. At this time staff believes the May 2023 costs accurately represent the Project.

Table 1. Los Gatos Creek Trail to Highway 9 Trailhead Connector Project Construction Phase Services Cost Comparison

Item	Costs per 1/17/2023 Council Memo	Updated Costs - May 2023	Increase
Construction	\$ 4,361,984	\$ 6,529,396	\$ 2,167,412
Construction Contingency (10 percent)	\$ 436,198	\$ 652,940	\$ 216,742
Construction Management (CM)			
Consultant CM/RE/Inspection, Testing and Monitoring	\$ 775,926	\$ 1,250,000	\$ 474,074
Town Project Management	\$ 150,000	\$ 127,000	\$ (23,000.00)
Construction Support Services from Design Engineer	\$ -	\$ 206,371	\$ 206,371
Other Project Delivery Costs	\$ 5,000	\$ 50,000	\$ 45,000
Total Costs	\$ 5,729,108	\$ 8,815,707	\$ 3,086,599

The construction costs were significantly higher than expected as noted above. Staff reviewed the construction bids with the design engineering team and found that the overages are not attributed to any one specific line item, but rather than a number of items are proposed at higher costs than anticipated. Examples of this include traffic control, mobilization, handrailing systems, and structural concrete. The overages are the result of higher than expected inflation,

SUBJECT: Approve a Funding Plan for Construction of the Los Gatos Creek Trail to Highway 9 Project (CIP No. 832-4505)

DATE: May 26, 2023

DISCUSSION (continued):

the relatively small size of the Project compared to other transportation projects, the complexity of the work area adjacent to Route 9 and the existing trail, and worker shortages in the construction trades. Follow up conversations with staff at Valley Transportation Agency (VTA) confirmed that many transportation-related projects are seeing similar cost increases.

Throughout the Project development, staff had been seeking grants and working to secure project funding. Following the bid opening, staff evaluated the existing funding and attempted to identify additional potential sources. Table 2 shows the funding sources presented in January in comparison to funding that has been identified to meet the updated total project cost.

Table 2. Los Gatos Creek Trail to Highway 9 Trailhead Connector Project Funding Comparison

	Sources per 1/17/2023 Council Memo	Updated Sources - May 2023
OBAG Cycle II Grant - CMAQ	\$ 3,351,000	\$ 6,193,000
GFAR	\$ 995,377	\$ 1,160,387
Measure B (2016 Program Bicycle and Pedestrian Program)	\$ 693,500	\$ 693,500
TFCA	\$ 755,921	\$ 755,921
TDA3	\$ -	\$ 68,884
Total Budget	\$ 5,795,798	\$ 8,871,692

One Bay Area Grant Cycle II (OBAG II) – In mid-April, VTA sent a message to all Santa Clara County jurisdictions that an OBAG II funded project in another jurisdiction had been cancelled. VTA asked for other potential projects that might use the funding. Staff notified VTA of the construction funding shortfall for the Project. VTA reviewed the Project with the Metropolitan Transportation Commission (MTC) and offered the Town additional OBAG II funding of \$2,842,000 to support the Project. The Town had executed a Master Agreement with the California Department of Transportation (CalTrans) for OBAG II funding in 2019 (Attachment 1). A Supplemental Agreement (Attachment 2) was executed in February 2023 to accept \$3,351,000 for construction. Staff is working with CalTrans to develop and execute a second supplement to for the additional \$2,842,000, which is expected to follow the same form as shown in Attachment 2. The new supplement is expected to be available for signing in July 2023. Staff is seeking authorization for the Town Manager to execute the supplement now to allow the grant funds to be recognized before the construction award is considered by the Council on August 1, 2023.

SUBJECT: Approve a Funding Plan for Construction of the Los Gatos Creek Trail to Highway 9 Project (CIP No. 832-4505)

DATE: May 26, 2023

DISCUSSION (continued):

General Fund Appropriated Reserve (GFAR) – With the cancellation of the Winchester Boulevard Complete Street project, staff has requested that \$169,000 of GFAR be transferred to this Project. This is the amount needed to balance the project budget after all other sources were evaluated. A separate Council agenda item addresses this request.

Measure B: The Project was awarded Measure B funds and the requisite funding agreement was executed in February 2023. Staff considered reallocating a portion of the Winchester Boulevard Complete Streets Measure B funding to the Project, but reallocation of Measure B funding requires an act of the VTA Board of Directors and there was not enough time for that action to occur before construction bids expire on August 4, 2023.

Transportation Fund for Clean Air (TFCA): The project has received \$755,921 in TFCA funds and the grant agreement has been executed.

Transportation and Development Act Article 3 (TDA3): Through the MTC, VTA distributes TDA3 funding to Santa Clara County cities and towns annually. This funding can be used for any bicycle and pedestrian project. Los Gatos has \$68,884 of TDA3 available and is proposing to use the funding for the Project. Use of the funding requires a Council resolution and application to MTC as noted in Attachment 3.

CONCLUSION:

The funding identified can fully fund the Project and staff is seeking approval of this funding plan before returning with the construction and construction inspection award contracts. If this funding plan is not authorized, then it is unlikely the project will move forward to construction at this time.

COORDINATION:

This memorandum was coordinated with the Finance Department and VTA.

FISCAL IMPACT:

The fiscal table below reflects the updated costs and budget sources for the construction phase of the project, which will be sufficient to fund the project.

SUBJECT: Approve a Funding Plan for Construction of the Los Gatos Creek Trail to Highway 9 Project (CIP No. 832-4505)

DATE: May 26, 2023

FISCAL IMPACT (continued):

Los Gatos Creek Trail to Highway 9 Trailhead Connector		
CIP No. 832-4505		
	Budget	Costs
GFAR	\$ 1,259,127	
OBAG Cycle II Grant - CMAQ	\$ 3,351,000	
OBAG Cycle II Grant - CMAQ	\$ 353,000	
Measure B (2016 Program Bicycle and Pedestrian Program)	\$ 693,500	
TFCA Grant Funds	\$ 755,921	
Total Budget	\$ 6,412,548	
Potential Additional Funding		
GFAR (Requested in a Separate Council Agenda Item - Transfer from CIP No. 813-0238)	\$ 169,000	
TDA3 Grant Funds (Requested with this Staff Report)	\$ 68,884	
OBAG Cycle II Grant - CMAQ (Requested with this Staff Report)	\$ 2,842,000	
Total	\$ 3,079,884	
Total with Potential Budget	\$ 9,492,432	
Design Phase		
Consultant Services - Mott MacDonald		\$ 576,747
Part-Time Staff Cost		\$ 99,297
Other Project Delivery Costs		\$ 490
Design Total		\$ 676,534
Construction Phase		
Construction		\$ 6,529,396
Construction Contingency (10%)		\$ 652,940
Construction Management		
Consultant CM/RE/Inspection, Testing, and Monitoring		\$ 1,250,000
Town Project Management		\$ 127,000
Construction Support Services from Design Engineer		\$ 206,371
Other Project Delivery Costs		\$ 50,000
Construction Totals		\$ 8,815,707
Total Project Expenditures		\$ 9,492,241
Remaining Budget		\$191

As noted in the staff report, the new OBAG supplement is expected to be available for signing in July 2023. Staff is seeking authorization now for the Town Manager to execute the supplement to allow the grant funds to be recognized before the construction award is considered by the

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SUBJECT: Approve a Funding Plan for Construction of the Los Gatos Creek Trail to Highway 9 Project (CIP No. 832-4505)

DATE: May 26, 2023

FISCAL IMPACT (continued):

Council on August 1, 2023. For the TDA3 grant, the use of the funding requires a Council resolution and application to MTC, which staff has attached for authorization.

Approval of this funding plan would allow staff to return to Council in August with the construction and construction inspection award contracts.

ENVIRONMENTAL ASSESSMENT:

CalTrans opted to be the lead agency for the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). This project is Categorically Exempt per Section 15301, PRC 21084; 14 CCR 15300.

Attachments:

1. Master Grant Agreement for One Bay Area Grant Cycle II
2. Supplement 1 to OBAG II Agreement
3. Resolution and Grant Application for TDA3 Funding

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

04 City of Los Gatos

District Administering Agency

AGR 19.013
IHH _____

Agreement No. 04-5067F15

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

RECITALS:

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

NOW, THEREFORE, the PARTIES agree as follows:

ARTICLE I - PROJECT ADMINISTRATION

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II - RIGHTS OF WAY

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

6. ADMINISTERING AGENCY shall, along with recording the deed or instrument evidencing title in the name of the ADMINISTERING AGENCY or their assignee, also record an Agreement Declaring Restrictive Covenants (ADRC) as a separate document incorporating the assurances included within Exhibits A and B and Appendices A, B, C and D of this AGREEMENT, as appropriate.

ARTICLE III - MAINTENANCE AND MANAGEMENT

1. ADMINISTERING AGENCY will maintain and operate the property acquired, developed, constructed, rehabilitated, or restored by PROJECT for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, ADMINISTERING AGENCY or its successors in interest in the PROJECT property may transfer this obligation and responsibility to maintain and operate PROJECT property for that intended public purpose to another public entity.
2. Upon ADMINISTERING AGENCY's acceptance of the completed federal-aid construction contract or upon contractor being relieved of the responsibility for maintaining and protecting PROJECT, ADMINISTERING AGENCY will be responsible for the maintenance, ownership, liability, and the expense thereof, for PROJECT in a manner satisfactory to the authorized representatives of STATE and FHWA and if PROJECT falls within the jurisdictional limits of another Agency or Agencies, it is the duty of ADMINISTERING AGENCY to facilitate a separate maintenance agreement(s) between itself and the other jurisdictional Agency or Agencies providing for the operation, maintenance, ownership and liability of PROJECT. Until those agreements are executed, ADMINISTERING AGENCY will be responsible for all PROJECT operations, maintenance, ownership and liability in a manner satisfactory to the authorized representatives of STATE and FHWA. If, within ninety (90) days after receipt of notice from STATE that a PROJECT, or any portion thereof, is not being properly operated and maintained and ADMINISTERING AGENCY has not satisfactorily remedied the conditions complained of, the approval of future federal-aid projects of ADMINISTERING AGENCY will be withheld until the PROJECT shall have been put in a condition of operation and maintenance satisfactory to STATE and FHWA. The provisions of this section shall not apply to a PROJECT that has been vacated through due process of law with STATE's concurrence.
3. PROJECT and its facilities shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians as PROJECT reasonably requires. Said operations and maintenance staff may be employees of ADMINISTERING AGENCY, another unit of government, or a contractor under agreement with ADMINISTERING AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the complete PROJECT improvements.

ARTICLE IV - FISCAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE V
AUDITS, THIRD PARTY CONTRACTING, RECORDS RETENTION AND REPORTS

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

7. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain provisions 5, 6, 17, 19 and 20 of ARTICLE IV, FISCAL PROVISIONS, and provisions 1, 2, and 3 of this ARTICLE V, AUDITS, THIRD-PARTY CONTRACTING RECORDS RETENTION AND REPORTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By [Signature]

for Chief, Office of Project Implementation
Division of Local Assistance

Date February 28, 2019

City of Los Gatos

By [Signature]

Laurel Prevetti

Town Manager

City of Los Gatos

Representative Name & Title

(Authorized Governing Body Representative)

Date 2/25/19

Approved as to form:

[Signature], Town Attorney

EXHIBIT A

FAIR EMPLOYMENT PRACTICES ADDENDUM

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

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

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

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

5. Remedies for Willful Violation:

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

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

EXHIBIT B

NONDISCRIMINATION ASSURANCES

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

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

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

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

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

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

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

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

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

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

Appendix C;

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

Appendix D;

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

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

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

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

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

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

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

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

APPENDIX A TO EXHIBIT B

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

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

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

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

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

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

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

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

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

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

(GRANTING CLAUSE)

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

(HABENDUM CLAUSE)

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

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

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

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

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

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

APPENDIX C TO EXHIBIT B

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

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

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

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

(Include in deeds)*

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

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

APPENDIX D TO EXHIBIT B

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

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

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

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

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

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

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

(Include in deeds)*

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

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

PROGRAM SUPPLEMENT NO. F012
to
ADMINISTERING AGENCY-STATE AGREEMENT
FOR FEDERAL-AID PROJECTS NO 04-5067F15

Adv Project ID 0419000135
Date: December 18, 2018
Location: 04-SCL-0-LGTS
Project Number: CML-5067(021)
E.A. Number:
Locode: 5067

This Program Supplement hereby adopts and incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on 2/25/19 and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. 2015-051 approved by the Administering Agency on August 18, 2015 (See copy attached).

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

PROJECT LOCATION:

In Los Gatos: The Los Gatos Creek Trail to the north and south sides of Highway 9 between the Highway 17 interchange and University Ave

TYPE OF WORK: Construct Bike and Pedestrian Connectors

LENGTH: 0.0(MILES)

Estimated Cost	Federal Funds		Matching Funds	
	Z003	LOCAL	OTHER	
\$387,440.00	\$343,000.00	\$0.00	\$44,440.00	

CITY OF LOS GATOS

By L. Prevetti
 Title Town Manager
 Date 2/25/2019
 Attest Shelley New, CMC
Town Clerk

STATE OF CALIFORNIA
Department of Transportation

By [Signature]
 Chief, Office of Project Implementation
 Division of Local Assistance

Date February 22, 2019

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

Accounting Officer [Signature] **Date** 12/20/18 **\$343,000.00**

Chapter	Statutes	Item	Year	Program	BC	Category	Fund Source	AMOUNT

Page ____ of ____

SPECIAL COVENANTS OR REMARKS

1. A. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.

B. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).

C. STATE and ADMINISTERING AGENCY agree that any additional funds which might be made available by future Federal obligations will be encumbered on this PROJECT by use of a STATE-approved "Authorization to Proceed" and Finance Letter. ADMINISTERING AGENCY agrees that Federal funds available for reimbursement will be limited to the amounts obligated by the Federal Highway Administration.

D. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days of project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Attention is directed to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.

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

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

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

F. Administering Agency shall not discriminate on the basis of race, religion, age, disability, color, national origin, or sex in the award and performance of any Federal-

SPECIAL COVENANTS OR REMARKS

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

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

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

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

2. A. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of

SPECIAL COVENANTS OR REMARKS

Federal Regulation (CFR) and 2 CFR Part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.

B. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.

C. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.

D. Indirect Cost Allocation Plan/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.

E. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

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

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

H. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures,

SPECIAL COVENANTS OR REMARKS

48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items.

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

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

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

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

L. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices set to or paid by STATE.

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

N. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in

SPECIAL COVENANTS OR REMARKS

ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with 2 CFR, Part 200.

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

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

3. In the event that right of way acquisition for or construction of this project of the initial federal authorization for preliminary engineering is not started by the close of the tenth fiscal year following the fiscal year in which the project is authorized, the ADMINISTERING AGENCY shall repay the Federal Highway Administration through Caltrans the sum of Federal funds paid under the terms of this agreement.

Headquarters Division of
Local Assistance

FEB 27 2019

from Local Agency

Headquarters Division of
Local Assistance

DEC 26 2018

from local Programs Accounting

RESOLUTION 2015-051

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
AUTHORIZING THE TOWN MANAGER
TO EXECUTE ALL MASTER AGREEMENTS, PROGRAM SUPPLEMENTAL
AGREEMENTS, FUND EXCHANGE AGREEMENTS, FUND TRANSFER
AGREEMENTS AND AMENDMENTS WITH THE STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

WHEREAS, the **Town of Los Gatos** (Town) is eligible to receive Federal and/or State funding for certain Transportation projects, through the California Department of Transportation; and

WHEREAS, Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements, and/or Fund Transfer Agreements need to be executed with the California Department of Transportation before such funds can be claimed; and

WHEREAS, the Town wishes to delegate authorization for signing these agreements to the Town Manager;

NOW, THEREFORE BE IT RESOLVED that the Town Manager be authorized to execute Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements, Fund Transfer Agreements and any amendment thereto with the California Department of Transportation.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 18th day of August, 2015, by the following vote:

COUNCIL MEMBERS:

AYES: Steve Leonardis, Rob Rennie, Marico Sayoc, Barbara Spector, Mayor Marcia Jensen

NAYS:

ABSENT:

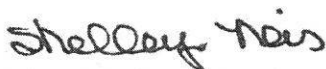
ABSTAIN:

SIGNED:



MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:



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

OBAG 2

PROGRAM SUPPLEMENT NO. F012 Rev. 1
to
ADMINISTERING AGENCY-STATE AGREEMENT
FOR FEDERAL-AID PROJECTS NO 04-5067F15

Adv. Project ID
 0419000135

Date: January 30, 2023
Location: 04-SCL-9-LGTS
Project Number: CML-5067(021)
E.A. Number:
Locode: 5067

This Program Supplement hereby adopts and incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on 02/28/2019 and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. 2015-051 approved by the Administering Agency on August 18, 2015 (See copy attached).

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

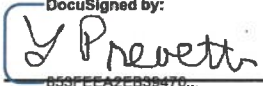
PROJECT LOCATION: In Los Gatos: The Los Gatos Creek Trail to the north and south sides of Highway 9 between the Highway 17 interchange and University Ave

TYPE OF WORK: Construct Bike and Pedestrian Connectors

LENGTH: 0.0(MILES)

Estimated Cost	Federal Funds	Matching Funds		
	Y003 \$3,351,000.00 Z003 \$343,000.00	LOCAL		OTHER
\$5,190,622.00		\$0.00		\$1,496,622.00

CITY OF LOS GATOS

DocuSigned by:

 By _____
 Title Town Manager
 Date 2/10/2023
 Attest Wendy Wood, Town Clerk

STATE OF CALIFORNIA

Department of Transportation

By _____
 Chief, Office of Project Implementation
 Division of Local Assistance
 Date _____

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

Accounting Officer



Date 02/01/2023

\$3,694,000.00

Town of Los Gatos:

Approved as to Form:

DocuSigned by:

EFD6736A5534426...
Gabrielle Whelan, Town Attorney

Attest:

DocuSigned by:

BF6EBCBC2C214F8...
Wendy Wood, CMC, Town Clerk

SPECIAL COVENANTS OR REMARKS

1. A. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.

B. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).

C. STATE and ADMINISTERING AGENCY agree that any additional funds which might be made available by future Federal obligations will be encumbered on this PROJECT by use of a STATE-approved "Authorization to Proceed" and Finance Letter. ADMINISTERING AGENCY agrees that Federal funds available for reimbursement will be limited to the amounts obligated by the Federal Highway Administration.

D. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days of project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Attention is directed to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.

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

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

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

SPECIAL COVENANTS OR REMARKS

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

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

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

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

SPECIAL COVENANTS OR REMARKS

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

SPECIAL COVENANTS OR REMARKS

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

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

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

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

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

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

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

SPECIAL COVENANTS OR REMARKS

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

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

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

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

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

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

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

Pertinent Nondiscrimination Authorities:

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

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

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

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

SPECIAL COVENANTS OR REMARKS

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

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

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

G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or

activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);

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

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

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

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

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

DRAFT RESOLUTION 2023-

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
METROPOLITAN TRANSPORTATION COMMISSION
TRANSPORTATION DEVELOPMENT ACT ARTICLE 3 FUNDS
BICYCLE AND PEDESTRIAN PROJECTS**

WHEREAS, Article 3 of the Transportation Development Act (TDA), Public Utilities Code (PUC) Section 99200 et seq., authorizes the submission of claims to a regional transportation planning agency for the funding of projects exclusively for the benefit and/or use of pedestrians and bicyclists; and

WHEREAS, the Metropolitan Transportation Commission (MTC), as the regional transportation planning agency for the San Francisco Bay region, has adopted MTC Resolution No. 4108, Revised, entitled “Transportation Development Act, Article 3, Pedestrian/Bicycle Projects,” which delineates procedures and criteria for submission of requests for the allocation of “TDA Article 3” funding; and

WHEREAS, MTC Resolution No. 4108, Revised requires that requests for the allocation of TDA Article 3 funding be submitted as part of a single, countywide coordinated claim from each county in the San Francisco Bay region; and

WHEREAS, the Town of Los Gatos desires to submit a request to MTC for the allocation of TDA Article 3 funds to support the projects described in Attachment B to this resolution, which are for the exclusive benefit and/or use of pedestrians and/or bicyclists; now, therefore, be it

RESOLVED, that the Town of Los Gatos declares it is eligible to request an allocation of TDA Article 3 funds pursuant to Section 99234 of the Public Utilities Code, and furthermore, be it

RESOLVED, that the Town of Los Gatos attests to the accuracy of and approves the statements in Attachment A to this resolution; and furthermore, be it

RESOLVED, that a certified copy of this resolution and its attachments, and any accompanying supporting materials shall be forwarded to the congestion management agency, countywide transportation

planning agency, or county association of governments, as the case may be, of the County of Santa Clara for submission to MTC as part of the countywide coordinated TDA Article 3 claim.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 6th day of June 2023 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

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

DATE: _____

Attachment A

Re: Request to the Metropolitan Transportation Commission for the Allocation of Fiscal Year 2023/24 Transportation Development Act Article 3 Pedestrian/Bicycle Project Funding

Findings

Page 1 of 1

1. That the Town of Los Gatos is not legally impeded from submitting a request to the Metropolitan Transportation Commission for the allocation of Transportation Development Act (TDA) Article 3 funds, nor is the Town of Los Gatos legally impeded from undertaking the project(s) described in "Attachment B" of this resolution.
2. That the Town of Los Gatos has committed adequate staffing resources to complete the project(s) described in Attachment B.
3. A review of the project(s) described in Attachment B has resulted in the consideration of all pertinent matters, including those related to environmental and right-of-way permits and clearances, attendant to the successful completion of the project(s).
4. Issues attendant to securing environmental and right-of-way permits and clearances for the projects described in Attachment B have been reviewed and will be concluded in a manner and on a schedule that will not jeopardize the deadline for the use of the TDA funds being requested.
5. That the project(s) described in Attachment B comply with the requirements of the California Environmental Quality Act (CEQA, Public Resources Code Sections 21000 et seq.).
6. That as portrayed in the budgetary description(s) of the project(s) in Attachment B, the sources of funding other than TDA are assured and adequate for completion of the project(s).
7. That the project(s) described in Attachment B are for capital construction and/or final design and engineering or quick build project; and/or for the maintenance of a Class I bikeway which is closed to motorized traffic and/or Class IV separated bikeway; and/or for the purposes of restriping Class II bicycle lanes; and/or for the development or support of a bicycle safety education program; and/or for the development of a comprehensive bicycle and/or pedestrian facilities plan, and an allocation of TDA Article 3 funding for such a plan has not been received by the Town of Los Gatos within the prior five fiscal years.
8. That the project(s) described in Attachment B which are bicycle projects have been included in a detailed bicycle circulation element included in an adopted general plan, or included in an adopted comprehensive bikeway plan (such as outlined in Section 2377 of the California Bikeways Act, Streets and Highways Code section 2370 et seq.) or responds to an immediate community need, such as a quick-build project.
9. That any project described in Attachment B bicycle project meets the mandatory minimum safety design criteria published in the California Highway Design Manual or is in a National Association of City and Transportation Officials (NACTO) guidance or similar best practices document.
10. That the project(s) described in Attachment B will be completed in the allocated time (fiscal year of allocation plus two additional fiscal years).
11. That the Town of Los Gatos agrees to maintain, or provide for the maintenance of, the project(s) and facilities described in Attachment B, for the benefit of and use by the public.

TDA Article 3 Project Application Form

1. Agency	Town of Los Gatos		
2. Primary Contact	Gary Heap		
3. Mailing Address	41 Miles Avenue, Los Gatos CA 95030		
4. Email Address	gheap@losgatosca.gov	5. Phone Number	408-399-5773
6. Secondary Contact (in the event primary is not available)	Nicolle Burnham		
7. Mailing address (if different) N/A ☒			
8. Email Address	nburnham@losgatosca.gov	9. Phone Number	408-399-5774
10. Send allocation instructions to (if different from above):			
11. Project Title	Los Gatos Creek Trail to Highway 9 Trailhead Connector Project		
12. Amount requested	68,884	13. Fiscal Year of Claim	2023/24

14. Description of Overall Project:

Construction of access to Los Gatos Creek Trail at Highway 9. Project includes walkway from intersection of University Avenue to trail, with new bridge over Los Gatos Creek on south side of Highway 9; and switchback walkway access to trail from Highway 9 on north side.

15. Project Scope Proposed for Funding: (Project level environmental, preliminary planning, and ROW are ineligible uses of TDA funds.)

Funding will be used for construction phase services. Construction will be awarded to the apparent low bidder in August 2023. The requested finding will be used to fill a funding gap that was identified after bid opening.

16. **Project Location:** A map of the project location is attached or a link to a online map of the project location is provided below:

<https://www.losgatosca.gov/2557/Los-Gatos-Creek-Trailhead-Connector-to-H>

Project Relation to Regional Policies (for information only)

17. Is the project in an [Equity Priority Community](#)? Yes ☐ No ☐

☒

18. Is this project in a [Priority Development Area](#) or a [Transit-Oriented Community](#)? Yes ☐ No ☐

☒

19. Project Budget and Schedule

Project Phase	TDA3	Other Funds	Total Cost	Estimated Completion (Month / Year)
Bike/ Ped Plan	\$0.00	NA	NA	2020
ENV		NA	NA	2022
PA&ED		NA	NA	2021
PS&ED	\$0.00	\$676,044.00	\$676,044.00	1/17/2023
ROW		NA		NA
CON	\$68,884.00	\$8,806,685.53	\$8,875,569.53	12/2024
Total Cost	\$68,884.00	\$9,482,729.53	\$9,551,613.53	

Project Eligibility

- A.** Has the project been reviewed by the Bicycle and Pedestrian Advisory Committee? Yes ☒ No ☐
 If "YES," identify the date and provide a copy or link to the agenda.
 If "NO," provide an explanation).
- B.** Has the project been approved by the claimant's governing body? Yes ☒ No ☐
 If "NO," provide expected date: _____
- C.** Has this project previously received TDA Article 3 funding? Yes ☐ No ☒
 (If "YES," provide an explanation on a separate page)
- D.** For "bikeways," does the project meet Caltrans minimum safety design criteria Yes ☒ No ☐
 pursuant to [Chapter 1000 of the California Highway Design Manual](#)?
- E. 1.** Is the project categorically exempt from CEQA, pursuant to CCR Section 15301(c), Existing Facility? Yes ☒ No ☐
2. If "NO" above, is the project is exempt from CEQA for another reason? Yes ☐ No ☐
 Cite the basis for the exemption. _____ N/A ☐
 If the project is not exempt, please check "NO," and provide environmental documentation, as appropriate.
- F.** Estimated Completion Date of project (month and year): _____ 12/2024 _____
- G.** Have provisions been made by the claimant to maintain the project or facility, or has the claimant arranged for such maintenance by another agency? (If an agency other Yes ☒ No ☐

than the Claimant is to maintain the facility, please identify below and provide the agreement.

H. Is a Complete Streets Checklist required for this project ?

Yes ☐

No



If the amount requested is over \$250,000 or if the total project phase or construction phase is over \$250,000, a Complete Streets checklist is likely required. Please attach the Complete Streets checklist or record of review, as applicable. More information and the form may be found here: <https://mtc.ca.gov/planning/transportation/complete-streets>

DRAFT



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/06/2023

ITEM NO: 13

DATE: May 30, 2023

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Operating and Capital Budgets

- a. Adopt a Resolution Approving the Town of Los Gatos Fiscal Year (FY) 2023/24 Operating Budget and FY 2023/24 – 2027/28 Capital Improvement Program (CIP), New Appropriations, Additional Council Actions on May 16, 2023; American Rescue Plan Act Budget Adjustment, Minor Corrections, and Carry-Forward Appropriations.
- b. Adopt a Resolution Approving Commitment of Fund Balances under GASB 54.
- c. Approve FY 2022/23 Budget Adjustments:
 - 1. Major Revenue Adjustments to Match Year-End Estimated Revenues as Directed by the Town Council on May 16, 2023 and as Determined from Updated Information
 - i. Property Tax revenue Increase in the Amount of \$140,000,
 - ii. Educational Realignment Augmentation Fund (ERAF) Revenue Increase in the Amount of \$818,891.60 and Reserve 30% (689,607.60) of the Total Proceeds (\$2,298,691.60) in an ERAF Risk Reserve,
 - iii. Transient Occupancy Tax Increase in the Amount of \$348,547,
 - iv. Interest Revenue Increase in the Amount of \$237,074,
 - v. Sales Tax Revenue Increase in the Amount of \$121,878 (\$124,851 Increase in Regular Sales Tax and \$2,973 Decrease in Measure G Sales Tax),
 - vi. Business License Tax Revenue Decrease in the Amount of \$133,890,
 - vii. Plan Check Pass Through Service Revenue Increase in the Amount of \$125,000,

PREPARED BY: Gitta Ungvari
Finance Director

Reviewed by: Town Manager and Town Attorney

- viii. Map Plan Check Pass Through Service Revenue Increase in the Amount of \$120,000,
 - ix. OPEB Trust Withdrawal Revenue Decrease in the Amount of \$902,579 as Current Year End Estimates FY 2022/23 Surplus,
 - x. Recognize \$140,195 General Fund Salary Reimbursement for Capital Improvement Staff Work,
 - xi. Recognize Additional Police Foundation Donation Received in the Amount of \$50,195, and
 - xii. Recognize up to \$20,000 General Fund Salary Reimbursement for Enterprise Resource Upgrade Project Staff Work.
- 2. Expenditure Increases:
 - i. In the Amount of \$140,195 for General Fund Salary Reimbursement for Capital Improvement Staff Work,
 - ii. In the Amount of \$125,000 for Plan Checking Pass Through Services,
 - iii. In the Amount of \$100,000 for Map Plan Checking Pass Through Services,
 - iv. In the Amount of \$50,195 to Authorize the Spending the Additional Police Foundation Donation Received,
 - v. In the Amount of \$32,000 to Cover Third Party Business License Administrator Services, and
 - vi. In the Amount of up to \$20,000 General Fund Salary Reimbursement for Enterprise Resource Upgrade Staff Work.
- 3. Approve American Rescue Plan Act (ARPA) Replacement Revenue Tracking Pass Through Revenue and Expenditures Budget Adjustments in the Amount of \$453,465.
- d. Adopt the Following Salary Schedules:
 - 1. Salary Schedule for Management Classifications Effective April 2, 2023,
 - 2. American Federation of State, County, and Municipal Employees (AFSCME) Salary Schedule Effective July 9, 2023,
 - 3. Police Officer Association (POA) Salary Schedule Effective July 9, 2023,
 - 4. Town Employees' Association (TEA) Salary Schedule Effective July 9, 2023,
 - 5. Salary Schedule for Confidential Classifications Effective July 9, 2023,
 - 6. Salary Schedule for Management Classifications Effective July 9, 2023, and
 - 7. Salary Schedule for Temporary/Hourly Classifications Effective July 9, 2023.

RECOMMENDATION:

Operating and Capital Budgets

- a. Adopt a Resolution Approving the Town of Los Gatos Fiscal Year (FY) 2023/24 Operating Budget and FY 2023/24 – 2027/28 Capital Improvement Program (CIP), New Appropriations, Additional Council Actions on May 16, 2023; American Rescue Plan Act Budget Adjustment, Minor Corrections, and Carry-Forward Appropriations.
- b. Adopt a Resolution Approving Commitment of Fund Balances under GASB 54.
- c. Approve FY 2022/23 Budget Adjustments:
 1. Major Revenue Adjustments to Match Year-End Estimated Revenues as Directed by the Town Council on May 16, 2023; and as Determined from Updated Information
 - i. Property Tax revenue Increase in the Amount of \$140,000,
 - ii. Educational Realignment Augmentation Fund (ERAF) Revenue Increase in the Amount of \$818,891.60 and Reserve 30% (689,607.60) of the Total Proceeds (\$2,298,691.60) in an ERAF Risk Reserve,
 - iii. Transient Occupancy Tax Increase in the Amount of \$348,547,
 - iv. Interest Revenue Increase in the Amount of \$237,074,
 - v. Sales Tax Revenue Increase in the Amount of \$128,878 (\$124,851 Increase in Regular Sales Tax and \$2,973 Decrease in Measure G Sales Tax),
 - vi. Business License Tax Revenue Decrease in the Amount of \$133,890,
 - vii. Plan Check Pass Through Service Revenue Increase in the Amount of \$125,000,
 - viii. Map Plan Check Pass Through Service Revenue Increase in the Amount of \$120,000,
 - ix. OPEB Trust Withdrawal Revenue Decrease in the Amount of \$902,579 as Current Year End Estimates FY 2022/23 Surplus,
 - x. Recognize \$140,195 General Fund Salary Reimbursement for Capital Improvement Staff Work,
 - xi. Recognize Additional Police Foundation Donation Received in the Amount of \$50,195, and
 - xii. Recognize \$20,000 General Fund Salary Reimbursement for Enterprise Resource Upgrade Project Staff Work.
 2. Expenditure Increases:
 - i. In the Amount of \$140,195 General Fund Salary Reimbursement for Capital Improvement Staff Work,
 - ii. In the Amount of \$125,000 for Plan Checking Pass Through Services,
 - iii. In the Amount of \$100,000 for Map Plan Checking Pass Through Services,
 - iv. In the Amount of 50,195 to Authorize the Spending the Additional Police Foundation Donation Received,
 - v. In the Amount of \$32,000 to Cover Third Party Business License Administrator Services, and
 - vi. In the Amount of \$20,000 General Fund Salary Reimbursement for Enterprise Resource Upgrade Staff Work.

3. Approve ARPA Replacement Revenue Tracking Pass Through Revenue and Expenditure Adjustments in the amount of \$453,465.
- d. Adopt the Following Salary Schedules:
 1. Salary Schedule for Management Classifications Effective April 2, 2023,
 2. American Federation of State, County, and Municipal Employees (AFSCME) Salary Schedule Effective July 9, 2023,
 3. Police Officer Association (POA) Salary Schedule Effective July 9, 2023,
 4. Town Employees' Association (TEA) Salary Schedule Effective July 9, 2023,
 5. Salary Schedule for Confidential Classification Effective July 9, 2023,
 6. Salary Schedule for Management Classifications Effective July 9, 2023, and
 7. Salary Schedule for Temporary/Hourly Classifications Effective July 9, 2023.

BACKGROUND:

On April 17, 2023, the Proposed FY 2023/24 Operating and Capital Budgets were posted to the Town's website. Per Measure A, the Finance Commission received the Proposed Budgets 21 business days before May 16, 2023, which is the first meeting at which the Proposed Budgets were considered by the Town Council. The Finance Commission held three public meetings at which Commissioners discussed the Proposed Budgets and provided recommendations to the Town Council per Measures A and G.

On May 16 2023, the Town Council conducted public hearings to discuss the proposed FY 2023/24 Operating and Capital Summary Budget and Proposed FY 2023/24– 2027/28 Capital Improvement Program. The Town Council considered public testimony, discussed both documents, considered the Finance Commission recommendations, and directed staff to bring back the documents for final approval incorporating the Council recommendations.

DISCUSSION:

The draft resolution (Attachment 1) incorporates the budget direction provided by the Council at the May 16, 2023 budget hearing including building in a 4.6% vacancy factor.

Attachment 2 contains the resolution to formally move General Fund balances based on the Town Council General Fund Reserve Policy and additional Council direction consistent with General Accounting Standards Board (GASB) 54.

In May, the Council directed that the proposed revenues reflect 100% of the projected Education Realignment General Fund (ERAF) revenue. This is built into the Resolution for the adoption of the budget (Attachment 1).

As requested by Town Council, at least three other jurisdictions in Santa Clara County with ERAF proceeds over \$1 million have started to reserve the at-risk amount since FY 2021/22 (Milpitas

DISCUSSION (continued):

30%, Palo Alto 25%, and Santa Clara 30%). Mountain View and Sunnyvale are recognizing the ERAF revenue as a one-time revenue.

Based on this information, staff recommends establishing an ERAF Risk Reserve and reserve 30% of the anticipated proceeds in FY 2022/23 and FY 2023/24. Staff recommends continuing to reserve the at-risk amount until the lawsuit is resolved. If the result of the lawsuit is unfavorable to the Town, the County will reduce the Town Property Tax distribution by the at-risk amount; in this case, this reserve would provide the funding gap. If the lawsuit result is favorable to the Town, staff will come back to Council for direction on how to spend the accumulated reserve.

Upon Treasury's release of the simplified reporting process for entities awarded less than \$10 million in American Rescue Plan Act (ARPA) funding and additional guidance received through staff review of federal compliance issues, the Town recognized the \$3.4M in FY 2021/22 and will recognize the \$3.6M FY 2022/23 cash collections of ARPA revenues as qualified revenue loss under the Treasury provisions for use in providing essential government services. To further aid in compliance with federal uniform guidance and Single Audit requirements, staff claimed the lost revenue for use in providing essential government services and eligible public safety payroll costs for both FY 2021/22 and FY 2022/23. This action allocates all ARPA "replacement" revenues to the General Fund which in turn will unencumber other General Fund operating revenues which were previously dedicated for public safety costs.

Once the ARPA Revenues were fully recognized as loss revenue, it became part of General Fund and available for Council direction for any lawful government service. Staff is tracking the \$7.2 million total revenue received against Council directed use through pass through revenues and expenditures (Attachment 3). Staff is recommending establishing a Council Priorities – Economic Recovery Reserve to track any unallocated amount of the \$7.2 million.

In anticipation of the end of the 2022/23 fiscal year, the Council is being asked to make several revenue and expenditure budget adjustments. These adjustments recognize circumstances that have changed since the Mid-Year Review last February and assist with the annual audit.

As part of the Budget adoption process, the Town Council needs to adopt the salary schedules as separate actions (Attachment 4 through 10). As described in the Proposed Operating

Budget, the schedules reflect an approved 3% cost of living increase in the Memoranda of Understanding with the bargaining units. All unrepresented staff would receive the same cost of living increase. In addition, unrepresented Management did not receive a 5% market increase last summer as did all other employees. The Proposed Budget includes a 3% market increase for Management classifications retroactive to April (Attachment 4).

CONCLUSION:

Staff recommends approval of FY 2022/23 budget adjustments, establishment of ERAF Risk and Council Priorities – Economic Recovery Reserves, adoption of a Resolution approving the Town of Los Gatos Fiscal Year (FY) 2023 /24 Operating Budget and FY 2023/24 – 2027/28 Capital Improvement Program (CIP), approval of American Rescue Plan Act Budget Adjustments ARPA Loss Revenue and Expenditure Tracking Adjustments for FY 2022/23, adoption of a Resolution approving commitment of Fund Balances under GASB 54, and adoption of the Salary Schedules for Management effective April 2, 2023, and Salary Schedules for AFSCME, TEA, POA, Confidential, Management and Temporary/Hourly Classifications effective July 9, 2023.

COORDINATION:

The preparation of the budget documents involved the participation of all Town Departments.

FISCAL IMPACT:

The fiscal impact is presented in summary form in the Financial Summaries chapter of the Proposed Operating and Capital Budget for FY 2023/24.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Resolution of the Town Council Approving FY 2023/24 Operating Budget and FY 2023/24 – 2027/28 Capital Improvement Program (with Exhibit A)
2. Resolution of the Town Council of the Town of Los Gatos Approving Commitments of Fund Balance under GASB 54
3. ARPA Revenue Replacement Proceeds Tracking
4. Salary Schedule for Management Classifications Effective April 2, 2023
5. American Federation of State, County, and Municipal Employees (AFSCME) Salary Schedule Effective July 9, 2023
6. Police Officer Association (POA) Salary Schedule Effective July 9, 2023
7. Town Employees' Association (TEA) Salary Schedule Effective July 9, 2023
8. Salary Schedule for Confidential Classification Effective July 9, 2023
9. Salary Schedule for Management Classifications Effective July 9, 2023
10. Salary Schedule for Temporary/Hourly Classifications Effective July 9, 2023
11. Public comments received before publishing the staff report

DRAFT RESOLUTION 2023-

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
APPROVING THE FISCAL YEAR (FY) 2023/24 OPERATING BUDGET AND FY 2023/24-
2027/28 CAPITAL BUDGET; NEW APPROPRIATIONS; OTHER ADJUSTMENTS;
AMERICAN RESCUE PLAN ACT RECOGNITION; MINOR CORRECTIONS; AND
CARRY-FORWARD APPROPRIATIONS**

WHEREAS, Section 2.30.295(b) of the Los Gatos Town Code requires the Town Manager to annually prepare and submit a budget to the Town Council and be responsible for its administration; and

WHEREAS, the Town Manager submitted to the Town Council and Finance Commission a Proposed Operating Budget for FY2023/24 on April 17, 2023; and

WHEREAS, the Town Manager submitted to the Town Council and Finance Commission a Proposed Five-Year Capital Improvement Program for FY 2023/24 – 2027/28 on April 17, 2023; and

WHEREAS, the Town Council conducted a noticed public hearing on the Proposed Operating Budget and Capital Improvement Program on May 16, 2023; and

WHEREAS, per Measure A, the Town Council has considered and reviewed the Finance Commission written recommendations to the Town Council on the said proposed Budget and Capital Improvement Program during the public hearing on May 16, 2023; and

WHEREAS, per Measures G and A, the Town Council has considered and reviewed the Finance Commission written recommendations to the Town Council regarding the potential allocation of Measure G proceeds during its public hearing on May 17, 2022; and

WHEREAS, the Town Council has continued the use of Measure G proceeds in the remainder of the forecast (FY 2023/24- FY 2027/28) to be 50% for operating expenditures and 50% for capital purposes; and

WHEREAS, the Town Council previously allocated residual Measure G proceeds for capital should be programmed to the Shannon Road Repair Project; and

ATTACHMENT 1

WHEREAS, the Town Council has continued the use of Measure G proceeds in the remainder of the forecast (FY 2023/24- FY 2027/28) to be 50% for operating expenditures and 50% for capital purposes; and

WHEREAS, the Town Council previously allocated residual Measure G proceeds for capital should be programmed to the Shannon Road Repair Project; and

WHEREAS, the future year Measure G proceeds for capital should be programmed to the State Route 17 Corridor Project; and

WHEREAS, the estimated FY 2023/24 Education Realignment Augmentation Fund (ERAF) revenue increased by \$660,900 based on current estimates; and

WHEREAS, the Town Council has determined that 30% of the ERAF proceeds should be reserved in an ERAF Risk Reserve, until the lawsuit between the State and School Districts regarding the ERAF calculation distribution is concluded; and

WHEREAS, the estimated FY 2023/24 expenditures and pass through revenues and expenditures increased by \$33,000 for additional money for the Chamber Agreement; and

WHEREAS, the estimated FY 2023/24 expenditures increased by \$11,000 for additional money for supporting project based Commissions; and

WHEREAS, the Town Council has determined that the Town salary and expenditure will decrease by \$1,618,107 by building in the 4.6 % salary saving factor; and

WHEREAS, the Town Council has determined that the Town reimbursement of \$1,608,226 from available Other Post-Employment Benefits (OPEB) 115 Trust assets for retiree pay-as-you go expenses in FY 2023/24 is not necessary if the build in 4.6 % salary saving factor materialize; and

WHEREAS, the Town Council has determined to recognize the remainder of American Rescue Plan Act (ARPA) proceeds for FY 2023/24 under loss revenue; and

WHEREAS, the Town Council has determined that once the ARPA Revenues were fully recognized as loss revenue, it becomes the part of General Fund and available for Council direction for any lawful government service. Staff is tracking the \$7.2 million total revenue received against Council directed use through pass through revenues and expenditures, and

WHEREAS, the Town Council has determined that the remainder of the \$7.2 million

proceeds should be tracked in an Council Priorities – Economic Recovery Reserve; and

WHEREAS, on June 6, 2023, Town Council considered and reviewed the proposed Budget and Capital Improvement Program making final determinations.

NOW, THEREFORE, BE IT RESOLVED: that the Town Council hereby adopts as the Operating Budget for the Town of Los Gatos for the 2023/24 fiscal year as depicted in Exhibit A entitled “Total Town Revenues and Expenditures by Fund” including the first year (FY 2023/24) of the Town’s Capital Improvement Program budget as contained in the Town’s FY 2023/24 – 2027/28 Capital Improvement Program.

BE IT FURTHER RESOLVED, that the final adopted Budget documents include minor corrections and approved appropriations for unspent prior year allocations, and that they be carried forward from prior years in a Reserve for Encumbrances whereby within each fund there is an amount sufficient to cover approved outstanding encumbrances as of June 30, 2022.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 6th day of June, 2023 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

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

DATE: _____

TOTAL TOWN REVENUES AND EXPENDITURES BY FUND

	2023/24 Proposed Budget	Estimated Budget Revision	2023/24 Recommended Budget
REVENUES			
General Fund	\$54,130,896	\$ (914,326) (1)	\$ 53,216,570
Special Revenue Funds	542,380	-	\$ 542,380
Internal Service Funds	4,947,389	-	\$ 4,947,389
Capital Project Funds (does not include carryforwards)	8,547,920	-	\$ 8,547,920
Successor Agency Funds	3,811,664	-	\$ 3,811,664
TOTAL REVENUES	\$71,980,249	\$ (914,326)	\$ 71,065,923
OTHER FUNDING SOURCES			
Designated One-Time Use of General Fund Reserves	2,361,000	\$ 33,000	2,394,000 (2)
TOTAL TOWN REVENUES & OTHER FUNDING SOURCES	\$74,341,249	\$ (881,326)	\$ 73,459,923
TOTAL TOWN EXPENDITURES, TRANSFERS OUT & CARRYFORWARD APPROPRIATION			
General Fund	\$56,101,896	\$ (1,586,649) (3)	\$ 54,515,247
Special Revenue Funds	469,381	(9,794) (4)	459,587
Internal Service Funds	6,132,798	-	6,132,798
Capital Project Funds (does not include carryforwards)	10,658,747	- (5)	10,658,747
Successor Agency Funds	3,801,021	(87) (6)	3,800,934
TOTAL TOWN EXPENDITURE & OTHER FUNDING USES	\$77,163,843	\$ (1,596,530)	\$ 75,567,313
GENERAL FUND SOURCE(USE) OF FUND BALANCES	\$ 390,000	\$ 660,900	\$ 1,095,323
OTHER FUNDS SOURCE(USE) OF FUND BALANCES	(3,212,594)		(3,202,713) (7)
TOTAL SOURCE(USE) OF FUND BALANCES	\$ (2,822,594)	\$ 715,204	\$ (2,107,390)

(1) Additional General Fund Revenues

\$1,608,226 Decreases OPEB Trust Reimbursement for Retiree Medical
\$660,900 Increases Additional ERAF Proceeds to Reserve At Risk
\$33,000 - Increase ARPA Replacement Pass Through Revenue - Tracking

(2) Designated One-Time Use of the General Fund Reserves during FY 2023/24

\$1,615,000 - Transfer to Capital Projects (GFAR)
\$779,000 - ARPA Revenue Replacement Tracking

(3) General Fund Expenditures

\$1,663,649 - Decrease - 4.6% Salary Saving Factor
\$11,000 - Increase Project Based Boards and Commissions Support
\$33,000 - Increase Chamber Agreement
\$33,000 - Increase ARPA Replacement Pass Through Expenditure - Tracking

(4) Special Revenue Fund Expenditures

\$9,794 - Decrease - 4.6% Salary Saving Factor

(5) Capital Project Funds Expenditures

No Change in Total Expenditures, \$35,000 transferred from the Lynn Avenue Pedestrian Path Design Project (411-832-4510) to Emergency Preparedness Project (411-821-2012)

(6) Successor Agency Funds Expenditures

\$87 - Decrease - 4.6% Salary Saving Factor

(7) Other Funds Source (Use) represents planned one-time uses of Internal Service Funds, Special Revenue Funds, Trust Funds, and Capital Project Funds primary for infrastructure and equipment investment.

Numbers may differ between exhibits due to rounding.

EXHIBIT A

RESOLUTION 2023-

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS APPROVING COMMITMENTS OF FUND BALANCE UNDER GASB 54

WHEREAS, the Governmental Accounting Standards Board (GASB) has issued its Statement No. 54, Fund Balance and Governmental Fund Type Definitions with the intent of improving financial reporting by providing fund balance categories that will be more easily understood and to improve the comparability of governmental fund financial statements; and

WHEREAS, GASB 54 provides that the Town Council of the Town of Los Gatos classify governmental fund balances as restricted, assigned, or committed fund balances; and

WHEREAS GASB 54 provides that restricted reserves are funds that are restricted for externally imposed constraints such as legal contracts or state law, assigned amounts are constrained by the Town's intent to use them for specific purposes, and committed amounts are dedicated for specific purposes under constraints and formal action taken by the Town Council and these committed amounts cannot be used for any other purposes unless the Town Council of the Town of Los Gatos removes or changes the specific use through the same formal action to establish the commitment; and

WHEREAS, there exists a Restricted General Fund Pension Reserve in the form of an IRS 115 Pension Trust; and

WHEREAS, there exists a balance of \$1,380,00 as of June 30, 2023 in the restricted Pension Reserve; and

WHEREAS, the Town Council of the Town of Los Gatos has established a General Fund Reserve Policy providing for minimum fund balance dollar target amounts for Budget Stabilization and Catastrophic Reserve fund balances and outlines policies and procedures for use and restoration of these balances; and

WHEREAS, there exists an assigned General Fund Compensated Absences Reserve allocated to fund 50% of all vested hours of sick leave, compensation, and vacation time with the actual reserve amount to be determined at the close of FY 2022/23; and

ATTACHMENT 2

WHEREAS, there exists an assigned Capital/Special Projects Reserve to fund key infrastructure and capital/special projects as identified in the Town's five-year Capital Improvement Plan, and/or other Council priorities; and

WHEREAS, there exists an assigned authorized Carry Forward Reserve for materials and services on approved purchase order and contracts which were issued but not finalized or fulfilled as of the end of the fiscal year but for which funds will be carried forward to the following fiscal year. Actual reserve balance will be established at the close of FY 2022/23; and

WHEREAS, in June 2016, the Town Council established the committed Pension/OPEB Reserve to provide funding toward pension and Other Post-Employment Benefits (OPEB) unfunded obligations by placing discretionary amounts to the reserve with formal Council action and transferring available year-end surpluses based on the General Fund Reserve Policy; and

WHEREAS, there is anticipate an excess balance of \$300,000 as of June 30, 2023 in the assigned OPEB/Pension Reserve, that will confirmed at the close of FY 2022/23 and

WHEREAS, on November 6, 2018, the Town Council provided direction to establish an unassigned Surplus Property Revenue General Fund Reserve that any monies received from the sale of the property located on Winchester Boulevard and any monies received from the sale of future surplus property be placed in this reserve, and the provisions for the reserve specifically indicate that Council may, at its discretion, distribute those funds as it deems appropriate; and

WHEREAS, The Town Council established the assigned Sustainability Reserve in FY 2008/09 by closing the Solid Waste Management fund and placing the initial residual balance dedicated for conservation, recycling, and sustainability; and

WHEREAS, there exists an excess balance of \$140,553 as of June 30, 2023 in the assigned Sustainability Reserve; and

WHEREAS, there exists an assigned Market Fluctuation Reserve that represent fund balance amounts for unrealized investment gains that have been recorded as investment income in the financial statements in accordance with the requirements of GASB 31 in the amount of \$0, actual reserve balance will be established at the close of FY 2022/23; and

WHEREAS, there exists an assigned Measure G 2018 District Sales Tax Reserve to track receipt and use of the 1/8 cent district tax funds collected by the Town; and

WHEREAS, the Town Council has determined the use of Measure G accumulated and future proceeds to be 50% for operating expenditures and 50% for capital purposes; and

WHEREAS, the residual balance of \$590,581 that was set aside for operating purposes in FY 2020/21 and/or FY 2021/22 should be used for operating expenses in FY 2023/24; and

WHEREAS, the assigned Measure G Residual – Operating Reserve should be reclassified as committed Reserve; and

WHEREAS, with the adoption of the Fiscal Year 2023/24 Budget, an assigned Council Priorities – Economic Recovery Reserve has been established to track General Fund revenues freed up from recognizing all ARPA “replacement” revenues to the General Fund for essential government services, for economic recovery and business support, enhanced senior services, capital program augmentations, and other one-time uses; and

WHEREAS, the assigned Council Priorities – Economic Recovery Reserve has an estimated balance of \$1,645,281 at June 30, 2023, with the actual reserve balance being determined at the close of FY 2022/23; and

WHEREAS, with the adoption of the Fiscal Year 2023/24 Budget, an assigned Education Realignment Augmentation Fund (ERAF) Risk Reserve has been established, reserving the 30% of the anticipated ERAF proceeds from FY 2022/23 until a lawsuit between the State and the School Districts concludes; and

WHEREAS, an excess balance of \$689,608 exists as of June 30, 2023 in the assigned ERAF Risk Reserve, with the actual amount will be determined at the close of FY 2022/23; and

WHEREAS, the \$1,615,000 transfer from the Capital/Special Project Reserve to the General Fund Appropriated Reserve provides funding to the five-year capital plan; and

WHEREAS, the Town Council established the assigned Open Space reserve in the FY 1998/99 to be used for the preservation of open space, connection of open space trails, the definition of the southern boundary of the Town with passive open space, and protection of unique natural features; and

WHEREAS, there exists an excess balance of \$410,000 as of June 30, 2023 in the assigned Open Space Reserve; and

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES
HEREBY RESOLVE that the following estimated Pension, Budget Stabilization, Catastrophic, Pension/OPEB, Capital/Special Projects, Compensated Absences; Measure G District Sales Tax, Surplus Property Revenue, Market Fluctuations, Sustainability, Open Space, and ARPA Reserves as of June 30, 2023 and as of June 30, 2024 as restricted, assigned, unassigned or formally committed as follows:

	Actual General Fund Reserves June 30, 2022	FY 2022/23 Budget, GF Reserve Policy, and this Resolution Approved Increase	FY 2022/23 Budget, GF Reserve Policy, and this Resolution Approved (Decrease)	Estimated General Fund Reserves June 30, 2023	FY 2023/24 Budget Resolution Approved Increase	FY 2023/24 Budget Resolution Approved (Decrease)	Estimated General Fund Reserves June 30, 2024
Restricted Fund Balances							
Pension	\$ 690,000	\$ 690,000	\$ -	\$ 1,380,000	\$ 390,000	\$ -	\$ 1,770,000
Committed Fund Balances							
Budget Stabilization	5,991,566	\$ 138,208	-	6,129,774	-	-	6,129,774
Catastrophic	5,991,566	138,209	-	6,129,775	-	-	6,129,775
Pension/OPEB	300,000	300,000	(300,000)	300,000	-	-	300,000
Measure G District Sale Tax - Operating			590,581	590,581	-	-	590,581
Assigned Fund Balances							
Capital/Special Projects	11,071,231	1,220,811	(4,271,698)	8,020,344	88,423	(1,615,000)	6,405,344
Compensated Absences	1,519,147	-	-	1,519,147	-	-	1,519,147
Open Space	410,000	-	-	410,000	-	-	410,000
Sustainability	140,553	-	-	140,553	-	-	140,553
Market Fluctuations	-	-	-	-	-	-	-
Measure G District Sale Tax - Operating	590,581	-	(590,581)	-	-	-	-
Carryover Encumbrances	33,145	-	-	33,145	-	-	33,145
Council Priorities - Economic Recovery	-	-	1,645,281	1,645,281	-	(779,000)	866,281
ERAF Risk Reserve	-	689,608	-	689,608	660,900	-	1,350,508
Rehab Loan Reserve (Nonspendable)	159,000	-	-	159,000	-	-	159,000

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos held on the 6th day of June 2023 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

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

DATE: _____

General Fund Council Priorities – Economic Recovery Tracking

(American Rescue Plan Act (ARPA) Grant Proceeds Fully Recognized as Lost Revenue for use in Providing Public Safety Services, this Action enabled General Fund Operating Revenues which were Previously Dedicated for Public Safety Costs)

		FY 2020/21 Actuals	FY 2021/22 Actuals	FY 2022/23 Estimated	FY 2023/24 Proposed
General Fund ARPA Replacement Revenues	\$ 7,229,744				
Less Council Approved Uses					
Parklets (Downtown Economic Recovery Efforts)	\$ 930,000		\$ 466,428	\$ 463,572	
Rent Waivers	746,463	121,255	341,452	283,756	
CUP/ADA Fee Waivers	75,000	19,656	27,672	7,018	
Destination Marketing	55,000		55,000	-	
K-Rails (Downtown Economic Recovery Efforts)	68,000		88,654	-	
Promenades	200,000		69,855	130,145	
Direct Grants	110,000	60,000	50,000	-	
Enhanced Senior Services	500,000		249,597	250,403	
Capital Improvement Program Support Transfers	2,900,000			2,900,000	
One-Time Community Grant (Council Action 2-21-2023)	150,000				\$ 150,000
One-Time to LGS REC 55+ Program (Council Action 2-21-2023)	225,000				225,000
One-Time to KCAT Producers (Council Action 2-21-2023)	100,000				100,000
One-Time Unhoused Residents Efforts (Council Action 2-21-2023)	25,000				25,000
One-Time Rent Forgiveness LGS REC (Council Action 3-21-2023)	200,000				200,000
One-Time Rent Forgiveness NUMU (Council Action 3-21-2023)	21,000				21,000
One-Time Unhoused Residents Efforts (Council Action 4-4-2023)	25,000				25,000
One-Time - Additional Chambers of Commerce (Council Action 5-2-2023)	33,000				33,000
Total	\$ 6,363,463	\$ 200,911	\$ 1,348,659	\$ 4,034,894	\$ 779,000
Available Funding After Council Recent Actions	\$ 866,281				

Town of Los Gatos Town Council and Management Classifications
Salary Schedule for Fiscal Year 2022/23
Effective April 2, 2023

Class Code	Classification Title	Annual Salary Minimum	Annual Salary Maximum
2615	Assistant Parks & Public Works Director/Town Engineer	\$ 150,422	\$ 203,069
2110	Assistant Town Manager	\$ 178,804	\$ 241,386
2420	Chief Building Official	\$ 136,276	\$ 183,972
2400	Community Development Director	\$ 174,438	\$ 235,492
2180	Community Outreach Coordinator	\$ 94,093	\$ 127,026
2130	Economic Vitality Manager	\$ 129,708	\$ 175,105
2315	Finance and Accounting Manager	\$ 136,276	\$ 183,972
2310	Finance and Budget Manager	\$ 136,276	\$ 183,972
2300	Finance Director	\$ 170,189	\$ 229,755
2200	Human Resources Director	\$ 158,037	\$ 213,350
2900	Information Technology Manager	\$ 136,276	\$ 183,972
2800	Library Director	\$ 158,037	\$ 213,350
2820	Library Division Manager	\$ 103,861	\$ 140,212
2600	Parks & Public Works Director	\$ 174,438	\$ 235,492
2645	Parks & Public Works Operations Manager	\$ 117,510	\$ 158,638
2630	Parks & Public Works Superintendent	\$ 136,276	\$ 183,972
2412	Planning Manager	\$ 136,276	\$ 183,972
2510	Police Captain	\$ 161,988	\$ 218,683
2500	Police Chief	\$ 183,274	\$ 247,419
2545	Police Records & Communication Manager	\$ 126,544	\$ 170,835
2140	Senior Administrative Analyst	\$ 101,328	\$ 136,792
2650	Senior Civil Engineer	\$ 129,708	\$ 175,105
2000	Town Attorney - Council Appointed (<i>Effective 11/15/22, Adopted by Town Council 12/6/22</i>)		\$ 253,649
2190	Town Clerk	\$ 136,276	\$ 183,972
2100	Town Manager - Council Appointed (<i>Effective 9/02/22, Adopted by Town Council 12/6/22</i>)		\$ 275,783
2655	Transportation & Mobility Manager	\$ 126,544	\$ 170,835
2905	Urban Forest Manager	\$ 117,510	\$ 158,638
1000	Town Council (<i>Effective 1/1/19 Pursuant to Ordinance Adopted by Town Council on 2/6/18</i>)	\$570 Stipend per month, for a total compensation of \$6,840 per year	

Management salaries reflect a spread of 35% to the top of the range.

Reflects a General Increase of 3%

Town of Los Gatos AFSCME Classifications
Salary Schedule for Fiscal Year 2023/24
Effective July 9, 2023

Class Code	Classification Title	FLSA	Range AF1	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
6619	Assistant Equipment Mechanic	Non-Exempt	09	\$34.37	\$36.09	\$37.89	\$39.78	\$41.77	\$43.86
6620	Equipment Mechanic	Non-Exempt	03	\$39.53	\$41.51	\$43.59	\$45.77	\$48.06	\$50.46
6618	Supervising Equipment Mechanic	Non-Exempt	08	\$45.46	\$47.73	\$50.12	\$52.63	\$55.26	\$58.02
6670	Facility Technician	Non-Exempt	02	\$36.78	\$38.62	\$40.55	\$42.58	\$44.71	\$46.95
6600	Lead Parks & Maintenance Worker	Non-Exempt	07	\$41.97	\$44.07	\$46.27	\$48.58	\$51.01	\$53.56
6650	Parks & Maintenance Worker	Non-Exempt	05	\$33.77	\$35.46	\$37.23	\$39.09	\$41.04	\$43.09
6660	Parks & Maintenance Worker Trainee	Non-Exempt	04	\$27.58	\$28.96	\$30.41	\$31.93	\$33.53	\$35.21
6605	Senior Parks & Maintenance Worker	Non-Exempt	06	\$36.75	\$38.59	\$40.52	\$42.55	\$44.68	\$46.91
6610	Town Arborist	Non-Exempt	03	\$40.09	\$42.09	\$44.19	\$46.40	\$48.72	\$51.16

Reflects General Increase of 3%.

Town of Los Gatos POA Classifications
Salary Schedule for Fiscal Year 2023/24
Effective July 9, 2023

Class Code	Classification Title	Range	Step	Hourly Rate
2520	Police Sergeant (Prior)	04-0721	1	\$71.71
	<i>Appointment before 03/01/2015</i>		2	\$75.30
			3	\$79.07
			4	\$83.02
			5	\$87.17

Class Code	Classification Title	Range	Step	Hourly Rate
2521	Police Sergeant (New)	05-0721	1	\$71.71
	<i>Appointment after 03/01/2015</i>		2	\$75.30
			3	\$79.07
			4	\$83.02

Class Code	Classification Title	Range	Step	Hourly Rate
7500	Police Corporal	03-0715	1	\$59.75
			2	\$62.74
			3	\$65.88
			4	\$69.17
			5	\$72.63

Class Code	Classification Title	Range	Step	Hourly Rate
7510	Police Officer	02-0711	1	\$56.92
			2	\$59.77
			3	\$62.76
			4	\$65.90
			5	\$69.20

Class Code	Classification Title	Range	Step	Hourly Rate
9519	Police Trainee *	01-0710	1	\$54.07
	<i>* 95% of Step 1 of Police Officer Classification (Provisional Employee with Misc PERS)</i>			

Reflects General Increase of 3%.

Town of Los Gatos TEA Classifications
Salary Schedule for Fiscal Year 2023/24
Effective July 9, 2023

Class Code	Classification Title	Rate Type	Range TE1	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
4310	Account Technician	Hourly	08	\$37.99	\$39.89	\$41.88	\$43.97	\$46.17	\$49.06
3580	Administrative Assistant	Hourly	04	\$31.80	\$33.39	\$35.06	\$36.81	\$38.65	\$41.16
4620	Assistant Engineer	Hourly	25	\$50.59	\$53.12	\$55.78	\$58.57	\$61.50	\$65.16
4420	Assistant Planner	Hourly	12	\$43.99	\$46.19	\$48.50	\$50.93	\$53.48	\$56.73
4600	Associate Civil Engineer	Hourly	27	\$57.56	\$60.44	\$63.46	\$66.63	\$69.96	\$74.04
4661	Associate Engineering Technician	Hourly	14	\$44.31	\$46.53	\$48.86	\$51.30	\$53.87	\$57.14
4400	Associate Planner	Hourly	20	\$51.19	\$53.75	\$56.44	\$59.26	\$62.22	\$65.91
4410	Building Inspector	Hourly	24	\$49.25	\$51.71	\$54.30	\$57.02	\$59.87	\$63.44
4430	Code Compliance Officer	Hourly	10	\$44.04	\$46.24	\$48.55	\$50.98	\$53.53	\$56.79
4530	Communication Dispatcher	Hourly	17	\$46.67	\$49.00	\$51.45	\$54.02	\$56.72	\$60.14
4535	Communication Dispatcher Lead	Hourly	19	\$58.96	\$61.91	\$65.01	\$68.26	\$71.67	\$75.83
4540	Community Services Officer	Hourly	11	\$37.45	\$39.32	\$41.29	\$43.35	\$45.52	\$48.38
4615	Construction Project Manager	Hourly	26	\$55.22	\$57.98	\$60.88	\$63.92	\$67.12	\$71.06
4660	Engineering Technician	Hourly	13	\$40.22	\$42.23	\$44.34	\$46.56	\$48.89	\$51.91
4705	Environmental Programs Specialist	Hourly	08	\$37.99	\$39.89	\$41.88	\$43.97	\$46.17	\$49.06
4200	Events and Marketing Specialist	Hourly	06	\$33.51	\$35.19	\$36.95	\$38.80	\$40.74	\$43.36
3501	Executive Assistant	Hourly	08	\$37.99	\$39.89	\$41.88	\$43.97	\$46.17	\$49.06
4900	IT Systems Administrator	Hourly	23	\$54.84	\$57.58	\$60.46	\$63.48	\$66.65	\$70.56
4915	IT Technician	Hourly	07	\$41.11	\$43.17	\$45.33	\$47.60	\$49.98	\$53.06
4810	Librarian I	Hourly	16	\$42.03	\$44.13	\$46.34	\$48.66	\$51.09	\$54.22
4808	Librarian II	Hourly	18	\$45.80	\$48.09	\$50.49	\$53.01	\$55.66	\$59.02
4830	Library Assistant	Hourly	03	\$31.03	\$32.58	\$34.21	\$35.92	\$37.72	\$40.19
4807	Library Customer Service Specialist	Hourly	01	\$29.08	\$30.53	\$32.06	\$33.66	\$35.34	\$37.69
4805	Library Customer Service Supervisor	Hourly	08	\$37.99	\$39.89	\$41.88	\$43.97	\$46.17	\$49.06
4825	Library Specialist	Hourly	06	\$33.51	\$35.19	\$36.95	\$38.80	\$40.74	\$43.36
4819	Library Tech Specialist	Hourly	15	\$40.74	\$42.78	\$44.92	\$47.17	\$49.53	\$52.59
3181	Office Assistant	Hourly	01	\$29.08	\$30.53	\$32.06	\$33.66	\$35.34	\$37.69
4640	Park Services Officer	Hourly	11	\$37.45	\$39.32	\$41.29	\$43.35	\$45.52	\$48.38
4560	Parking Control Officer	Hourly	01	\$29.08	\$30.53	\$32.06	\$33.66	\$35.34	\$37.69

Town of Los Gatos TEA Classifications
Salary Schedule for Fiscal Year 2023/24
Effective July 9, 2023

Class Code	Classification Title	Rate Type	Range TE1	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
4440	Permit Technician	Hourly	09	\$36.60	\$38.43	\$40.35	\$42.37	\$44.49	\$47.29
4425	Planning Technician	Hourly	11	\$37.45	\$39.32	\$41.29	\$43.35	\$45.52	\$48.38
4550	Police Records Specialist	Hourly	05	\$32.55	\$34.18	\$35.89	\$37.68	\$39.56	\$42.12
4555	Police Records Specialist Lead*	Hourly	31	\$40.22	\$42.23	\$44.34	\$46.56	\$48.89	\$51.91
4630	Public Works Inspector	Hourly	18	\$45.80	\$48.09	\$50.49	\$53.01	\$55.66	\$59.02
4450	Senior Building Inspector	Hourly	27	\$57.56	\$60.44	\$63.46	\$66.63	\$69.96	\$74.04
4525	Senior Communication Dispatcher	Hourly	29	\$52.28	\$54.89	\$57.63	\$60.51	\$63.54	\$67.30
4831	Senior Library Page	Hourly	02	\$20.45	\$21.47	\$22.54	\$23.67	\$24.85	\$26.67
4565	Senior Parking Control Officer	Hourly	11	\$37.45	\$39.32	\$41.29	\$43.35	\$45.52	\$48.38
4405	Senior Planner	Hourly	28	\$58.96	\$61.91	\$65.01	\$68.26	\$71.67	\$75.83
4552	Senior Police Records Specialist*	Hourly	30	\$36.60	\$38.43	\$40.35	\$42.37	\$44.49	\$47.29
4610	Senior Public Works Inspector	Hourly	26	\$55.22	\$57.98	\$60.88	\$63.92	\$67.12	\$71.06
4662	Sr. Engineering Technician	Hourly	24	\$49.25	\$51.71	\$54.30	\$57.02	\$59.87	\$63.44

Town of Los Gatos Confidential Classifications
Salary Schedule for Fiscal Year 2023/24
Effective July 9, 2023

Class Code	Classification Title	Rate Type	Range CF1	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6
3300	Accountant/Finance Analyst	Hourly	07	\$48.55	\$50.98	\$53.53	\$56.21	\$59.02	\$62.55
3000	Administrative Analyst	Hourly	07	\$48.55	\$50.98	\$53.53	\$56.21	\$59.02	\$62.55
3518	Administrative Assistant	Hourly	09	\$33.38	\$35.05	\$36.80	\$38.64	\$40.57	\$43.18
3115	Administrative Technician	Hourly	04	\$41.87	\$43.96	\$46.16	\$48.47	\$50.89	\$54.01
3190	Deputy Clerk	Hourly	08	\$39.85	\$41.84	\$43.93	\$46.13	\$48.44	\$51.44
3500	Executive Assistant to Chief of Police	Hourly	03	\$39.85	\$41.84	\$43.93	\$46.13	\$48.44	\$51.44
3100	Executive Assistant to Town Manager	Hourly	05	\$41.87	\$43.96	\$46.16	\$48.47	\$50.89	\$54.01
3015	Human Resources Technician	Hourly	02	\$37.93	\$39.83	\$41.82	\$43.91	\$46.11	\$49.00
3200	Legal Administrative Assistant	Hourly	02	\$37.93	\$39.83	\$41.82	\$43.91	\$46.11	\$49.00
3180	Office Assistant	Hourly	01	\$30.54	\$32.07	\$33.67	\$35.35	\$37.12	\$39.56
3301	Payroll Technician	Hourly	06	\$41.87	\$43.96	\$46.16	\$48.47	\$50.89	\$54.01

Reflects General Increase of 3% and includes 5% Confidential Premium

Town of Los Gatos Town Council and Management Classifications
Salary Schedule for Fiscal Year 2023/24
Effective July 9, 2023

Class Code	Classification Title	Annual Salary Minimum	Annual Salary Maximum
2615	Assistant Parks & Public Works Director/Town Engineer	\$ 154,934	\$ 209,162
2110	Assistant Town Manager	\$ 184,168	\$ 248,627
2420	Chief Building Official	\$ 140,364	\$ 189,491
2400	Community Development Director	\$ 179,672	\$ 242,557
2180	Community Outreach Coordinator	\$ 96,916	\$ 130,837
2130	Economic Vitality Manager	\$ 133,599	\$ 180,359
2315	Finance and Accounting Manager	\$ 140,364	\$ 189,491
2310	Finance and Budget Manager	\$ 140,364	\$ 189,491
2300	Finance Director	\$ 175,294	\$ 236,647
2200	Human Resources Director	\$ 162,778	\$ 219,750
2900	Information Technology Manager	\$ 140,364	\$ 189,491
2800	Library Director	\$ 162,778	\$ 219,750
2820	Library Division Manager	\$ 106,977	\$ 144,419
2600	Parks & Public Works Director	\$ 179,672	\$ 242,557
2645	Parks & Public Works Operations Manager	\$ 121,035	\$ 163,397
2630	Parks & Public Works Superintendent	\$ 140,364	\$ 189,491
2412	Planning Manager	\$ 140,364	\$ 189,491
2510	Police Captain	\$ 166,847	\$ 225,244
2500	Police Chief	\$ 188,772	\$ 254,842
2545	Police Records & Communication Manager	\$ 130,340	\$ 175,960
2140	Senior Administrative Analyst	\$ 104,367	\$ 140,896
2650	Senior Civil Engineer	\$ 133,599	\$ 180,359
2000	Town Attorney - Council Appointed (<i>Effective 11/15/22, Adopted by Town Council 12/06/22</i>)		\$ 253,649
2190	Town Clerk	\$ 140,364	\$ 189,491
2100	Town Manager - Council Appointed (<i>Effective 9/02/22, Adopted by Town Council 12/6/22</i>)		\$ 275,783
2655	Transportation & Mobility Manager	\$ 130,340	\$ 175,960
2905	Urban Forest Manager	\$ 121,035	\$ 163,397
1000	Town Council (<i>Effective 1/1/19 Pursuant to Ordinance Adopted by Town Council on 2/6/18</i>)	\$570 Stipend per month, for a total compensation of \$6,840 per year	

Management salaries reflect a spread of 35% to the top of the range.

Reflects a General Increase of 3%

Town of Los Gatos Temporary Classifications
Salary Schedule for Fiscal Year 2023/24
Effective July 9, 2023

Class Code	Classification Title	Rate Type	Range	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6
9305	Account Clerk Temp/Hourly	Hourly	TE2-04	\$27.55	\$28.93	\$30.38	\$31.90	\$33.50	\$35.18
9310	Account Technician Temp/Hourly	Hourly	TE2-10	\$33.10	\$34.76	\$36.50	\$38.33	\$40.25	\$42.26
9300	Accountant Temp/Hourly	Hourly	TE2-17	\$39.98	\$41.98	\$44.08	\$46.28	\$48.59	\$51.02
9010	Admin Analyst Temp/Hourly	Hourly	TE2-17	\$39.98	\$41.98	\$44.08	\$46.28	\$48.59	\$51.02
9100	Admin Specialist Temp/Hourly	Hourly	TE2-10	\$33.10	\$34.76	\$36.50	\$38.33	\$40.25	\$42.26
9580	Administrative Assistant Temp/Hourly	Hourly	TE2-05	\$30.10	\$31.61	\$33.19	\$34.85	\$36.59	\$38.42
9105	Administrative Secretary Temp/Hourly	Hourly	TE2-09	\$31.62	\$33.20	\$34.86	\$36.60	\$38.43	\$40.35
9656	Assistant Engineer Temp/Hourly	Hourly	TE2-23	\$45.31	\$47.58	\$49.96	\$52.46	\$55.08	\$57.83
9655	Associate Civil Engineer Temp/Hourly	Hourly	TE2-24	\$52.17	\$54.78	\$57.52	\$60.40	\$63.42	\$66.59
9400	Associate Planner Temp/Hourly	Hourly	TE2-22	\$45.13	\$47.39	\$49.76	\$52.25	\$54.86	\$57.60
9410	Building Inspector Temp/Hrly	Hourly	TE2-23	\$45.31	\$47.58	\$49.96	\$52.46	\$55.08	\$57.83
9112	Clerical Aide Temp/Hourly	Hourly	TE2-01	\$16.69	\$17.52	\$18.40	\$19.32	\$20.29	\$21.30
9430	Code Compliance Officer Temp/Hourly	Hourly	TE2-16	\$38.95	\$40.90	\$42.95	\$45.10	\$47.36	\$49.73
9530	Communication Dispatcher Temp/Hourly	Hourly	TE2-19						
9545	Crime Analyst Temp/Hourly	Hourly	TE2-18	\$40.47	\$42.49	\$44.61	\$46.84	\$49.18	\$51.64
9540	CSO Intern Temp/Hourly	Hourly	TE2-03	\$24.74	\$25.98	\$27.28	\$28.64	\$30.07	\$31.57
9532	CSO Temp/Hrly	Hourly	TE2-12	\$35.46	\$37.23	\$39.09	\$41.04	\$43.09	\$45.24
9190	Deputy Clerk Temp/Hourly	Hourly	TE2-04	\$27.55	\$28.93	\$30.38	\$31.90	\$33.50	\$35.18
9660	Engineering Technician Temp/Hourly	Hourly	TE2-13	\$36.37	\$38.19	\$40.10	\$42.11	\$44.22	\$46.43
9621	Equipment Mechanic Temp	Hourly	AF2-01	\$36.75	\$38.59	\$40.52	\$42.55	\$44.68	\$46.91
9720	Facility Attendant Temp/Hourly	Hourly	TE2-01	\$16.69	\$17.52	\$18.40	\$19.32	\$20.29	\$21.30
9109	Human Resources Specialist Temp/Hourly	Hourly	TE2-09	\$31.62	\$33.20	\$34.86	\$36.60	\$38.43	\$40.35
9041	Intern I Temp/Hourly	Hourly	TE2-02	\$19.36	\$20.33	\$21.35	\$22.42	\$23.54	\$24.72
9040	Intern II Temp/Hourly	Hourly	TE2-03	\$24.74	\$25.98	\$27.28	\$28.64	\$30.07	\$31.57
9200	IT Technician Temp/Hrly	Hourly	TE2-14	\$36.43	\$38.25	\$40.16	\$42.17	\$44.28	\$46.49
9605	Lead Parks & Maint Worker	Hourly	AF2-06	\$38.49	\$40.41	\$42.43	\$44.55	\$46.78	\$49.12
9015	Legal Assistant Temp/Hrly	Hourly	TE2-17	\$39.98	\$41.98	\$44.08	\$46.28	\$48.59	\$51.02
9810	Librarian Temp/Hourly	Hourly	TE2-15	\$38.56	\$40.49	\$42.51	\$44.64	\$46.87	\$49.21
9820	Library Assistant Temp/Hourly	Hourly	TE2-06	\$29.40	\$30.87	\$32.41	\$34.03	\$35.73	\$37.52

Town of Los Gatos Temporary Classifications
Salary Schedule for Fiscal Year 2023/24
Effective July 9, 2023

Class Code	Classification Title	Rate Type	Range	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6
9840	Library Clerk Temp/Hourly	Hourly	TE2-04	\$27.55	\$28.93	\$30.38	\$31.90	\$33.50	\$35.18
9850	Library Page Temp/Hourly	Hourly	TE2-01	\$16.69	\$17.52	\$18.40	\$19.32	\$20.29	\$21.30
9830	Library Teen Services Specialist	Hourly	TE2-03	\$24.74	\$25.98	\$27.28	\$28.64	\$30.07	\$31.57
9600	Maintenance Assistant	Hourly	AF2-02	\$18.50	\$19.43	\$20.40	\$21.42	\$22.49	\$23.61
9900	Network Administrator	Hourly	TE2-21	\$43.15	\$45.31	\$47.58	\$49.96	\$52.46	\$55.08
9180	Office Assistant Temp/Hourly	Hourly	TE2-04	\$27.55	\$28.93	\$30.38	\$31.90	\$33.50	\$35.18
9645	Park Service Officer Aide Temp/Hourly	Hourly	TE2-03	\$24.74	\$25.98	\$27.28	\$28.64	\$30.07	\$31.57
9640	Park Service Officer Temp/Hourly	Hourly	TE2-12	\$35.46	\$37.23	\$39.09	\$41.04	\$43.09	\$45.24
9560	Parking Control Officer Temp/Hourly	Hourly	TE2-04	\$27.55	\$28.93	\$30.38	\$31.90	\$33.50	\$35.18
9620	Parks & Main Worker Temp	Hourly	AF2-04	\$30.96	\$32.51	\$34.14	\$35.85	\$37.64	\$39.52
9630	Parks & Main Worker Trainee Temp	Hourly	AF2-03	\$25.31	\$26.58	\$27.91	\$29.31	\$30.78	\$32.32
9440	Permit Technician	Hourly	TE2-11	\$34.11	\$35.82	\$37.61	\$39.49	\$41.46	\$43.53
9590	Police Officer Reserve (Top Step of Officer)	Hourly	TE2-25						
9520	Police Officer Temp/Hourly	Hourly	TE2-25						
9550	Police Records Specialist Temp/Hourly	Hourly	TE2-08	\$30.84	\$32.38	\$34.00	\$35.70	\$37.49	\$39.36
9000	Project Manager	Hourly	Mgmt	up to \$119.03					
9650	Public Works Inspector Temp/Hourly	Hourly	TE2-20	\$42.82	\$44.96	\$47.21	\$49.57	\$52.05	\$54.65
9670	Senior Electrician Temp/Hourly	Hourly	TE2-23	\$45.31	\$47.58	\$49.96	\$52.46	\$55.08	\$57.83
9831	Senior Library Page	Hourly	TE2-02	\$19.36	\$20.33	\$21.35	\$22.42	\$23.54	\$24.72
9725	Special Event Attendant	Hourly	TE2-07	\$18.50	\$19.43	\$20.40	\$21.42	\$22.49	\$23.61
9610	Ticket Booth Attendant	Hourly	AF2-05	\$16.69	\$17.52	\$18.40	\$19.32	\$20.29	\$21.30

Reflects General Increase of 3%

Subject: Community Garden

From: [REDACTED]
Sent: Sunday, May 28, 2023 5:28 PM
To: 'Matthew Hudes' [REDACTED] <[REDACTED]>; 'Mary Badame' <[REDACTED]>; 'Rob Rennie' <[REDACTED]>; 'Maria Ristow' <[REDACTED]>
Cc: 'Laurel Prevetti' [REDACTED]; 'Joanne Rodgers' <[REDACTED]>; 'Joe Rodgers' [REDACTED]; 'Lee Fagot' [REDACTED] <[REDACTED]>; [REDACTED]
Subject: Community Garden

Dear Town Council Members,

I am writing to express my concern that the town is considering spending \$195,000 on a community garden. I want to be clear, I am not opposed to the idea of the town having a community garden, but not if it is from the town budget. We are in a deficit. Perhaps the people who want a community garden can seek private funding, hold a fund raiser, or seek grants to support their cause as a means to make it happen.

If the town has an extra \$195,000 to spend, I would suggest directing it towards safety projects that benefit the entire community. For example installing speed bumps for traffic calming, more speed limit signs, or installing flashing crosswalk signal lights. We have had several deaths on our community streets in the last few years and to me that seems safety should be more of a priority.

The other things to consider if the town spends money on a community garden are;

1. Having smaller gardens peppered throughout the community for all residents to enjoy, rather than having one on the far side of East Los Gatos, that isn't even centrally located.
2. How much will this cost in perpetuity to maintain and where will the continuous funding come from? Our town is already in a deficit.
3. How will vandalism and theft be addressed? The Cabana Club in the Belwood neighborhood at Belwood Gateway and Blossom Hill in Los Gatos always had problems with youth climbing the 6 foot fence to gain access and vandalizing the grounds. This is being built near a middle school and not far from a high school.

I urge the Town Council to have a robust discussion on what fiscal responsibility looks like and other ways it could spend \$195,000, rather than a community garden. We are in a deficit and that is not changing anytime soon.

"The problem with socialism is that eventually you run out of other people's money" (former British Prime Minister, Margaret Thatcher)

Kind regards,
Lisa Harris



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**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/06/2023

ITEM NO: 14

DATE: May 16, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Provide Direction on Terms and Authorize the Town Manager to Execute a Use Agreement with Los Gatos-Saratoga Community Education and Recreation

RECOMMENDATION:

Provide direction on terms and authorize the Town Manager to execute a Use Agreement with Los Gatos-Saratoga Community Education and Recreation.

BACKGROUND:

Los Gatos-Saratoga Community Education and Recreation ("LGSR"), a joint powers agency of the Los Gatos Union School District, Saratoga Union School District, and Los Gatos-Saratoga Union High School District, was established in 1956 to ensure the effective and efficient provision of community education and recreation services to the residents of Los Gatos, Saratoga, Monte Sereno, and Santa Cruz Mountains communities.

In 2009, the Town entered into a lease agreement for 208 East Main Street with LGSR. The parties agreed that LGSR would provide programming for Town senior residents (age 55 years and older) in exchange for rent payments that were below market rate. LGSR has been generally providing those services ever since.

In 2014, the Town and LGSR entered into an agreement for recreation-based programming in certain Town Parks. The initial agreement was extended through May 31, 2020 (Attachment 1). In accordance with Council action taken on April 21, 2020 (item #12) regarding relief during the pandemic, use charges were waived during 2020, 2021, and the first six months of 2022. A use agreement renewal was not executed during that period.

PREPARED BY: Nicolle Burnham
Director, Parks and Public Works

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

SUBJECT: Provide Direction on Terms and Authorize the Town Manager to Execute a Use Agreement with Los Gatos-Saratoga Community Education and Recreation

DATE: May 16, 2023

DISCUSSION:

The proposed Use Agreement (Attachment 2) provides LGSR the use of certain facilities at Blossom Hill Park, Creekside Park, La Rinconada Park, and Oak Meadow Park (collectively, the “Premises”).

The main terms of the proposed agreement upon which both parties agree are as follows:

1. Length of Agreement: The term of the agreement is one year with nine additional one-year periods. Either party may terminate the agreement by providing written notice on or before February 1 of the calendar year.
2. Schedule of Use: LGSR shall provide a schedule for fall programming by June 30th of each calendar year for Fall session, by September 30th of Winter and Spring sessions, and February 28th for the Summer session. A sample of schedule for Summer 2023 is show in Attachment 3.
3. Annual Use Fee Adjustment: On each anniversary of the agreement (starting July 1, 2024), the Annual User Fee will be adjusted according to the percent change in the U. S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, *All Items, All Urban Consumers, San Francisco-Oakland-San Jose, 1982-84-100 Index*.
4. Clean-Up: LGSR shall be responsible for general site clean-up including pick up and disposal of trash that may result from the approved use of the Premises.
5. Adherence to the Town Code and Rules: LGSR shall comply, without limitation, with all applicable provisions of the Los Gatos Town Code, with special attention to Chapter 19, Parks and Recreation provisions. LGSR shall also comply with any park rules and regulations established by the Director of Parks and Public Works pursuant to Section 19.10.025(17) of the Town Code, including those rules set forth in Town of Los Gatos Park Rules and Regulations.

REQUESTED DIRECTION

There are two agreement terms for which staff is seeking direction from Town Council. These are as follows and alternative language for each item is presented in the draft agreement in Attachment 2.

SUBJECT: Provide Direction on Terms and Authorize the Town Manager to Execute a Use Agreement with Los Gatos-Saratoga Community Education and Recreation

DATE: May 16, 2023

DISCUSSION (continued):

Annual Use Fee

Staff has established a use fee of \$15,500 for the contract base year. This cost would provide for up to 4,607 hours of park use by LGSR for their programming. Los Gatos has a Use Fee for sport fields of \$95 per day for the first day of use plus \$55 per day after that, which is well below the current rates charged by neighboring communities.

Table 1 provides the use fee per hour for groups with which the Town has Park Use Agreements.

Table 1. Park Use Fees by User Group

User Name	Annual Use Fee (\$)	Annual Total Use Hours	Annual Fee Per Hour (\$/Hour)
Los Gatos United Soccer	21,590	1,865	11.58
Red Hawks Lacrosse	5,850	253	23.12
Los Gatos Little League	6,600	1,216	5.43
Los Gatos Saratoga Recreation	15,500	4,607	3.36

LGSR has discussed with staff the idea that there be no charge for senior programming provided in the Town Parks covered in this agreement. LGSR provides 671 hours of pickleball programming at the present time. While this is not specifically a senior program, many of the participants in this program are over 55, which is the assumed age that senior programming would target. Using the \$3.36 per hour use fee noted above, free pickleball programming would result in a net reduction in the Use Fee of \$2,254.56. The annual fee for 2023/24 would then be \$13,245.22, or \$2.88 per use hour.

Per the terms of the proposed agreement, the addition of future senior programming would not result in an increase in charges; however, the use would need to be provided to Town staff in the annual schedule. Staff would need to balance the community interest and public use of the park amenities with the additional programming requests made by LGSR, which is typical of all use agreements.

Facility Maintenance Fee

Past Use Agreements with LGSR have included a Facility Maintenance fee of \$2.00 per participant per session. With the renewal of agreements with Los Gatos Little League, Red Hawks Lacrosse, and Los Gatos United Soccer, a \$4.00 per participant per season Facility Maintenance Fee was included in the contract, and staff is suggesting the same for LGSR. Table 2 shows projected Facility Maintenance Fees for groups with which the Town has Use Agreements.

SUBJECT: Provide Direction on Terms and Authorize the Town Manager to Execute a Use Agreement with Los Gatos-Saratoga Community Education and Recreation

DATE: May 16, 2023

DISCUSSION (continued):

Table 2. Project Facility Maintenance Fee by User Group

User Name	Facility Maintenance Fee (Per Attendee per Season or Session)	Approximate Number of Annual Users	Projected Facility Maintenance Fee to be Paid Annually (\$)
Los Gatos United Soccer	\$4.00	350	\$1,400
Red Hawks Lacrosse (the Club)	\$4.00	125	\$500
Los Gatos Little League	\$4.00	200	\$800
Los Gatos Saratoga Recreation	\$4.00	4,300	\$17,200

LGSR has asked that their Facility Maintenance Fee be retained at \$2.00 per participant and staff is seeking Town Council direction on this topic.

CONCLUSION:

Staff is asking that the Town Council provide direction on the Use Agreement between the Town of Los Gatos and Los Gatos-Saratoga Community Education and Recreation, specifically with regard to the Use Fee and Facility Maintenance Fees.

FISCAL IMPACT:

Approval of the Use Agreement with LGSR would result in annual revenue of \$15,500 (or \$13,245.22 if pickleball hours are provided at no charge to LGSR) beginning July 1, 2023. Each future year of the agreement the fee would increase as defined in the Agreement Terms. Additional revenue will be derived from the Facility Maintenance Fee, which will be paid to the Town on a semi-annual basis. The amount of revenue will depend on Council's direction on this issue.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Prior Use Agreement
2. Proposed Use Agreement between Town of Los Gatos and Los Gatos-Saratoga Community Education and Recreation

**FIRST AMENDMENT
TO
USE AGREEMENT
BETWEEN THE TOWN OF LOS GATOS AND LOS GATOS-SARATOGA
RECREATION**

This FIRST AMENDMENT to USE AGREEMENT is entered into this 31st day of October 2017, by and between the **TOWN OF LOS GATOS**, State of California ("Town"), and **LOS GATOS-SARATOGA RECREATION** ("LGSR").

RECITALS

- A. Town and LGSR entered into a Use Agreement on June 25, 2014 to provide fee-based public recreation, supplemental education and child care programs for Los Gatos, Monte Sereno, Saratoga and the Santa Cruz Mountain communities, a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town and LGSR mutually desire to extend the term of the existing Use Agreement through May 31, 2020.

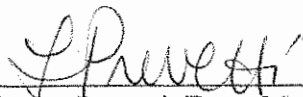
FIRST AMENDMENT

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

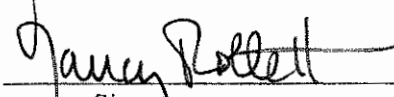
- 1. The term of this Agreement shall be extended for one additional three-year term as outlined in section 3 of the Use Agreement from June 1, 2017 through May 31, 2020.
- 2. All other Terms and Conditions of the Use Agreement dated June 25, 2014 remain in full force.

IN WITNESS WHEREOF:

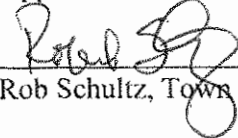
Town of Los Gatos, by:


Laure Prevetti, Town Manager

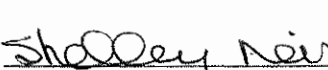
Los Gatos-Saratoga Recreation, by:


Signature
Nancy Rollett, Executive Director
Print Name and Title

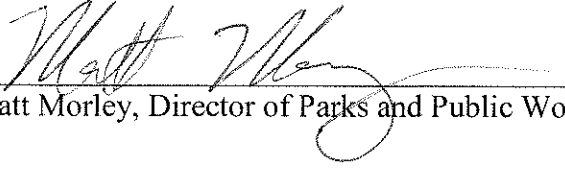
Approved as to Form:


Rob Schultz, Town Attorney

Attest:

 2/16/18
Shelly Neis, Interim Town Clerk

Recommended by:


Matt Morley, Director of Parks and Public Works

CLERK DEPARTMENT
AGD 14-076
DIR
CRD
REC
RESO

**USE AGREEMENT
BETWEEN THE TOWN OF LOS GATOS
AND
LOS GATOS-SARATOGA RECREATION**

This USE AGREEMENT is entered into this 25th day June, 2014, by and between the TOWN OF LOS GATOS, State of California ("Town"), and LOS GATOS-SARATOGA RECREATION, ("LGSR").

RECITALS

- A. Los Gatos-Saratoga Community Education and Recreation ("LGSR"), a joint powers agency of the Los Gatos Union School District, Saratoga Union School District and Los Gatos-Saratoga Union High School District, was established to ensure the effective and efficient provision of community education and recreation services to the communities of Los Gatos, Saratoga, Monte Sereno and Santa Cruz Mountains communities.
- B. LGSR provides fee-based public recreation, supplemental education and child care programs for Los Gatos, Monte Sereno, Saratoga and the Santa Cruz Mountains communities.
- C. In order to provide convenient and effective programs to its constituent communities, LGSR desires to use various parks and open spaces owned and maintained by the Town of Los Gatos ("Town").
- D. The Town and LGSR each desire an agreement between them setting forth the specific terms and conditions under which LGSR may use certain Town parks, facilities and open spaces, including days and hours of use, and the fees payable by LGSR for the exclusive use of the designated facilities.

AGREEMENT

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

- 1. **Subject Premises.** The premises covered by this agreement are Creekside Sports Park, Blossom Hill Park, Town Plaza Park (for Santa in the Park only) and Oak Meadow Park (collectively, the "Premises"). LGSR may request the use of additional premises, which shall be considered by the Town and authorized for use as more fully described in Section 7.
- 2. **Use of Premises.** LGSR shall be allowed use of the Premises for approved Programs during those times and dates as shown on Attachment A, "Annual Schedule". The initial Annual Schedule shall cover camps and class for the 2014 Summer Session through the 2015 Spring Session ("Initial Program Year"), and shall identify what portion or portions of the Premises shall be designated for each approved Program. No later than July 15th of each year this Agreement is in force, LGSR shall submit to the Town a schedule for the upcoming Fall and Winter sessions, including the dates for the December Santa in the Park event. No later than December 15th of each year this agreement is in session, LGSR shall submit a schedule for the upcoming Spring and Summer sessions. The period from Summer through the following Spring shall constitute a "Program Year" for purposes of this agreement, with Premises use shown on the Annual Schedule.

LGSR may request changes to the Annual Schedule by written notification to the Department of Parks and Public Works, but shall endeavor to minimize changes to the schedule during the Initial Program Year and each subsequent Program Year. All changes should be made in writing no less

ATTACHMENT 1

than 30 days prior to the effective date of the change. The Town of Los Gatos shall have sole authority to approve the Annual Schedule and any requested changes to the Annual Schedule.

3. Term of Agreement. Unless terminated sooner pursuant to Section 19 of this Agreement, this Agreement shall expire on May 31, 2017. The term of this Agreement may be extended for up to two additional three year periods upon mutual written consent of the parties.
4. Annual Use Fee. Beginning June 1, 2014, and every year thereafter, LGSR shall pay the Town of Los Gatos an Annual Use Fee for the use of the Premises. The initial Annual Use Fee shall be **\$10,000**. The Annual Use Fee shall be considered full and fair compensation for use of the Premises for those days and times on the approved Annual Schedule, and in conjunction with the Facility Maintenance Fee described in Section 5, shall be used by the Town to help fund the cost of maintenance of the Premises.
5. Facility Maintenance Fee. Beginning June 1, 2014, and continuing for the full term of this agreement, including any extensions, each participant in programs or classes offered by LGSR on Town premises will be charged a \$2.00 Facility Maintenance Fee (FMF) per class or program. The Facility Maintenance Fee shall be assessed by LGSR at the time of registration or payment of program fees, and shall be remitted to the Town quarterly. Participants shall be charged a FMF for each separate registration in a program or class offered by LGSR offered on the Premises covered by this Agreement.
6. Annual Use Fee Adjustment—Change in CPI. On June 1, 2015, and each anniversary thereafter, the Annual User Fee shall be adjusted equal to the CPI adjustment approved by the Town Council as part of its annual Comprehensive Fee Schedule adoption, which is based on the average increase in the CPI for the previous calendar year.
7. Annual Use Fee Adjustment—Change in Programming or Facilities. On June 1, 2015, and each anniversary thereafter, the Annual User Fee shall also be adjusted based on programming changes resulting in a material increase or decrease in the use of the Premises. In addition, the Annual User Fee shall be adjusted to reflect the addition of any new facilities or the cessation of use at any of the facilities that comprise the Premises. Any fee adjustment under this section will be negotiated in good faith between the Town and LGSR as part of the development of the Annual Schedule described in Section 2 above.
8. Maintenance. LGSR shall be responsible for general site clean-up including pick up and disposal of trash that may result from the approved use of the Premises.
9. Facility Use Policies. LGSR shall comply, without limitation, to all applicable provisions of the Los Gatos Town Code, with special attention to the provisions of Chapter 19, Parks and Recreation. LGSR shall also comply with any park rules and regulations established by the Director of Parks and Public Works pursuant to Section 19.10.025(17) of the Town Code, including those rules set forth in Attachment B, Town of Los Gatos Park Rules and Regulations, and Attachment C, Town of Los Gatos Creekside Sports Park Special Use Policies. Failure to comply with these policies may result in suspension and/or termination of this agreement.
10. Payment. LGSR shall make all payments, whether or not invoiced by Town, required pursuant to this Agreement no later than July 1st of each year that such payments are due. All payments shall be mailed by first class mail or delivered in person at Town offices and addressed as follows:

Town of Los Gatos
Attn: Finance Department
P.O. Box 655
Los Gatos, California 95030

11. Assignment. LGSR shall not assign any portion of this Agreement, or allow any use of the Premises by any other person or entity contrary to the terms of this Agreement, without prior written approval of Town. LGSR is expressly prohibited from use of the Premises for any activity other than activities sanctioned and associated with LGSR.
12. Personal Property. Personal property of LGSR shall be LGSR's sole responsibility to acquire, repair, replace and store. Any storage of personal property on the Premises shall require prior approval by the Town. LGSR shall remove all personal property at the expiration or termination of this Agreement, or sooner, as directed by the Town in its sole discretion. Any personal property not so removed with 30 days of notification by the Town shall become the sole property of Town with no compensation.
13. Temporary Signage. LGSR shall be permitted to install temporary event signage on the Premises upon approval of an application to the Town of Los Gatos Planning Department pursuant to the provisions of Section 29.10.120 (4) Event Signs of the Town Code. Each LGSR Activity Quarter (summer, fall, spring, winter) shall be eligible for temporary event signage. All temporary event signage must include the LGSR logo of such size and placement that it is clear that the signage is for a program or activity sponsored by LGSR. The Town shall charge a single Temporary Signage fee for each Program Year.
14. New Program Vendors Referral. The Town and LGSR shall meet and negotiate in good faith a New Program Vendor Referral procedure, wherein the Town directs prospective new program vendors to LGSR for initial consideration prior to any issuance of permits or negotiation of use agreements directly between the Town and the prospective vendor.
15. Insurance.
 - (a) Minimum Scope of Insurance:
 - (i) LGSR agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring the LGSR, its officers and employees to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage. Insurance is to be placed with insurers with a current Best's rating of no less than B+.
 - (ii) LGSR agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy insuring the LGSR, its officers and employees to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
 - (iii) LGSR shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. LGSR shall provide all certificates and endorsements before term of Agreement begins.

(b) General Liability:

- (i) The Town, its officers, employees and volunteers are to be covered as additional insured as respects to liability arising out of activities occurring on or related to the occupancy and use of the Premises by the LGSR.
- (ii) The LGSR's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town, its officials, employees or volunteers shall be excess of the LGSR's insurance and shall not contribute with it.
- (iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
- (iv) The LGSR's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(c) All Coverages. Each insurance policy required in this Paragraph 12 shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. The LGSR shall ensure that current certification of such insurance is on file at all times with the Town Clerk during the term of this agreement.

(d) Workers' Compensation. In addition to these policies, LGSR shall have and maintain Workers' Compensation insurance as required by California law. Further, LGSR shall ensure that all contractors employed on the Premises by the LGSR provide the required Workers' Compensation insurance for their respective employees.

(e) Property Insurance. Town shall have no obligation to maintain any insurance of the Premises or any personal property placed on the Premises. LGSR shall be solely responsible for obtaining whatever insurance coverage that the LGSR believes may be appropriate to protect and indemnify the LGSR for loss to the Premises or to any personal property that the LGSR may place on the Premises.

16. Indemnification. LGSR agrees to indemnify, hold harmless, and defend the Town, its officers, employees, volunteers, and agents, from and against any and all damages, claims or liability, penalties, costs or expenses in law or equity that may at any time arise from any loss, damage, or injury to persons or property occurring in or about the Premises that arises out of or incident to the LGSR's use of the Premises, including use by anyone that the LGSR has permitted or allowed to use the Premises. This obligation to indemnify, hold harmless, and defend applies whether or not the incident or claim or liability is or may be related to negligence on the part of the Town.

17. Damage and Destruction.

- (a) Damage or destruction of any portion of the Premises by any cause shall not terminate this Agreement or otherwise affect the respective obligations of the two parties, any present or future law to the contrary notwithstanding, except pursuant to the provisions of this Section 17.

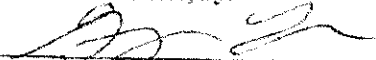
- (b) If because of destruction or damage, a portion of the Premises becomes unsuitable or inadequate for a use as specified in the Annual Schedule, the Town and LGSR shall meet and work cooperatively to identify an alternative location for the use. If the alternative location can be found on Town-owned property, then no modification of the Annual Use Fee shall be made. If no alternative location can be found, or if an alternative location is found that is not on Town-owned property, then LGSR shall be entitled to a prorated refund of the Annual Use Fee, calculated by determining the fee that would have been assessed for the displaced program or activity if it had been issued a Facility Use Fee Permit. Any such calculation will be based on the Town's approved schedule of Annual Fees and Charges in effect at the time of the program displacement.
 - (c) Under no circumstances does the Town have any obligation to provide LGSR with an alternative property to conduct its operations, and LGSR is solely responsible for obtaining such insurance as the LGSR deems appropriate to protect its interests should damage or destruction to any of the Premises occur.
 - (d) LGSR shall be liable for any loss, damage or injury to the Premises as a result of the direct or indirect use of the Premises by LGSR under this agreement.
- 18. Compliance with Town Codes. LGSR shall comply with all provisions of the Town Code, including the provisions of Chapter 19 of the Code concerning Parks and Recreation.
- 19. Termination.
 - a) LGSR shall promptly terminate its use of the Premises at the expiration of this Agreement, leaving the Premises in the same condition it was received, in good order and repair, reasonable wear and tear and damage by the elements excepted. Any personal property not removed by the LGSR within thirty (30) days of the termination of this Agreement shall become the property of the Town and may be disposed of as the Town in its sole discretion deems advisable.
 - b) This Agreement shall continue in full force and effect unless prior to February 1st of any calendar year, either Party provides written notice to the other Party that it desires to terminate the Agreement for convenience and, upon such notice, the Agreement shall terminate on June 30th of the same calendar year.
 - c) If Town in its sole discretion determines that it requires the Premises for any public purpose, Town may terminate this Agreement upon one hundred eighty (180) days written notice. In the event of an emergency, Town may terminate this Agreement upon five (5) days written notice. "Emergency," for the purposes of this paragraph, is defined as when the Town Council declares a State of Emergency. Upon termination of this Agreement in the event of an Emergency, Town and LGSR will work cooperatively to secure alternative facilities for LGSR programs.
 - d) In the event of any material default or breach by LGSR, Town may at any time thereafter, following any notice required by statute, and without limiting Town in the exercise of any right or remedy which may have reason of such default or breach:
 - a. Terminate LGSR's right to possession of the Premises by any lawful means, in which case this Agreement shall terminate and LGSR shall immediately surrender possession of the Premises to Town. In such event, Town shall be entitled to recover from LGSR any

damages incurred by Town by reason of LUSL's default including but not limited to: the cost of recovering possession of the Premises and reasonable attorneys' fees.

- b. Pursue any other remedy now or hereafter available to Town under the laws of the State of California. Town shall have all remedies provided in law and equity.
 - c) LGSR waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and 1179, and any other present and future law, in the event LGSR is evicted or Town otherwise lawfully takes possession of the Premises by reason of any default or breach of this Agreement by LGSR.
20. No Property Rights. Nothing in this Agreement is in any way intended to establish, convey, create or otherwise grant to LGSR any form of property rights in the Premises, nor shall such rights be established, conveyed, created or otherwise granted by LGSR's use of the Premises pursuant to this Agreement. LGSR hereby acknowledges that it currently has no property interest in the Premises or any improvements thereto or fixtures location thereon, and that any claim it may have to same is hereby and forever waived.
21. Notices. Any written correspondence or Notices given under this Agreement shall be addressed as follows:
- | | |
|-------------------------------|--------------------------------------|
| To the LGSR: | To the Town: |
| Executive Director | Director |
| Los Gatos-Saratoga Recreation | Department of Parks and Public Works |
| 123 E. Main Street | Town of Los Gatos |
| Los Gatos, CA 95030 | 41 Miles Avenue |
| | Los Gatos, CA 95030 |
- Notices shall be delivered by first class, postage prepaid mail or in person. If mailed, a notice shall be deemed effective on the fifth day following deposit in the U.S. Mail.
22. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this License Agreement.
23. Entire Agreement. This Agreement constitutes the complete and exclusive statement of the Agreement between Town and LGSR. No terms, conditions, understanding or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

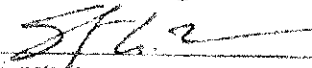
IN WITNESS WHEREOF:

Town of Los Gatos, by:

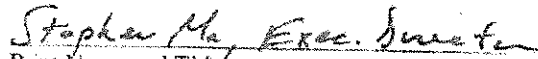


Greg Larson, Town Manager

Los Gatos-Saratoga Recreation, by:

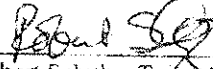


Signature



Print Name and Title

Approved as to Form:



Robert Schultz, Town Attorney

Attest:



Shelly Nets, Town Clerk

BLOSSOM HILL PARK-WINTER

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
Lacrosse	KLS	KLS	T-ball	KLS	KLS	NA
3:30pm-4:30pm	10am-6:00pm	1:45pm-6pm	4pm-5pm	9:00am-6:00pm	2:05pm-6:00pm	
1/26-3/30	1/27-3/31	1/28-4/1	1/29-4/2	1/30-4/3	1/31-4/4	
Tennis	Tennis	Tennis	Tennis	Tennis	Tennis	Tennis
3:30pm-6:00pm	9am-12pm	9:00am-11am	9:00am-12am	9:00am-11am	9:30am-1:45pm	1:00pm-4pm
1/26-3/30	1/27-3/31	3:30pm-5:30pm	4:00pm-6:00pm	1/30-4/3	1/31-4/4	2/1-4/5
		1/28-4/1	1/29-4/2			

OAK MEADOW PARK-WINTER

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
NA	NA	Skyhawks	NA	NA	NA	NA
		3pm-4pm				
		1/28-4/1				

CREEKSIDE SPORTS PARK-WINTER

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
NA	TBD	TBD	TBD	NA	NA	NA
	3:30pm-5:30pm	2:00pm-3:00pm	3:30pm-5:30pm			
	1/27-3/31	1/28-4/1	1/29-4/2			

BLOSSOM HILL PARK-SPRING

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
Lacrosse	KLS	KLS	T-ball	KLS	KLS	NA
3:30pm-4:30pm	10am-6:00pm	1:45pm-6pm	4pm-5pm	9:00am-6:00pm	2:05pm-6:00pm	
4/14-6/9	4/15-6/3	4/16-6/4	4/17-6/5	4/18-6/6	4/19-6/7	
Tennis	Tennis	Tennis	Tennis	Tennis	Tennis	Tennis
3:30pm-6:00pm	9am-12pm	9:00am-11am	9:00am-12am	9:00am-11am	9:30am-1:45pm	1:00pm-4pm
3/24-5/19	3/25-5/20	3:30pm-5:30pm	4:00pm-6:00pm	3/28-5/23	3/29-5/17	3/30-5/18
		3/26-5/21	3/27-5/22			

OAK MEADOW PARK-SPRING

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
NA	NA	Skyhawks	NA	NA	NA	NA
		3pm-4pm				
		4/16-5/21				

CREEKSIDE SPORTS PARK-SPRING

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
United Soccer Camp	TBD	TBD	TBD	United Soccer Camp	NA	NA
8am-3pm	3:30pm-5:30pm	2:00pm-3:00pm	3:30pm-5:30pm	8am-3pm		
4/7-4/11	1/27-3/31	1/28-4/1	1/29-4/2	4/7-4/11		
	United Soccer Camp	United Soccer Camp	United Soccer Camp			
	8am-3pm	8am-3pm	8am-3pm			
	4/7-4/11	4/7-4/11	4/7-4/11			

BLOSSOM HILL PARK-SUMMER

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
NA	KLS	KLS	T-ball	KLS	KLS	NA
	9:30am-6:50pm	3:30pm-6pm	4pm-5pm	9:00am-6:00pm	2:05pm-5:05pm	
	6/24-8/12	6/25-8/13	6/12-8/7	6/27-8/22	7/12-8/23	
	Tennis	NA	Tennis	NA	NA	Tennis
	3:30pm-5:30pm		3:30pm-5:30pm			1:00pm-4:00pm
	6/16-8/4		6/18-8/6			6/21-8/9

OAK MEADOW PARK-SUMMER

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
NA	NA	NA	NA	NA	NA	NA

CREEKSIDE SPORTS PARK-SUMMER

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
Lacrosse Camp	Lacrosse Camp	Lacrosse Camp	Lacrosse Camp	Lacrosse Camp	NA	NA
8am-12pm	8am-12pm	8am-12pm	8am-12pm	8am-12pm		
6/9-6/13	6/9-6/13	6/9-6/13	6/9-6/13	6/9-6/13		
6/23-6/27	6/23-6/27	6/23-6/27	6/23-6/27	6/23-6/27		
United Soccer Camp	United Soccer Camp	United Soccer Camp	United Soccer Camp	United Soccer Camp		
8am-3pm	8am-3pm	8am-3pm	8am-3pm	8am-3pm		
7/7-8/8	7/7-8/8	7/7-8/8	7/7-8/8	7/7-8/8		
WC Soccer Camp	WC Soccer Camp	WC Soccer Camp	WC Soccer Camp	WC Soccer Camp		
8am-3pm	8am-3pm	8am-3pm	8am-3pm	8am-3pm		
6/23-7/3	6/23-7/3	6/23-7/3	6/23-7/3	6/23-7/3		
8/11-8/15	8/11-8/15	8/11-8/15	8/11-8/15	8/11-8/15		

BLOSSOM HILL PARK-FALL

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY	3600	4600	4700
Lacrosse	KLS	KLS	T-ball	KLS	KLS	NA	0	0	0
3:30pm-4:30pm	10am-6:00pm	1:45pm-6pm	4pm-5pm	9:00am-6:00pm	2:05pm-6:00pm		0	0	0
9/29-11/17	9/30-11/13	10/3-11/14	10/2-11/20	10/5-11/16	10/6-11/17		0	0	0
Tennis	Tennis	Tennis	Tennis	Tennis	Tennis	Tennis	0	64	0
3:30pm-6:00pm	9am-12pm	9:00am-11am	9:00am-12am	9:00am-11am	9:30am-1:45pm	1:00pm-4pm	0	0	0
9/29-11/17	9/30-11/18	3:30pm-5:30pm	4:00pm-6:00pm	10/2-11/20	10/3-11/21	10/4-11/22	28	0	28
		10/1-11/19	10/2-11/20				0	0	0

OAK MEADOW PARK-FALL

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY	3600	4600	4700
NA	NA	Skyhawks	NA	NA	NA	NA	0	0	0
		3pm-4pm					0	0	0
		10/1-11/19					0	0	0
							0	0	0

CREEKSIDE SPORTS PARK-FALL

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY	3600	4600	4700
NA	TBD	TBD	TBD	NA	NA	NA	0	0	0
	3:30pm-5:30pm	2:00pm-3:00pm	3:30pm-5:30pm				0	0	0
	9/30-11/18	10/1-11/19	10/2-11/20				0	0	0
							0	0	0

ATTACHMENT B

PARK RULES AND REGULATIONS (Effective March 1, 2013)

All park users shall comply with the provisions of Chapter 19, Parks and Recreation of the Los Gatos Town Code, and the these Park Rules and Regulations established by the Director of Parks and Public Works pursuant to Section 19.10.025(17) of the Los Gatos Town Code

General

Hours: Parks and trails are open from official sunrise to one-half hour after sunset, unless posted otherwise.

Parking at Oak Meadow Park:	<u>Residents of Los Gatos</u> (all residents living in 95030 & 95032 zip codes)	FREE
	<u>Non-Residents</u> (includes people living in 95033 zip code)	\$6.00 per vehicle

Parking at all other Parks: Free

No Smoking

- Smoking is prohibited within any park or on any trail.

Food & Alcohol

- Beer and wine are allowed with a picnic meal but must not leave the picnic site.
- A Vehicle Escort Permit is required when a caterer delivers food to a picnic site.
- Barbecues are not allowed at Belgatos Park.

Decorations & Signs

- Decorations must not interfere with other picnic sites.
- Decorations must be cleaned up and removed before leaving the park.
- Directional signs may be posted in designated areas, but must be removed before leaving.
- No tacks, nails or staples on park signs, tables or trees.
- No confetti, Egg toss or piñatas are allowed.

Dogs

- A six (6) foot leash is required at all times and dogs must be kept under physical control.
- Pet owners are required to immediately clean-up after their pets.

Miscellaneous

- Portable BBQs (gas or charcoal) are allowed in picnic areas only.
- Portable radios are allowed.
- Loud music is not allowed at any hour.
- Volleyball and Badminton nets are allowed.
- Portable toilets are not allowed.
- Petting zoos and pony rides are not allowed.
- Water slides and "Slip-n-Slides" are not allowed.
- Organized sports activities are not allowed without a permit.
- No golfing within any park.
- No overnight camping allowed.
- No sale or vending or other commercial activity except by permit.

Clean-Up

- Facilities rented and used must be left in clean condition. A fee will be assessed to you for leaving the picnic area unclean or damaged.
- Applicant should provide means to clean up site, including extra trash bags.
- Pick-up and dispose of all trash and food waste materials at reserved park site.
- Remove cans, bottles, bags, decorations, balloons, food and debris from park site. Use trash cans.
- Allow fires in barbecue pits to burn out. Do not use water because it will damage the grill and pit.

Reservations

- Prior to selecting and reserving any picnic area or bandstand/gazebo, we recommend that the applicant visit the park facility in advance or view [Parks & Trails Map](#) to obtain details of each of Town's parks and trails, including maps and driving directions. A [Park and Trails Map](#) is available online and at Town offices.
- The Parks and Public Works Department staff will finalize your reservation request once you have completed the [on-line reservation](#) process and payment by credit card in full is received. Checks will no longer be accepted. A reservation fee will be charged for each site you reserve. If you reserve two or more sites, a fee will be assessed for each site, as applicable. Park reservations do not include parking. Please view the [Fee Schedule](#) for current charges.
- Requests to reserve a picnic area should not be submitted with less than 48 hours of advance notice prior to the requested reservation date. All reservation requests must be completed through the on-line reservation process. Reservations by phone will not be accepted.
- All information collected is only for the use of the Town of Los Gatos Parks and Public Works Department for park reservations and will not be sold or shared with

outside vendors. Also be assured that all data you send as part of this reservation process is through a secure server and the data is encrypted for transmission. We do not keep any of your credit card information on our system.

Permits

- Special Use Permits are required for the following:
 1. Use of a group area for 25 people or more.
 2. Use of a jump house at any park in Los Gatos.
 3. Use of a vehicle escort at any park.
 4. Use of Bocce ball Courts at Oak Meadow Park.
 5. Use of Gazebo/Bandstand at Oak Meadow Park.
 6. For any organized recreational activities, such as formal classes or other similar activities.
- The permittee, under Town Municipal Code, Section 19.30.025, shall be bound by all park rules and regulations, and all applicable ordinances. The person to whom such permit is issued shall be liable for any loss, damage or injury sustained by the Town or by any person whomsoever by reason of the negligence of the person to whom such permit shall have been issued.
- Special Use Permit is approved by the Parks & Public Works Department upon review of reservation request and payment of applicable deposit.
- Use of a disc jockey (DJ) at the Gazebo/Bandstand at Oak Meadow Park is allowed only after receiving a Special Events Permit from the Los Gatos-Monte Sereno Police Department. The Police Department number is (408) 354-8600.
- An insurance certificate in the amount of \$1 million, naming the Town of Los Gatos, its Council members, Boards, Commissions, employees and agents as additionally insured is required for groups of over 100 people (reservations for events such as weddings, reunions and company picnics).
- Permits cannot be transferred, assigned or sublet.

Jump Houses

- Use of a jump house requires a Special Use Permit. At Oak Meadow Park, a Special Use Permit for jump houses can be requested only if the associated picnic area is reserved concurrently.
- Jump houses can be rented only from companies that have provided proof of liability insurance naming the Town of Los Gatos as the additional insured. The following companies have registered with the Clerk's Office and have provided the required certificate:

Astro Events & Jump	(800) 300-0922
Bali Baly Jump	(408) 226-2706
Jump For Fun	(800) 281-6792
Bay Area Jump	(800) 514-5867
Jump For Joy	(800) 418-5867

- Any jump house company not listed above must provide insurance to the Town of Los Gatos Clerk's Office for consideration. A permit will not be issued to an applicant without providing proof of insurance from the vendor.

- Jump houses must be hand carried in to the park and placed in the area specified by the Parks Service Officer.
- No electricity is provided at the park for jump houses.
- Jump houses with combined features such as a jumper and a slide and/or obstacle course, and features containing water are not allowed.
- Personally owned jump houses are not allowed.
- Jump house fees for residents are \$95. Non-resident fees are \$125.
- A Jump House Permit does not include Picnic Area Use Permit. Each must be obtained separately.

Vehicle Escort

Individuals renting a park facility can request a staff vehicle escort to assist with the transport of supplies to/from a designated picnic area. Reservations must be made five (5) business days in advance of the event date for this service.

- No vehicles are allowed beyond designated public parking lots. If an individual would like to drop off supplies or equipment beyond these areas in a vehicle, a vehicle escort is required.
- Vehicle escorts conducted by a Park Service Officer must be scheduled in advance.
- Vehicle escorts are not available for Picnic Areas 1, 2, & 7 at Oak Meadow Park.

ATTACHMENT C

CREEKSIDE SPORTS PARK **SPECIAL RULES AND REGULATIONS** **(Effective March 1, 2013)**

All park users shall comply with the provisions of Chapter 19, Parks and Recreation of the Los Gatos Town Code; Park Rules and Regulations established by the Director of Parks and Public Works pursuant to Section 19.10.025(17) of the Los Gatos Town Code; and these Special Rules and Regulations, also established pursuant to Section 19.10.025(17) of the Los Gatos Town Code. Permitted groups have priority use and other users shall promptly vacate field upon request by permitted users

No Smoking

- Smoking of any substance and use of any tobacco product, including chewing tobacco, is prohibited.

Artificial Turf Field and Warm Up Area Use

- No metal cleats or spikes allowed.
- No metal stakes, such as umbrellas or shade structures permitted.
- No bare feet.
- No spitting on artificial turf surfaces.
- No vehicles allowed on field or warm-up area
- No marking or painting of turf unless approved by the Town of Los Gatos.
- No golfing or use of golf clubs.
- No discus, hammer, javelin or other field events permitted.

Food & Beverages

- No alcoholic beverages permitted within Creekside Sports Park.
- No open fires, flames or portable barbecues (gas or charcoal) permitted.
- No chewing gum or sunflower seeds allowed within Creekside Sports Park.
- No food or beverages allowed on playing field other than water.
- No glass bottles or containers allowed on field or warm-up areas.

Dogs and Other Animals

- No dogs or other animals allowed except for certified guide animals.

Signage

- Signs may be affixed with string, rope or ties only. No tape, tacks, staples, or nails allowed.
- All signage and ties must be removed after use.
No staking of any team signs or banners allowed.

**USE AGREEMENT
BETWEEN THE TOWN OF LOS GATOS
AND
LOS GATOS-SARATOGA COMMUNITY EDUCATION AND RECREATION**

THIS AGREEMENT is dated for identification this 1st day of July 2023 and is made by and between TOWN OF LOS GATOS, State of California (“Town”) and LOS GATOS-SARATOGA COMMUNITY EDUCATION AND RECREATION (“LGSR”) identified as a California nonprofit corporation and whose address is 123 E. Main Street, Los Gatos, CA 95030.

I. RECITALS

- 1.1 Los Gatos-Saratoga Community Education and Recreation (“LGSR”), a joint powers agency of the Los Gatos Union School District, Saratoga Union School District, and Los Gatos-Saratoga Union High School District was established to ensure the effective and efficient provision of community education and recreation services to the communities of Los Gatos, Saratoga, Monte Sereno, and Santa Cruz Mountains communities.
- 1.2 LGSR provides fee-based public recreation, supplemental education, and childcare programs for Los Gatos, Monte Sereno, Saratoga, and the Santa Cruz Mountains communities. LGSR and the Town have been under contract since 2014 for programs within certain parks that are owned and operated by the Town.
- 1.3 In order to provide convenient and effective programs to its constituent communities, LGSR desires to use various parks and open spaces owned and maintained by the Town of Los Gatos (“Town”).
- 1.4 The Town requested and LGSR has agreed to provide recreational programming for adults aged 55 years and older for the Town of Los Gatos.

II. AGREEMENTS

- 2.1 Subject Premises. The premises covered by this agreement are the portions of Blossom Hill Park, Creekside Sports Park, La Rinconada Park, and Oak Meadow Park (collectively, the “Premises”) denoted in Attachment 1. LGSR may request the use of additional premises which shall be considered by the Town and authorized for use as more fully described in Section 2.7.
- 2.2 Use of Premises. LGSR shall be allowed the use of the Premises for approved Programs during those times and dates as shown on the “Annual Schedule”. The Annual Schedule shall cover camps and classes and shall identify what portion or portions of the Premises shall be designated for each approved Program. Each year this Agreement is in force, LGSR shall submit a schedule no later than June 30th for the upcoming Fall session, no later than

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September 30th for the upcoming Winter and Spring session, and no later than February 28th for the upcoming Summer session.

LGSR may request changes to the Annual Schedule by written notification to the Department of Parks and Public Works but shall endeavor to minimize changes to the schedule. All changes should be made in writing no less than 30 days prior to the effective date of the change. Town has the final say in establishing the master schedule. Town will attempt to accommodate user groups at their requested time but reserves the right to propose use hours that balance the needs of all user groups equitably. The Town of Los Gatos shall have sole authority to approve the Annual Schedule and any requested changes to the Annual Schedule.

LGSR may partner with third party providers that have executed Use Agreements with the Town. In the case of such partnerships the Use Hours and Facility Maintenance Fee payments will be paid by the third party and not by LGSR.

- 2.3 Term of Agreement. Unless terminated sooner pursuant to Section 4.3 of this Agreement, the Use Agreement remains in effect from July 1, 2023 through June 30, 2024. The term of this Agreement may be extended for up to nine additional one-year periods.
- 2.4 Annual Use Fee. Beginning July 1, 2023, and every year thereafter, LGSR shall pay the Town of Los Gatos an Annual Use Fee for the use of the Premises. The initial Annual Use Fee shall be \$15,500, which represents 4,607 hours of Premises Use. The Annual Use Fee shall be considered full and fair compensation for use of the Premises for those days and times on the approved Annual Schedule, and in conjunction with the Facility Maintenance Fee described in Section 2.5, shall be used by the Town to help fund the cost of the maintenance of the Premises.

ALTERNATIVE LANGUAGE. TO BE USED IF COUNCIL ACCEPTS THAT PICKLEBALL IS A SENIOR PROGRAM

Annual Use Fee. Beginning July 1, 2023, and every year thereafter, LGSR shall pay the Town of Los Gatos an Annual Use Fee for the use of the Premises. The based initial Annual Use Fee shall be \$13,245.22, which represents 3,936 hours of Premises Use. The parties recognize that 671 hours of pickleball programming at LaRinconada Park is not included in this calculation in consideration of pickleball as a senior program serving people aged 55 years and older. The Annual Use Fee shall be considered full and fair compensation for use of the Premises for those days and times on the approved Annual Schedule, and in conjunction with the Facility Maintenance Fee described in Section 2.5, shall be used by the Town to help fund the cost of the maintenance of the Premises.

- 2.5 Facility Maintenance Fee. Beginning July 1, 2023, and continuing for the full term of this agreement, including any extensions, each participant in programs or classes offered by LGSR on Town premises will be charged a four (\$4.00) Facility Maintenance Fee (FMF) per

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session . The Facility Maintenance Fee shall be assessed by LGSR at the time of registration or payment of program fees and shall be remitted to the Town quarterly. Participants shall be charged an FMF for each separate registration in a program or class offered by LGSR offered on the Premises covered by this agreement.

ALTERNATIVE LANGUAGE: TO BE USED IF COUNCIL ACCEPTS THE REDUCED FACILITY USE FEE FOR LGSR

Facility Maintenance Fee. Beginning July 1, 2023, and continuing for the full term of this agreement, including any extensions, each participant in programs or classes offered by LGSR on Town premises will be charged a two (\$2.00) Facility Maintenance Fee (FMF) per session. The Facility Maintenance Fee shall be assessed by LGSR at the time of registration or payment of program fees and shall be remitted to the Town quarterly. Participants shall be charged an FMF for each separate registration in a program or class offered by LGSR offered on the Premises covered by this agreement.

- 2.6 Annual Use Fee Adjustment-Change in CPI. On July 1, 2024, and each anniversary thereafter, the Annual User Fee shall be adjusted according to the percent change in the U. S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, *All Items, All Urban Consumers, San Francisco-Oakland-San Jose, 1982-84-100 Index*.
- 2.7 Annual Use Fee Adjustment-Change in Programming or Facilities. On July 1, 2024, and each anniversary thereafter, the Annual User Fee shall also be adjusted based on programming changes resulting in a material increase or decrease in the use of the Premises. In addition, the Annual User Fee shall be adjusted to reflect the addition of any new facilities or cessation of use at any of the facilities that comprise the Premises. Should LGSR increase or decrease its requested hours of use as set forth in the Annual Schedule, by 5% or more, the Annual Use Fee shall be adjusted proportionally based on the percentage change in hours. Any fee adjustment under this section will be negotiated in good faith between the Town and LGSR as part of the development of the Annual Schedule. Programming that is specifically marketed to and participation is limited to senior participants aged 55 years and older shall not be included in the calculated increase of hours.
- 2.8 Maintenance. LGSR shall be responsible for general site clean-up including pick up and disposal of trash that may result from the approved use of the Premises.
- 2.9 Facility Use Policies. LGSR shall comply, without limitation, with all applicable provisions of the Los Gatos Town Code, with special attention to Chapter 19, Parks and Recreation provisions. LGSR shall also comply with any park rules and regulations established by the Director of Parks and Public Works pursuant to Section 19.10.025(17) of the Town Code, including those rules set forth in Attachment A, Town of Los Gatos Park Rules and Regulations. LGSR agrees to comply with the current rules and regulations available at www.losgatosca.gov/parkres as well as any future amendments to those rules and

ATTACHMENT 2

regulations. Failure to comply with these policies may result in suspension and/or termination of this agreement.

LGSR agrees to comply with the state "Fair Play in Community Sports Act." LGSR will not discriminate on the basis of gender and boys' and girls' teams will have equal access to the facilities.

- 2.10 Payment. LGSR shall make all payments, whether or not invoiced by Town, required pursuant to this Agreement no later than November 1 and April 1 of each year that such payments are due. All payments shall be mailed by first class mail or delivered in person at Town offices and addressed as follows:

Town of Los Gatos
Attn: Finance Department
P.O. Box 697
Los Gatos, California 95031

- 2.11 Assignment. LGSR shall not assign any portion of this Agreement or allow any use of the Premises by any other person or entity contrary to this Agreement's terms, without the Town's prior written approval. LGSR is expressly prohibited from use of the Premises for any activity other than activities sanctioned and associated with LGSR.

- 2.12 Personal Property. Personal property of LGSR shall be LGSR's sole responsibility to acquire, repair, replace and store. Any storage of personal property on the Premises shall require prior approval by the Town. LGSR shall remove all personal property at the expiration or termination of this Agreement, or sooner, as directed by the Town in its sole discretion. Any personal property not so removed with 30 days of notification by the Town shall become the sole property of Town with no compensation.

- 2.13 Temporary Signage. LGSR shall be permitted to install temporary event signage on the Premises upon approval of an application to the Town of Los Gatos Planning Department pursuant to the provisions of Section 29.10.120 (4) Event Signs of the Town Code. Each LGSR Activity Quarter (summer, fall spring, winter) shall be eligible for temporary event signage. All temporary event signage must include the LGSR logo of such size and placement that it is clear that the signage is for a program or activity sponsored by LGSR. The Town shall charge a single Temporary Signage fee for each year.

- 2.14 New Program Vendors Referral. The Town and LGSR shall meet and negotiate in good faith a New Program Vendor Referral procedure, wherein the Town directs prospective new program vendors to LGSR for initial consideration prior to any issuance of permits or negotiation of use agreements directly between the Town and the prospective vendor.

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III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. LGSR agrees to have and maintain for the duration of this Agreement, General Liability insurance policies insuring LGSR, its elected and appointed officials, employees, and agents to an amount not less than two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage. Insurance is to be placed with insurers with a current Best's rating of no less than B+.
- ii. LGSR agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring the LGSR, its elected and appointed officials, employees, and agents to an amount not less than one million (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iii. LGSR shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. LGSR shall provide all certificates and endorsements before term of Agreement begins.

General Liability:

- i. The Town, its elected and appointed officials, employees and agents are to be covered as additional insured as respects to liability arising out of activities occurring on or related to the occupancy and use of the Premises by LGSR.
- ii. The LGSR's insurance coverage shall be primary insurance as respects the Town, its elected and appointed officials, employees and agents. Any insurance or self-insurance maintained by the Town, its elected and appointed officials, employees or agents shall be excess of the LGSR's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
- iv. The LGSR's insurance shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability.

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- 3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. The LGSR shall ensure that current certification of such insurance is on file at all times with the Town Clerk during the term of this agreement.
- 3.3 Workers' Compensation. In addition to these policies, LGSR shall have and maintain Workers' Compensation insurance as required by California law. Further, LGSR shall ensure that all contractors employed on the Premises by the LGSR provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Property Insurance. LGSR shall have no obligation to maintain any insurance of the Premises or any personal property placed on the Premises. LGSR shall be solely responsible for obtaining whatever insurance coverage that the LGSR believes may be appropriate to protect and indemnify the LGSR for loss to the Premises or to any personal property that the LGSR may place on the Premises.
- 3.4 Indemnification. LGSR agrees to indemnify, hold harmless, and defend the Town, its elected and appointed officials, employees, and agents, from and against any and all damages, claims or liability, penalties, costs or expenses in law or equity that may at any time arise from any loss, damage, or injury to persons or property occurring in or about the Premises that arises out of or incident to the LGSR's use of the Premises, including use by anyone that the LGSR has permitted or allowed to use the Premises. This obligation to indemnify, hold harmless, and defend applies whether or not the incident or claim or liability is or may be related negligence on the part of the Town.

IV. GENERAL TERMS

- 4.1 Damage and Destruction. Damage or destruction of any portion of the Premises by any cause shall not terminate this Agreement or otherwise affect the respective obligations of the two parties, any present or future law to the contrary notwithstanding, except pursuant to the provisions of this Section 4.1.

If because of destruction or damage, a portion of the Premises becomes unsuitable or inadequate for use as specified in the Annual Schedule the Town and LGSR shall meet and work cooperatively to identify an alternative location for the use. If the alternative location can be found on Town-owned property, then no modification of the Annual Use Fee shall be made. If no alternative location can be found, or if an alternative location is found that is not on Town-owned property, then LGSR shall be entitled to a prorated refund of the Annual Use Fee, calculated by determining that fee that would have been assessed for the displaced program or activity is if it had been issued a Facility Use Fee Permit. Any such calculation will be based on the Town's approved schedule of Annual Fees and Charges in effect at the time of the program displacement.

ATTACHMENT 2

Under no circumstances does the Town have any obligation to provide LGSR with an alternative property to conduct its operations, and LGSR is solely responsible for obtaining such insurance as the LGSR deems appropriate to protect its interests should damage or destruction to any of the Premises occur.

LGSR shall be liable for any loss, damage, or injury to the Premises as a result of the direct or indirect use of the Premises by LGSR under this agreement.

- 4.2 Compliance with Town Codes. LGSR shall comply with all Town Code provisions, including Chapter 19 of the Code concerning Parks and Recreation.
- 4.3 Termination of Agreement. LGSR shall promptly terminate its use of the Premises at the expiration of this Agreement, leaving the Premises in the same condition it was received, in good order and repair, reasonable wear and tear and damage by the elements excepted. Any personal property not removed by LGSR within thirty (30) days of the termination of this Agreement shall become the property of the Town and may be disposed of as the Town in its sole discretion deems advisable.

This Agreement shall continue in full force and effect unless prior to February 1st of any calendar year, either Party provides written notice to the other Party that it desires to terminate the Agreement for convenience and, upon such notice, the Agreement shall terminate on June 30th of the same calendar year.

If Town in its sole discretion determines that it requires the Premises for any public purpose, Town may terminate this Agreement upon one hundred eighty (180) days written notice. In the event of an emergency, Town may terminate this Agreement upon five (5) days written notice. "Emergency," for the purpose of this paragraph, is defined as when the Town Council declares a State of Emergency. Upon termination of this Agreement in the event of an Emergency, Town and LGSR will work cooperatively to secure alternative facilities for LGSR programs.

In the event of any material default or breach by LGSR, Town may at any time, thereafter, following any notice required by statute, and without limiting Town in the exercise of any right or remedy which may have reason of such default or breach:

Terminate LGSR's right to possession of the Premises by any lawful means, in which case this Agreement shall terminate and LGSR shall immediately surrender possession of the Premises to Town. In such event, Town shall be entitled to recover from LGSR any damages incurred by Town by reason of LGSR's default including but not limited to the cost of recovering possession of the Premises and reasonable attorneys' fees.

ATTACHMENT 2

Pursue any other remedy now or hereafter available to Town under the laws of the State of California. Town shall have all remedies provided in law and equity.

LGSR waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and 1179, and any other present, and future law, in the event LGSR is evicted or Town otherwise lawfully takes possession of the Premises by reason of any default or breach of this Agreement by LGSR.

4.4 No Property Rights. Nothing in this Agreement is in any way intended to establish, convey, create or otherwise grant LGSR any form of property rights in the Premises, nor shall such rights be established, conveyed, created or otherwise granted by LGSR's use of the Premises pursuant to this Agreement. LGSR hereby acknowledges that it currently has no property interest in the Premises or any improvements thereto or fixture's location thereon, and that any claim it may have to same is hereby and forever waived.

4.5 Notices. Any written correspondence of Notices given under this Agreement shall be addressed as follows:

To the LGSR:
Executive Director
Los Gatos-Saratoga Recreation
123 E. Main Street
Los Gatos, CA 95030

To the Town:
Director
Department of Parks and Public Works
Town of Los Gatos
41 Miles Avenue
Los Gatos, CA 95030

Notices shall be delivered by first class, postage prepaid mail or in person. If mailed, a notice shall be deemed effective on the fifth day following in the U.S. Mail.

4.6 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of subsequent breach of the same or any other provision of this License Agreement.

4.7 Entire Agreement. This Agreement constitutes the complete and exclusive statement of the Agreement between Town and LGSR. No terms, conditions, understanding, or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

ATTACHMENT 2

IN WITNESS WHEREOF, the Town and LGSR have executed this Use Agreement.

Town of Los Gatos:

Los Gatos-Saratoga Recreation:

Laurel Prevetti, Town Manager

Nancy Rollett, Executive Director

Recommended by:

Nicolle Burnham
Director of Parks and Public Works

Approved as to Form:

Gabrielle Whelan, Town Attorney

Attest:

Wendy Wood, CMC, Town Clerk

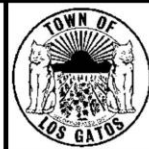
ATTACHMENT 2

ATTACHMENT 1
Areas Included in this Agreement



LA RINCONADA PARK
LGSR RESERVED AREA

NOT TO SCALE



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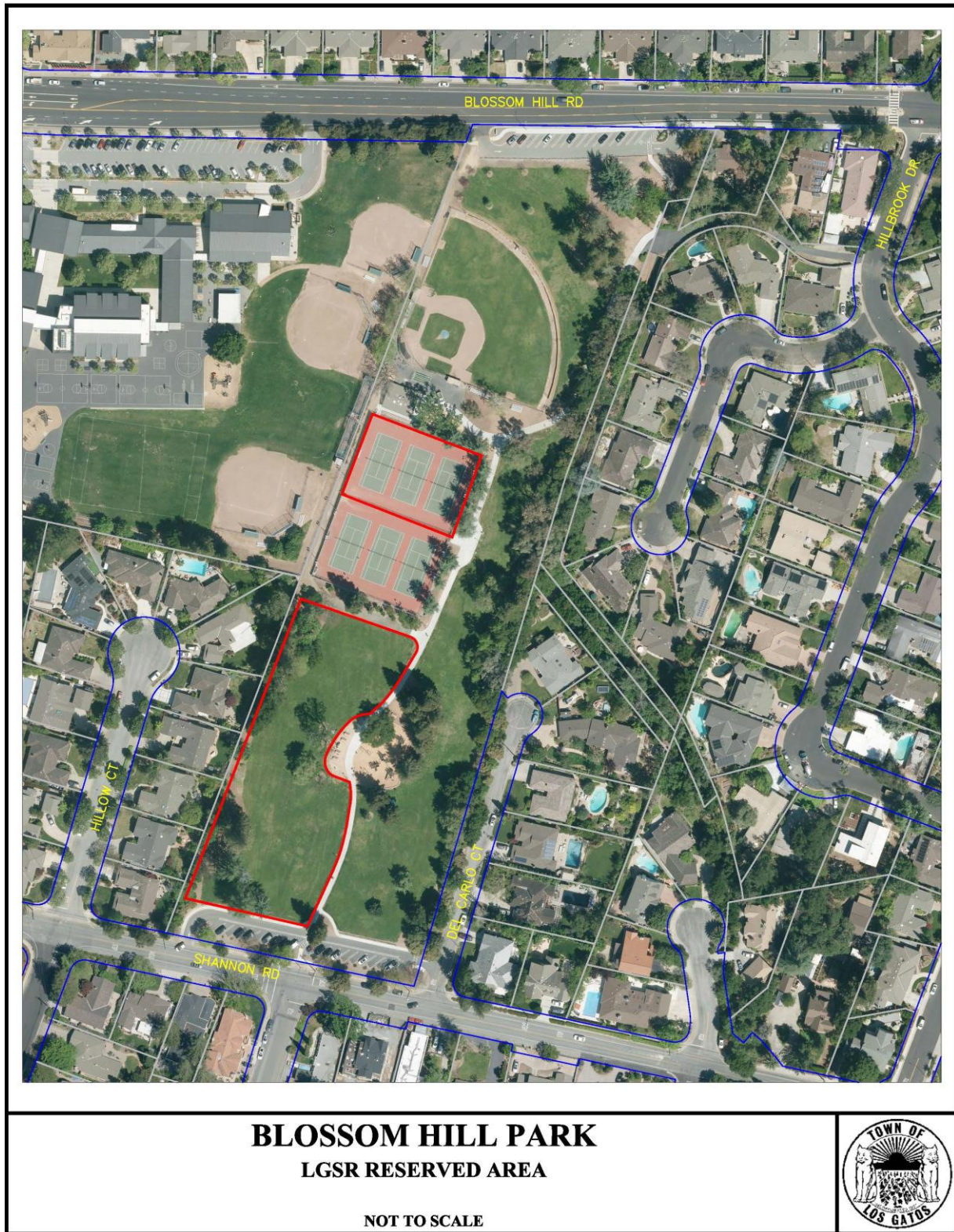
ATTACHMENT 2

ATTACHMENT 1
Areas Included in this Agreement



ATTACHMENT 2

ATTACHMENT 1
Areas Included in this Agreement



ATTACHMENT 2