



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/01/2020

ITEM NO: 12

DATE: November 25, 2020

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Highway 17 Bicycle and Pedestrian Overcrossing (Project 818-0803):

- a. Authorize the Town Manager to Negotiate and Execute a Measure B Funding Agreement with the Santa Clara Valley Transportation Authority (Attachment 1) to Accept a Measure B Grant in the Amount of \$2,754,990 for the Highway 17 Bicycle and Pedestrian Overcrossing Project Final Design Phase;
- b. Authorize Revenue and Expenditure Budget Increases in the Total Amount of \$3,701,200 (\$2,754,990 in Grant Fund and \$946,210 in General Fund Appropriated Reserve) in the Fiscal Year 2020/21 – 2024/25 Capital Improvement Program (CIP) Budget for the Highway 17 Bicycle and Pedestrian Overcrossing Project to Recognize the Receipt of Grant Funds in FY 2020/21;
- c. Authorize the Release of a Request for Proposals (Attachment 2) for the Highway 17 Bicycle and Pedestrian Overcrossing Design Project;
- d. Authorize the Town Manager to Negotiate and Execute a Consultant Agreement with the Highest Ranked Firm in an Amount Not to Exceed \$3,000,000; and
- e. Approve the Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan (Attachment 3).

RECOMMENDATION:

Highway 17 Bicycle and Pedestrian Overcrossing (Project 818-0803):

- a. Authorize the Town Manager to negotiate and execute a Measure B Funding Agreement with the Santa Clara Valley Transportation Authority (Attachment 1) to accept a Measure B Grant in the amount of \$2,754,990 for the Highway 17 Bicycle and Pedestrian Overcrossing Project Final Design Phase;

PREPARED BY: Ying Smith
Transportation and Mobility Manager

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

- b. Authorize revenue and expenditure budget increases in the total amount of \$3,701,200 (\$2,754,990 in Grant Fund and \$946,210 in General Fund Appropriated Reserve) in the Fiscal Year 2020/21 – 2024/25 Capital Improvement Program (CIP) Budget for the Highway 17 Bicycle and Pedestrian Overcrossing Project to recognize the receipt of grant funds in FY 2020/21;
- c. Authorize the release of a Request for Proposals (Attachment 2) for the Highway 17 Bicycle and Pedestrian Overcrossing Design Project;
- d. Authorize the Town Manager to negotiate and execute a Consultant Agreement with the highest ranked firm in an amount not to exceed \$3,000,000; and
- e. Approve the Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan (Attachment 3).

EXECUTIVE SUMMARY:

The Highway 17 Bicycle and Pedestrian Overcrossing project has been identified as a local need through the Bicycle and Pedestrian Master Plan, the Traffic Impact Mitigation Fee program, and the Connect Los Gatos program. The Blossom Hill corridor has been identified in the regional Valley Transportation Plan 2040 and the Valley Transportation Authority's (VTA) Countywide Bicycle Plan.

To date, Town staff has emphasized the community outreach portion of this project, developing a project specific outreach plan and ensuring interested parties have an opportunity at every step to provide input.

The greatest portion of project funding comes from outside sources. Recommendation "a" allows for an agreement with the VTA to support the next phases of design through Measure B funding of \$2.75M. Because of the strong ranking of this project among all projects in the County, funding is available earlier than originally anticipated. Recommendation "b" makes the necessary fiscal year timing and budget adjustments to facilitate continued progress.

The next step of the project is to take the project through the next design phases and environmental analysis. Recommendations "c, d, and e" facilitate that effort with the goal of achieving a project that solves the challenges of the corridor. This report outlines those phases, the schedule, outreach, and Council decision points.

BACKGROUND:

The Highway 17 Bicycle and Pedestrian Overcrossing Project is one of the Connect Los Gatos projects and has received strong support from the Complete Streets Commission and other community members, while the Ohlone Court neighbors remain concerned. The project location is one of the most heavily travelled bicycle and pedestrian locations in Town, serving as a main crossing of Highway 17 on what are narrow and uncomfortable shoulders and sidewalks.

BACKGROUND (continued):

The location is used by all types of users, with perhaps the most notable being students going to and from school.

The Town began a Feasibility Study for the Highway 17 Bicycle and Pedestrian Overcrossing (BPOC) in September 2019. The project is included in the Fiscal Year 2020/21 – 2024/25 CIP Budget. At its March 3, 2020 meeting, the Town Council approved the project purpose and need, and authorized staff to proceed with design alternatives for a separate bicycle and pedestrian overcrossing. Establishing the purpose and need at the onset of the project development phase helps to ensure the project reflects the Council's and community's vision and priorities.

At its September 1, 2020 meeting, the Town Council approved the Feasibility Study for the project and directed staff to proceed with the final design of a separate bridge structure between 16 and 20 feet wide located immediately south of the Blossom Hill Road Bridge.

The *Highway 17 Bicycle and Pedestrian Overcrossing Feasibility Study* includes detailed information on the alignment alternative evaluation and technical reports. The project team also conducted extensive community engagement, which is documented in the *Community Engagement Activities Report*. Both documents are posted on the project website: <https://www.losgatosca.gov/2556/Hwy-17-Bicycle-Pedestrian-Overcrossing>.

Attachment 4 provides a summary of key project background information, including the project purpose and need, alternative evaluation, and community engagement in the Feasibility Study phase.

In April, staff submitted a grant application to the Santa Clara Valley Transportation Authority (VTA) for the Measure B Bicycle and Pedestrian Competitive Grant Program. In June, the VTA Board approved the Measure B program, including the \$2,754,990 award to fund the final design phase of this project.

DISCUSSION:

The next step to move this project forward is the final design phase, which will include preliminary engineering, environmental clearance, and final design. This phase of the project will be funded by the Measure B grant and the Town's local match. The recommended actions are necessary to proceed with the grant acceptance and allocate the Measure B dollars in the project. Relevant information is provided in this staff report to support the Town Council's consideration and evaluation.

DISCUSSION (continued):Project Cost by Phase

The final design phase cost is estimated to be \$3,701,200. The construction cost is estimated to be \$24,932,000 and the total cost with all project phases combined would be \$28,867,700.

Table 1 shows the project costs by phase and funding sources.

Table 1 – Project Cost by Phase and Funding

Phase	Grant	Source	Town	Source/Year	Total
Feasibility Study	\$87,000	TDA3	\$147,000	TMF (FY19/20)	\$234,000
Final Design	\$2,755,000	Measure B	\$946,200	GFAR (FY20/21)	\$3,701,200
Construction	\$23,932,000	TBD	\$1,000,000	TBD	\$24,932,000
Total	\$26,774,000		\$2,093,200		\$28,867,200

Notes to Table 1:

1. TMF = Traffic Mitigation Fees, GFAR = General Fund Appropriate Reserve
2. Feasibility Study and Final Design costs are in 2020 dollars. Construction costs are in 2024/25 dollars (midpoint of construction). All costs rounded to nearest \$100.
3. Total project costs include all phases.
4. Construction costs are based on the most expensive structure type, steel arch.
5. The Town's contributions in the Final Design and Construction phases are pending Town Council's budget decisions.

Project Funding Plan

The Town has been very strategic in investing in the early stage of the project development using the Town's Traffic Mitigation Fee and its share of the Transportation Development Act Article 3 (TDA 3) funds for the current phase. The progress has positioned the project to be competitive in grant programs, including the Santa Clara County 2016 Measure B program. The project was awarded \$2,754,990 in Measure B funds for the final design phase, which will require \$946,200 from the Town's contribution as local match.

The Fiscal Year 2020/21 – 2024/25 CIP Budget shows \$946,200 in General Fund Appropriated Reserve (GFAR) funds as the local match in FY 2021/22. At the time the CIP budget was approved, the VTA Measure B grant funding decision was not finalized and the timing of the Measure B grant availability was unknown. The best assumption at that time was to put both the Measure B grant and the local match in the FY2021/22 budget, setting funds aside in next year's CIP. This project was ranked number six out of 39 submitted regional projects. This competitive ranking allowed the Town to secure funding in the first fund distribution cycle due to the strength of the project. To take advantage of the Measure B funds, the fiscal portions of the staff recommendation would move the funds into the current fiscal year. The Measure B funds will be available upon the execution of the Funding Agreement (Attachment 1). The awarded Measure B grant can only be used for this project's final design, as described in the grant application.

DISCUSSION (continued):

The Town has yet to secure funding for the project construction, with an estimated cost close to \$25 million. The first opportunity to compete for grant funding was the 2021 Active Transportation Program (ATP) cycle. However, after further consultation and analysis, staff concluded that the application would not be competitive in this over-subscribed program. The ATP grant program requested detailed construction phasing and cost information that was beyond the work prepared to date. Staff will continue to seek future grant funding opportunities as the design work progresses, including the next ATP funding cycle in two to three years.

Most of the grant programs are highly specialized with project types well defined. Considering the current revenue forecast and grant programs available at the State, regional and County levels, bicycle and pedestrian projects, such as this one, have a much higher chance of getting funded. For example, the ATP program is not likely to be affected by the revenue decrease due to the COVID-19 pandemic, unlike other State and regional transportation funds. Other project types, such as highway and roadway projects, will likely face uncertainty in revenue options.

Request for Proposal for the Final Design Phase

The project design phase would involve preliminary engineering, environmental determination and clearance, and final design. A draft of the Request for Proposal (RFP) to solicit proposals from qualified engineering design consultants for the final design phase of the project is included as Attachment 2. Below is a list of few key task items included in the draft RFP as scope of services:

- Completion of the required Caltrans project development process to obtain an encroachment permit for construction of the project. This includes completion of the Project Initiation Document (PID), Environmental Documents and Project Report (PA/ED), and the final project Plans, Specifications, and Estimates (PS&E). The process will require subsequent agreements between the Town and Caltrans, along with payment to Caltrans for reimbursement of Caltrans' assistance on the PID phase documents.
- Assistance to the Town in the selection of the final bridge type.
- Provision of consultant services in line with federal project delivery and reimbursement requirements to allow the project to remain eligible for future federal construction funding opportunities.
- Assistance to the Town in the presentation of the 35%, 65%, and 95% complete PS&E to the community and Town Council/Commissions for review and comments.
- Coordination with utility companies regarding the project and any necessary utility relocations and future services.

DISCUSSION (continued):

- Surveying, civil, geotechnical, environmental, structural and other professional engineering services as needed to complete the PS&E.
- Construction support services, potentially including materials testing. The final scope of services for the construction support services task will be refined and awarded when construction funding has been secured for the project.

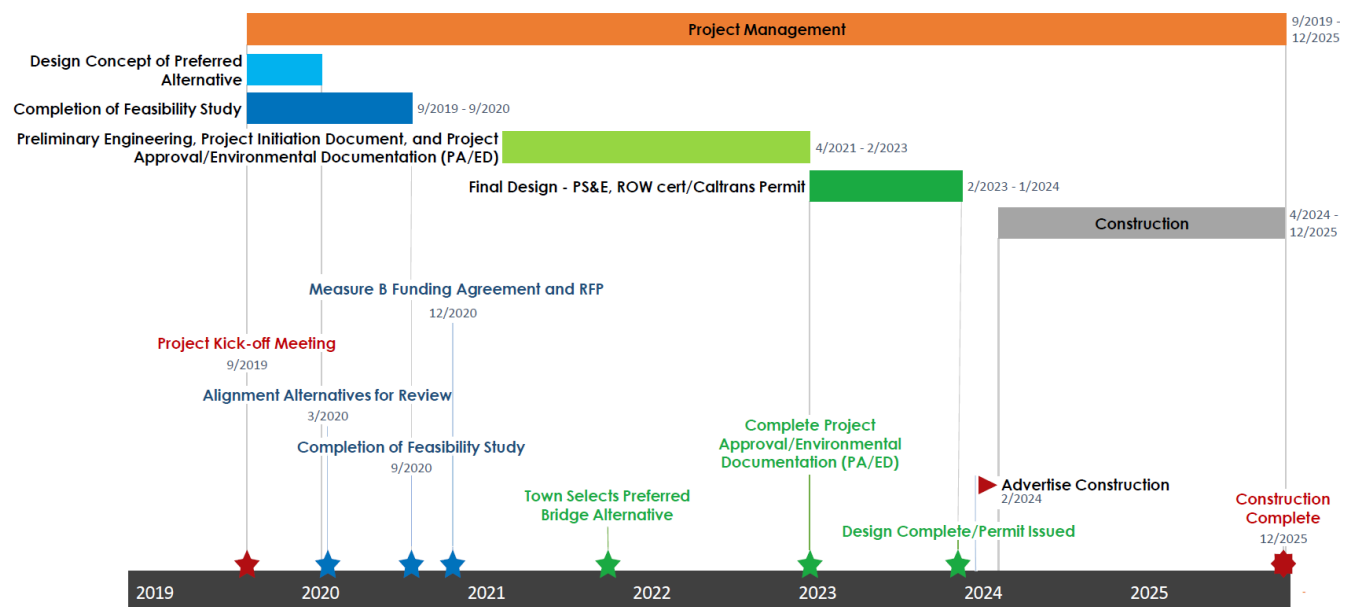
Upon the Town Council's authorization, staff will release the RFP and conduct evaluation per the process described in the RFP. Consultant selection and contract negotiation are expected in February and March, with a target start date in April 2021.

Project Timeline

The project timeline is shown in Figure 1. The Feasibility Study phase was completed. With the Town Council's approval, the final design work can begin in early 2021 and is expected to be completed in 2023. The last phase is construction, which could start as early as 2024 with construction completion by the end of 2025, if construction funding is available.

Figure 1 – Project Timeline

★ ★ Project milestones/Council decisions



Community Engagement Plan

In the Feasibility Study phase, community engagement for this project followed the framework identified in the *Connect Los Gatos Community Engagement Plan*, adopted by Town Council in

DISCUSSION (continued):

March 2020. The project team conducted extensive community engagement, which is documented in the Community Engagement Activities Report.

At the September 1, 2020 Town Council meeting, staff indicated that there would be ample opportunities for the community to provide input in the design and construction phases. Staff is recommending a project specific Community Engagement Plan to guide the engagement efforts in the design phase. The Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan (Attachment 3) provides a framework and describes specific tools and actions to maximize the opportunities for all stakeholders to provide meaningful feedback, as highlighted by the following three key components:

- Stakeholders: Identifying the key stakeholders will help ensure the community engagement efforts are comprehensive, focused, and effective. This is also one of the requirements of the Measure B Funding Agreement.
- Complete Streets and Transportation Commission: The Commission will play a more vital role in representing the community, providing input to the project team, and advising the Town Council in key decisions.
- Information Sharing and Transparency: The project webpage will be the central place for information, including project updates, meetings announcements, documents, and reports. Providing one central place for information allows for consistent and accessible information for all stakeholders.

CONCLUSION:

Approval of the staff recommendations would enable this project to continue through the design phases. In the design phases, the Project Team will present the design to the Town Council for its consideration at several decision points per the project schedule, including bridge type selection, 35% design/environmental documentation, and final design – PS&E, Right of Way certification/Caltrans permit. Upon approval of the final design, if the Town is successful in securing construction funds, the next step is issuing a construction bid, which will also require the Town Council's approval.

ALTERNATIVES:

The Town Council may reject the Measure B grant and choose not to proceed with final design. Although approving the Community Engagement Plan is not required per Town policies or the Measure B grant program, the Town Council's approval will strengthen the community engagement process. The Town Council may choose not to approve the engagement plan or request further changes.

COORDINATION:

At its November 12, 2020 meeting, the Complete Streets and Transportation Commission recommended approving the staff recommendations.

FISCAL IMPACT:

Table 2 shows a comparison between the adopted project budget vs. the proposed revised project expenditure and revenue.

Table 2 - Adopted 2020/21 Project Budget vs. Revised Expenditure and Revenue

Adopted 2020/21 Project Budget					
	2019/20	2020/21	2020/21	2021/22	Total
Revenue	Estimated	Revised Funding	Budget	Proposed	Project
GFAR				\$946,210	\$946,210
Traffic Mitigation	\$147,005				\$147,005
Grants	\$86,995			\$4,484,093	\$4,571,088
Total Revenue	\$234,000			\$5,430,303	\$5,664,303
Total Use of Funds	\$234,000			\$5,430,303	\$5,664,303
Revised 2020/21 Project Budget					
	2019/20	2020/21	2020/21	2021/22	Total
Revenue	Estimated	Revised Funding	Budget	Proposed	Project
GFAR		\$946,210	\$946,210		\$946,210
Traffic Mitigation	\$147,005				\$147,005
Grants	\$86,995	\$2,754,990	\$2,754,990		\$2,841,985
Total Revenue	\$234,000	\$3,701,200	\$3,701,200		\$3,935,200
Total Use of Funds	\$234,000	\$3,701,200	\$3,701,200		\$3,935,200

Table 2 reflects the following specific budget changes:

1. Decrease grant revenue by \$1,729,103 from \$4,484,093 to \$2,754,990 and shift the amount from FY 2021/22 to FY2020/21 to reflect the actual grant amount and year awarded;
2. Change the FY2021/22 GFAR budgeted funds of \$946,210 to FY 2020/21.
3. Shift all expenditures in FY2021/22 to FY 2020/21.

If Council approves this item, the Town will receive grant revenue of \$2,754,990 for the Highway 17 Bicycle and Pedestrian Overcrossing project final design phase. The

FISCAL IMPACT (continued):

recommendation also includes the authorization for a consultant agreement in an amount not to exceed \$3,000,000. The revised project budget and proposed uses are show on Table 3.

Table 3 – Fiscal Table

	Available Budget	Expended/ Encumbered to Date	Proposed Contract Amount	Available Balance
Traffic Mitigation	\$ 147,005	\$ 147,005		
TDA Article 3 (FY 18/19 & 19/20)	\$ 86,995	\$ 86,995		
Measure B Grant	\$ 2,754,990			
GFAR	\$ 946,210			
Total Budget	\$ 3,935,200	\$ 234,000	\$ 3,000,000	
Remaining Balance				\$ 701,200

Note to Table 3:

Measure B Grant and GFAR are only available upon the approval of recommended Council Action.

ENVIRONMENTAL ASSESSMENT:

Actions of authorizing a funding agreement, budget adjustments, approving a consultant services agreement, and approving a community engagement plan are not considered projects as defined under CEQA, and no further action is required. The construction of improvements is considered a project and environmental analysis will be prepared in the final design phase after preliminary engineering is completed.

Attachments:

1. Draft Measure B Funding Agreement with the Santa Clara Valley Transportation Authority.
2. Draft Request for Proposals for Professional Engineering Design Services.
3. Draft Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan.
4. Highway 17 Bicycle and Pedestrian Overcrossing Project Background.
5. Public Comment Received.

**DRAFT – 11.20.2020
FUNDING AGREEMENT
BETWEEN
TOWN OF LOS GATOS
AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR
BICYCLE & PEDESTRIAN OVERCROSSING OVER HIGHWAY 17**

THIS AGREEMENT (“AGREEMENT”) is between the TOWN OF LOS GATOS, referred to herein as “TOWN”, and the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, referred to herein as “VTA”. Hereinafter, TOWN and VTA may be individually referred to as “PARTY” or collectively referred to as “PARTIES”.

I. RECITALS

1. Whereas, on June 24, 2016, the VTA Board of Directors adopted a resolution to place a ballot measure before the voters of Santa Clara County in November 2016 to authorize a one-half of one percent retail transaction and use tax (“2016 MEASURE B”) for 30 years for nine transportation-related program categories; and
2. Whereas, on November 8, 2016, the voters of Santa Clara County enacted 2016 MEASURE B for 30 years to pay for the nine transportation-related program categories; and
3. Whereas, the duration of 2016 MEASURE B will be 30 years from the initial year of collection, beginning April 1, 2017, and continuing through March 31, 2047; and
4. Whereas, on October 5, 2017, the VTA Board of Directors established the 2016 Measure B Program (“PROGRAM”) and adopted the 2016 Measure B Program Category Guidelines; and
5. Whereas, the PROGRAM includes a Bicycle and Pedestrian program category (“BIKE/PED CATEGORY”) to fund bicycle and pedestrian projects and educational programs; and
6. Whereas, the BIKE/PED CATEGORY consists of three sub-categories, including a Capital Projects Competitive Grant Program (“BIKE/PED CAPITAL PROGRAM”); and
7. Whereas, on October 3, 2019 the VTA Board of Directors adopted the BIKE/PED CAPITAL PROGRAM criteria; and
8. Whereas, on December 3, 2019 the Fiscal Year (FY) 2020 (July 1, 2019 to June 30, 2020) to Fiscal Year 2030 (July 1, 2029 to June 30, 2030) BIKE/PED CAPITAL PROGRAM call for projects was released; and
9. Whereas on June 4, 2020 the VTA Board of Directors approved the FY2020 to FY2030 10-year priority project list for the BIKE/PED CAPITAL PROGRAM; and
10. Whereas, Bicycle & Pedestrian Overcrossing over Highway 17 is an eligible project on the VTA Board of Directors approved FY2020 to FY2030 10-year priority project list for the BIKE/PED CAPITAL PROGRAM; and

11. Whereas, the anticipated cost for the Conceptual Design and Final Design Phases of the Bicycle & Pedestrian Overcrossing over Highway 17 project is expected to be \$3,935,700; and
12. Whereas, TOWN has contributed \$234,500 towards the Conceptual Design Phase of the Bicycle & Pedestrian Overcrossing over Highway 17; and
13. Whereas, VTA and TOWN desire to specify herein the terms and conditions under which the BIKE/PED CAPITAL PROGRAM funds will be administered to TOWN by VTA as directed by the VTA Board of Directors.

NOW, THEREFORE, the PARTIES agree as follows:

II. AGREEMENT

1. PROJECT DESCRIPTION

The project is a new, separate bicycle and pedestrian overcrossing (BPOC) just south of the existing Blossom Hill Road bridge to provide a new Class I facility for bicyclists and pedestrians (PROJECT). The PROJECT is located south of the existing Blossom Hill Road bridge over Highway 17 and is along the Blossom Hill Road between Roberts Road West and Roberts Road East in the Town of Los Gatos. PROJECT includes Conceptual Engineering and Final Design Phases.

2. SCOPE OF WORK

The scope of work for this AGREEMENT is for the Final Design for the PROJECT (SCOPE OF WORK). SCOPE OF WORK activities include environmental clearance, right-of-way, and activities leading to the development of bid-ready construction document. The deliverable of the SCOPE OF WORK is the bid-ready document for construction.

3. TERM OF AGREEMENT

The term of this AGREEMENT will commence on the Effective Date (as defined in the signature block below) and continue through the later of: (i) June 30, 2024, (ii) completion of the PROJECT, or (iii) cancellation of the PROJECT.

4. COST OF PROJECT

Total cost of the PROJECT is estimated not to exceed \$3,935,700.00 (TOTAL PROJECT COST). TOTAL PROJECT COST includes \$234,500 in Conceptual Engineering costs that have been borne by the Town of Los Gatos.

The TOTAL PROJECT COSTS means the total cumulative dollar amount actually incurred and expended toward the PROJECT by all PARTIES involved, as measure at the completion or termination of the PROJECT.

5. COST OF SCOPE OF WORK

The total cost of the SCOPE OF WORK is estimated not to exceed \$3,701,200 (TOTAL SCOPE OF WORK COST).

6. FINANCIAL CONTRIBUTION TO COST OF PROJECT

- a. VTA's Financial Contribution for PROJECT. VTA will contribute an amount not to exceed \$2,754,900.00 of BIKE/PED CAPITAL PROGRAM funds to be used by TOWN for completion of SCOPE OF WORK of PROJECT. All funds will be available on a reimbursement basis only, pursuant to the terms and conditions set forth herein.
- b. TOWN's Financial Contribution for PROJECT. TOWN is solely responsible for all funds TOWN has expended toward the PROJECT prior to Effective Date of this AGREEMENT, and TOWN must not seek reimbursement from VTA for such costs.
- c. Additional Funds. Any additional funds required to complete the PROJECT will be TOWN's sole responsibility.

7. SCOPE OF WORK SAVINGS

If the SCOPE OF WORK is anticipated to be delivered under budget, BIKE/PED CAPITAL PROGRAM funds will be reduced in proportion to TOWN's Financial Contribution to SCOPE OF WORK.

8. ELIGIBLE USE OF FUNDS

Only SCOPE OF WORK costs incurred by TOWN after the Effective Date of this AGREEMENT, will be eligible for reimbursement.

VTA will only reimburse TOWN for actual costs directly related to the SCOPE OF WORK ("ELIGIBLE COSTS"). ELIGIBLE COSTS are costs that: (i) are directly related to the SCOPE OF WORK of the PROJECT; and (ii) were incurred in compliance with all applicable 2016 Measure B program requirements.

9. TOWN's ROLE

- a. Tasks. TOWN will be the sponsor and implementing agency for the final design phase for the PROJECT. In its role as sponsor and implementing agency under this AGREEMENT, TOWN must perform and/or be responsible for the following tasks:
 - i. Serve as project manager for PROJECT;
 - ii. All actions necessary to procure design services for the PROJECT, including but not limited to advertising the work via a public solicitation, opening bids in response to the public solicitation, awarding a contract, approving contract documents, and administering the awarded design contract in accordance with all applicable laws, regulations, and codes, including but not limited to the California Public Contract Code and the California Labor Code.

- iii. Conduct standard close-out activities for the PROJECT, including but not limited to performing final accounting review and reviewing all contractual requirements.

b. Other PROJECT Management Duties. TOWN must:

- i. Submit to VTA the most current version of VTA's 2016 Measure B Complete Streets Checklist for Capital Projects (as supplied by VTA to TOWN) within five (5) business days of the Effective Date of this AGREEMENT.
- ii. Submit a project management plan (PMP) to VTA within thirty (30) business days of the Effective Date of this AGREEMENT. The PMP must be in writing and must include information regarding staffing plan, cost, schedule, contracting plan, and risk assessment.
- iii. Actively monitor actual PROJECT expenditures to ensure that the 2016 MEASURE B funds are used to pay only for ELIGIBLE COSTS (as defined in Section 8).
- iv. Provide VTA with written quarterly progress updates on the PROJECT, including but not limited to updates on PROJECT expenditures, any changes in scope and schedule, and PROJECT status.
- v. Submit the PROJECT's final report ("FINAL REPORT") to VTA. This FINAL REPORT must be in writing and must include information regarding final PROJECT, along with any other information VTA may require for inclusion in the FINAL REPORT.
- vi. Provide VTA copies of PROJECT deliverables including, but not limited to, reports, designs, drawings, plans, specifications, schedules, and other materials. TOWN will provide VTA a minimum of thirty (30) calendar days to review and provide comments. VTA's comments must be considered in the final design phase of the PROJECT before TOWN constructs the PROJECT. If TOWN chooses not to incorporate any VTA comment into the final design for the PROJECT, TOWN must provide VTA with a written explanation of why such comment was not incorporated.
- vii. TOWN will make staff available to present on the PROJECT at VTA committees as needed.

10. VTA's PROJECT Role. VTA will perform and/or be responsible for the following tasks:

- a. Tasks. VTA will perform and be responsible for the following tasks to perform oversight for ELIGIBLE PROJECT ACTIVITIES:
 - i. Review PROJECT's Complete Streets checklist to ensure Complete Streets compliance;
 - ii. Provide technical oversight of PROJECT, including reviews of PMP and PROJECT deliverables listed in Section 9.b.vi.

- iii. Provide oversight of the delivery of the PROJECT to ensure PROJECT compliance with the 2016 Measure B Program Category Guidelines.

Costs and expenses to perform these tasks will be paid for by 2016 Measure B Program Administration funds.

11. TOWN'S OBLIGATIONS

TOWN must:

- a. Ensure that all 2016 MEASURE B funds are expended on only allowable BIKE/PED CAPITAL PROGRAM expenditures as described above in Section 8.
- b. Begin requests for reimbursement of ELIGIBLE COSTS (see Section 8) from VTA within one (1) year of the Effective Date of this AGREEMENT.
- c. Submit to VTA all records including contractors' invoices, miscellaneous invoices, and force account charges as substantiation for invoices submitted to VTA for reimbursement hereunder.
- d. Maintain financial records, books, documents, papers, accounting records, and other evidence pertaining to costs related to this AGREEMENT for five (5) years. TOWN shall make such records available to VTA upon VTA's written request for review and audit purposes. Financial audits will be performed at VTA's sole discretion.
- e. Submit invoices to VTA, no more frequently than monthly, for reimbursement of ELIGIBLE COSTS (see Section 8. ELIGIBLE USE OF FUNDS). TOWN must submit invoices within one year of the date TOWN incurs the cost submitted on the invoice for reimbursement (unless otherwise approved by VTA in writing).

12. VTA'S OBLIGATIONS

VTA will remit the amount due to the TOWN under an invoice within thirty (30) calendar days of receipt of a complete and proper, fully documented invoice complying with the requirements set forth herein.

13. INDEMNIFICATION

Neither VTA nor any officer or employee thereof will be responsible for any damage or liability arising out of or relating to TOWN's acts or omissions under or in connection with any work, authority, or jurisdiction associated with this AGREEMENT. Pursuant to California Government Code §895.4, TOWN must fully defend, indemnify, and save harmless VTA from all suits or actions of every name, kind, and description arising from an injury (as defined by California Government Code §810.8) relating to TOWN's acts or omissions under or in connection with any work, authority, or jurisdiction delegated to TOWN under this AGREEMENT. This provision will survive the termination or expiration of this AGREEMENT.

14. INSURANCE

At all times during this AGREEMENT, TOWN must comply with the insurance requirements and specifications of Exhibit A attached hereto, and herein incorporated by reference.

15. ADDITIONAL INSURED AND INDEMNITY PROVISION

In any agreement executed between the TOWN and a third party for purposes related in any way to the subject matter of this AGREEMENT ("Third Party Contract"), the TOWN must require that VTA be named as (i) Additional insureds on a primary and non-contributory basis with Separation of Insureds and Waiver of Subrogation on all policies of insurance, except when not applicable required in the Third Party Contract and (ii) indemnified parties in any indemnity provision contained in the Third Party Contract. Third Party Contracts must contain insurance requirements with coverages at least as broad as, and limits at least as great as, the requirements of Exhibit B in this AGREEMENT.

16. PUBLIC WORKS

If the TOWN awards a contract to a third party for the performance of a public work (as defined in California Labor Code Section 1720 through 1720.6) (a "Public Works Contract") in connection with this AGREEMENT, the TOWN must comply, and must require such third party to comply, with the requirements of California Labor Code Section 1720 et seq. If the Public Works Contract is funded in whole or in part with federal funds, the TOWN must also comply, and must require such third party to also comply, with the requirements of the Davis Bacon Act (40 U.S.C. Sections 3141-3144 and 3146-3148).

17. COMPLIANCE WITH APPLICABLE LAW

In the execution of the PROJECT and performance of its responsibilities set forth herein, TOWN must comply with all applicable requirements of state, federal, and local law.

18. COMPLIANCE WITH 2016 MEASURE B REQUIREMENTS

In its performance under this AGREEMENT, TOWN must comply with, and must ensure PROJECT compliance with all 2016 MEASURE B requirements set forth in the 2016 Measure B Program Category Guidelines for the BIKE/PED CATEGORY as identified in Attachment B, attached hereto, and herein incorporated by reference.

19. TERMINATION

Each of the PARTIES may at any time terminate this AGREEMENT by giving ten (10) business days' written notice of such termination to other PARTY. Notice must identify the effective date of such cancellation and must be provided in accordance with the terms and conditions of this AGREEMENT.

In the event of termination as set forth herein, TOWN must submit its final invoice to VTA within thirty (30) calendar days of the effective date of termination, solely for ELIGIBLE COSTS incurred by TOWN prior to termination (see Section 8).

20. AUDIT AND RECORDS

- a. All PARTIES shall maintain, and shall require their contractors to maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records and data pertaining to services performed under this AGREEMENT, including the costs of contract administration. Such documentation must be supported by properly executed payrolls, invoices, contracts, and vouchers evidencing in detail the nature and propriety of any charges and must be sufficient to allow a proper audit of services. All checks, payrolls, invoices, contracts and other accounting documents pertaining in whole or in part to the services must be clearly identified and readily accessible.
- b. For the duration of the AGREEMENT, and for a period of five (5) years after final payment, the PARTIES and their representatives shall have access during normal business hours to any books, accounts, records, data, and other relevant documents that are pertinent to this AGREEMENT for audits, examinations, excerpts, and transactions and copies thereof must be furnished upon request.

21. NOTICES

All notices required or permitted under this AGREEMENT must be in writing, will be effective five (5) days after being sent by personal service or certified mail, or forty-eight (48) hours after being sent by electronic mail to the individuals at the addresses set forth below, or to such other address which may be specified in writing by the PARTIES hereto.

VTA:
Marcella Rensi
Deputy Director, Grants & Allocations
Santa Clara Valley Transportation Authority
3331 N First Street
San Jose, CA 95134
Email: marcella.rensi@vta.org

TOWN of LOS GATOS:
[INSERT TITLE]
TOWN
Address
TOWN, CA, Zip Code
Email

Written notification to the other PARTY must be provided, in advance, for changes in the name or address of the individuals identified above.

22. GENERAL TERMS AND CONDITIONS

- a. **Headings.** The subject headings of the articles and paragraphs in this AGREEMENT are included for convenience only and will not affect the construction or interpretation of any of its provisions.

- b. **Construction and Interpretation of Agreement.** This AGREEMENT, and each of its provisions, terms and conditions, has been reached as a result of negotiations between the PARTIES. Accordingly, each PARTY expressly acknowledges and agrees that (i) this AGREEMENT will not be deemed to have been authored, prepared, or drafted by any particular PARTY and (ii) the rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this AGREEMENT or in the resolution of disputes.
- c. **Amendment.** No alteration or variation of the terms of this AGREEMENT will be valid unless made in writing and signed by both of the PARTIES hereto, and no oral understanding or agreement not incorporated herein will be binding on any of the PARTIES hereto.
- d. **Entire Agreement.** This AGREEMENT contains the entire understanding between VTA and TOWN relating to the subject matter hereof. This AGREEMENT supersedes any and all other agreements which may have existed between the PARTIES, whether oral or written, relating to the subject matter hereof. This AGREEMENT is binding upon each PARTY, their legal representatives, and successors for the duration of the AGREEMENT.
- e. **Representation of Authority.** Each PARTY to this AGREEMENT represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this AGREEMENT on behalf of the entity that is a party to this AGREEMENT.
- f. **No Waiver.** The failure of either PARTY to insist upon the strict performance of any of the terms, covenants and conditions of this AGREEMENT will not be deemed a waiver of any right or remedy that either PARTY may have, and will not be deemed a waiver of either PARTY's right to require strict performance of all of the terms, covenants, and conditions hereunder.
- g. **Dispute Resolution.** If a question or allegation arises regarding (i) interpretation of this AGREEMENT or its performance, or (ii) the alleged failure of a PARTY to perform, the PARTY raising the question or making the allegation shall give written notice thereof to the other PARTY. The PARTIES shall promptly meet in an effort to resolve the issues raised. If the PARTIES fail to resolve the issues raised, alternative forms of dispute resolution, including mediation, may be pursued by mutual agreement. It is the intent of the PARTIES to the greatest extent possible to avoid litigation as a method of dispute resolution.
- h. **Severability.** If any of the provisions of this AGREEMENT (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and TOWN shall negotiate an equitable adjustment in the provisions this AGREEMENT with a view toward effecting the purpose of this AGREEMENT, and the validity and enforceability of the remaining provisions or portions or applications thereof will not be affected thereby.
- i. **Governing Law.** The laws of the State of California will govern this AGREEMENT, as well as any claim that might arise between TOWN and VTA, without regard to conflict of law provisions.
- j. **Venue.** Any lawsuit or legal action arising from this AGREEMENT must be commenced and prosecuted in the courts of Santa Clara County, California. TOWN agrees to submit to the

personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.

- k. **Ownership of Work.** All reports, designs, drawings, plans, specifications, schedules, studies, memoranda, and other documents assembled for or prepared by or for; in the process of being assembled or prepared by or for; or furnished to VTA or TOWN under this AGREEMENT are the joint property of all PARTIES. Each PARTY is entitled to copies and access to these materials during the progress of the PROJECT and upon completion of the PROJECT or termination of this AGREEMENT. All PARTIES may retain a copy of all material produced under this AGREEMENT for use in their general activities.
- l. **Attribution to the VTA.** TOWN must include attribution to VTA that indicates part of work was funded by 2016 Measure B Funds. This provision applies to any project or publication that was funded in part or in whole by 2016 Measure B Funds. Acceptable forms of attribution include 2016 Measure B's branding on project-related documents, construction signs, public information materials, and any other applicable documents. VTA will provide 2016 Measure B branding to TOWN.
- m. **Non-discrimination.** The PARTIES and any contractors performing services on behalf of the PARTIES ("Contractors") will not unlawfully discriminate or permit discrimination, harass, or allow harassment against any person or group of persons because of race, color, religious creed, national origin, ancestry, age (over 40), sex, gender, gender identity, gender expression, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition (including cancer), mental disability, physical disability (including HIV and AIDS), genetic information, or military and veteran's status, or in any manner prohibited by federal, state, or local laws. In addition, the PARTIES and Contractors shall not unlawfully deny any of their employees family care leave or discriminate against such employees on the basis of having to use family care leave. The PARTIES and Contractors must ensure that the evaluation and treatment of their employees and applicants for employment is free of such discrimination and harassment.
- n. **Relationship of the PARTIES.** It is understood that this is an AGREEMENT by and between independent parties and does not create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship other than that of independent contractor.
- o. **Warranty of Authority to Execute Agreement.** Each PARTY to this AGREEMENT represents and warrants that each person whose signature appears hereon is authorized and has the full authority to execute this AGREEMENT on behalf of the entity that is a PARTY to this AGREEMENT.

Signatures of PARTIES on following page.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT as of the last date set forth below (“Effective Date”).

***Santa Clara Valley
Transportation Authority***

TOWN

Nuria I. Fernandez
General Manager/CEO

Name
Title

Date

Date

Approved as to Form

Approved as to Form

Shannon Smyth-Mendoza
Sr. Assistant Counsel for VTA

Name
Title

ATTACHMENT A

INSURANCE REQUIREMENTS

TOWN'S ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT TOWN CONFER WITH THEIR INSURANCE CARRIERS OR BROKERS TO DETERMINE THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS REQUIRED BY THIS AGREEMENT.

INSURANCE

Without limiting TOWN's indemnification and defense of claims obligations to VTA, TOWN must procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise under or in connection with any work, authority, or jurisdiction associated with the Agreement. The cost of such insurance must be borne by TOWN. TOWN must furnish complete copies of all insurance policies within three (3) business days of any request for such by VTA.

A. MINIMUM SCOPE OF INSURANCE

Coverage must be at least as broad as:

1. Insurance Services Office General Liability coverage ("occurrence" form CG 0001). General Liability insurance written on a "claims made" basis is not acceptable.
2. Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employer's Liability insurance.
4. Professional Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of Contractor's services under this Contract. This coverage must be continuously maintained for a minimum of two (2) years following completion of this Contract. This coverage may be written on a "claims made" basis, if so, please see special provisions in Section B.

B. MINIMUM LIMITS OF INSURANCE

- a. TOWN must maintain limits no less than:

1. General Liability: \$1,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
 2. Automobile Liability (including umbrella/excess liability): \$1,000,000 limit per accident for bodily injury and property damage.
 3. Workers' Compensation and Employer's Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employer's Liability limits of \$1,000,000 per accident.
 4. Professional Liability: \$1,000,000 each occurrence/aggregate minimum limit per claim.
- b. Notwithstanding any language in this Lease to the contrary, if TOWN carries insurance limits exceeding the minima stated in Section B(a)(1)-(3) immediately above, such greater limits will apply to this Agreement.

C. SELF-INSURED RETENTION

The certificate of insurance must disclose the actual amount of any deductible or self-insured retention, or lack thereof, for all coverages required herein. Any self-insured retention or deductible in excess of \$50,000 (\$100,000 if TOWN is a publicly-traded company) must be declared to and approved by VTA. If TOWN is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention or deductible in excess of \$50,000, TOWN must provide a current financial report including balance sheets and income statements for the past three years, so that VTA can assess TOWN's ability to pay claims falling within the self-insured retention or deductible. Upon review of the financial report, if deemed necessary by VTA in its sole discretion, VTA may elect one of the following options: to accept the existing self-insured retention or deductible; require the insurer to reduce or eliminate the self-insured retention or deductible as respects VTA, its directors, officers, officials, employees and volunteers; or to require TOWN to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Applicable costs resulting therefrom will be borne solely by TOWN. TOWN may request execution of a nondisclosure agreement prior to submission of financial reports.

D. CLAIMS MADE PROVISIONS (NOT APPLICABLE TO GENERAL LIABILITY OR AUTO LIABILITY)

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must comply with the following:

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

E. OTHER INSURANCE PROVISIONS

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

1. General Liability and Automobile Liability

- a. VTA, its directors, officers, officials, employees, and volunteers must be named as additional insureds as respects: liability arising out of TOWN's performance under this Agreement. The coverage must contain no special limitations on the scope of protection afforded to VTA, its directors, officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.
- b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its directors, officers, officials, employees, or volunteers.
- c. Coverage must state that Lessee's insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. The General Liability General Aggregate limit must apply per project, not per policy.
- e. The General Liability policy must be endorsed to remove the exclusion for railroad liabilities, with coverage at least as broad as afforded by ISO CG 24 17.

2. All Coverages

- a. TOWN must agree to waive all rights of subrogation against VTA, its directors, officers, officials, employees, and volunteers for losses arising under or in connection with any work, authority, or jurisdiction associated with the Agreement.

- b. TOWN's insurance coverage must be primary insurance as respects VTA, its directors, officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by VTA, its directors, officers, officials, employees, or volunteers may apply only as excess to TOWN's insurance. TOWN's insurance must not seek contribution from VTA's insurance program.

3. Other Insurance Provisions

- a. The Certificate must disclose the actual amount of the Deductible or Self-Insured Retention.
- b. If any coverage forms or endorsements required by this Agreement are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Agreement, VTA reserves the rights to require TOWN to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

F. ACCEPTABILITY OF INSURERS

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

G. CERTIFICATES OF INSURANCE

TOWN must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy must be signed by an authorized representative of that insurer. The certificates must be issued on a standard ACORD Form. TOWN must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to real.estate@vta.org. All endorsements must be attached to the ACORD certificate in a single PDF document.

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

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

In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA property leased must appear, the list of policies scheduled as underlying on the Umbrella/Excess policy must be

listed, Certificate Holder must be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Agreement documents.

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

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

H. MAINTENANCE OF INSURANCE

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

ATTACHMENT B

Bicycle & Pedestrian Program Guidelines

(Adopted by VTA Board of Directors on October 5, 2017)

Definition from Resolution No. 2016.06.17

To fund bicycle and pedestrian projects of countywide significance identified by the cities, County and VTA. The program will give priority to those projects that connect to schools, transit and employment centers; fill gaps in the existing bike and pedestrian network; safely cross barriers to mobility; and make walking or biking a safer and more convenient means of transportation for all county residents and visitors. Bicycle and pedestrian educational programs such as Safe Routes to Schools, will be eligible for funding.

Total Funding

- \$250 million in 2017 dollars.

Distribution

- Board of Directors will allocate funding schedule and amount for program through the budget cycle.
- VTA anticipates that allocations will be programmed based upon the total allocation for the Bicycle & Pedestrian Program contained in 2016 Measure B divided by the number of years in the measure.
- Future allocations will vary depending on the amount of sales tax revenue collected.
- Funds will be distributed on a 2-year cycle. The program will consist of three categories: education & encouragement programs, planning studies, and capital projects.
- A total of 15% of available program area funds will be set aside for the education & encouragement category. The funds will be allocated as follows:
 - \$250,000 for countywide (including targeting unincorporated areas) education & encouragement programs
 - Remaining funds allocated by TOWN population formula with a \$10,000 annual minimum allocation per TOWN
- A maximum of 5% of available program area funds will be allocated to planning studies grants category.
- If the planning studies grants category is not fully awarded, the remaining funds will roll into the capital category.
- If a cycle's funds are not fully awarded, the balance will roll into the next cycle's budget.
- Example of breakdown of grant program funding: If Bicycle/Pedestrian Program Area is programmed at \$8.3 million/year:
 - Capital - \$6.6 million (minimum)
 - Planning - \$415,000 (maximum)
 - Education & Encouragement - \$1.25 million (maximum)

Implementation

Education & Encouragement (Formula Distribution)

- VTA and individual agencies will enter into a Master Agreement for Education & Encouragement funds.
- VTA will notify agency of estimated allocation for two-year cycle.
- Agency will submit annual education & encouragement work program.
- Funds will be available on a reimbursable basis. Agencies may submit invoices to VTA on a monthly, quarterly or annual basis. Invoices must be submitted within one year of the date posted on the contractor's invoice.
- Education & Encouragement funds may be banked for a maximum of three years with explanation of banking purposes.
- VTA will conduct an assessment regarding the effectiveness of the program.

Grant Program (Competitive)

- Only a public agency can serve as a project sponsor. Other entities must partner with a public agency to apply for a grant.
- The grant program will contain two categories:
 - Capital projects
 - Activities leading to/including:
 - Environmental Clearance
 - Design
 - Right of Way
 - Construction
 - Construction grant requests must include cost estimates supported by 30% to 35% design.
 - Planning studies
 - Includes planning studies to support capital project development for those projects currently listed on Attachment A of 2016 Measure B. It does not include general/master planning efforts.
- The minimum grant award is \$50,000.
- The maximum grant award per sponsoring agency can be no more than 50% of the total available funds per call for projects per cycle, unless the cycle is undersubscribed.
- Project criteria will be developed in conjunction with the VTA Technical Advisory Committee (TAC) Capital Improvement Program Working Group, and brought to the TAC and Bicycle & Pedestrian Advisory Committee (BPAC) for input.
- Scoring committee for the grant program will be comprised of three BPAC members, three Member Agency staff, and one VTA staff person.

Criteria

- Only projects currently listed on Attachment A of 2016 Measure B are eligible.
- Capital Projects will be scored on criteria that supports the language in 2016 Measure B.
 - Countywide significance

- Connection to/serves schools, transit, or employment centers
- Fills gaps in bicycle/pedestrian network
- Provides safer crossings of barriers
- Makes walking or biking safer
- Makes walking or biking more convenient
- Other criteria to consider:
 - Safety benefits
 - Increase in bicycle and pedestrian usage
 - Community support
 - Project readiness
 - Projects serve Communities of Concern

Requirements

- Competitive grant projects require a 10% non-2016 Measure B contribution.
- Reporting requirements will be detailed in agreements executed with VTA for project funding.
- All applications must include a delivery schedule.
- Funds will be available on a reimbursement basis.
- VTA Complete Streets reporting requirements will be required for Planning and Capital projects.
- All collateral material will be required to display a 2016 Measure B logo.



Town of Los Gatos

**REQUEST FOR PROPOSALS
To Provide
PROFESSIONAL ENGINEERING SERVICES
For The
HIGHWAY 17 BICYCLE AND PEDESTRIAN OVERCROSSING PROJECT**

**Contract Numbers:
TLG 19-818-0803**

Date Released:

DECEMBER 4, 2020

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

Proposals are due prior to 1:00 P.M., January 7, 2021



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Request for Proposals for Highway 17 Bicycle and Pedestrian Overcrossing Project Professional Engineering Services

Proposal Due: 1:00 PM on Thursday, January 7, 2021.

Pre-Proposal Meeting: A pre-proposal virtual meeting will be held on **December 17, 2020 at 10:30 a.m.**

Consultants are highly encouraged to attend. For details and the link to the virtual pre-proposal meeting, e-mail Michelle Quinney @ MQuinney@losgatosca.gov before 5pm on December 15, 2020.

A. PURPOSE

The Town of Los Gatos - Parks and Public Works Department hereby invites qualified professionals, experienced in working with public agencies and federally funded Projects (Proposers) to submit proposals to provide services for environmental clearance, engineering design, preparation of construction documents, and construction support services for the Highway 17 Bicycle and Pedestrian Overcrossing Project. The selected Consultant is expected to coordinate and directly interface with California Department of Transportation (Caltrans) and provide all professional services as necessary to complete the environmental clearances, preliminary and final civil engineering design, including structural engineering, geotechnical engineering, surveying and mapping, utility coordination, Project management, bid and construction support, and quality control as outlined in this request for proposals (RFP).

B. OVERVIEW

The Highway 17 Bicycle and Pedestrian Overcrossing Project (Project) is one of many Projects included in the Town's Connect Los Gatos Program. The Connect Los Gatos Program is a collection of bicycle and pedestrian Projects that will promote connectivity and improve the multimodal network throughout the Town. Connect Los Gatos is aimed at making it easier and safer for all to bike and walk in Los Gatos, expanding access and improving safety between key community destination points. Projects included in the Connect Los Gatos program were originally identified in the Town's Bicycle and Pedestrian Master Plan, adopted by the Town Council March of 2017 and updated in September 2020.

The Project is included in the Connect Los Gatos Program as one of the highest priority bicycle and pedestrian improvements for the Town. A Feasibility Study for the Project, to confirm the purpose and need of the Project, and to investigate viable options for a bicycle and pedestrian crossing of Highway 17, was recently completed in 2020. The Feasibility Study and other relevant Project documents are available on the Project website: <http://www.losgatosca.gov/2556/Hwy17BicyclePedestrianOvercrossing>.

In late 2019 the Town began the Feasibility Study and developed the following purpose and need for the Project:

Purpose: To improve bicycle and pedestrian mobility across Highway 17 in the vicinity of the Blossom Hill Road overcrossing. Include a focus on improving safety for all modes of travel and creating a safe route to schools while promoting active transportation, reducing traffic congestion and greenhouse gas emissions by providing comfortable mobility alternatives.

Need: Highway 17 creates both a physical and psychological barrier for both pedestrians and bicyclists as it divides the Town in two. The existing Blossom Hill Road Bridge over Highway 17 is one of only a few roadways that provide the Town with east-west connectivity across the highway. With two travel lanes in each direction, carrying upwards of 63,000 vehicles per day, the roadway is congested and unfriendly to bicyclists and pedestrians.

The current Blossom Hill Road Overcrossing provides 10.5-foot wide travel lanes, 4-foot wide bike lanes, and 5-foot wide sidewalks in each direction. This sub-standard width does not meet current and future bicycle and pedestrian demands. The deficiency becomes more apparent during school hours when the bicycle and

pedestrian volumes are high. Furthermore, the narrow width lacks the necessary separation and protection between the various modes and creates less than optimal conditions given the high volume and speed of vehicles on the roadway. The current facility is considered high stress, especially for vulnerable street users including youth, older adults, and those with access and functional needs.

The Feasibility Study, which included public outreach and community meetings, began by evaluating three basic options for getting pedestrians and bicycles across Highway 17. The pros and cons of each option were identified, and a staff recommendation was made to proceed with a separate bicycle and pedestrian overcrossing (BPOC). At the March 3, 2020 meeting, the Town Council approved the Project purpose and need, and authorized staff to proceed with the feasibility analysis for a separate BPOC over Highway 17. After additional analysis and community input, the final Feasibility Study was approved by the Town Council on September 1, 2020 and directed staff to pursue the final design of a separate bicycle and pedestrian overcrossing to be located to the south of the existing Blossom Hill Road crossing of Highway 17.

The Town is now prepared to move into the design phase for the Project. The Project will include the final design of a separate BPOC structure just south of the existing Blossom Hill Road bridge to provide a new Class I facility for bicyclists and pedestrians. In general, the Project scope includes determination/selection of final bridge type through a community engagement process, environmental clearance, preliminary and final design, resulting in bid ready documents allowing for the construction of the Project.

A Project location map is included in Attachment 1.

The intent is for the Project is to be designed and constructed completely within the existing Town and Caltrans right of way. A Caltrans Encroachment Permit will be required to complete the Project construction, and the Project should be considered to be a Complex Project requiring the preparation of the PID, PA/EA, and PS&E for submission to Caltrans for approval prior to the issuance of the Encroachment Permit. It shall be the Consultant's duty to determine all other permits, as needed, for the Project construction.

The Consultant Services Agreement is anticipated to be a multi-phased contract consisting of two phases as outlined in the Requested Scope of Services. Phase I will include services necessary to complete the environmental clearances, preliminary and final design, bid and award support services. Phase II will include services necessary to provide construction support for the Project throughout construction. A separate Notice to Proceed will be issued prior to the Consultant beginning work on each phase. Payment for each phase shall be as outlined in the Method of Payment section of this RFP. Compensation for Phase I shall be on a lump sum, not to exceed basis and will be paid based on percentage complete of each task. Compensation for Phase II shall be on a cost per unit of work basis and will be paid based on units of work completed. Cost proposals shall be submitted on the appropriate Caltrans forms contained in Attachment 4 – Exhibit 10-H1, 10-H3, and 10-H4.

The funding for Phase I of the Project is funded in part with Santa Clara County 2016 Measure B funds. All Consultant services will need to comply with the requirements attached to the Measure B funding, including invoicing, reporting, insurance, advertising, and record keeping requirements. Funding for the Phase II construction support services will be determined at a later date. It is likely that federal construction funds will be allocated for the construction of the Project. The Consultant shall be required to follow the federal guidelines for the design of the Project in order to meet the requirements regarding future Project federalization. Should federal funds be secured, the Consultant shall be prepared to meet all requirements for providing construction support services compliant with federal Project delivery guidelines and requirements. A consultant services contract will not be awarded to a Consultant without an adequate financial management and accounting as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31.

The DBE goal for this Project is 12%.

The proposals submitted in response to this RFP will be used as a basis for selecting the Consultant for this Project. The Proposer's attention is directed to Section E, "Proposal Requirements." Each proposal will be evaluated and ranked according to the criteria provided in Section F, "Proposal Evaluation," of this RFP.

If any proposer has any question regarding the meaning of any part of this RFP, the proposer shall e-mail a request for an interpretation or clarification to: MQuinney@losgatosca.gov before 3:00 PM on December 22, 2020.

Addenda to this RFP, if issued, will be posted on the Town of Los Gatos - Parks and Public Works Department RFP website at:

<http://www.losgatosca.gov/2258/RFPRFQ>

It shall be the Proposer's responsibility to check the Town's website to obtain any addenda that may be issued.

Proposers are requested to submit three (3) hard copies of the proposal, in addition to a digital copy on a USB flash drive, and under separate cover, one (1) hard copy of the cost proposal. As a result of the continuing Shelter In Place Order, all Town Departments are closed for any in-person services. Therefore, proposal submittals, including the hard and digital copies, shall be mailed via certified mail with return receipt or delivered by package carrier to the Town of Los Gatos – Parks and Public Works Department at the address shown below, to be received by the Town prior to **1:00 PM, January 7, 2021**. Proposals shall be submitted in two separately sealed packages clearly marked:

1. **"PROPOSAL** for the Highway 17 Bicycle and Pedestrian Overcrossing Project – Professional Engineering Services"
2. **"COST PROPOSAL** for the Highway 17 Bicycle and Pedestrian Overcrossing Project – Professional Engineering Services"

and shall be addressed as follows:

WooJae Kim, Town Engineer
Town of Los Gatos - Parks and Public Works Department
41 Miles Avenue
Los Gatos, CA 95030

Proposals received after the time and date specified above will be considered nonresponsive and will be returned to the Proposer.

Any proposals received prior to the time and date specified above may be withdrawn by a written request of the Proposer. To be considered, however, any modified proposal must be received prior to **1:00 PM., January 7, 2021**.

Proposers are advised that should this RFP result in recommendation by Town staff for award of a contract, the contract will not be in force until it is approved and fully executed by the Town Manager and a Notice to Proceed has been issued. It is anticipated that the contract will be awarded in two phases, with an individual Notice to Proceed being issued for the construction support phase.

The performance period of the contract will be from the date of the Notice to Proceed through the completion of the phase, or ultimately through the construction of the Project if all phases are ultimately awarded.

All products used or developed in the execution of any contract resulting from this RFP will remain in the public domain at the completion of the contract.

Any questions related to this RFP shall be submitted in writing to the attention of Michelle Quinney, Special Projects Manager via email at MQuinney@losgatosca.gov. Questions shall be submitted before **3:00 PM on December 22, 2020**. Responses will not be provided to questions received after **3:00 PM on December 22, 2020**. No oral questions or inquiries about this RFP shall be accepted.

The anticipated timeline for the consultant selection process is as follows:

Release of Request for Proposals	December 4, 2020
Pre-proposal Meeting	December 17, 2020
Question Cut-Off (before 3:00 PM)	December 22, 2020

Proposals Due (before 1:00 PM)	January 7, 2021
Proposal Review and Evaluation	January 8 – 29, 2021
Consultant Oral Interviews/Presentations	February 9-10, 2021
Negotiations with Top Ranked Consultant	February 15-26, 2021
Town Manager Considers Contract Award	March 2021
Notice to Proceed	April 1, 2021

C. GENERAL PROVISIONS AND REQUIREMENTS

1. Each Proposer is responsible for determining and complying with all applicable business licensing requirements necessary to complete the Project's scope of work.
2. The successful Proposer shall be required to provide evidence to the Town that it is authorized to do business in California prior to the award of the contract.
3. Each Proposer is responsible for determining and complying with all applicable professional licensing requirements necessary to complete the Project's scope of work.
4. If applicable, California Department of Industrial Relations ("DIR") Registration is required. If applicable, Selected Consultant will be required to certify that they have verified that their subcontractors on this Project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Consultant shall provide such proof of registration to the Town.
5. The Town's Project Manager shall be the Consultant's primary contact for the Town.
6. Throughout the design phase, the consultant's project manager shall provide bi-weekly updates to the Town's Project Manager at minimum. Updates can be in a form of a report, meeting, or telephone conference.
7. The Selected Consultant shall prepare technical documents in compliance with the latest applicable codes, rules, regulations, and guidelines.
8. The Selected Consultant shall manage, coordinate, and review work submitted by the Project's sub-consultants for accuracy and conflicts with other disciplines.
9. The Consultant shall maintain the Consultant's key personnel, as presented in the Proposal through the entire duration of services. The Consultant will conduct their business in a professional manner to schedule and support their personnel to provide the scope of services in a timely and professional manner. The Town must approve of any key personnel change in advance through personnel qualifications review and oral interviews with Town staff.
10. The Selected Consultant shall prepare and periodically update the Project Schedule by identifying milestones, dates for decisions required by the Town, design services furnished by the consultant and sub-consultants, deliverables to be furnished, completion of documentation, commencement of construction, and project completion.
11. The consultant shall not proceed further with next tasks until each design submittals and cost estimates are approved and authorized by the Town.
12. The consultant shall submit design documents for Town's review, evaluation, and comments and address comments provided by the Town into a single set of coordinated comments/responses and make revisions as required by the Town within two (2) weeks. In responding to review comments and revising the design documents, the consultant shall review, coordinate and address all associated consequences of the revisions to maintain the integrity of the documents and the design intent.
13. The Town does not warrant the accuracy or completeness of its documents provided. The consultant shall verify all information to consultant's professional satisfaction and note and report any discrepancies observed in the course of professional activities covered by the services.
14. Deliverables will be submitted in electronic format (PDF) and in native document formats such as Word, Excel, AutoCAD, etc. unless otherwise specified.
15. Selected Consultant shall comply with local, county, regional, State and Federal health orders.

D. REQUESTED SCOPE OF SERVICES

General

The selected qualified professional firm shall provide the environmental clearances, preliminary engineering, final design and construction support for the Highway 17 Bicycle and Pedestrian Overcrossing Project, to be located south of the existing Blossom Hill Road Overcrossing over Highway 17 in the Town of Los Gatos. The selected Consultant shall prepare all work products, including but not limited to plans, specifications and estimates in a prompt, professional, and workmanlike manner, in accordance with the standards of the design profession. The bridge, bike/pedestrian approaches to the bridge, roadway design, intersection improvements and traffic signal design/modifications are to follow Caltrans, Town of Los Gatos, and current ADA Standards for multi-use paths. Design should factor in and accommodate occasional maintenance vehicle travel on the overcrossing.

The Consultant selected shall provide the professional engineering services necessary to complete the contract documents and tasks to advance the Project to the construction phase and shall provide support services to the Town during the bidding and construction phases of the Project, as needed, to successfully complete the Project construction.

The selected Consultant will be delivering the Project in two phases. Phase 1 includes the engineering design work for the Project, and phase two includes consultant construction support during the construction of the Project. Currently the Town only has funding for the Phase I work outlined in this RFP. It is anticipated that the Phase II work will be added to the Consultant contract, by amendment, when construction funding has been obtained.

The Town has secured Measure B funding from the Valley Transportation Agency (VTA) for Phase I. The Town anticipates the funding for the construction of the Project, and for the Phase II construction support services, will include federal funds. Therefore, the Project design should proceed following federal guidelines and should assume the use of federal funds for the construction segment of the Project. The Consultant shall proactively provide direction to the Town regarding the Project steps necessary to deliver the federalized Project consistent with Caltrans and federal reimbursement requirements.

The requested scope of services as presented is an outline only for use in the RFP process. The final scope of services will be negotiated with the selected Consultant prior to the execution of the consultant services agreement.

All work in Phase I shall be done on a lump sum basis and will be paid on a percentage complete for each subtask as ultimately outlined in the final scope of services. All work in Phase II shall be paid on a cost per unit of work. Proposal cost estimates shall be provided for each phase on the appropriate Caltrans Cost Proposal forms and shall be submitted in a separately sealed envelope.

The work shall comply with the requirements of all of the following without limitation, and shall apply to this RFP and any subsequent contract as though incorporated herein by reference:

1. Federal laws
2. State laws
3. Local laws
4. Rules and regulations of governing utility companies and utility districts
5. Rules and regulations of other authorities with jurisdiction over the procurement of products

A preliminary scope of services is outlined below. The Consultant shall review the preliminary scope of services and deliverables and shall include any modifications, recommendations, additions, deletions, as the Consultant believes prudent for the Project in the Consultant's proposal.

For each task/sub-task listed below, (or as modified by the Consultant in the proposal), the proposal shall indicate the anticipated resource allocation (both Consultant and sub Consultants) that will be assigned to the task/sub-task and

the number of hours anticipated for each. The final scope of services shall be developed with the Town during the final contract negotiations with the selected Consultant and shall be included in the final contract for services.

PHASE I - ENGINEERING DESIGN SERVICES AND ENVIRONMENTAL CLEARANCES:

The Consultant selected shall provide all design services, including but not limited to: Project management; preliminary engineering; environmental studies and clearances; utility coordination and right-of-way; permits and coordination with other agencies; surveys and mapping; geotechnical investigations and reports; structural and final design and development of all contract documents; bid support and obtaining the authorization to proceed to construction from Caltrans for the Highway 17 Bicycle and Pedestrian Overcrossing Project as more specifically described as follows.

- **Task A.1 Project Management**

The Consultant shall provide all the necessary Project coordination, administration, management and interfacing with the Town, Caltrans, and other internal/external stakeholders to achieve Project objective. The Consultant shall proactively provide direction to the Town regarding the Project tasks necessary to deliver the federally funded Project consistent with Caltrans permitting requirements and federal reimbursement requirements. The Consultant shall be responsible for Project management activities throughout the life of the contract. The scope of these activities includes, but is not limited to,

- provide, distribute, and maintain contact information for all Project team members
- coordinate and schedule meetings/conference calls as needed
- prepare and distribute meeting minutes
- itemize, track, and pursue all Project action items to completion
- develop and maintain the Project schedule, report on Project progress
- manage Consultant and sub Consultant activities to remain on schedule,
- supervise, coordinate, and monitor design for conformance with all current applicable design standards from the Town, AASHTO, Caltrans Design Standards and Specifications, California Building Code, and any affected utilities
- supervise, coordinate, and monitor the design for conformance with permit requirements from Caltrans, VTA, and utility companies
- conduct field reviews as needed
- prepare and track Town's submissions to Caltrans
- provide internal quality control checks and document quality control actions conducted for the Project
- conduct cross-checking to avoid potential conflicts between various subconsultant's work
- develop Project filing and record keeping system for Project files for a period of 5 years
- develop a list of Project stakeholders for coordination during Project design
- provide the Town with required documents and information, such as quarterly progress reports, reimbursement forms and other documents for compliance with the Measure B funding agreement between the Town and VTA funding. Refer to Attachment 3 – Links to Relevant Project Information for link to funding agreement.

Deliverables to include: Meeting minutes, schedule, progress reports, action item logs, tracking spreadsheets, Caltrans submissions and other items resulting from Consultant's Project management duties

- **Task A.2 Data Collection and Review**– The Consultant shall obtain and collect data as needed to develop general Project design concepts and related activities needed to establish the parameters for final design, such as, existing topography/geometrics, grading and drainage considerations, geotechnical/retaining wall considerations, structural engineering and proposed bridge structure, ADA considerations, extent of required demolition activities, construction phasing/staging, environmental and future maintenance considerations. The scope of these activities includes, but is not limited to, (items to be provided by the Town or items on the Town's Project webpage are as indicated below.).

- Complete an extensive site review/existing conditions assessment of the Project area
- Collect and review existing background information regarding the Project including:
 - o Town's adopted Bicycle and Pedestrian Master Plan and Update (see Attachment 3)
 - o Highway 17 Bicycle and Pedestrian Overcrossing Feasibility Analysis (see Attachment 3)

- Funding Agreement between the Town of Los Gatos and Santa Clara Valley Transportation Agency for the Bicycle and Pedestrian Overcrossing Over Highway 17 (see Attachment 3)
- Caltrans Local Procedures Manual
- Plans for existing utilities in Project area
- Development plans for adjacent properties – (Town to provide)
- Proposed developments in the Project vicinity (Town to provide) and potential Project impacts
- Street improvement plans, including signalized intersections (Town to provide)
- Aerial photos and any available mapping, including digitized topography
- Survey control data
- ROW information, including Caltrans right of way documents, existing easements, etc.
- Existing as-built information from the Town, Caltrans, property owners, local agencies, utility companies, and other organizations
- Existing Blossom Hill Road Highway 17 Overcrossing bridge structure plans and geotechnical information
- Geologic and soil literature in the Project vicinity
- Design standards and codes applicable to the Project
- Town's Standard Specifications and Details for Construction, 2010 Caltrans Standard Specifications and Standard Plans, and applicable portions of the MUTCD and California MUTCD, and other controlling design standards as appropriate
- Americans with Disabilities Act (ADA) requirements
- Connect Los Gatos webpage and Highway 17 Bicycle and Pedestrian Overcrossing Project page
- Minutes from Project related community meetings
- Based on existing conditions and Project objectives, determine required permits and permit requirements necessary for successful completion of Project and review permit applications and requirements
- Based on the data collected and site evaluations, review the preliminary layout as presented in the feasibility study, verify assumptions, and confirm consistency with the Project's objectives and budget.
- Based on information collected, prepare a summary or diagram of existing conditions highlighting any special/potential conditions that may affect the final design (opportunities and constraints diagram)

Deliverables to include: Video of existing site conditions, listing of all potentially required permits, opportunities and constraints diagram

- **Task A.3 Surveys and Base Mapping** – The Consultant shall be responsible for data collection, and all mapping and surveying necessary to complete a comprehensive base map and other plans as indicated below. The scope of a comprehensive base map and survey includes setting Project bench marks and establishing control for Project layout and construction, aerial photogrammetry, design level topographic surveys, identification of all public right-of-way, adjacent parcels, property lines, easements, and existing utility locations. The extent of the topographical surveying and mapping shall extend a minimum of 10' or more beyond the existing Blossom Hill Road right of way to show adequate conforms to existing conditions and proper future drainage. Existing conditions mapping shall include appropriate data collected in Task A.2.
- Consultant shall conduct a detailed field survey to review and record existing conditions in the Project area and shall identify any unusual or special conditions that may affect the design or construction of the Project. The field survey for the Project area shall include at a minimum, the location of all existing above and below grade facilities, including but not limited to, roadways, signing/stripping, medians, traffic signals and appurtenances, fire hydrants, street lights, retaining walls, sidewalks, curbs, gutters, ramps, SR 17 overcrossing structure including the embankments and structural components, fences, gates, utilities, flood control facilities, waterways, outfalls, trees greater than 6" DBH, and any existing irrigation facilities.
- Consultant shall review data and survey information collected with proposed Project layout and shall complete physical verification of utility locations in areas of potential conflict. Consultant shall obtain all permits and approvals necessary to complete the potholing operations. Results of potholing shall be included on the Utilities Base Map.

- Based on the survey and data collected, Consultant shall prepare one or more existing conditions base maps, at a scale of 1"=20' for use in the Project design and community meetings, including
 - o Existing Conditions Base Map
 - o Existing Utilities Base Map
 - o Existing Tree Plan - Consultant shall prepare a separate plan showing the location and number of existing trees over 6" DBH, including size and species
 - o Right of Way Map – showing location of all property lines and easements within or immediately adjacent to the Project area.

Deliverables: Survey data sheets, base map(s) and plans in AutoCAD format– including Existing Conditions Base Map, Existing Utilities Base Map, Tree Locations and Right of Way Map

- **Task A.4 Stakeholder Coordination and Project Permits**– Consultant shall identify all Project stakeholders and shall take actions necessary to coordinate Project design with the Town and Project stakeholders. Meetings with the stakeholders, including the Town, Town Council and Commissions, community members, Caltrans, VTA, any affected utilities, and any affected private properties will be included in this scope of work and shall include preparing and providing supporting documents, reports, and exhibits. Consultant shall determine the need for permits to allow for the ultimate construction of the Project, including a Caltrans encroachment permit, and any other permits deemed necessary for construction access and staging areas and shall prepare required applications, documents, and reports to allow the Town to obtain the Project permits in a timely manner. Design of the Project is to remain within the existing public and Caltrans right of way, however, the Consultant will identify any conform or other activities that may need to temporarily take place on private property, and will coordinate with adjacent property owners to obtain clearances for such activities. Consultant shall coordination permits necessary for geotechnical drilling operations and USA clearances.

Caltrans Coordination: Consultant will take the lead and coordinate with Caltrans and the Town to prepare a Project Initiation Document (PID), Project Study Report-Project Development Study (PSR-PSD), Project Approval & Environmental Document (PA&ED), and final PS&E including all reports and documentation required by Caltrans in order to obtain a Caltrans encroachment permit for the Project. The PID shall comply with the Caltrans standard PSR-PDS requirements and will include the overall site plan and typical conceptual cross-sections for the alternatives identified in the feasibility study. The Consultant shall assist the Town in the development of the necessary Cooperative Agreements with Caltrans for the PID, PA/ED, and PS&E phases. The Consultant shall schedule and hold meetings as needed with Caltrans and shall also schedule and hold regular Project team coordination meetings with Caltrans and shall prepare the meeting agendas, minutes, and action items. It will be the Consultant's responsibility to prepare, implement and monitor a realistic schedule of the activities necessary, to lead the Town through the PID, PA/ED, and PS&E phases of the Project.

Deliverables to include: Approved PID, PA/ED, and PS&E; Project team meeting agendas, minutes, action item lists, Caltrans encroachment permit for Project construction.

Selection of Preferred Bridge Type: The feasibility study has identified three feasible types of bridge structures for consideration. The Consultant shall develop each concept further and shall assist the Town in the presentation of these three alternatives to the community, the Town's Complete Streets and Transportation Commission and the Town Council. The Consultant shall lead the Town's effort to develop a consensus regarding the final bridge type for advancing into the final design process. This process is to take place concurrently with the development of the Project Initiation Document (PID), and shall result the Town Council's selection of the final bridge type prior to the completion of the PID phase. The following tasks are anticipated for the selection of the preferred bridge structure:

- o Prepare an opportunities and constraints diagram for each bridge type
- o Refine each alternative to show impacts to adjacent properties and relationship to adjacent property lines
- o Provide diagrams and plans showing the movement of bicycle and pedestrians across the structures and through the adjacent intersections and across bridge structure

- Develop additional perspectives for each bridge structure showing:
 - Viewer friendly plans showing proposed alignment, profiles, and cross-sections of each bridge alternative
 - Visual simulation/view of each bridge structure from both south and northbound SR 17
 - Visual simulation/view of each bridge from the user's perspective both east and west bound directions
 - Potential additional architectural features or opportunities for each bridge type
 - Refine basic cost estimate for each bridge type
- Assist the Town in a community workshop(s) to review bridge types and determine community preference
- Assist the Town in presentations to the Parks and Recreation Commission, the Complete Streets and Transportation Commission, and Town Council to determine the final bridge type.

Deliverables to include: Opportunities and constraints diagrams, visual simulations, plans, profiles, cross-section, meeting presentations, cost estimates.

Community Coordination: With assistance from the Consultant, Town staff will implement and lead the Project's Community Engagement Plan. Specific community engagement activities required of the Consultant are anticipated to include the following:

- Stakeholder Engagement – The Consultant shall provide supporting documents and exhibits for the Towns use in stakeholder notifications.
- Community Meeting and Workshops – The Consultant and Town shall develop a list of key Project milestones for community input and workshops. For the purposes of this Proposal, Proposers shall include a minimum of eighteen (18) 2- hour public meetings/workshops. A preliminary list of anticipated milestone presentations is outlined below. The Town shall arrange venues for workshops and shall notify stakeholders of meetings and workshops, however the Consultant shall be prepared to lead the community discussion/workshops and Commission/Council presentations and shall provide supporting documentation and visual aids. Visual aids shall include renderings and visual simulations of major Project elements. All Project materials shall include the appropriate Measure B logo and acknowledgements. The Consultant shall provide meeting summaries and follow up on outstanding comments or issues. It is anticipated that the community meetings, workshops, and presentations will be required at the following Project milestones:
 - Preferred Bridge Type Selection – Two (2) community workshops, plus four (4) Council or other Commission presentations
 - Community/Commission Design Reviews– minimum of two (2) each at PID, PA/ED, 35% design, 65% design, and 95% design
 - Town Council presentation at 35% and at 100% complete PS&E
- On-line Engagement – Consultant shall provide periodic progress updates for the Town to post on the Project web-page.

Deliverables to include: Workshops and presentations (min. 18), agendas, visual aids/visual simulations, renderings, meeting summaries, follow-up as needed,

VTA Coordination: Consultant shall review the Town's funding agreement with the VTA for the Project and shall assist the Town in compliance with the requirements contained in the funding agreement. The following tasks are anticipated to be required:

- Provide the Town with written quarterly progress updates on the Project, including but not limited to updates on Project expenditures, any changes in scope and schedule, and Project status.
- Include insurance coverage and endorsements as required by VTA funding agreement.
- Provide VTA copies of Project deliverables including, but not limited to, reports, designs, drawings, plans, specifications, schedules, and other materials. Consultant shall allow VTA a minimum of thirty (30) calendar days to review and provide comments and shall include such review time in the master Project schedule. VTA's comments must be considered in the final design phase of the Project. Consultant shall provide back-up information as necessary for any VTA comment that will not be incorporated into the final design documents.

- Consultant shall be available to present on the Project at VTA committees as needed.
- Submit to the Town all records including invoices, miscellaneous invoices, and force account charges as substantiation for invoices submitted to VTA for reimbursement hereunder.
- Provide information to the Town for the submittal of the Project's final report to VTA, including information regarding final Project costs and post-construction photos, along with any other information VTA may require for inclusion in the final report.
- Maintain financial records, books, documents, papers, accounting records, and other evidence pertaining to costs related to the Project for five (5) years. Consultant shall make such records available to VTA and the Town upon written request for review and audit purposes. Financial audits may be performed at VTA's sole discretion.

Deliverables to include: Updates, invoices, reports, written responses to VTA review comments.

Utility Coordination – The complete effort for utility coordination is to include accurately identifying and mapping of existing utilities, identifying and defining any relocations or modifications required by the Project, and documenting utilities in accordance with Caltrans policies, and coordinating any future utility requirements for the Project.

- Coordinate with all utility companies early in Project to identify and confirm any potential conflicts with the Project.
- Submit proposed plans to utility companies as necessary for review in accordance with utility requirements.
- Complete potholing to verify location of utilities in potential conflict areas.
- Coordinate any necessary utility relocations, including and temporary relocation of the utility facilities, as needed, for bridge installation or other construction considerations.
- Coordinate with PG&E and the SJWC for future power and water service points needed for the Project.
- Develop and maintain a list of utility contacts and relocation tracking database for the Project design and construction activities.
- Prepare Utility A, B, and C letters.
- Conduct utility coordination meetings, prepare agendas, minutes, and track action items.
- Prepare utility conflict maps clearly delineating existing and proposed utilities in current and final locations.
- Provide support to the Town for the utility relocation process, determining liability for the costs associated with necessary relocations.
- Prepare necessary Utility Agreements.
- Incorporate relocation activities into Project schedule.
- Certify that all utility conflicts are addressed and other actions necessary to obtain the Utility Certification as part of the ROW Certification.

Deliverables to include: A, B, C, letters and utility certifications, agreements, permits, clearances as required to obtain the Caltrans encroachment permit and for construction of the Project, meeting minutes, utility contact list.

- **Task A.5 Environmental Studies and Documentation – CEQA and NEPA** The Consultant shall complete all required environmental reviews and obtain all environmental clearances to allow the Project to move forward into construction. All environmental documents and reports, studies and public noticing shall be conducted according to the provisions of the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA). Consultant will prepare an Initial Study pursuant to the requirements of CEQA. For the purposes of this proposal, Proposers shall assume the City will be designated as the lead for the CEQA process and that the Initial Study will determine a Categorical Exemption is the appropriate filing for the Project. NEPA clearance will be required due to the future federal funding for construction of the Project. Consultant will work with Caltrans, the lead for the NEPA process, and will complete all studies as identified by the Initial Study and as required by Caltrans to complete the NEPA documents. For proposal purposes, Proposers should assume the appropriate filing for the NEPA will be a Categorical Exclusion. The

Proposer shall confirm that the Project team possesses the expertise necessary to complete any level of environmental documentation.

Consultant will attend field meetings, conduct field investigations, research and review appropriate literature, prepare forms (including any required maps, plans, and/or exhibits), and prepare any/all required technical reports/studies necessary to obtain the CEQA and NEPA clearances.

Regulatory Agency Permits - Consultant will identify any/all regulatory agency permits required for the Project, including the State Water Resources Control Board. Consultant will prepare/submit required applications to the each identified regulatory agency and obtain approvals/permits as required for the Project. Consultant will coordinate and attend any meetings required for/by the regulatory agencies.

Deliverables to include: Environmental studies and reports as required by Caltrans, CEQA and NEPA, CEQA and NEPA clearances, Caltrans authorization to proceed to final design, Regulatory permits and documentation of activities required by the State Water Resources Control Board, Incorporation of mitigation measures, if any, into final contract documents.

- **Task A.6 Geotechnical Investigations and Reports** – The Consultant shall conduct geotechnical investigations as necessary to ensure that all geotechnical data within the Project area that may affect the final design and construction of the Project are identified and addressed per the Caltrans encroachment permit requirements and in the final design of the Project.
 - Investigations shall include a boring program for the bridge abutments and supports, any relevant design parameters, bearing capacities, anticipated settlements, testing locations for hazardous or unsuitable materials, subgrade preparation, and treatment recommendations for wet, unsuitable and/or saturated conditions as appropriate.
 - Consultant shall provide the number of necessary borings in the Project area, located appropriately to provide sufficient information to support cost-effective solutions for final design of the proposed improvements. The proposed boring locations (and quantity) shall be identified in the proposal.
 - Conduct any soil sampling and studies, including laboratory testing, as necessary to obtain detailed information required for final design of the improvements, including the existence of any contaminated, hazardous, or unsuitable soil/materials including aerially deposited lead. The number of soils samples shall be sufficient to provide statistically representative indication of the type and level of contaminants as required by the Town and Caltrans.
 - Consultant shall prepare a foundation report and log of test borings for all proposed new bridge structures.
 - Consultant shall perform engineering analyses and evaluation and develop design recommendations for the proposed bridge foundation system. Evaluation shall include alternate foundation systems, seismic and liquefaction considerations, California Building Code and current Caltrans seismic design criteria. ARS curves shall be provided by the Consultant.
 - Draft and final foundation reports shall be prepared for submittal to Caltrans and shall follow Caltrans guidelines and shall include recommendations for the bridge foundation.
 - Consultant shall submit an encroachment permit application to the appropriate agency prior to performing any borings. Coordination and approval from the Town shall be required prior to commencement of the work.
 - Soils testing shall also be completed for the multi-use pathway for use in the final design recommendations.
 - The results of the field work, the laboratory testing, and the analyses shall be provided to the Town in a letter report.

Deliverables: Geotechnical Reports, Soils testing reports, Foundation Reports, and/or Technical Memorandums

- **Task A.7 35% PS&E** – The preliminary 35% design is intended to allow the Town, Caltrans, the community, and other stakeholders to review and comment based upon the basic design concepts early in the design process. Plan development shall be based on the base mapping, data collection, and other determinations that

are developed through the Environmental and PID/ phases. Consultant shall prepare the 35% design and submit to stakeholders for review and comment at community, commission, and Council meetings. Stakeholder comments shall be addressed in writing by the Consultant prior to continuation of the design to the next level.

35% submittal, at a minimum, is anticipated to include the following:

- Town's standard cover sheet and title sheet
 - Index of all plan sheets that will be included in the final plan set
 - Index of all required special details
 - Existing utilities and existing right of way base map
 - Horizontal and vertical alignment plans
 - Demolition plan(s)
 - Typical trail cross sections
 - Preliminary grading and drainage plans and details
 - Preliminary utility plans and details (including water service for landscape areas)
 - Preliminary landscape plans and details
 - Preliminary bridge plans (structural and architectural), typical cross sections, and details
 - Preliminary electrical plans and details (including bridge, trail, traffic signals, etc)
 - Preliminary lighting plans and details
 - Preliminary intersection plans and details (signing and striping)
 - Preliminary retaining wall plans, details, and cross sections
 - Options and preliminary plans for architectural features and enhancements for bridge structure and pedestrian and bicycle facility
 - Tree removal plan
 - Preliminary stormwater management plan
 - Standard Specifications and Special Provisions prepared to a 35% complete level
 - Construction cost estimate including all anticipated cost items and an appropriate estimating contingency
 - Independent quality control check including a review of the 35% plans and specifications for accuracy and conformance to applicable design standards and codes, constructability, and potential for value engineering/cost savings measures.
- **Task A.8 Final Design** – Based on the 35% PS&E documents and resolved comments, and following Caltrans approval of the PA/ED, the Consultant will prepare the PS&E for the 65%, 95% and Final 100% submittals. PS&E shall be submitted to the Town of Los Gatos - Parks and Public Works Department at 65%, 95% and 100% complete. At each submittal stage, the items listed in A.7 shall be completed to the appropriate level of design. At each state, 3 hard copy sets of D-size (24"x36") plans and 3 hard copy sets of B-size (11"x17") plans shall be submitted along with electronic copies prepared in PDF format. At each stage 3 hard copies of the Specifications, Special Provisions, and Cost Estimates shall be provided along with electronic copies in MS Word/Excel. After each submittal, the Consultant shall allow appropriate time frames for identified stakeholders to review the submittal and return comments. All comments provided shall be addressed in writing prior to beginning work on the following submittal.

65% submittal shall include all plan sheets developed to a minimum 65% complete stage and shall have been reviewed by the Consultant for quality control, and coordination and consistency between plan sheets. Specifications and Special Provisions at the 65% level shall include a complete table of contents with all special provisions necessary for the construction of the Project identified. The construction cost estimate shall be prepared and shall include an appropriate estimating contingency.

Bridge Design Calculations and Independent Check: Structural calculations, Project plans and specifications shall be independently checked by a Structural Engineer registered in the State of California and hired by the Town. Consultant shall provide the 65% complete Project plans and specifications and allow sufficient time for the independent review. All review comments from the independent check will be resolved between the designer and the checker, and incorporated into the final design. The independent check will also include a constructability review to evaluate potential fabrication, transport, and erection schemes to verify the feasibility of the proposed structure design and possible joint locations. At least one feasible fabrication and

erection scheme will be outlined on the drawings for approval by the Town, Caltrans, VTA and any third party reviewers. The structural detailing will be developed to allow contractor flexibility if feasible.

Consultant shall ensure all activities necessary to comply with regulations of the State Water Resources Control Board, including the requirements for the National Pollutant Discharge Elimination System permitting process, preparation of Project Registration Documents (PRDs) by a licensed qualified stormwater pollution prevention plan (SWPPP) developer (QSD), submittal of information to the Stormwater Multi Application Permit Tracking System (SMARTS), obtaining the WDID Project number, processing any other applicable documents, studies, waivers, and payment of all fees is addressed by the Consultant and/or included in the construction Project specifications for completion during construction.

95% submittal shall be the fully developed set of contract documents including all plans sheets, Specifications and Special Provisions, details, and other contract documents necessary for the construction of the Project. The construction cost estimate shall be finalized and shall include a 10% estimating contingency. The Consultant shall have conducted an internal quality control review of the plans, Specifications, Special Provisions, and construction cost estimate prior to submitting the 95% complete set and shall ensure that the contract documents are well coordinated, and information is consistent between all documents.

Following submission and review of the 95% submittal, the Consultant shall prepare and provide the Town with the final contract documents 100% for use in the construction bid process. All contract documents (plans, Specifications, Special Provisions, and estimates) are to be signed by the appropriately licensed professional engineer in responsible charge of the design.

Consultant shall provide an electronic copy of the final contract documents, a signed and stamped mylar copy of the final approved plans, and a hard copy of the final signed, approved, and stamped Specifications, Special Provisions, and construction cost estimate. The electronic copy of the plans shall be provided as both AutoCAD files and PDF files, and the electronic copy of the specifications and estimate shall be provided in both Microsoft Word/Excel format and PDF format. Town of Los Gatos - Parks and Public Works Department will be responsible for making copies of contract documents and will distribute to plan rooms and contractors in advance of the bid phase.

Deliverables: Plans, Specifications, Special Provisions, and estimates for Town review at 35%, 65%, 95% design stages; final contract documents, SWPPP, WDID Project number

Right of Way, Utility and ADA Certifications – It is not anticipated that right of way will be required for the Project. Consultant shall verify and prepare the appropriate Right of Way, Utility, and ADA certifications to advance the Project to the construction phase using procedures outlined in the Caltrans Local Assistance Procedures Manual. All property lines are to be shown on the design and construction documents.

Deliverables: Utility Clearance, Right of Way and ADA Certifications

- **Task A.9 - Additional Reports and Services** –Additional reports and/or services may be required by the Town or Caltrans during the course of design. Under Task A.9, Proposers may include, as subtasks, any additional reports or services they believe may be required or necessary as part of the Project. During design, should additional reports or services be required, the Town and Consultant shall agree on the work involved in the required subtask, and the Consultant shall provide a cost proposal for the subtask work. Upon agreement of the scope and cost of the subtask, the Town will provide a written authorization to proceed with the subtask, with deliverables and lump sum payment identified. Subtasks may include any item of work for which the expertise required to complete the subtask was evaluated as part of this RFP. This includes, but is not limited, to additional reports or services requiring surveying, mapping, environmental surveys, studies, and reporting, structural engineering, landscape design, public interaction, soils and geotechnical testing and reporting. There is no guarantee, either expressed or implied, that the services and costs shown for this task A.9 will be authorized in full.

- **Task A.10 Construction Phase Authorization** – Consultant shall assist the Town in the preparation of the Request for Authorization to advance Project to Construction using procedures outlined in the Caltrans Local Assistance Procedures Manual and shall complete any items necessary to obtain authorization for the Town to proceed with construction.

Deliverables: Caltrans Encroachment Permit, Authorization from Caltrans to proceed with construction (E-76)

- **Task A.11 Bid Support Services** – Consultant shall respond in writing to questions that arise during the bid phase and shall prepare addendums, if necessary, which will be distributed by the Town of Los Gatos - Parks and Public Works Department. Each addendum shall also address cost implications to the Project construction cost estimate. Consultant shall prepare written responses to questions received and addenda in a format that can be easily posted to the Town's website. Following completion of bid stage, Consultant shall incorporate any addenda into the final contract documents and shall prepare the final "Conformed Contract Documents". Consultant shall provide an electronic copy of the final Conformed Contract Documents, a signed and stamped mylar copy of the final conformed plans, and a hard copy of the final signed, approved, and stamped conformed Specifications, Special Provisions, and cost estimate. The electronic copy of the plans shall be provided as both AutoCAD files and PDF files, and the electronic copy of the specifications and estimate shall be provided in both Microsoft Word/Excel format and PDF format.

PHASE II - CONSTRUCTION SUPPORT SERVICES:

- **Task B.1 Project Management**
The Consultant shall provide all the necessary Project coordination, administration, management and interfacing with the Town, Caltrans, and other internal/external stakeholders to achieve Project objective. Consultant shall proactively provide direction to the Town regarding the Project tasks necessary to deliver the federally funded Project consistent with Caltrans permitting requirements and federal reimbursement requirements. The Consultant shall be responsible for Project management activities throughout the life of the contract. The scope of these activities includes, but is not limited to,
 - provide, distribute, and maintain contact information for all Project team members
 - coordinate and schedule meetings/conference calls as needed
 - prepare and distribute meeting minutes
 - itemize, track, and pursue all Project action items to completion
 - develop and maintain the Project schedule, report on Project progress
 - supervise, coordinate, and monitor the construction for conformance with permit requirements from Caltrans, VTA, and utility companies
 - conduct field reviews as needed,
 - prepare all submissions for the Town's submittal to Caltrans
 - provide internal quality control checks and document quality control actions conducted for the Project
 - conduct cross-checking to avoid potential conflicts between various subconsultant's work
 - develop Project filing and record keeping system for Project files for a period of 5 years
 - develop a list of Project stakeholders for coordination during Project design
 - provide the Town with required documents required for compliance with the Measure B funding Agreement between the Town and VTA, including but not limited to progress reports, reimbursement forms, etc.)
 - provide monthly Project updates for posting on the Project page of the Town's website

Deliverables: Meeting minutes, schedule, progress reports, action item logs, tracking spreadsheets, Caltrans submissions and other items resulting from Consultant's Project management duties

- **Task B.2 Construction Support Services** – Consultant shall be prepared to provide the following construction support services:
 - Provide construction surveying
 - Provide materials testing services as required per Caltrans, Town, and federal requirements
 - Review of submittals and shop drawings for compliance with Contract Documents

- Review and response to Requests for Information, Requests for Change Orders, Quotes from Contractor
- Review of Contract Change Orders
- Review and tracking of results from materials testing for conformation to Contract Documents
- Field review and geotechnical monitoring during bridge installation
- Structural review and field monitoring during bridge installation
- Prepare design modifications if necessary due to unforeseen conditions

Contract Term – Contract amendments are required to modify the terms of the original contract for changes such as extra time, added work, or increased costs and must be done prior to expiration of the original contract. Only work within the original advertised scope of services shall be added by amendment to the contract.

Method of Payment –

Phase I – Design Services - Lump Sum Fee

Phase II – Construction Support Services – Cost per Unit of Work

For Phase I, progress payments will be based on the percent of work complete by task or upon completion of clearly defined milestones as approved by the Town.

For Phase II, the Consultant agrees to be paid based on a cost per unit of work. The Consultant's cost proposal must specify what is included in the price to be paid for each item. Any item of work not identified in the contract cost proposal is not eligible for reimbursement. New items of work (those within the original scope of work only) must be amended into the contract before work is performed. Consultant's cost proposal shall include a not to exceed amount for these services.

Insurance Requirements - The Consultant shall comply with all insurance requirements of the Town of Los Gatos - Parks and Public Works Department, included in the sample Agreement contained in Attachment 2. Submittal of a proposal is a guarantee that the Consultant will provide documentation of compliance with the insurance requirements prior to contract award.

Minimum Qualifications of Personnel – The Consultant shall meet, at a minimum, the appropriate professional qualifications as required to complete the work outlined in the RFP and as required by State Law and the contract. The responsible Consultant/engineer shall sign all Plans, Specifications, Special Provisions, Estimates (PS&E) and engineering data and reports furnished under the Agreement including the engineer's registration number and expiration date.

Equipment Requirements - The Consultant shall have and provide adequate office equipment and supplies to complete the work required by the Agreement, including any home/work offices or arrangements. Consultant shall have and provide adequate field tools, instruments, equipment, materials, supplies, and safety equipment to complete the required field work and that meet or exceed Caltrans Specifications per the Caltrans Manuals.

Quality Control/Assurance Measures – Consultant shall implement and maintain quality control procedures to manage conflicts, insure product accuracy, and identify critical reviews and milestones. Consultant shall provide knowledge, experience, and familiarity with the Quality Control and Quality Assurance (QA/QC) for California Test Methods and laboratories.

Materials to be provided by the Agency - Unless otherwise specified in this Agreement, the Consultant shall provide all materials to complete the required work in accordance with the Scope of Services and the delivery schedule and cost estimate outlined for each Task. Materials that may be furnished or made available by the Town of Los Gatos - Parks and Public Works Department and where listed in the individual Tasks and this Agreement, are for the Consultant's use only, shall be returned at the end of the Contract.

Work to be performed by the Agency - The Town shall assist in the coordination between the Consultant and the various offices of Caltrans, the Town Council, the community and the contractor, however, it is expected that the selected Consultant has experience with local federally funded Projects and will provide both the technical as well as

procedural support necessary to proactively guide the Town through the design and construction process to be compliant with Caltrans and federal requirements. The Town shall provide general construction management, but shall rely on Consultant for geotechnical, structural inspection, and materials inspection services during construction as needed. The Town reserves the right to hire an independent Materials Testing firm to provide testing services during the Project construction. Should the Town hire an independent Materials Testing firm, the Consultant shall assist the Town in the scheduling, coordination, and review of the activities of the testing firm..

Conflict of Interest Requirements - Throughout the term of the awarded contract, any person, firm or subsidiary thereof who may provide, has provided or is currently providing Design Engineering Services and/or Construction Engineering Services under a contractual relationship with a construction contractor(s) on any local Project listed in this Scope of Services must disclose the contractual relationship, the dates and the nature of the services. The prime Consultant and its subconsultants shall also disclose any financial or business relationship with the construction contractor(s) who are working on the Projects that are assigned for material Quality Assurance services through task orders on the contract.

Similar to the disclosures regarding contractors, all firms are also required to disclose throughout the term of the awarded contract, any Design Engineering services including claim services, Lead Project Management services and Construction Engineering Services provided to all other clients on any local Project listed in this Scope of Services.

In addition to the disclosures, the Consultant shall also provide possible mitigation efforts, if any, to eliminate or avoid any actual or perceived conflicts of interest.

The Consultant shall ensure that there is no conflict before providing services to any construction contractor on any of the agency's Projects listed in this Scope of Work. The submitted documentation will be used for determining potential conflicts of interest.

If a Consultant discovers a conflict during the execution of an assigned task, the Consultant must immediately notify the Contract Manager regarding the conflicts of interest. The Contract Manager may terminate the Task involving the conflict of interest and may obtain the conflicted services in any way allowed by law. Failure by the Consultant to notify the Contract Manager may be grounds for termination of the contract.

Some examples of conflict of interest are the following:

- Certified Materials Tester(s) or Plant Inspector(s) from the same company that performs Quality Control for the Contractor and Quality Assurance for the Town of Los Gatos - Parks and Public Works Department on the same Project.
- Providing services to construction contractor's subcontractors, fabricators, equipment installer, material suppliers and other firms associated with the Projects listed in the Contract can be a potential conflict of interest when such contractor teams are identified.

Project Schedule – The following milestone dates have been identified for the scope of services.

Notice to Proceed	April 2021
Project Initiation Document (PID)	April 2021-February 2022
Bridge Type Selection	June 2021 – October 2021
PA/ED	February 2022 – January 2023
Complete 35% Design	May 2022
Complete 65% Design	July 2023
Complete 95% Design	December 2023
Final Contract Documents	January 2024
Advertise/Bid Phase*	February 2024 – April 2024
Construction Phase*	April 2024 – December 2025*

*The schedule for the bid and construction phases will be dependent on the Town securing funding to proceed and are subject to modification based on the availability of the actual funding source.

In order to easily assess duration and resources, the Project planning and scheduling of tasks and deliverables by the Consultant should be done using a Gantt chart.

E. PROPOSAL REQUIREMENTS

These guidelines are provided for standardizing the preparation and submission of Proposals by all Consultants. The intent of these guidelines is to assist Consultants in preparation of their proposals, to simplify the review process, and to help assure consistency in format and content.

Proposals shall contain the following information in the order listed:

1. Introductory Letter

The introductory (or transmittal) letter shall be addressed to:

WooJae Kim, Town Engineer
Parks & Public Works Department
41 Miles Avenue
Los Gatos, CA 95030

The letter shall be on Consultant letterhead and include the Consultant's contact name, mailing address, telephone number, facsimile number, and email address. The letter will address the Consultant's understanding of the services being requested, statement on financial stability of the firm, and any other pertinent information the Consultant believes should be included. Proposer must state that they take no exceptions to the Town of Los Gatos Consultant Services Agreement (Attachment 2) or list items for exceptions for Town's consideration. All addendums received must be acknowledged in the transmittal letter. Introductory letter shall be limited to two (2) pages.

The letter shall be signed by the individual authorized to bind the Consultant to the proposal.

2. Executive Summary

Proposers shall include in the executive summary a statement addressing the firm's ability to establish an office within the Town of Los Gatos, the County of Santa Clara, or the surrounding area. Executive Summary shall be limited to two (2) pages.

3. Consultant Information, Qualifications & Experience

The Town of Los Gatos - Parks and Public Works Department will only consider submittals from Consultants that demonstrate they have successfully completed comparable federally funded Projects. These Projects must illustrate the quality, type, and past performance of the Project team. Submittals shall include a detailed description of a minimum of three (3) Projects within the past five (5) years which include the following information:

1. Contracting agency
2. Contracting agency Project Manager
3. Contracting agency contact information
4. Contract amount
5. Funding source
6. Date of contract
7. Date of completion
8. Consultant Project Manager and contact information
9. Project Objective
10. Project Description
11. Project Outcome

12. Accuracy of Cost Estimate prepared by Consultant

4. Organization and Approach

1. Describe the roles and organization of your proposed team for this Project. Indicate the composition of subcontractors and number of Project staff, facilities available and experience of your team as it relates to this Project.
2. Describe your Project and management approach. Provide a detailed description of how the team and scope of work will be managed.
3. Describe the roles of key individuals on the team. Provide resumes and references for all key team members. Resumes shall show relevant experience, for the Project's Scope of Services, as well as the length of employment with the proposing Consultant. Key members, especially the Project Manager, shall have significant demonstrated experience with this type of federally funded Project, and should be committed to stay with the Project for the duration of the Project.

5. Scope of Services

1. Review the preliminary scope of services included in the RFP "Requested Scope of Services". Prepare a detailed Scope of Services outline per the RFP "Requested Scope of Services", describing all services proposed to be provided with explanations regarding any proposed deviations or modifications to the preliminary scope of services and tasks included in the RFP. Include for each task the anticipated resource allocation (both Consultant and Sub Consultants) that are proposed to be assigned to the task/sub task along with the anticipated number of hours anticipated for each resource to be assigned.
2. Describe Project deliverables for each phase of your work.
3. Describe your cost control, budgeting, and quality control methodology for this Project.
4. Provide responses to the following:
 - a. Describe critical engineering design issues associated with the Project and how you will address these.
 - b. Describe critical environmental issues and how you will address these.
 - c. Describe how Project cost could be minimized and how Project schedule could be expedited.

6. Schedule of Work

Review the preliminary schedule included in the RFP "Requested Scope of Services". Provide a summary schedule for all tasks/phases of the Project and the proposed Consultant's services, including time for reviews and approvals. The schedule shall meet the Project Schedule as shown in the RFP "Requested Scope of Services" or shall be modified with explanation as to why an alternate schedule is being proposed.

7. Conflict of Interest Statement

The proposing Consultant shall disclose any financial, business or other relationship with the Town of Los Gatos that may have an impact upon the outcome of the contract or the construction Project. The Consultant shall also list current clients who may have a financial interest in the outcome of this contract or the construction Project that will follow. The proposing Consultant shall disclose any financial interest or relationship with any construction company that might submit a bid on the construction Project.

8. Litigation

Indicate if the proposing Consultant was involved with any litigation in connection with prior Projects. If yes, briefly describe the nature of the litigation and the result.

9. Contract Agreement

Indicate if the proposing Consultant has any issues or requested changes to the Town's Agreement for Consultant Services, as included as Attachment 2.

The Consultant shall provide a brief statement affirming that the proposal terms shall remain in effect for ninety (90) days following the date proposal submittals are due.

Prior to award, Consultants must provide documentation of an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. In the proposal, the Consultant shall indicate whether or not the Consultant has possession of a Cognizant Letter of Approval for Indirect Cost Rates from Caltrans which will be accepted for completion of this Project. A contract will not be awarded to a Consultant without an adequate financial management and accounting system as required by 48 CFR Part 31 and 2 CFR Part 200.

10. Federal-Aid Provisions

Consultant shall demonstrate familiarity of providing services for federally funded Projects and a clear understanding of requirements/needs to facilitate the Project through and in compliance with Caltrans Local Assistance and the Local Assistance Procedures Manual. Proposers shall demonstrate familiarity and highlight expertise the following areas.

The proposing Consultant's services are not federally funded, however it is likely the construction will be federally funded, and as such the design services contract is likely to be federalized necessitating compliance with additional requirements. Special attention is directed to Attachment 4 – Local Assistance Procedures Manual Exhibits. The proposing Consultant shall review and comply with Exhibit 10-I: Notice to Proposers DBE Information, and complete and submit the following forms with the proposal to be considered responsive. Sample of these forms and instructions are provided for the proposer in Attachment 4, however it is the Proposer's responsibility to complete the most current version of the form by downloading from the Caltrans website at <https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>.

- Local Agency Proposer DBE Commitment (Consultant Contracts); (LAPM 10-01). **The local agency's current contract DBE Goal is 12%.**
- DBE Information - Good Faith Effort (LAPM 15-H) – Required only if DBE goal is not achieved. It is recommended that proposer prepare and submit a GFE irrespective of meeting the DBE goal.
- Disclosure of Lobbying Activities (LAPM 10-Q)
- Cost proposals per Sample Cost Proposal Exhibit 10-H (10-H1, 10-H3 and 10-H4)

Consultant shall assist the Town in completion of Exhibit 10-A, the Consultant Financial Document Review Request, and provide all required documents for submission. Upon award, during, and at completion of the Project, the successful proposing Consultant will be required to follow applicable federal-aid requirements. Consultant shall complete and submit the following forms with the Agreement at the time of award:

- Local Agency Proposer DBE Information (Consultant Contracts) (LAPM 10-02) This form must be completed by the successful Consultant and it will be incorporated into the final Consulting Services Agreement with the Town.
- Exhibit 10-K Consultant Certification of Contract Costs and Financial Management System
- Any other relevant forms required during the Project.

11. Cost Proposal

The Consultant performs the services stated in the contract for an agreed amount as compensation, including a net fee or profit if applicable, as outlined below.

In order to assure that the Town of Los Gatos - Parks and Public Works Department is able to acquire professional services based on the criteria set forth in the Brooks Act and Government Code 4526, the proposal shall include a cost proposal for each task included in the proposal. Proposing Consultants will be required to submit certified payroll records, as required. **Cost proposal shall be submitted in a separate sealed envelope from the**

proposal. The cost proposal is confidential and will be unsealed after all proposals have been reviewed, and most qualified Consultant has been selected.

The Consultant cost proposal shall include separate cost and resource allocations for the two phases outlined in the RFP “Requested Scope of Services”, as follows:

Phase I – Design Services - Lump Sum Fee. Consultant shall prepare a Lump Sum Fee estimate with progress payments at specifically defined milestones or at defined percent complete stages. Cost estimates shall be prepared in accordance with the reference sample cost estimate in Attachment 3 - Sample Cost Proposal Form 10-H1.

Phase II – Construction Support Services – Specific rate of compensation. Consultant shall prepare a fee estimate based on specific items of work to be performed. The Consultant’s cost proposal must specify what is included in the price to be paid for each item. Any item of work not identified in the contract cost proposal is not eligible for reimbursement. New items of work (those within the original scope of work only) must be amended into the contract before work is performed. Cost estimates shall be prepared and submitted in accordance with the reference sample cost estimate in Attachment 3 - Sample Cost Proposal Form 10-H3 and Form 10-H4 for Prevailing Wage considerations. The Consultant’s cost proposal shall include the hourly rate schedule for all personnel and shall specify a maximum contract amount for these services.

Selected Consultant shall comply with Chapter 10 of the Local Assistance Procedures Manual regarding the A&E Consultant Contract Audit and Review process (including Section 10.1.3).

F. PROPOSAL EVALUATION, CRITERIA AND SELECTION PROCESS

Evaluation Process

All proposals will be evaluated by a Town Selection Committee (Committee). The Committee may be composed of Town of Los Gatos - Parks and Public Works Department staff and other parties that may have expertise or experience in the services described herein. The Committee will review the submittals and will rank the proposers. The evaluation of the proposals shall be within the sole judgment and discretion of the Committee. All contacts during the evaluation phase shall be through the Town of Los Gatos - Parks and Public Works Department Contract Administrator/Project Manager only. Proposers shall neither contact nor lobby evaluators during the evaluation process. Attempts by Proposer to contact members of the Committee may jeopardize the integrity of the evaluation and selection process and risk possible disqualification of Proposer.

The Committee will evaluate each proposal meeting the qualification requirements set forth in this RFP. Proposers should bear in mind that any proposal that is unrealistic in terms of the technical or schedule commitments may be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity and risk of the Town’s requirements as set forth in this RFP.

The selection process will include oral interviews. The Consultant will be notified of the time and place of oral interviews and if any additional information that may be required to be submitted.

Upon completion of the evaluation and selection process, only the cost proposal from the most qualified Consultant will be opened to begin cost negotiations. All unopened cost proposals will be returned at the conclusion of procurement process. Upon acceptance of a cost proposal and successful contract negotiations, staff will recommend a contract be awarded.

Evaluation Criteria

Proposals will be evaluated according to each Evaluation Criteria and scored on a zero to five point rating. The scores for all the Evaluation Criteria will then be multiplied according to their assigned weight to arrive at a weighted score for each proposal. A proposal with a high weighted total will be deemed of higher quality than a proposal with a lesser-weighted total. The final maximum score for any Project is five hundred (500) points.

Rating Scale		
0	Not Acceptable	Non-responsive, fails to meet RFP specifications. The approach has no probability of success. For mandatory requirement this score will result in disqualification of proposal.
1	Poor	Below average, falls short of expectations, is substandard to that which is the average or expected norm, has a low probability of success in achieving Project objectives per RFP.
2	Fair	Has a reasonable probability of success, however, some objectives may not be met.
3	Average	Acceptable, achieves all objectives in a reasonable fashion per RFP specification. This will be the baseline score for each item with adjustments based on interpretation of proposal by Evaluation Committee members.
4	Above Average/Good	Very good probability of success, better than that which is average or expected as the norm. Achieves all objectives per RFP requirements and expectations.
5	Excellent/Exceptional	Exceeds expectations, very innovative, clearly superior to that which is average or expected as the norm. Excellent probability of success and in achieving all objectives and meeting RFP specification.

The Evaluation Criteria Summary and their respective weights are as follows:

No.	Written Evaluation Criteria	Weight
1	Completeness of Response	Pass/Fail
2	Qualifications & Experience	15
3	Organization & Approach	15
4	Scope of Services to be Provided	20
5	Schedule of Work	5
6	Conflict of Interest Statement	Pass/Fail
7	Local Presence	5
8	References	10
Subtotal:		70

No.	Interview Evaluation Criteria	Weight
9	Presentation by team	15
10	Q&A Response to panel questions	15
Subtotal:		30
Total:		100

1. Completeness of Response (Pass/Fail)

- a. Responses to this RFP must be complete. Responses that do not include the proposal content requirements identified within this RFP and subsequent addenda and do not address each of the items listed below will be considered incomplete, be rated a Fail in the Evaluation Criteria and will receive no further consideration.

2. Qualifications & Experience (15 points)

- a. Relevant experience, specific qualifications, and technical expertise of the firm, team, and sub-Consultants to conduct professional engineering services on federal-aid Projects.

3. Organization & Approach (15 points)

- a. Describes familiarity with this specific Project and demonstrates understanding of Project objectives moving forward as a federally funded Project. Demonstrates a thorough review and evaluation of the RFP "Requested Scope of Services"
- b. Roles and Organization of Proposed Team
 - i. Proposes adequate and appropriate disciplines of Project team.
 - ii. Some or all of team members have previously worked together on similar Project(s).
 - iii. Overall organization of the team is relevant to Town of Los Gatos - Parks and Public Works Department needs.
- c. Project and Management Approach
 - i. Team is managed by an individual with appropriate experience in similar Projects. This person's time is appropriately committed to the Project.
 - ii. Project team and management approach responds to Project issues. Team structure provides adequate capability to perform both volume and quality of needed work within Project schedule milestones.
- d. Roles of Key Individuals on the Team
 - i. Proposed team members, as demonstrated by enclosed resumes, have relevant experience for their role in the Project.
 - ii. Key positions required to execute the Project team's responsibilities are appropriately staffed.
- e. Working Relationship with Town of Los Gatos - Parks and Public Works Department
 - i. Team and its leaders have experience working in the public sector and knowledge of public sector procurement process and knowledge of the Caltrans process for consistency with requirements for federally funded Projects.
 - ii. Team leadership understands the nature of public sector work and its decision-making process.
 - iii. Proposal responds to need to assist Town of Los Gatos - Parks and Public Works Department during the Project.

4. Scope of Services to be Provided (20 points)

- a. Detailed Scope of Services to be Provided
 - i. Proposed scope of services is appropriate for all phases and tasks of the work.
 - ii. Scope adequately addresses all known Project needs.
 - iii. Resources appear reasonably assigned to complete tasks presented in scope of services.
 - iv. Scope appears achievable in the timeframes set forth in the Project schedule or presents logical amendments to the scope/schedule.
- b. Project Deliverables
 - i. Deliverables are appropriate to schedule and scope set forth in above requirements.
- c. Cost Control and Budgeting Methodology
 - i. Proposer has a system or process for managing cost and budget.
 - ii. Evidence of successful budget management for a similar Project.

5. Schedule of Work (5 points)

- a. Schedule shows completion of the work within or preferably prior to the Town of Los Gatos – Parks and Public Works Department overall time limits as specified in the RFP “Requested Scope of Services”, or provides modifications that are logical, reasonable, and timely.
- b. The schedule serves as a Project timeline, stating all major milestones and required submittals for Project management and Federal-Aid compliance.
- c. The schedule addresses all knowable phases of the Project, in accordance with the general requirements of this RFP.

6. Conflict of Interest Statement (Pass/Fail)

- a. Discloses any financial, business or other relationship with the Town of Los Gatos that may have an impact upon the outcome of the contract or the construction Project.
- b. Lists current clients who may have a financial interest in the outcome of this contract or the construction Project that will follow.
- c. Discloses any financial interest or relationship with any construction company that might submit a bid on the construction Project.

7. Local Presence (5 points)

- a. Evaluation of the statement addressing firm’s ability to establish an office within the County or surrounding area.

8. References (10 points)

- a. Completeness of information provided regarding references as outlined in the RFP.
- b. Evaluation of references and Project information provided from at least three (3) agencies you currently or have previously consulted for in the past five (5) years.

9. Presentation by Team (15 points)

- a. Presentation is given by Project team members and is clear, concise, and focused on the Project.
- b. Team presentation conveys Project understanding, communication skills, innovative ideas, critical issues and solutions.

10. Q&A Response to Panel Questions (15 points)

- a. Proposer’s Project team members provide comprehensive, well versed, and educated responses to various interview panel questions.

Weighted scores for each Proposal will be assigned utilizing the table below:

No.	Evaluation Criteria	Rating (0-5)	Weight	Score (Rating * Weight)
1	Completeness of Response	N/A	Pass/Fail	Pass/Fail
2	Qualifications & Experience		15	
3	Organization & Approach		15	
4	Scope of Services to be Provided		20	
5	Schedule of Work		5	
6	Conflict of Interest Statement	N/A	Pass/Fail	Pass/Fail
7	Local Presence		5	
8	References		10	

9	Presentation by Team		15	
10	Q&A Response to Panel Questions		15	
Total:			100	

G. Additional Requirements and Information

1. **Authorized signature.** Unsigned proposals or proposals signed by an individual not authorized to bind the prospective Consultant will be considered nonresponsive and rejected.
2. **Reservation of Rights.** This RFP does not commit the Town of Los Gatos to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for services. The Town reserves the right to accept or reject any or all proposals, to postpone or cancel the selection process for its own convenience at any time, to waive any defects or irregularities in the RFP, to negotiate with any qualified Consultant, or to modify or cancel in part or in its entirety the RFP if it is in the best interests of the Town of Los Gatos to do so. Furthermore, a contract award may not be made based solely on price. The Town also reserves the right to accept or reject any individual sub-consultant that a candidate proposes to use. This RFP and the interview process shall in no way be deemed to create a binding contract or agreement of any kind between the Town and the Proposers. The Town's consultant agreement will form the basis of the contract between the parties.
3. **Proposer's Costs.** Each proposer responding to this RFP acknowledges and agrees that the preparation of all materials for submittal to the Town and all presentations, related costs, and travel expenses, including but not limited to vehicle miles, vehicle rentals, flights, transit fares, and meals, are at the Proposer's sole expense. The Town shall not, under any circumstances, be responsible for any cost or expense incurred by the Proposer. In addition, each proposer acknowledges and agrees that all documentation and/or materials submitted with the RFP shall remain the property of the Town.
4. **DIR Monitoring.** This Project may be subject to compliance monitoring and enforcement by the DIR.
5. **Communicating with Town.** If you have any questions regarding this RFP, please contact Michelle Quinney, Special Projects Manager at:

MQuinney, Special Projects Manager
Parks and Public Works Department
Town of Los Gatos
41 Miles Avenue, Los Gatos CA 95030
mquinney@losgatosca.gov

The Town's primary point of contact for this RFP shall be the Town's Project manager who shall administer the RFP process. All communications shall be submitted in writing and shall specifically reference this RFP (identify the Project in the subject line). Only answers issued by Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect. No contact with other Town staff, Town council members, or any other public official concerning the Project during the procurement process is allowed. A violation of this provision may result in the disqualification of the Consultant.

6. **Assumptions of Proposers.** The Town is not responsible for the assumptions of Proposers. Neither the participation of the Town in any pre-proposal meeting, nor the subsequent award of the contract by the Town shall in any way be interpreted as an agreement or approval by the Town that a Proposer's assumptions are

reasonable or correct. The Town specifically disclaims responsibility or liability for any Proposer's assumptions in developing its proposal.

7. **Public Record.** All responses to this RFP become property of the Town and will be kept confidential, subject to the requirements of the California Public Record Act, until a recommendation for award of a contract has been announced. Submittals are subject to public inspection and disclosure under the California Public Records Act. (Cal. Govt. Code sections 6250 *et seq*). Unless the information is exempt from disclosure by law, the content of any proposal, request for explanation, or any other written communication between the Town and any Proposer, and between Town employees or Consultants, regarding the procurement, shall be available to the public. In any event, the Town shall have no liability to Proposer for making disclosures required by the California Public Records Act or other law, court order, legal proceeding discovery request, investigative demand, subpoena, or order from a regulatory body having jurisdiction over either of the parties. Nothing contained herein shall be construed as requiring or obligating the Town to withhold information in violation of the California Public Records Act or other laws.
8. **Equal Opportunity.** The Town hereby notifies all Proposers that it will affirmatively insure that in any contract entered into pursuant to this procurement, minority business enterprises will be afforded full opportunity to submit PROPOSAL's in response to this RFP and will not be discriminated against on the grounds of race, creed, color, national origin, ancestry, sexual orientation, political affiliations or beliefs, sex, age, physical disability, medical condition, marital status, pregnancy, or other protected characteristic as set forth hereunder.
9. **Appeal.** The Town will entertain appeals regarding this RFP process only as set forth herein. The appeal process presented in this RFP will take precedence in the case of any conflict with the appeal processes contained in the Town's Policies and Procedures. The Town will not entertain appeals regarding, or reconsider, substantive scores or determinations made in the evaluation process.

Appeals may be based upon restrictive requirements or alleged improprieties in the RFP that are apparent or reasonably should have been discovered prior to the Town's receipt of proposals. Such appeals shall be written and hand delivered or sent via certified mail to be received by the Town's Contact at least fourteen (14) calendar days prior to the Town's receipt of proposals. The appeal must clearly specify in writing the grounds and evidence on which the appeal is based.

Appeals may also be based upon alleged improprieties that are not apparent in the RFP or that could not reasonably have been discovered prior to the Town's receipt of the proposals. Such appeals are limited to 1) the Town's failure to follow its own appeal procedures set forth in this Section; and 2) other procedural errors in the RFP process. The appeal must clearly specify in writing the grounds and evidence on which the appeal is based. Such appeals shall be in writing and hand delivered or sent via certified mail to be received by the Town. Contact within five (5) calendar days from receipt of the notice from the Town informing of the successful proposer.

The Town's Contact will respond to an appeal in writing within ten (10) business days of receipt, and that determination shall be final.

The appeal procedures summarized in this Section are mandatory and comprise the sole and exclusive appeal procedures for this RFP. A Proposer's failure to comply with the procedures set forth herein will result in rejection of the appeal and constitute a waiver of any right to further pursue a protest or appeal (including, but not limited to, filing a Government Code claim or legal proceeding). If the Town determines the appeal to be frivolous, the Respondent originating the appeal may be determined to be irresponsible and may be ineligible for future purchase orders and/or contracts.

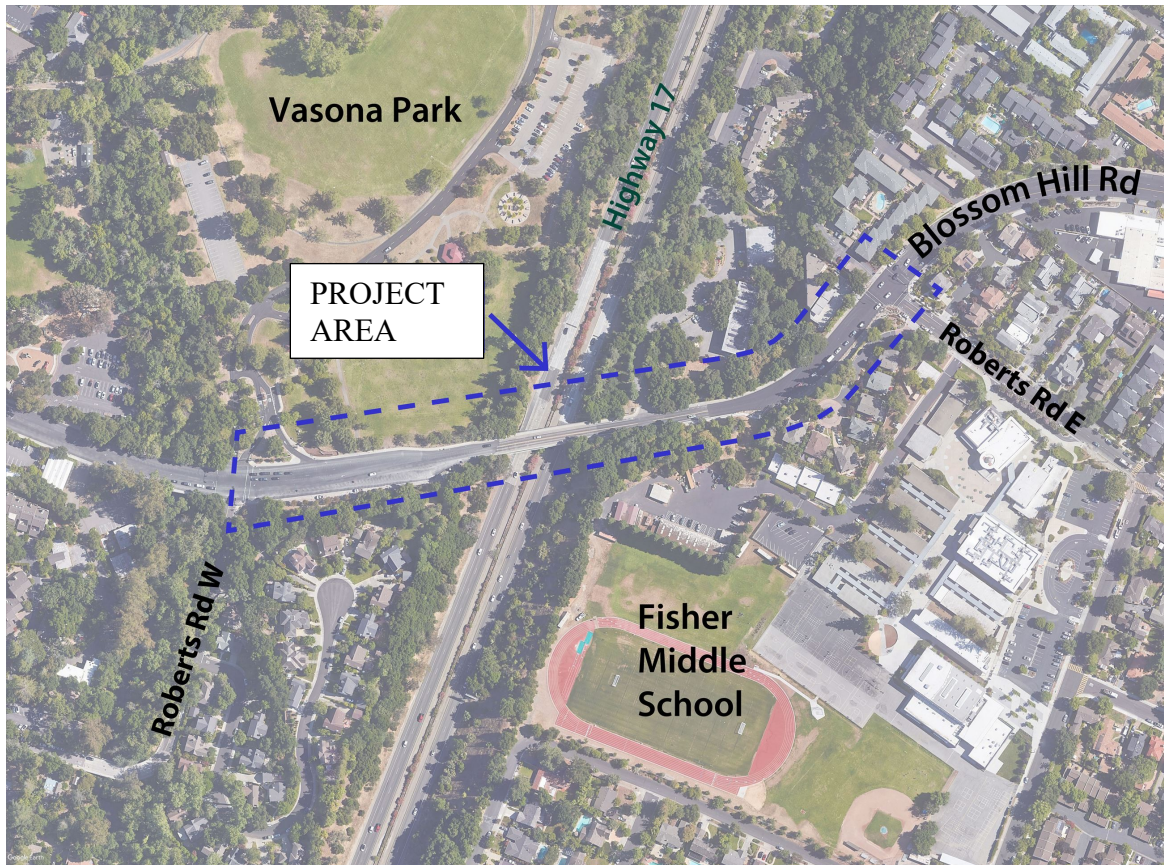
In order to prevail on an appeal based on alleged improprieties not apparent in the RFP as described herein, a Proposer must demonstrate that an error was material and prejudicial to the Proposer's effort to become selected for participation in this Project. In other words, in order to prevail, the Proposer must demonstrate that but for the Town's error, the Proposer would have been selected as the Successful Respondent.

If an appeal is received within five (5) business days from receipt of the notice from the Town informing of the successful proposer, the Town will proceed with the following process: 1) Town provides a copy of the appeal to the Successful Respondent and, within five (5) business days of receipt, successful proposer may provide to the Town a written response to the appeal; 2) within ten (10) business days thereafter, Town prepares a written response to the appeal and to the successful proposer's response, if any, and provides the analysis to appellant and successful proposer; 3) within five (5) business days, appellant and successful proposer may provide written responses; 4) Town sets a hearing date for a Town Council determination on the appeal and prepares a written staff report and recommendation; 5) Town staff notifies successful proposer and appellant of the date and time of the hearing and prepares and distributes a written record containing all documents necessary for the Town Council determination and distributes the record to all parties; 6) Town Council hearing in which successful proposer and appellant are provided full opportunity to present matter to Town Council; 7) Town Council renders a final determination.

10. **Governing Law.** The laws of the State of California shall govern the interpretation and enforcement of the contract. Legal action may be instituted only in the Superior Court of the County of Santa Clara, State of California, or in the Federal District Court in the Northern District of California.
11. **Adherence to All Local, State, and Federal Laws and Requirements.** The Proposer shall adhere to all applicable federal, state, and local laws, ordinances, statutes, rules and regulations, and rulings or directives of any agencies having jurisdiction including without limitation those relating to the environment (including, but not limited to, those promulgated by EPA, California Department of Public Health), wages, hours, health and safety (including, but not limited to, those promulgated by CAL-OSHA and FED-OSHA), equal employment opportunity, and working conditions or which pertain in any way to the Project and/or Proposer's scope of work on the Project.

ATTACHMENT 1

Highway 17 Bicycle and Pedestrian Overcrossing Project
VICINITY MAP



ATTACHMENT 2 –Sample -AGREEMENT FOR CONSULTANT SERVICES

HIGHWAY 17 BICYCLE AND PEDESTRIAN OVERCROSSING PROJECT 18-832-4505

ARTICLE I - INTRODUCTION

- A. This AGREEMENT is made and entered into on _____ (DATE) by and between the TOWN OF LOS GATOS, a California municipal corporation, hereinafter referred to as, LOCAL AGENCY and _____ (CONSULTANT), hereinafter referred to as, CONSULTANT, whose address is _____ (ADDRESS OF CONSULTANT). The CONSULTANT is incorporated in the State of (NAME OF STATE).

The Project Manager for the “CONSULTANT” will be (NAME)

The Contract Administrator for LOCAL AGENCY will be WooJae Kim, Town Engineer.

This Agreement is made with reference to the following facts.

The LOCAL AGENCY desires to engage CONSULTANT to provide professional engineering services for the Highway 17 Bicycle and Pedestrian Overcrossing Project.

The CONSULTANT represents and affirms that it is willing to perform the desired work pursuant to this Agreement.

The CONSULTANT represents and warrants to LOCAL AGENCY that it possesses the distinct professional skills, qualifications, experience, and resources necessary and has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for CONSULTANT to practice its profession and to timely perform the services described in this Agreement. CONSULTANT acknowledges LOCAL AGENCY has relied upon these warranties to retain the CONSULTANT.

CONSULTANT shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws.

CONSULTANT shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.

- B. The work to be performed under this AGREEMENT is described in Article II entitled Statement of Work and the approved CONSULTANT’s Cost Proposal dated (DATE). The approved CONSULTANT’s Scope of Service (Exhibit A) and Cost Proposal (Exhibit B) is attached hereto and incorporated by reference. If there is any conflict between the approved Scope of Services or Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- C. CONSULTANT agrees, to the fullest extent permitted by law, to save, keep, indemnify and hold harmless and defend the LOCAL AGENCY, its officers, agents, employees and volunteers from all damages, claims, demands, 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, errors, or omissions of the CONSULTANT, or any of the CONSULTANT’S officers, employees, or agents or any sub-consultant. CONSULTANT will reimburse LOCAL AGENCY for any expenditure, including reasonable attorney fees, incurred by LOCAL AGENCY in

defending against claims ultimately determined to be due to negligent acts, errors, or omissions of CONSULTANT.

- D. CONSULTANT and the agents and employees of CONSULTANT, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of LOCAL AGENCY. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to LOCAL AGENCY 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.
- E. LOCAL AGENCY is not required to make any deductions or withholding from the compensation payable to CONSULTANT under the provisions of this AGREEMENT, and is not required to issue W-2 forms for income and employment tax purposes for any of CONSULTANT'S assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished.
- F. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds LOCAL AGENCY harmless from any and all claims that may be made against LOCAL AGENCY based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.
- G. Except as expressly authorized herein, CONSULTANT'S obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the LOCAL AGENCY. However, claims for money due or which become due to CONSULTANT from LOCAL AGENCY under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the LOCAL AGENCY.
- H. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- I. No alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- J. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT'S expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II STATEMENT OF WORK

CONSULTANT agrees to perform the services as outlined in "Exhibit A –Scope of Services" within the time frames specified therein, and "Exhibit B – Consultant's Cost Proposal" which are hereby incorporated by reference and attached.

ARTICLE III CONSULTANT'S REPORTS OR MEETINGS

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the LOCAL AGENCY'S Contract Administrator to determine, if CONSULTANT is performing to

expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator, as needed, to discuss progress on the AGREEMENT.
- C. This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the LOCAL AGENCY, State, and/or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the CONSULTANTS fee.

ARTICLE IV PERFORMANCE PERIOD

- A. This contract shall go into effect on (insert award date), contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The contract shall end at the earlier of final Project construction or on 12/31/26 unless extended by contract amendment.
- B. CONSULTANT is advised that any recommendation for contract award is not binding on LOCAL AGENCY until the contract is fully executed and approved by LOCAL AGENCY.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

TASK 1 -

- A. The method of payment for PHASE I of this AGREEMENT will be based on lump sum. The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article II Statement of Work. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the Project. In the instance of a change in the scope of work or scope of the Project, adjustment to the total lump sum compensation will be negotiated between CONSULTANT and LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by AGREEMENT amendment and approved by LOCAL AGENCY.
- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article VI Termination.
- C. CONSULTANT shall not commence performance of work or services until this contract has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this AGREEMENT.
- D. CONSULTANT will be reimbursed within 30 days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than 30 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each Project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and Project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase of this contract. The final invoice must be submitted within 60-calendar days after completion of CONSULTANT's work, unless a later date is approved by the LOCAL AGENCY. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

Town of Los Gatos Parks and Public Works Department
ATTN: Lisa Petersen, WooJae Kim, Town Engineer

Highway 17 Bicycle and Pedestrian Overcrossing Project
41 Miles Avenue
Los Gatos, CA 95030

- E. The total amount payable by LOCAL AGENCY for PHASE I shall not exceed \$(Amount).

PHASE II

- A. The method of payment for Phase II shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to CONSULTANT for the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.
- B. The specified rate to be paid for vehicle expense for CONSULTANT's field personnel shall be \$(Amount) per approved Cost Proposal. This rate shall be for a fully equipped vehicle(s) specified in Article II Statement of Work, as applicable. The specified rate to be paid for equipment shall be, as listed in the approved Cost Proposal.
- C. The method of payment for Phase II of this AGREEMENT, except those items to be paid for on a specified rate basis, will be based on cost per unit of work. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment-rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for, by contract amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY approved overhead rate set forth in the approved Cost Proposal. In the event, LOCAL AGENCY determines that changed work from that specified in the approved Cost Proposal and AGREEMENT is required; the actual costs reimbursable by LOCAL AGENCY may be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "J," shall not be exceeded unless authorized by AGREEMENT amendment.
- D. In addition to the allowable costs, LOCAL AGENCY will pay CONSULTANT a fixed fee of \$(0). The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the scope of work and such adjustment is made by AGREEMENT amendment.
- E. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- F. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- G. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article VI Termination.
- H. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this AGREEMENT.
- I. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by LOCAL AGENCY's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall

detail the work performed on each milestone and each Project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and Project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY including any equipment purchased under the provisions of Article XI Equipment Purchase of this contract. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

Town of Los Gatos Parks and Public Works Department
ATTN: Woo Jae Kim/Town Engineer
Highway 17 Bicycle and Pedestrian Overcrossing Project
41 Miles Avenue
Los Gatos, CA 95030

- J. The total amount payable by LOCAL AGENCY for Phase II shall not exceed \$_____.
- K. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by LOCAL AGENCY's Contract Administrator.
- L. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

ARTICLE VI TERMINATION

- A. This AGREEMENT may be terminated by LOCAL AGENCY provided that LOCAL AGENCY gives not less than thirty (30) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawing and data estimates performed to that date, whether complete or not.
- B. LOCAL AGENCY may temporarily suspend the AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by LOCAL AGENCY by virtue of any breach of this AGREEMENT by CONSULTANT, and LOCAL AGENCY may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due LOCAL AGENCY from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.
- E. LOCAL AGENCY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, LOCAL AGENCY may proceed with the work in any manner deemed proper by LOCAL AGENCY. If LOCAL AGENCY terminates this contract with CONSULTANT, LOCAL AGENCY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to LOCAL AGENCY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 or 48 CFR Part 31, are subject to repayment by CONSULTANT to LOCAL AGENCY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CRF Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

ARTICLE VIII RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Government Code 8546.7; the CONSULTANT, Subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT, including but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT'S Independent CPA, shall make such materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal Government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of CONSULTANT, Subconsultants, and the CONSULTANT'S Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

ARTICLE IX AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTS, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY contract administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the

federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the contract and disallowance of prior reimbursed costs.

- E. CONSULTANT Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Caltrans' Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
1. During a Caltrans' review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR, part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred and fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred and fifty percent (150%) and two hundred percent (200%) - the provisional rate will be eighty five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%) - the provisional rate will be seventy five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
 3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA-audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
 4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA-audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X SUBCONTRACTING

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between LOCAL AGENCY and any subconsultant(s), and no subcontract shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to LOCAL AGENCY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. The CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from LOCAL AGENCY'S obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by LOCAL AGENCY's Contract Administrator, except that, which is expressly identified in the CONSULTANT'S approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to CONSULTANT by LOCAL AGENCY..
- E. Any substitution of subconsultant(s) must be approved in writing by LOCAL AGENCY's Contract Administrator in advance of assigning work to a subconsultant(s).
- F. Prompt Progress Payment
CONSULTANT or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONSULTANT or subconsultant to a subconsultant, CONSULTANT or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.
- G. Prompt Payment of Withheld Funds to Subconsultants
The LOCAL AGENCY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The LOCAL AGENCY designates the method below to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant. Method 3: The LOCAL AGENCY shall hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY of the contract work and pay retainage to CONSULTANT based on these acceptances. CONSULTANT or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the LOCAL AGENCY. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT; deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subcontract performance, or noncompliance by a subconsultant.

ARTICLE XI EQUIPMENT PURCHASE

- A. Prior authorization in writing, by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000) prior authorization by LOCAL AGENCY's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
 - 1. "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
 - 2. Regulation 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the Project.

ARTICLE XII STATE PREVAILING WAGE RATES

- A. No CONSULTANT or subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction Project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY Projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

- C. General Prevailing Wage Rate Determinations applicable to this Project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.
- D. Payroll Records
 - 1. Each CONSULTANT and subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a. The information contained in the payroll record is true and correct.
 - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works Project.
 - 2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
 - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
 - c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.
 - 3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
 - 4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or subconsultant performing the work shall not be marked or obliterated.
 - 5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 - 6. The CONSULTANT or subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a subconsultant to comply with this section.

- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.
- F. Penalty
1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any subconsultant shall forfeit to the LOCAL AGENCY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
 2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
 3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or subconsultant.
 4. If a worker employed by a subconsultant on a public works Project is not paid the general prevailing per diem wages by the subconsultant, the prime CONSULTANT of the Project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
 - a. The AGREEMENT executed between the CONSULTANT and the subconsultant for the performance of work on public works Projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the subconsultant to the employees by periodic review of the certified payroll records of the Sub-consultant.
 - c. Upon becoming aware of the Sub-consultant's failure to pay the specified prevailing rate of wages to the subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the subconsultant for work performed on the public works Project.
 - d. Prior to making final payment to the subconsultant for work performed on the public works Project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the subconsultant that the subconsultant had paid the specified general prevailing rate of per diem wages to the subconsultant's employees on the public works Project and any amounts due pursuant to Labor Code §1813.

5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works Project within fifteen (15) calendar days of receipt of a complaint that a subconsultant has failed to pay workers the general prevailing rate of per diem wages.
 6. If LOCAL AGENCY determines that employees of a subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.
- G. Hours of Labor
- Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.
- H. Employment of Apprentices
1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
 2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XIII CONFLICT OF INTEREST

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction Project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction Project which will follow.
- B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise LOCAL AGENCY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.
- C. The CONSULTANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction Project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right in its discretion; to terminate the AGREEMENT without liability; to pay only for the value of the work actually performed; or to deduct from the AGREEMENT price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING

A. CONSULTANT certifies to the best of his or her knowledge and belief that:

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

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

C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subagreements, which exceed one hundred thousand dollars (\$100,000) and that all such sub recipients shall certify and disclose accordingly.

ARTICLE XVI NON DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.

B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.
- I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the LOCAL AGENCY components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
 - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - 3. Does not have a proposed debarment pending; and
 - 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility.

Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

- C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. CONSULTANT, subrecipient (LOCAL AGENCY), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, The LOCAL AGENCY shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is CONSULTANT's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found [here](#).

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies CONSULTANT purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49CFR26.55 defines "manufacturer" and "regular dealer."

This AGREEMENT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTS who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California's statewide overall DBE goal.

- B. The goal for DBE participation for this AGREEMENT is **12%**. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in [Exhibit 10-O2: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

- D. Contract Assurance

Under 49 CFR 26.13(b):

CONSULTANT, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;

- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying CONSULTANT from future proposing as non-responsible

E. Termination and Substitution of DBE Subconsultants

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONSULTANT or DBE subconsultant obtains the LOCAL AGENCY's written consent. CONSULTANT shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the LOCAL AGENCY. Unless the LOCAL AGENCY's consent is provided, the CONSULTANT shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form, included in the Bid.

The LOCAL AGENCY authorizes a request to use other forces or sources of materials if CONSULTANT shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the Project.
2. The LOCAL AGENCY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the LOCAL AGENCY's bond requirements.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the Project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The LOCAL AGENCY determines other documented good cause.

CONSULTANT shall notify the original DBE of the intent to use other forces or material sources and provide the reasons and provide the DBE with 5 days to respond to the notice and advise CONSULTANT and the LOCAL AGENCY of the reasons why the use of other forces or sources of materials should not occur.

CONSULTANT's request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from CONSULTANT to the DBE regarding the request.
3. Notices from the DBEs to CONSULTANT regarding the request.

If a listed DBE is terminated or substituted, CONSULTANT must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

F. Commitment and Utilization

The LOCAL AGENCY's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The LOCAL AGENCY shall request CONSULTANT to:

1. Notify the LOCAL AGENCY's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
 - Name and business address of each 1st-tier subconsultant
 - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
 - Date of payment and total amount paid to each business (see Exhibit 9-F *Monthly Disadvantaged Business Enterprise Payment*)

If CONSULTANT is a DBE CONSULTANT, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify CONSULTANT in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify CONSULTANT in writing of the certification date. CONSULTANT shall submit the notifications to the LOCAL AGENCY. On work completion, CONSULTANT shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to the LOCAL AGENCY within 30 days of contract acceptance.

Upon work completion, CONSULTANT shall complete Exhibit 17-F Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the LOCAL AGENCY within 90 days of contract acceptance. The LOCAL AGENCY will withhold \$10,000 until the form is submitted. The LOCAL AGENCY will release the withhold upon submission of the completed form.

In the LOCAL AGENCY's reports of DBE participation to Caltrans, the LOCAL AGENCY must display both commitments and attainments.

- G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.
- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or Project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within thirty (30) calendar days.
- L. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to the Agency.
- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XIX INSURANCE

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance in compliance with the following:

Minimum Scope of Insurance:

- i. Consultant agrees to have and maintain, for the duration of the 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 LOCAL AGENCY all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by the LOCAL AGENCY before work commences.
- iv. Consultant agrees to have and maintain, for the duration of the 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 LOCAL AGENCY, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of Consultant, premises owned or used by the Consultant. This requirement does not apply to the professional liability insurance required for professional errors and omissions.

- ii. The Consultant's insurance coverage shall be primary insurance as respects the LOCAL AGENCY, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the LOCAL AGENCY, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the LOCAL AGENCY, its officers, officials, employees or volunteers.
- iv. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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

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

Indemnification. The Consultant shall save, keep, hold harmless and indemnify and defend the LOCAL AGENCY its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, 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.

- B. CONSULTANT agrees that the insurance herein provided for, shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, CONSULTANT agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

ARTICLE XX FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only, if sufficient funds are made available to LOCAL AGENCY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.

- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to terminate the AGREEMENT pursuant to Article VI, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI CHANGE IN TERMS

- A. This AGREEMENT may be amended only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY'S Contract Administrator.
- C. There shall be no change in CONSULTANT's Project Manager or members of the Project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by LOCAL AGENCY'S Contract Administrator.

ARTICLE XXII CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXII DISPUTES

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and (Insert Department Head or Official), who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

ARTICLE XXIV INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the Project activities and files at all reasonable times during the performance period of this AGREEMENT.

ARTICLE XXV SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction Project site.

- B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY has determined that such areas are within the limits of the Project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.
- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper

ARTICLE XXVI OWNERSHIP OF DATA

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other Project except the one detailed in this Contract. Any reuse by City for another Project or Project location shall be at City's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.
- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

ARTICLE XXVIII CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.
- E. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than LOCAL AGENCY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXX EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

ARTICLE XXXI PROMPT PAYMENT FROM THE LOCAL AGENCY TO CONSULTANT

The LOCAL AGENCY shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the LOCAL AGENCY fails to pay promptly, the LOCAL AGENCY shall pay interest to the contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the LOCAL AGENCY shall act in accordance with both of the following:

- 1) Each payment request shall be reviewed by the LOCAL AGENCY as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- 2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to CONSULTANT as soon as practicable, but not later than seven (7) days, after receipt. A

request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

ARTICLE XXXII NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT: _____
(NAME)
ATTN: _____
(Project Manager)

(ADDRESS)

LOCAL AGENCY: Parks and Public Works Department
ATTN: WooJae Kim, Town Engineer, Contract Administrator
41 Miles Avenue
Los Gatos, CA 95030

ARTICLE XXXIII CONTRACT

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

ARTICLE XXXIV SIGNATURES

Recommended by Department Head:

IN WITNESS WHEREOF, THE LOCAL AGENCY AND CONSULTANT HAVE EXECUTED THIS AGREEMENT.

TOWN OF LOS GATOS by:

Laurel Prevetti, Town Manager

CONSULTANT by:

Signature

Printed Name and Title

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, CMC, Town Clerk

Town of Los Gatos - CONSULTANT SERVICES AGREEMENT (Continued)

EXHIBIT A – SCOPE OF SERVICES

Selected Consultant will prepare final Scope of Services with Town following consultant selection process.

EXHIBIT B – CONSULTANT'S COST PROPOSAL

Selected Consultant and Town will negotiate and develop final cost proposal following consultant selection process.

ATTACHMENTS TO CONSULTANT AGREEMENT

1. The following exhibits from the Caltrans Local Assistance Procedures Manual (in the most current form) are hereby included in this AGREEMENT for Consultant Services.
 - Exhibit 10-I, Notice to Proposers DBE Information
 - Exhibit 10-O2, Consultant Contract DBE Information
 - Exhibit 10-H, Sample Cost Proposals
 - Exhibit 10-K, Consultant Annual Certification of Indirect Costs and Financial Management System
 - Exhibit 10-A, A&E Consultant Financial Document Review Request

A&E consultant firms (prime and/or sub consultants) electing to use the Safe Harbor Rate (SHR) in a contract are required to submit a completed SHR Consultant Certification of Eligibility, Contract Cost, Financial Management System (Attachment 1R). This requirement is in addition to the A&E Consultant Audit and Review Process requirement described in Local Assistance Procedures Manual, Chapter 10, Section 10.3.

- Safe Harbor Rate - Attachment 1R
2. Consultant is responsible for filing in and submitting the following exhibits (in the most current form) upon Project completion.
 - Exhibit 17-F, Final Report – Utilization of DBEs

ATTACHMENT 3 – LINKS TO RELEVANT PROJECT INFORMATION

- **Highway 17 Bicycle and Pedestrian Project webpage:** <https://www.losgatosca.gov/2556/Hwy-17-Bicycle-Pedestrian-Overcrossing>
Key documents on Project webpage include:
 - Feasibility Study Report
 - Highway 17 Bicycle and Pedestrian Overcrossing – Preliminary alignment
 - Community Engagement Plan
 - Project outreach video
 - Measure B Funding Agreement – attachment to the Dec.1,2020 Town Council Meeting Agenda
- **Connect Los Gatos webpage –** <http://losgatosca.gov/connectlg>
- **Town of Los Gatos Bicycle and Pedestrian Master Plan:**
<https://www.losgatosca.gov/2347/Bicycle-and-Pedestrian-Master-Plan>
- **Measure B Funding Agreement between Town and VTA –** Can be found as an Attachment to the Dec. 1, 2020 Town Council Meeting at: <https://www.losgatosca.gov/13/Agendas-Minutes>
- **Town of Los Gatos Engineering Standards:** <https://www.losgatosca.gov/1088/Town-Engineering-Standards>
- **Town of Los Gatos Interactive GIS Map:** <http://www.losgatosca.gov/MAP>.
- **Caltrans Local Assistance Procedures Manual:**
<http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm>

ATTACHMENT 4 – LOCAL ASSISTANCE PROCEDURES MANUAL EXHIBITS

The following Local Assistance Procedures Manual Exhibits are included to aid in the preparation of the Consultant's Proposal. It shall be the Proposer and selected Consultant to use the most current forms from the Caltrans website at: <http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

- Exhibit 10-H-1: Sample Lump Sum Cost Proposal
- Exhibit 10-H-3: Sample Cost per Unit of Work Cost Proposal
- Exhibit 10-H-4: Cost Proposal for Caltrans with Prevailing Wage
- Exhibit 10-I: Notice to Proposers DBE Information
- Exhibit 10-01: Consultant Proposal DBE Commitment
- Exhibit 10-02: Consultant Contracts DBE Commitment
- Exhibit 15-H: Proposer/Contractor Good Faith Efforts
- Exhibit 10-A A&E Consultant Financial Document Review Request
- Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System
- Exhibit 10-Q: Disclosure of Lobbying Activities



Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan

Revised Draft
November 18, 2020

Connect Los Gatos

Connect Los Gatos is a program of bicycle and pedestrian projects that promote connectivity and improve the multimodal network throughout the Town. The program will expand access and improve safety for key community destination points. Connect Los Gatos is aimed at making it easier and safer for all to bike and walk in Los Gatos. The Highway 17 Bicycle and Pedestrian Overcrossing projects is one of the Connect Los Gatos projects.

In the *Bicycle and Pedestrian Master Plan (BPMP)* Update, adopted by the Town Council in September 2020, Prioritized Bicycle and Pedestrian Improvement Projects Table 4.2 are branded as Connect Los Gatos Projects. These projects will improve the Town’s multimodal network by providing safe and lower stress facilities, closing connectivity gaps, and providing safe crossings. As these prioritized projects are advanced, they will be supported under the Connect Los Gatos Community Engagement Program.

Community Engagement Goals

This document builds upon the original *Connect Los Gatos Community Engagement Plan* adopted by Town Council on March 3rd, 2020. In comparison to the program-level plan, this project-level plan establishes a framework, describes specific outreach approach and tools, while still allows flexibility in applying the tools. The purpose of this Community Engagement Plan is to maximize the opportunities for all stakeholders to provide meaningful feedback.

The plan provides a “toolbox” of options for outreach to the community. Outreach tools will be tailored to the specific project phase. The Town of Los Gatos is committed to creating bike and pedestrian connectivity projects that aligns with local needs and mobility priorities. Community input will be integral to each phase of the Highway 17 Bicycle and Pedestrian Overcrossing project process.

Key community engagement goals include:

1. Increasing community awareness of the mobility, safety and design challenges and opportunities for the Highway 17 Bike and Ped Overcrossing (BPOC) Project;
2. Providing access to project information and opportunities for meaningful participation;
3. Offering a range of communication and engagement tools to match interest and preferences;
4. Ensuring the Project reflects community priorities; and
5. Obtaining community support for the Project design and funding



Project Background, Purpose and Goals

Highway 17 is a barrier for bicyclists and pedestrians wanting to cross from one side of Los Gatos to the other. Within the Town limits, there are five crossings from north to south, Lark Avenue, Blossom Hill Road, Highway 9, an existing pedestrian bridge, and Main Street. The existing Blossom Hill Road bridge is situated near the middle among the five crossings. It provides suboptimal access for a variety of trips: school, work, shopping and recreation. This is a suggested route included in the Los Gatos-Monte Sereno Safe Routes to School “Walk & Roll” program.

At the March 3, 2020 meeting, the Town Council approved the project purpose and need, and authorized staff to proceed with design alternatives for a separate bicycle and pedestrian overcrossing. Establishing the purpose and need at the onset of the project development phase helps to ensure the project reflects the Council’s and community’s vision and priorities. The approved project purpose and need are:

Purpose: The project would improve bicycle and pedestrian mobility across Highway 17 in the vicinity of the Blossom Hill Road overcrossing. The project includes a focus on improving safety for all modes of travel and creating a safe route to schools while promoting active transportation. Additionally, the project would result in reduced traffic congestion and greenhouse gas emissions by providing comfortable mobility alternatives.

Need: With two travel lanes in each direction, carrying upwards of 63,000 vehicles per day, Highway 17 creates both a physical and psychological barrier for both pedestrians and bicyclists as it divides the Town in two. Blossom Hill Road is one of only a few roadways that provide east-west connectivity across the highway.

Stakeholders

This is a project that would benefit the immediate neighborhoods, the entire Los Gatos community, and a sub-region near Los Gatos. Identifying the key stakeholders will help ensure the community engagement efforts are comprehensive, focused, and effective. The community engagement efforts include engaging with the following stakeholders for project awareness, initial feedback, and alternatives and concept design input:

- Town Council
- Complete Street & Transportation Commission (CSTC)
- Schools and school community
 - Los Gatos Union School District and schools
 - Los Gatos-Saratoga Joint Union High School District and Los Gatos High School
 - Los Gatos-Monte Sereno Safe Routes to School (SR2S)



- Students and parents
- Residents, visitors and workers in Los Gatos
- Specific and under-represented populations:
 - Seniors
 - Disabled people and people with mobility limitations
 - Low-income households
 - People with limited English proficiency
- Residents in Monte Sereno
- Immediately Adjacent Neighborhoods: Ohlone Court, Serra Court
- Caltrans
- Santa Clara Valley Transportation Authority
- Utility companies:
 - San Jose Water
 - PG&E Electrical
 - Comcast

Complete Street & Transportation Commission

The Complete Streets & Transportation Commission (CSTC) is a key stakeholder in communicating with the community, advising the Council, and providing feedback to staff. They are advisory to the Town Council in matters pertaining to current trends and experiences in enhancing all modes of travel. They review Town transportation infrastructure, including bike and pedestrian pathways, with neighboring jurisdictions. They also review relevant grant applications, particularly transportation projects around schools. This includes enhancing safe routes to schools efforts. The CSTC also reviews and updates Town master plans, such as the Bicycle and Pedestrian Master Plan.

The CSTC and the former Bicycle and Pedestrian Advisory Commission have been actively engaged since the beginning of this project, including conducting a field meeting, leading a Silicon Valley Bicycle Coalition - Town infrastructure bike ride, conducting bicycle and pedestrian counts, and providing input at public and Commission meetings. In the next phase of the project design, the CSTC will play an even more vital role in representing the community, providing input to the project team, and advising the Town Council in key decisions. The project team will provide updates to the CSTC regularly at its monthly meetings and hold special workshops and field visits if necessary. At the monthly meetings, the CSTC will provide feedback to the project team on all aspects of project design, especially in the topics of user experience, environmental analysis, and neighborhood impacts.

The CSTC meetings are held on the second Thursday of each month at 7:30am and they are open to the public. The agenda center for the CSTC is available on the Town's website. Community members who are interested in project updates are encouraged to participate in the commission meetings.



Project Milestones

In early 2021, the Town will start the engineering and design phases of this Project. A significant amount of work needs to be done before reaching any final conclusions on the design of the Project. There will be many opportunities for the community to continue to be involved in this project moving forward. The Town is committed to open communication about this Project and its impact on the community. Following are key milestones and tasks involving community input and Council Direction.

Project Phase	Schedule
Begin Preliminary Design	April 2021
Decision on bridge architecture type	July - October 2021
Preliminary Engineering and Environmental Approval	April 2021 – April 2023
Development of plans, specifications, and cost estimates	February 2023 - Late 2023
Complete final design	Early 2024
Construction (pending funding availability)	2024 – December 2025

Outreach Approach and Tools

The outreach tools are based on the experience with the Connect Los Gatos program engagement. The tools that have shown to be most effective include the project webpage, social media, virtual meetings, and notification tools such as doorhangers. Not all tools outlined in the plan will be used at any given time. Outreach tools listed here will be tailored to the specific project phase and overall project goals.

TOOLS	DESCRIPTION	EVENTS
<u>Stakeholders Engagement</u>	Identifying the key stakeholders, including Town Council, community partners, and commissioners, that have a greater understanding of local active transportation issues in the community. Engagement with key stakeholders for project awareness, initial feedback, input from community workshops, alternatives and concept design.	Public meetings: Town Council – key decisions Complete Streets & Transportation Commission – regular updates Parks Commission – periodic updates Monte Sereno Better Streets Commission – periodic updates Safe Routes to Schools – periodic updates and discussions

<u>Community Meetings and Workshops</u>	Meetings and workshops to engage a broad segment of the public with proposed project awareness, input, feedback, and opportunities for engaged participation. Notifications by mail via social media, and the “Notify Me” email list, as well as door hangers and postcards are important tools to use to advertise these meetings.	Public meetings and workshops at key milestones. Formats: online and in-person community meetings, group meetings with target audience, such as schools and neighborhoods.
<u>Pop-Up Events and Messages</u>	Pop-ups are an informal approach used to increase community participation and awareness by setting up booths or posters at community wide events. Informal outreach provides an opportunity to engage a diverse set of community members otherwise missed by traditional meetings.	Pop-Up Events: Back-to-School events Los Gatos Holiday Parade Farmer’s market Spring Into Green event Traditional ways of messaging may include posters at public locations, businesses, and movable message signs.
<u>Online Engagement and Social Media</u>	Online and social media engagement will deliver project information to the community at large. The project webpage will be the central place for information. This allows for consistent, accessible information for all stakeholders. Webpages will include community meetings, photos, graphics, maps, and reports.	Project Webpage: https://www.losgatosca.gov/2556/Hwy-17-Bicycle-Pedestrian-Overcrossing NotifyMe Emails & Text Messages Project Email Address Social media: Twitter Facebook What’s New Town website front page NextDoor Town Instagram

<u>Targeted Outreach</u>	Focused outreach in areas where under-represented residents will be reached. Provide contact information in multiple languages, special outreach efforts to seniors, disabled people, low-income households, and the youth.	Youth Commission Community & Senior Services Commission Emails and e-newsletter to schools and Safe Routes to School (SR2S) Contact information in Russian, Mandarin Chinese, Spanish, and Vietnamese Information included in LGS Recreation and other community partner information materials
<u>Data Collection</u>	Data collection provides baseline data and an assessment of existing conditions of bicycle and pedestrian infrastructure for the BPOC project.	Bicycle and Pedestrian Counts User interviews and surveys

Information Sharing and Transparency

The project webpage will be the central place for information, including project updates, meetings announcements, documents, and reports. Providing one central place for information allows for consistent and accessible information for all stakeholders. This is a key component to achieving fair and equal transparency for all community members. The webpage also provides contact information for anyone who wants to communicate with the project team directly.

NotifyMe is a useful tool embedded in the project webpage. Interested individuals may sign up for this noticing service to receive either a text message or e-mail each time there is new information posted to the project webpage.

Information posted on social media shall be available on the project webpage, per the Town's Social Media Policy.

Engagement Plan Updates

The Plan will need to be updated periodically to ensure the proper tools are being utilized to maximize public awareness and participation at the BPOC project specific level and to add tools as needed. Town staff will periodically update the Plan and adjust engagement activities as needed to continue to maximize authentic participation by residents and workers representing a diverse background.





Highway 17 Bicycle and Pedestrian Overcrossing Project Background

Updated November 23, 2020

Project Background, Purpose and Goals

Highway 17 is a barrier for bicyclists and pedestrians wanting to cross from one side of Los Gatos to the other. Within the Town limits, there are five crossings from north to south, Lark Avenue, Blossom Hill Road, Highway 9, an existing pedestrian bridge, and Main Street. The existing Blossom Hill Road bridge is situated near the middle among the five crossings. It provides suboptimal access for a variety of trips: school, work, shopping and recreation. This is a suggested route included in the Los Gatos-Monte Sereno Safe Routes to School “Walk & Roll” program.

At the March 3, 2020 meeting, the Town Council approved the project purpose and need, and authorized staff to proceed with design alternatives for a separate bicycle and pedestrian overcrossing. Establishing the purpose and need at the onset of the project development phase helps to ensure the project reflects the Council’s and community’s vision and priorities. The approved project purpose and need are:

Purpose: The project would improve bicycle and pedestrian mobility across Highway 17 in the vicinity of the Blossom Hill Road overcrossing. The project includes a focus on improving safety for all modes of travel and creating a safe route to schools while promoting active transportation. Additionally, the project would result in reduced traffic congestion and greenhouse gas emissions by providing comfortable mobility alternatives.

Need: With two travel lanes in each direction, carrying upwards of 63,000 vehicles per day, Highway 17 creates both a physical and psychological barrier for both pedestrians and bicyclists as it divides the Town in two. Blossom Hill Road is one of only a few roadways that provide east-west connectivity across the highway.

Alternative Selection

The Town’s planning documents, the 2017 Bicycle and Pedestrian Master Plan and the Traffic Impact Mitigation Fee program, identified three options to address barrier for bicyclists and pedestrians crossing Highway 17. These are the initial alternatives being considered at the start of the Feasibility Study:

Alternative 1: Bicycle and pedestrian bridge connecting to Nino Avenue

Alternative 2: A separate bicycle and pedestrian bridge along Blossom Hill Road



Alternative 3: Widening the existing Blossom Hill Road bridge for bicyclists and pedestrians

Alternative 1, a new bridge connecting at Nino Ave, includes several variations, one of which could provide a direct connection to the Los Gatos Creek Trail.

1A: Los Gatos Creek Trail Connector to Nino Ave – A perpendicular crossing that provides a direct connection between Los Gatos Creek Trail on the west side and Nino Way on the east side.

1B: Blossom Hill Road Skewed Connector to Nino Ave – A skewed main span crossing with a point of connection at Blossom Hill Rd to the West and Nino Way to the East.

1C: Blossom Hill Rd Perpendicular Connector to Nino Ave – A perpendicular main span crossing that provides the same points of connection as Alternative 1B (with the exception of the optional second landing along East Blossom Hill Rd). A switchback alignment is required along the west approach to provide enough distance to conform to existing grades along Blossom Hill Rd with a profile grade of 5% or less that meets ADA requirements.

There are benefits of providing a new connection to Nino Avenue, however, during the early engagement process from both the February community meeting and a community survey, residents on Nino Avenue expressed that the access would be an intrusion to the neighborhood. The Nino connection would provide a convenient path to the back side of Fisher Middle School. However, for travelers going to the commercial area along Los Gatos Boulevard and BHR, this path would require additional walking/biking distance.

Alternative 2 includes two variations.

Alignment 2A – separate BPOC south of the existing bridge

Alignment 2B – separate BPOC north of the existing bridge

Alignment 2B is less desirable due to the following significant setbacks:

Utility impacts: Due to the existing overhead electrical lines located along the north side, this alignment would have significant interference with the overhead electrical lines.

Potential property impacts: There is more public ROW available on south side than on the north side. If a BPOC is built on the north side, it may have private proper impacts and may impact Vasona County Park. Impacts on Vasona Park would trigger a process in the CEQA that requires the Town to demonstrate that other alternatives are not feasible.



Match with the existing pedestrian patterns: Alignment 2A would best match the existing desired travel line. The Town's bicycle and pedestrian counts show that the pedestrian volumes on the south vs. north is 2:1. If the new BPOC is built on the north side, it would require a longer walk for Fisher students and make it difficult to navigate for eastbound cyclists to Fisher and further east.

In addition to the two variations, it was suggested that the Project Team considers putting a crossing below the existing BHR bridge, starting from the north side of BHR on the west and ending on the south side of BHR to the east of Highway 17. Due to the grade difference, such a crossing would have to slope down as it goes from west to the middle of Highway 17, then slope up sharply to match up with the grade to the east of Highway 17. In any design, the crossing has to meet the Caltrans clearance of 16'6" and ADA requirements. The Project Team doesn't foresee a feasible engineering solution.

Alternative 3, widening the existing bridge, would present the most engineering and cost challenges.

The existing bridge is very old and does not meet current design standards. The Caltrans standard for roadways is 16'6". Widening is constrained by the existing nonstandard vertical clearance of 15'2" and would require a design exception. It is highly unlikely that Caltrans will approve a design exception for maintaining or proposing nonstandard vertical clearance, especially since the underside of the bridge was recently struck. Caltrans could require replacement of the entire bridge, which would increase project costs significantly.

A bridge reconstruction would be a different project from building a BPOC and would be led by Caltrans, instead of the Town of Los Gatos. Currently the BHR bridge is not included in the Highway Bridge Program Ten Year Plan (TYP). Furthermore, Caltrans indicated given that most of the bridge assets are rating "good" and there is no target for Goods Movement (Clearance) at this time, no project would be forthcoming in the foreseeable future, ten to twenty years.

Although the good condition rating of the bridge seems to conflict with the non-standard clearance, realistically the two are viewed separately by Caltrans. Ideally bridges with non-standard clearance would be replaced, however the large inventory statewide make replacement for this reason alone unrealistic.

In summary, currently there is no schedule or funding identified for the replacement of the BHR bridge. Due to these challenges and uncertainties, staff recommended not to pursue the widening option (Alternative 3) as part of this project. This alternative was removed from further consideration, as presented to the Town Council at the March 3, 2020 meeting.



It is still possible that the bridge is replaced in the future, so it will be important for the Project Team to understand the Caltrans Right of Way at this location and design the new bridge with a strategic view on the separation from the existing structure.

The Project Team evaluated the alignment alternatives using a set of criteria:

- Community Feedback
- Caltrans Coordination
- Travel Demand and Patterns
- User Experience
- Potential Environmental Impacts: utilities, Right of Way constraints, geotechnical considerations, trees, and visual impacts
- Cost: construction and maintenance

Table 1 summarizes the determinations of the evaluation using the criteria:

Alternative	1A Nino	1B Nino	1C Nino	2A BHR south	2B BHR north	3 Widening
Circulation improvement	✓	✓	✓	✓	✓	✓
Maintains existing travel patterns	✗	✗	✗	✓	✗	✓
Meets Caltrans standards	✓	✓	✓	✓	✓	✗
Community acceptance	✗	✗	✗	✓	✓	Unknown
Add'l infrastructure cost	High	High	High	Medium	Medium	High
Accommodates future demand	✓	✓	✓	✓	✓	✗
ROW & utility constraints	High	Medium	High	Low	High	High
Environmental impact	Medium	Medium	Medium	Medium	Medium	Medium
Engineering constraints and complexity	Medium	Medium	Medium	Low	Low	High

While all the alternatives are considered feasible, Alternatives 1A, 1B, 1C, 2B and 3 were eliminated from further consideration as a result of the analysis summarized in Table 4 above. The Project Team concluded that Alternative 2A, a separate bridge structure just south of Blossom Hill Road Bridge, is the preferred alignment. The recommended alternative presents several benefits: consistency with the existing desired travel line, shortest distance between key origins and destinations, no or minimum utility impacts, no interference with the existing bridge, enhanced user experience, and neighborhood acceptance. The cost of this alternative is potentially lower than Alternative 1 because it would have a shorter bridge span.



Community Engagement in Feasibility Study Phase

Community engagement in the Feasibility Study phase followed the framework identified in the Connect Los Gatos Community Engagement Plan, adopted by Town Council in March 2020. This is one of the Connect Los Gatos projects and it is identified as a priority project in the 2020 Bicycle and Pedestrian Master Plan Update. Starting in the fall of 2019, the project team conducted extensive community engagement, which is documented in the Community Engagement Activities Report. The outreach efforts included:

- A dedicated project website containing the project information, progress updates, a project video, past Town Council decisions and staff reports, and the project manager's contact information. The relevant project documents are also posted on the project website: <https://www.losgatosca.gov/2556/Hwy-17-Bicycle-Pedestrian-Overcrossing>;
- Regular project updates provided to the former Bicycle and Pedestrian Advisory Commission, the Complete Streets and Transportation Commission, and Safe Route to School representatives;
- Project information displayed at Back-to-School events in fall 2019;
- An online community survey conducted in March 2020;
- Two community meetings held on February 25 and August 25, 2020. Meeting notices were sent by regular mail, door hangers, social media posts, and flyers placed on the streets and local businesses;
- Notices via the Town's website, social media and articles to the SR2S and LGUSD electronic newsletters;
- Onsite Ohlone Court neighborhood meeting held on October 19, 2020;
- Email and telephone exchanges between the project staff and residents.

From: Kevin Arroyo
Sent: Tuesday, November 24, 2020 8:54 AM
To: Council <Council@losgatosca.gov>
Subject: Highway 17 Ped & Bike Prelim Study Support

Hello Town Council,

I am a lifelong Los Gatos resident and want to express my support for a Highway 17 Bike and Ped Overcrossing preliminary study. This project will immensely increase bicycle safety within the local community. Over the years I've bicycled on the Blossom Hill Bridge to Vasona Park and faced multiple instances of vehicles passing too closely at unsafe distances. This project would help mitigate this hazard.

I fully support this proposal to help encourage residents to use alternative forms of transportation. We need more projects like this to better integrate the Los Gatos Creek Trail and help reduce our dependence on cars. My friends and family mentioned they would use the Creek Trail more often if there was a separate crossing.

Please vote yes to proceed with a preliminary study for this project. These are the type of local projects which makes me proud to see the town taking a leading role in creating a safer community for our future generations.

Thank you,
Kevin Arroyo

From: [Kim Wheeler](#)
To: [Council](#)
Subject: Bike bridge
Date: Monday, November 23, 2020 11:42:41 AM
Dear council,

I just wanted to send this note to let you know how very important the new bike bridge that is proposed on Blossom Hill Road is to this community. I have raised two sons and a family that has used that crossing so much over the years -to school , junior high, and high school, on the way to Boy Scouts and on weekend family bike rides.

It's an important thoroughfare from our side of Los Gatos- by Blossom Hill School, as it connects us to the trail and downtown businesses.

One thing that has crossed my mind so much is the danger of the cross and the narrow parts where my children and myself are right next to cars. It only takes one person to look away from the road to hit someone there. Also during school hours and weekends it can be hard to navigate the path with others. I have seen bikers swerve right into the road to avoid other riders.

A new bike bridge would be a huge step in making Los Gatos more bike friendly. By making this bike lane safer, I know my family and many others would be using it much more frequently. As a mother, I love to encourage biking, but knowing this stretch is not safe always

Attachment 5

gave me pause.

Please think of the future of our town and let this bridge be built. It's for future generations as well as those living here now. Biking and less cars are what make a community thrive and stay healthy.

Thank you

Kim Wheeler

From: Max Wheeler

To: Council

Subject: Blossom Hill Bike bridge

Date: Sunday, November 22, 2020 7:02:16 PM

Hello council members,

I'm just writing to express my support for the proposed bike bridge on Blossom Hill. I'm a huge fan of making the city more bikeable / walkable and that bridge is a major impediment for getting people on the East side of town down to the Creek trail. When my kids were younger, that was always the most harrowing part of the journey back from the Creek trail or Vasona. We always rode on the sidewalk but when pedestrians were present, that wasn't possible. It's not even that easy for a child to get off their bike if they've already started riding down the sidewalk.

Thanks for listening

Max Wheeler

Fairmead Lane

--

Max Wheeler

From: Sheldon Gilbert

To: Council

Subject: Support of Blossom Hill Road Bike/Ped Bridge

Date: Sunday, November 22, 2020 5:06:10 PM

Past commissioner and chair of the Bicycle and Pedestrian commission, I am a big supporter of the proposed

Bike/Ped bridge over the 17 at Blossom Hill Road. I wonder if it is possible to speak in support of this project at the

Dec. 1 Council meeting when this project is being discussed?

Thank You,

Sheldon Gilbert



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/01/2020

ITEM NO: 12

ADDENDUM

DATE: November 30, 2020

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Highway 17 Bicycle and Pedestrian Overcrossing (Project 818-0803):

- a. Authorize the Town Manager to Negotiate and Execute a Measure B Funding Agreement with the Santa Clara Valley Transportation Authority (Attachment 1) to Accept a Measure B Grant in the Amount of \$2,754,990 for the Highway 17 Bicycle and Pedestrian Overcrossing Project Final Design Phase;
- b. Authorize Revenue and Expenditure Budget Increases in the Total Amount of \$3,701,200 (\$2,754,990 in Grant Fund and \$946,210 in General Fund Appropriated Reserve) in the Fiscal Year 2020/21 – 2024/25 Capital Improvement Program (CIP) Budget for the Highway 17 Bicycle and Pedestrian Overcrossing Project to Recognize the Receipt of Grant Funds in FY 2020/21;
- c. Authorize the Release of a Request for Proposals (Attachment 2) for the Highway 17 Bicycle and Pedestrian Overcrossing Design Project;
- d. Authorize the Town Manager to Negotiate and Execute a Consultant Agreement with the Highest Ranked Firm in an Amount Not to Exceed \$3,000,000; and
- e. Approve the Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan (Attachment 3).

REMARKS:

This addendum reflects public comment received from 11:01 a.m., Wednesday, November 25, 2020 through 11:00 a.m., Monday, November 30, 2020.

PREPARED BY: Ying Smith
Transportation and Mobility Manager

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

PAGE 2 OF 2

SUBJECT: Highway 17 Bicycle and Pedestrian Overcrossing (Project 818-0803)

DATE: November 25, 2020

Attachments Previously Received with Staff Report:

1. Draft Measure B Funding Agreement with the Santa Clara Valley Transportation Authority.
2. Draft Request for Proposals for Professional Engineering Design Services.
3. Draft Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan.
4. Highway 17 Bicycle and Pedestrian Overcrossing Project Background.
5. Public Comment Received.

Attachment Received with this Addendum:

6. Public Comment Received from 11:01 a.m., Wednesday, November 25, 2020 through 11:00 a.m., Monday, November 30, 2020.

November 27, 2020

Los Gatos Town Council
c/o Town Manager
110 E. Main St.
Los Gatos, CA 95030

Via E-Mail (manager@losgatosca.gov)

Re: **CEQA ENVIRONMENTAL REVIEW**
Highway 17 Bicycle and Pedestrian Over-crossing (**Project 818-0803**)
Objection to Agenda Item #12 (December 1, 2020 Town Council Meeting)

Dear Town Council Members:

I am writing on behalf of *Los Gatos Citizens for Responsible Town Government*, which is an unincorporated association of residents, citizens, homeowners, workers, taxpayers, and electors residing in the Town of Los Gatos. Its organizational purpose includes advocating for equitable and responsible land use development policies, maintaining political accountability of elected local officials, and enforcing land use planning and environmental laws in and around Los Gatos. Members, which include adult U.S. citizens and residents of Los Gatos, maintain a direct and regular geographic nexus with the Town of Los Gatos, and will suffer direct harm as a result of any adverse environmental and/or public health impacts caused by poorly planned or managed public projects. They have a clear and present right to, and beneficial interest in, the Town's performance of its duties, including complying with all applicable state and federal environmental, land use, and health laws and regulations. The association seeks to protect the interests of its Members and will enforce the public duties owed to them by the Town, if necessary.

The circumstances underlying this letter are rather remarkable. This Project had three original sites under consideration, with each site having multiple design alternatives available. In fact, Town Staff's currently-selected site, Blossom Hill Road, is known to have at least four different design alternatives available, bringing the total number of alternatives already known to be available for the Project to more than half a dozen. Remarkably, not only are the Members represented herein strong proponents of the Project generally, but they are in fact proponents of locating the Project at Blossom Hill Road, assuming a proper design is selected. Yet, disagreement arises here due to Staff's unyielding insistence on institutionally and now potentially financially locking-in upfront a very specific final design (i.e., very large (16-20' wide) separately-constructed/ancillary bike/pedestrian bridge, Southbound-aligned to existing Blossom Hill Road bridge) before any evaluation or consideration whatsoever of corresponding environmental and cumulative impacts, even though Staff's choice is already known to pose burdensome environmental impacts both for nearby residents and the community, and also known to pose substantial cumulative impacts from two successive large-scale bridge construction projects. This letter brings certain environmental laws to the Town Council's attention so that the Town understands the environmental review that is required before the Town commits as a practical matter to a definite course of action for the Project.

The California Environmental Quality Act (CEQA)

The California Environmental Quality Act (CEQA - Pub. Res. Code §§21000 et seq.), enacted in 1970, forms the basis of environmental law and policy in the State of California. CEQA is modeled after the National Environmental Policy Act (NEPA) and protects all aspects of the environment. Here, the focus is on maintaining a quality environment for the people of California, an environment that is healthful and pleasing to the senses, including preserving clear air and water, preserving the enjoyment of the aesthetic, natural, and scenic beauty that the state offers, and providing freedom from excess noise. Like the federal act, CEQA requires public agency decision makers to document and consider the environmental implications of their actions. However, CEQA requires more. "CEQA contains substantive provisions with which agencies must comply. The most important of these is the provision requiring public agencies to deny approval of a project with significant adverse effects when feasible alternatives or feasible mitigation measures can substantially lessen such effects." *Sierra Club v. Gilroy City Council* (6th Dist. 1990) 222 Cal. App. 3d 30, 41. "A project may not be approved as proposed if feasible alternatives or mitigation measures would substantially lessen the project's significant environmental effect." *Citizens for Quality Growth v. City of Mount Shasta* (3d Dist. 1988) 198 Cal. App. 3d 433, 440-441.

In practice, CEQA requires public agencies to prepare environmental impact assessments of a proposed project and to circulate those documents to the public and other agencies for comment before approving that project. Agencies are required to avoid or mitigate environmental impacts whenever feasible. (Pub. Res. Code §21002; CEQA Guidelines §§15002, 15021). If avoiding or minimizing environmental damage is truly infeasible, CEQA requires agencies either to disapprove the proposed project or prepare a CEQA-compliant written justification of "overriding considerations" - supported by substantial evidence in the record - that explains why a given project still must be approved. (Pub. Res. Code §21081; Guidelines §15091). Even in the case where a public agency might not have the jurisdictional authority to effect a given mitigation, CEQA nevertheless requires the agency to disclose all such mitigations and to identify the other agencies that would have the power to implement the mitigations.

Public projects draw additional scrutiny under CEQA, as the public agency essentially prepares and approves the environmental review for its own projects. The later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage of the project. Guidelines §15004 addresses this issue by detailing proper timing requirements for commencing environmental review for public projects, stating that "project sponsors shall incorporate environmental considerations into project conceptualization, design, and planning" at the earliest feasible time. "[P]ublic agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance." This includes an explicit prohibition against taking "any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project." (CEQA Guidelines, § 15004, subd. (b)(2)) As no separate state agency is explicitly authorized to enforce CEQA, enforcement has primarily been accomplished through the courts via private attorney general actions brought by

environmental and citizen groups against agencies attempting to shortcut CEQA compliance.

As you are aware, on September 1, the Town Council approved Agenda Item #10 which formally endorsed Staff's Preferred Alternative (Blossom Hill Road Separate bridge, Southbound alignment) as well as approved a Feasibility Study. The September 1 action also authorized submission of a Caltrans Active Transportation Program (ATP) grant application by its September 15 application deadline, and committed up to \$1 million as matching funds for the grant. (The ATP grant application effort was abandoned by Staff.) Town records show approximately \$250k was spent on the Feasibility Study, which reflects less than **1%** of the Project's currently-estimated \$28 million price tag. Staff's indication of a Preferred Alternative is, by itself, helpful to inform Town residents what the Town's preference is. The preference should merely be an objectively-prepared choice at this point however. Staff's choice certainly should not be approved, adopted, and funded as effectively *Town's Final Adopted Project Choice* before CEQA evaluation occurs to determine whether the choice is even advisable when compared to all the other reasonable and feasible alternatives. Instead, all reasonable alternatives (including a "no project" alternative) should be rigorously explored and objectively evaluated before a final choice is in fact made.

The present Agenda Item before the Town Council requests approval to obtain and commit \$2.8 million grant funds (from VTA Measure B) for "Final Design Phase," which when combined with matching funds (\$950k) would consume at least 13% of the Project's budget. When those amounts are combined with a \$3 million consulting agreement (Item #12. d), the Agenda Item potentially commits upwards of **24%** of the Project's budget. Any Town Council approval of Staff's request should require Staff to comply with CEQA review procedures before the Town makes any significant financial commitment to a specific design or course of action for the Project, particularly spending millions of dollars in the pursuit of a Final Design of Staff's Preferred Alternative. Any premature commitment of substantial funds in the pursuit of the Final Design of Staff's Preferred Alternative at this juncture would serve as an economic yoke or constraint effectively limiting the Town's power in the future to consider the full range of alternatives and mitigation measures required by CEQA.

Under Guidelines §15004, CEQA documents should be prepared early enough in the planning process to enable environmental factors to influence project design, but late enough so that useful information is available for environmental assessment. Lead agencies should prepare CEQA documents during the agency planning process, and must complete and certify those documents before project "approval," which is the decision committing an agency to a definite course of action on the project (Guidelines §15352(a)). For the Project 818-0803, Staff has already generated highly detailed location, alignment, and engineering plans and specifications for the Project that are sufficiently well-defined and specific to allow meaningful rather than merely speculative review of potential impacts, and analysis of all reasonably feasible alternatives and mitigation measures available to the Project. Now, Staff requests that the Town Council approve the commitment of substantial funds to the Project, yet there is no indication that a complete environmental review would occur before Staff simply steers substantial funds to their Preferred Alternative. Such commitment of funding to a project (and in this case a particular final design of a proposed project), or otherwise taking any action that gives impetus to a planned-for foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA

compliance, is the type of action Guidelines §15004 aims to prevent.

As seen in the California Supreme Court's *Save Tara v. City of West Hollywood* (2008) 45 Cal. 4th 116) decision, how strongly a lead agency commits to a proposed project may determine how early in the process CEQA compliance should occur. Staff has already advised residents who oppose Staff's Preferred Alternative that, while residents' input on minor bridge stylistic features might be considered, Staff has ruled out other known candidate sites as well as other alignment and design alternatives within the final Blossom Hill Road site, thus limiting residents' input to minor end-of-project details. All of the potential environmental impacts posed by Staff's Preferred Alternative choice and previously highlighted by the residents are left completely unaddressed, as if they had never been raised. Although an agency may telegraph its preferences by designating a non-committal "preferred alternative" before CEQA review, any substantive commitment beyond that point must be preceded by CEQA completion and compliance. Otherwise, future CEQA analysis would be tainted as the agency's pre-commitment of the Project to a certain alternative and course of action yields a defective or sham CEQA analysis, one that has improperly precluded the feasibility of other alternatives and mitigation measures before any environmental analysis has occurred. Approval of Staff's proposal (as written) risks the Town commencing the Project and an already-prescribed Final Design for the Project before completing CEQA review. Approval of Staff's request would be a major step in the Project's progress, and one that is very likely to be irreversible. The Town Council should ensure that Staff cannot now simply steer millions of dollars towards their Preferred Alternative, thereby erecting an economic barrier limiting the choice of other alternatives or mitigation measures, all before completing CEQA review. Staff's Preferred Alternative must remain a non-committal choice financially, along with all the other feasible alternatives, until such time that the Town's best alternative is determined under CEQA review.

CONCLUSION

I urge the Town Council to reject or modify the proposed action as written as it does not include adequate safeguards ensuring that environmental review of the proposed Project will occur before Staff commits the Town to a definite course of action for the Project and does so in a manner that constitutes a discretionary project "approval" under CEQA. The Town Council may accept, reject, or modify any Staff proposal on the Agenda. Thus, if you decide to approve Staff's proposed action, I urge the Town Council to condition such approval on requisite environmental review of the proposed Project before the Town commits to the Project as a practical matter, so that the Project's environmental impacts may be uncovered and properly addressed. This would, for example, preclude Staff from spending millions of dollars on Final Design of Staff's Preferred Alternative before environmental review has occurred. If you permit the proposed action to proceed, the rest of the development contemplated by the Project will inevitably follow as a result. The Town has not done an environmental analysis that reviews the impacts that can be expected if you make a decision to allow the Project to proceed. Such an analysis is absolutely required, not only to comply with environmental laws, but also to put the Town Council in a position to truly understand the implications of the decisions you are contemplating. Please insist on such a full environmental analysis before committing the Town to the Project.

Thank you for your attention and careful consideration of the mater.

Respectfully submitted,

John Smart Digitally signed by John Smart
DN: cn=John Smart, o, ou=Legal,
email=jsmart4@fastmail.us, c=US
Date: 2020.11.27 10:39:07 -08'00'

John A. Smart

Encls. *Save Tara v. City of W. Hollywood*

IN THE SUPREME COURT OF CALIFORNIA

SAVE TARA,)	
)	
Plaintiff and Appellant,)	
)	S151402
v.)	
)	Ct.App. 2/8 B185656
CITY OF WEST HOLLYWOOD,)	
)	
Defendant and Respondent;)	Los Angeles County
)	Super. Ct. No. BS090402
WASET, INC., et al.,)	
)	
Real Parties in Interest and)	
Respondents.)	
_____)	

Under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.),¹ a public agency must prepare an environmental impact report (EIR) on any project the agency proposes to “carry out or approve” if that project may have significant environmental effects (§§ 21100, subd. (a), 21151, subd. (a)). We address in this case the question whether and under what circumstances an agency’s agreement allowing private development, conditioned on future compliance with CEQA, constitutes approval of the project within the meaning of sections 21100 and 21151. We conclude that under some

¹ All further unspecified statutory references are to the Public Resources Code.

circumstances such an agreement does amount to approval and must be preceded by preparation of an EIR. Under the circumstances of this case, we further conclude the City of West Hollywood's conditional agreement to sell land for private development, coupled with financial support, public statements, and other actions by its officials committing the city to the development, was, for CEQA purposes, an approval of the project that was required under sections 21100 and 21151 to have been preceded by preparation of an EIR.

FACTUAL AND PROCEDURAL BACKGROUND

The property at 1343 North Laurel Avenue (1343 Laurel) in the City of West Hollywood (City) is occupied by a large colonial-revival-style house constructed in 1923, later converted to four apartments, and a chauffeur's house and garage. The buildings are set well back from the street and the property is heavily wooded and landscaped, in contrast to most other properties on the block. City designated the main house a local cultural resource in 1994. In 1997, Mrs. Elsie Weisman, the longtime owner of 1343 Laurel, donated it to City on condition she be permitted to live there until her death and the other tenants be permitted to occupy the premises for six months after her death. Mrs. Weisman died in 2000 at the age of 101.²

Two nonprofit community housing developers, West Hollywood Community Housing Corporation and WASET, Inc., and a corporation they created for the purpose, Laurel Place West Hollywood, Inc. (collectively, Laurel Place), propose to develop approximately 35 housing units for low-income seniors on the 1343 Laurel site. As outlined in a 2003 grant application to the United

² Whether because of its estate-like appearance or because *Gone With the Wind* was Mrs. Weisman's favorite film, 1343 Laurel has acquired the popular nickname "Tara."

States Department of Housing and Urban Development (HUD), the project would preserve the main house but not the chauffeur's house or garage. The existing two-story house would be converted to hold the manager's apartment, one resident's apartment, and communal space, including a multipurpose room, arts and crafts room, television lounge and kitchen. A new three-story building, wrapping around the existing house's back and sides, would contain 33 one-bedroom apartments and underground parking spaces for residents. Between the back of the existing house and the new building would be a landscaped courtyard. A 2,800-square-foot portion of the existing front yard would remain in City's hands and be used as a pocket park. The HUD application included preliminary architectural drawings showing the proposed renovation, new building, site plan and landscaping.

On June 9, 2003, to facilitate Laurel Place's HUD grant application, City's city council granted Laurel Place an option to purchase the 1343 Laurel property, allowing the developer to show HUD it had control of the project site. In a June 10 letter to a HUD official, City's city manager outlined City's intended contribution to the proposed project: "To make the project competitive, [City] has approved the sale of the property at negligible cost." More specifically, City planned to contribute \$1.5 million in land value. "In addition, [City] will commit additional funding, in an amount not to exceed \$1 million," toward development costs. "In summary, [City] will be contributing land and funds totaling \$2,500,000 toward the development of the Laurel Place project."

HUD approved a \$4.2 million grant to Laurel Place in late 2003. City's mayor announced the grant in a December 2003 e-mail to residents, explaining it "will be used to build 35 affordable senior residential units, rehabilitate an historic house, and provide a public pocket park on Laurel Avenue." He described the project as "a win-win-win for the City, balancing desperately needed affordable

senior housing with historic preservation and open space.” Similarly, a City newsletter announced that with the recent HUD grant, City and Laurel Place “will redevelop the property” to rehabilitate the main house, build 35 units of low-income senior housing, and create a pocket park. The mayor’s announcement referred residents with questions about the proposed development to Jeffrey Skornick, City’s housing manager.

Shortly after the HUD grant was approved, in November 2003, Skornick wrote to a 1343 Laurel tenant, Allegra Allison, reassuring her that “nothing is going to happen for about a year” and that “[a]s the project proceeds and prior to construction” the tenants would receive professional relocation assistance. While he knew she would prefer to stay at 1343 Laurel, the housing manager wrote, he pledged, on City’s behalf, to “do everything in our power to minimize the impact of this project on you.” In December 2003, Allison responded that “your relocation people” had already contacted tenants and, according to one tenant, had said they would soon be served with “one year eviction notices.”

In January 2004, Skornick, responding to a resident critical of the proposed development, explained that the project would retain the historic house and most of the property’s front yard, as the new building would be to the rear of the site. He continued: “We are happy to consider variations on the approach. However, inasmuch as the City and its development partners have been awarded a \$4.2 million federal grant to help develop this project for senior housing, we must continue on a path that fulfills this obligation.” In another January 2004 e-mail to a resident, a city council member’s deputy used the same language, referring to the development of senior housing on the site as an “obligation” City “must” pursue.

On April 23, 2004, City announced the city council would consider, at its May 3 meeting, an agreement to facilitate development of the 1343 Laurel project, “subject to environmental review” and other regulatory approvals. Save Tara, an

organization of City residents and neighbors opposed to the project, wrote City to urge that it conduct CEQA review, including an EIR, *before* approving any new agreement, making a loan, or renewing the purchase option. Despite that and numerous other objections voiced at the meeting (many also expressed support), the city council on May 3, 2004, voted to (1) approve a “Conditional Agreement for Conveyance and Development of Property” between City and Laurel Place, including a \$1 million City loan to the developer, in order to “facilitate development of the project and begin[] the process of working with tenants to explore relocation options”; (2) authorize the city manager to execute the agreement “substantially in the form attached”; and (3) have appropriate City commissions review “alternative configurations” for the planned new building and obtain more public input “on the design of project elements.”

The “Conditional Agreement for Conveyance and Development of Property” the city council thus approved and authorized the city manager to execute (the May 3 draft agreement) had the stated purpose of “caus[ing] the reuse and redevelopment of [1343 Laurel] with affordable housing for seniors and a neighborhood pocket park, while retaining the historic integrity of the Site.” The agreement provided that “upon satisfaction of the conditions of this Agreement,” City would convey the property to Laurel Place and provide the developer a loan, and Laurel Place would construct 35 units of housing, one for the resident manager and 34 restricted to occupancy by low-income seniors. In the first phase of actions under the agreement, Laurel Place would obtain final HUD approval, “complete the relocation of tenants”³ and take actions necessary “to comply with

³ A staff report on the proposed agreement, presented to the city council, explained that relocation notices would be sent “shortly after” the agreement was executed, starting a one-year period for relocating the tenants.

CEQA” Once the property was conveyed, the second, construction phase would begin.

Under the May 3 draft agreement, City’s obligation to convey the property and make the improvement portion of the loan (i.e., all of the \$1 million loan other than the predevelopment portion and an earlier grant for \$20,000) was subject to several conditions precedent, among them that “[a]ll applicable requirements of CEQA . . . have been satisfied, as reasonably determined by the City Manager” and that “[d]eveloper shall have obtained all Entitlements.”⁴ The city manager, however, could waive these conditions. The predevelopment portion of the loan, which City estimated at \$475,000, was to be used for, inter alia, “environmental reports” and “governmental permits and fees” and was not subject to the CEQA compliance or entitlement conditions.

A “Scope of Development” discussion attached to the May 3 draft agreement explained that “[a] three- or four-story building over semi-subterranean parking will be erected at the west-rear portion of the lot, replacing what are currently the garage and outdoor parking area, and possibly the chauffeur’s quarters.” The new building’s exterior and interior design were described in some detail.

At the city council’s May 3, 2004, meeting, the project architect explained that the exact building design had not yet been determined and that historic preservation values would be fully considered in the final design. For example, the chauffeur’s house could be preserved, while still adding 35 housing units, by

⁴ The May 3 draft agreement defined “Entitlements” to include zoning changes, general plan amendments, and CEQA compliance, as well as any other permit or license required by City.

making the new building four stories rather than three, though the architect for aesthetic reasons preferred a three-story building.

Skornick, City's housing manager, similarly told the council that the further planning processes the project would undergo were "not a rubber stamp," as there were "real options to consider" regarding the design of the new building and park. At the same time, Skornick noted that staff had already rejected the alternative uses of 1343 Laurel suggested in public comments, such as dedication of the entire property for a park or use of the historic home as a library or cultural center. These alternatives, Skornick explained, failed to contribute to City's affordable housing goals and, in any event, "there were no funds available for those options." Finally, Skornick stressed that "while the agreement is conditional, the council needs to know that the recommended actions will commit the city as long as the developer delivers."

On July 12, 2004, Save Tara filed the operative complaint and petition for writ of mandate alleging, inter alia, that City had violated CEQA by failing to prepare an EIR before the city council's May 3 approval of the loan and draft agreement. On August 9, 2004, City and Laurel Place executed a revised agreement (the August 9 executed agreement).⁵ This agreement followed the May 3 draft agreement in many respects, but contained some potentially

⁵ Save Tara argues the administrative record should not have been augmented with the August 9 executed agreement, as its execution took place *after* the decision Save Tara has challenged, i.e., the city council's approval of the May 3 draft agreement. We agree with the Court of Appeal, however, that "[w]hile the May 2004 agreement is relevant for certain purposes, review of City's decision would be ineffective, if it were limited to the May 2004 Agreement, which is no longer operative." Like the lower court, we treat Save Tara's petition for writ of mandate as amended to address the August 9 executed agreement as well as the May 3 draft agreement.

significant changes. The requirement that all applicable CEQA requirements be satisfied could no longer be waived by the city manager, and the parties expressly recognized *City* retained “complete discretion over . . . any actions necessary to comply with CEQA” and that the agreement “imposes no duty on City to approve . . . any documents prepared pursuant to CEQA.” Finally, details on tenant relocation were stated, including that the developer was to begin the process by hiring a relocation consultant within 30 days.

The superior court denied Save Tara’s mandate petition, finding that while the parties agreed the 1343 Laurel project did call for an EIR at some time, none was required before approving the May 3 draft agreement because “the Agreement is expressly conditioned on compliance with CEQA . . . [and] does not limit the project alternatives or possible mitigation measures.” Thus, City “has not given its final approval to convey the property at issue to [Laurel Place], nor has it given its final approval of the housing project itself.”

The Court of Appeal reversed. Section 21100, the appellate court reasoned, requires an EIR be prepared whenever lead agencies “propose to approve or carry out” a project with potential significant effects; it is not, contrary to the trial court’s holding, “to be delayed until a ‘final’ decision has been made.” Moreover, conditioning a development agreement on CEQA compliance is insufficient because the EIR review process “is intended to be part of the decisionmaking process itself, and not an examination, *after the decision has been made*, of the possible environmental consequences of the decision.” Any question as to whether a particular point in the development process is too early for preparation of an EIR “is resolved by the pragmatic inquiry whether there is enough information about the project to permit a meaningful environmental assessment. If the answer is yes, the EIR review process must be initiated.” Before May 3, 2004, the Court of Appeal held, the project was well enough defined to permit

meaningful environmental analysis, which City should have performed between the award of the HUD grant in November 2003 and the approval of the May 3 draft agreement.

As remedy for the CEQA violation, the Court of Appeal remanded with directions that City be ordered (1) to void its approval of the May 3 and August 9 agreements, and (2) to “engage in the EIR review process (a) based on the project as described in the HUD application and (b) without reference to the May and August 2004 Agreements.” One justice dissented, arguing the matter was moot because, according to the parties, City had certified a final EIR for the project in October 2006.

We granted City’s and Laurel Place’s petitions for review, which presented the mootness issue as well as the substantive question of whether an EIR was required before City’s approval of the conditional development agreement.

DISCUSSION

I. Mootness

According to the Court of Appeal decision, City approved a final EIR for the 1343 Laurel project in October 2006, during pendency of the appeal. All parties agree on this chronology and further agree that Save Tara has not challenged the adequacy of this EIR in court.

The parties dispute whether these events rendered the present appeal moot. City and Laurel Place take the position that Save Tara has already received the relief it seeks in this action — preparation and certification of an EIR — and no further effective relief can be granted it. They cite CEQA cases in which, during pendency of the litigation, the project site had undergone irreversible physical or legal changes. (See, e.g., *Environmental Coalition of Orange County, Inc. v. Local Agency Formation Com.* (1980) 110 Cal.App.3d 164, 171-173 [challenge to

EIR for annexation moot where annexation had already occurred and could not be ordered annulled because annexing city was not a party to the action]; *Hixon v. County of Los Angeles* (1974) 38 Cal.App.3d 370, 378 [street improvement project involving tree replacement had already progressed to removal of original trees, which could not be restored].) Save Tara, in turn, argues that effective relief, in the form of an order setting aside City's approval of the May 3 draft agreement and August 9 executed agreement, can still be awarded, as it was by the Court of Appeal. It cites CEQA cases that were held not to be moot despite some intervening progress on the project. (See, e.g., *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1202-1204 [partial construction of a project did not moot the appeal, as the project could still be modified, reduced, or mitigated]; *Woodward Park Homeowners Assn. v. Garreks, Inc.* (2000) 77 Cal.App.4th 880, 888 [already constructed project could be modified or removed].)

We agree with Save Tara that the preparation and certification of an EIR does not render the appeal moot. No irreversible physical or legal change has occurred during pendency of the action, and Save Tara can still be awarded the relief it seeks, an order that City set aside its approvals. As will appear, we ultimately conclude the matter must be remanded with directions that the superior court order City to void its approval of the May 3 and August 9 agreements and reconsider those decisions, informed this time by an EIR of the full environmental consequences. Neither City nor Laurel Place contends such reconsideration is impossible as a practical matter or that the superior court lacks the power to order it. Such an order remedies the CEQA violation Save Tara alleges occurred, approval of the agreements without prior preparation and consideration of an EIR, and thus constitutes effective relief.

II. Timing of EIR Preparation

We turn to the substantive CEQA issue presented: Was City required to prepare and consider an EIR before approving the conveyance and development agreement on May 3 and executing the revised agreement on August 9, 2004? To answer this question, we first outline, in this part of the opinion, the existing law on timing of EIR preparation and the legislative policies that shape this law. We next address, in part III, the general question of whether an agency may delay EIR preparation by making its final approval of a project contingent on subsequent CEQA compliance, while otherwise agreeing to go forward with the project. In part IV, we apply our conclusions to the facts of this case to determine that City's May 3 and August 9 actions constituted project approval requiring prior preparation of an EIR.

We begin with CEQA's text. Section 21100, subdivision (a) provides in pertinent part: "All lead agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they *propose to carry out or approve* that may have a significant effect on the environment." (Italics added.) To the same effect, section 21151 provides that "local agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project that they *intend to carry out or approve* which may have a significant effect on the environment." (Italics added.)⁶

⁶ Both sections appear applicable to City. Section 21151 applies to local governments by its terms. Section 21100, although placed in a chapter of CEQA mainly addressing the duties of state agencies, itself applies to all "lead agencies," a term that includes local public entities undertaking projects subject to CEQA. (See §§ 21067 ["'Lead agency' means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment"], 21063 ["'Public agency' includes any state

(footnote continued on next page)

While the statutes do not specify criteria for determining when an agency “approve[s]” a project, the law’s implementing regulations, the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.),⁷ do address the question. Section 15352 of the CEQA Guidelines provides as follows:

“(a) ‘Approval’ means the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person. The exact date of approval of any project is a matter determined by each public agency according to its rules, regulations, and ordinances. Legislative action in regard to a project often constitutes approval.

“(b) With private projects, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.” (Cal. Code Regs., tit. 14, § 15352, subds. (a), (b).)

CEQA Guidelines section 15004, subdivision (b) observes that “[c]hoosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project

(footnote continued from previous page)

agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision”].)

⁷ “The CEQA Guidelines, promulgated by the state’s Resources Agency, are authorized by Public Resources Code section 21083. In interpreting CEQA, we accord the Guidelines great weight except where they are clearly unauthorized or erroneous.” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428, fn. 5.)

program and design and yet late enough to provide meaningful information for environmental assessment.” (Cal. Code Regs., tit. 14, § 15004, subd. (b).)⁸

This court has on several occasions addressed the timing of environmental review under CEQA, emphasizing in each case the same policy balance outlined in CEQA Guidelines section 15004, subdivision (b). In *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68 (*No Oil, Inc.*), discussing whether the proper scope of an EIR included possible related future actions, we quoted this observation from a federal decision: “ ‘Statements must be written late enough in the development process to contain meaningful information, but they must be written early enough so that whatever information is contained can practically serve as an input into the decision making process.’ ” (*Id.* at p. 77, fn. 5.) We again quoted this formulation of the general issue in *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779 (*Fullerton*), which considered whether a particular action was a “project” for CEQA purposes, adding, with what has turned

⁸ The parties’ briefs frame the timing issue here in two ways: (1) Did City, in May and August of 2004, *approve* the 1343 Laurel project? and (2) Was the contingent agreement to convey and develop 1343 Laurel itself a *project*? While this opinion will discuss some relevant decisions on the definition of a project, it largely follows the first formulation, asking whether City approved the project. As section 15378 of the CEQA Guidelines explains: “(a) ‘Project’ means the whole of an action, which has the potential for resulting in [an environmental change.] [¶] . . . [¶] (c) The term ‘project’ refers to the activity which is being approved and which may be subject to several discretionary approvals by government agencies. The term ‘project’ does not mean each separate government approval.” (Cal. Code Regs., tit. 14, § 15378.) The “project” in this case is the redevelopment of 1343 Laurel, not any of the individual steps City took to approve it. City and Laurel Place do not dispute the redevelopment of 1343 Laurel is a project requiring evaluation in an EIR; they disagree with Save Tara only on the required timing of that EIR process.

out to be an understatement, that “[t]he timing of an environmental study can present a delicate problem.” (*Fullerton*, at p. 797.)

In *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 (commonly known as *Laurel Heights I*), again discussing the proper scope of an EIR regarding future actions, we summed up the issue and attempted to state a rule, as follows: “We agree that environmental resources and the public fisc may be ill served if the environmental review is too early. On the other hand, the later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage of the project. . . . For that reason, ‘EIRs should be prepared as early in the planning process as possible to enable environmental considerations to influence project, program or design.’ ” (*Id.* at p. 395.)⁹ We also observed that at a minimum an EIR must be performed before a project is approved, for “[i]f postapproval environmental review were allowed, EIR’s would likely become nothing more than *post hoc* rationalizations to support action already taken.” (*Laurel Heights I*, at p. 394.)

This court, like the CEQA Guidelines, has thus recognized two considerations of legislative policy important to the timing of mandated EIR preparation: (1) that CEQA not be interpreted to require an EIR before the project is well enough defined to allow for meaningful environmental evaluation; and

⁹ In the recent decision of *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, *supra*, 40 Cal.4th at page 441, discussing the extent to which a large housing project’s EIR was required to address water sources for the project’s later phases, we reiterated *Laurel Heights I*’s admonition that environmental analysis not be delayed to the point where “ ‘bureaucratic and financial momentum’ ” rendered it practically moot.

(2) that CEQA not be interpreted as allowing an EIR to be delayed beyond the time when it can, as a practical matter, serve its intended function of informing and guiding decision makers.

The CEQA Guidelines define “approval” as “the decision by a public agency which commits the agency to a definite course of action in regard to a project.” (Cal. Code Regs., tit. 14, § 15352, subd. (a).) The problem is to determine when an agency’s favoring of and assistance to a project ripens into a “commit[ment].” To be consistent with CEQA’s purposes, the line must be drawn neither so early that the burden of environmental review impedes the exploration and formulation of potentially meritorious projects, nor so late that such review loses its power to influence key public decisions about those projects.

Drawing this line raises predominantly a legal question, which we answer independently from the agency whose decision is under review. While judicial review of CEQA decisions extends only to whether there was a prejudicial abuse of discretion, “an agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence. (§ 21168.5.) Judicial review of these two types of error differs significantly: while we determine de novo whether the agency has employed the correct procedures, ‘scrupulously enforc[ing] all legislatively mandated CEQA requirements’ (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564), we accord greater deference to the agency’s substantive factual conclusions.” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra*, 40 Cal.4th at p. 435.)

A claim, like Save Tara’s here, that the lead agency approved a project with potentially significant environment effects *before* preparing and considering an EIR for the project “is predominantly one of improper procedure” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra*, 40

Cal.4th at p. 435) to be decided by the courts independently. The claim goes not to the validity of the agency’s factual conclusions but to the required timing of its actions. Moreover, as noted above (fn. 8, *ante*), the timing question may also be framed by asking whether a particular agency action is in fact a “project” for CEQA purposes, and that question, we have held, is one of law. (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 382; *Fullerton, supra*, 32 Cal.3d at p. 795.)¹⁰

Considering the timing issue as one of legally proper procedure does not remove all logistical discretion from agencies; it merely sets an outer limit to how long EIR preparation may be delayed. To accord overly deferential review of agencies’ timing decisions could allow agencies to evade CEQA’s central commands. While an agency may certainly adjust its rules so as to set “[t]he exact date of approval” (Cal. Code Regs., tit. 14, § 15352, subd. (a)), an agency has no discretion to define approval so as to make its commitment to a project precede the required preparation of an EIR.

III. Development Agreements Contingent on CEQA Compliance

The May 3 draft agreement and August 9 executed agreement conditioned City’s obligation to convey the property to Laurel Place for development on all

¹⁰ In *Mount Sutro Defense Committee v. Regents of University of California* (1978) 77 Cal.App.3d 20, 40, the Court of Appeal remarked that “the determination of the earliest feasible time [for environmental review] is to be made initially by the agency itself, which decision must be respected in the absence of manifest abuse.” (Accord, *Stand Tall on Principles v. Shasta Union High Sch. Dist.* (1991) 235 Cal.App.3d 772, 780; see also *City of Vernon v. Board of Harbor Comrs.* (1998) 63 Cal.App.4th 677, 690 [“the timing of an EIR is committed to the discretion and judgment of the agency”].) To the extent these opinions contradict our determination that postponement of an EIR until after project approval constitutes procedural error that is independently reviewable, we disapprove them.

applicable requirements of CEQA having been satisfied. City and Laurel Place contend such a CEQA compliance condition on an agreement to convey or develop property eliminates the need for preparation of an EIR (or any other CEQA document) before an agency approves the agreement. In contrast, *Save Tara*, quoting the Court of Appeal, maintains that permitting a CEQA compliance condition to postpone environmental review until after an agreement on the project has been reached would render the EIR requirement a “dead letter.” We adopt an intermediate position: A CEQA compliance condition can be a legitimate ingredient in a preliminary public-private agreement for exploration of a proposed project, but if the agreement, viewed in light of all the surrounding circumstances, commits the public agency as a practical matter to the project, the simple insertion of a CEQA compliance condition will not save the agreement from being considered an approval requiring prior environmental review.

As previously noted, the CEQA Guideline defining “approval” states that “with private projects, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.” (Cal. Code Regs., tit. 14, § 15352, subd. (b).)¹¹ On its face, this regulatory definition suggests a public agency’s execution of a contract to convey a property for development would constitute approval of the development project. City and Laurel Place rely on two decisions holding

¹¹ The guideline derives in part from Public Resources Code section 21065, which defines “project” as including a private activity supported by public contracts, grants, or other assistance, or requiring issuance of a public permit, license, or other entitlement. (*Id.*, subds. (b), (c).)

agreements not to be approvals for CEQA purposes when conditioned on later CEQA compliance.

In *Stand Tall on Principles v. Shasta Union High Sch. Dist.*, *supra*, 235 Cal.App.3d 772 (*Stand Tall*), a school district board passed resolutions choosing the site for a new high school from a group of finalists and authorizing the district administration to purchase the property; any offer to purchase “was to be made contingent upon completion of the EIR process and final state approval.” (*Id.* at p. 777.) The appellate court rejected a claim the EIR should have been done before selecting the preferred school site, reasoning that “the Board’s resolutions regarding the site selection do not constitute an ‘approval’ under CEQA because they do not commit the District to a definite course of action since they are expressly made contingent on CEQA compliance.” (*Id.* at p. 781.)

In *Concerned McCloud Citizens v. McCloud Community Services Dist.* (2007) 147 Cal.App.4th 181 (*McCloud*), a district executed an agreement with a commercial spring water bottler for exclusive rights to bottle and sell water from the district’s sources, contingent on, among other things, the district and the bottler “ ‘completing, during the Contingency Period, proceedings under CEQA in connection with the Project, and the expiration of the applicable period for any challenge to the adequacy of District’s and [the bottler’s] compliance with CEQA without any challenge being filed.’ ” (*Id.* at p. 188.) Relying in part on *Stand Tall*, the *McCloud* court held no EIR was required before the district executed the contingent bottling agreement. The agreement was subject to several “ ‘ifs,’ ” the court reasoned, continuing: “The biggest ‘if’ in the agreement however is *if* all discretionary permits, expressly defined as including CEQA documentation, review and approvals, along with the final adjudication of any legal challenges based on CEQA, are secured and all environmental, title, physical, water quality and economic aspects of the project are assessed.” (*McCloud*, at p. 193.)

Without questioning the correctness of *Stand Tall* and *McCloud* on their facts, we note that each case involved particular circumstances limiting the reach of its logic; neither convinces us a broad rule exists permitting EIR preparation to be postponed in all circumstances by use of a CEQA compliance condition.

In *McCloud*, the court relied in part on the agreement's lack of information as to the springs that would be exploited, the site of the bottling plant, how the water would be transported, and other details essential to environmental analysis of the project. Without that information, the court concluded, "preparation of an EIR would be premature. Any analysis of potential environmental impacts would be wholly speculative and essentially meaningless." (*McCloud*, *supra*, 147 Cal.App.4th at p. 197.) In the terms used by the CEQA Guidelines to define "approval" — "the decision by a public agency which commits the agency to a definite course of action" (Cal. Code Regs, tit. 14, § 15352, subd. (a)) — *McCloud* thus speaks as much to *definiteness* as to commitment and does not establish that a conditional agreement for development never constitutes approval of the development.

Stand Tall, *supra*, 235 Cal.App.3d 772, involved an agreement to purchase property, an activity that, as a practical matter in a competitive real estate market, may sometimes need to be initiated before completing CEQA analysis. The CEQA Guidelines accommodate this need by making an exception to the rule that agencies may not "make a decision to proceed with the use of a site for facilities which would require CEQA review" before conducting such review; the exception provides that "agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance." (Cal. Code Regs., tit. 14, § 15004, subd. (b)(2)(A).) The Guidelines' exception for land purchases is a reasonable interpretation of CEQA, but it should not swallow the general rule

(reflected in the same regulation) that a development decision having potentially significant environmental effects must be *preceded*, not *followed*, by CEQA review. (See *Laurel Heights I*, *supra*, 47 Cal.3d at p. 394 [“A fundamental purpose of an EIR is to provide decision makers with information they can use in deciding *whether* to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved”].)

City and Laurel Place apparently would limit the “commit[ment]” that constitutes approval of a private project for CEQA purposes (Cal. Code Regs., tit. 14, § 15352, subd. (a)) to unconditional agreements irrevocably vesting development rights. In their view, “[t]he agency commits to a definite course of action . . . by agreeing to be legally bound to take that course of action.” (*City of Vernon v. Board of Harbor Comrs.*, *supra*, 63 Cal.App.4th at p. 688.) On this theory, any development agreement, no matter how definite and detailed, even if accompanied by substantial financial assistance from the agency and other strong indications of agency commitment to the project, falls short of approval so long as it leaves final CEQA decisions to the agency’s future discretion.

Such a rule would be inconsistent with the CEQA Guidelines’ definition of approval as the agency’s “*earliest* commitment” to the project. (Cal. Code Regs., tit. 14, § 15352, subd. (b), *italics added*.) Just as CEQA itself requires environmental review before a project’s approval, not necessarily its *final* approval (Pub. Resources Code, §§ 21100, 21151), so the guideline defines “approval” as occurring when the agency *first* exercises its discretion to execute a contract or grant financial assistance, not when the *last* such discretionary decision is made.

Our own decisions are to the same effect: we have held an agency approved a project even though further discretionary governmental decisions would be needed before any environmental change could occur. (See *Muzzy*

Ranch Co. v. Solano County Airport Land Use Com., *supra*, 41 Cal.4th at p. 383 [adoption of airport land use plan held to be a project even though it directly authorized no new development]; *Fullerton*, *supra*, 32 Cal.3d at p. 795 [adoption of school district succession plan held to be a project even though “further decisions must be made before schools are actually constructed”]; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 279, 282 [regional agency’s approval of annexation by city held to be a project even though further approvals, including zoning changes, would be needed for property development to occur].) Though these decisions framed the question as whether certain agency steps constituted projects, rather than whether the agency had approved a project, they stand for the principle that CEQA review may not always be postponed until the last governmental step is taken.

Moreover, limiting approval to unconditional agreements that irrevocably vest development rights would ignore what we have previously recognized, that postponing environmental analysis can permit “bureaucratic and financial momentum” to build irresistibly behind a proposed project, “thus providing a strong incentive to ignore environmental concerns.” (*Laurel Heights I*, *supra*, 47 Cal.3d at p. 395.)

A public entity that, in theory, retains legal discretion to reject a proposed project may, by executing a detailed and definite agreement with the private developer and by lending its political and financial assistance to the project, have as a practical matter committed itself to the project. When an agency has not only expressed its inclination to favor a project, but has increased the political stakes by publicly defending it over objections, putting its official weight behind it, devoting substantial public resources to it, and announcing a detailed agreement to go forward with the project, the agency will not be easily deterred from taking whatever steps remain toward the project’s final approval.

For similar reasons, we have emphasized the practical over the formal in deciding whether CEQA review can be postponed, insisting it be done early enough to serve, realistically, as a meaningful contribution to public decisions. (See *Fullerton, supra*, 32 Cal.3d at p. 797 [“as a practical matter,” school district succession plan was a project requiring review]; *No Oil, Inc., supra*, 13 Cal.3d at p. 77, fn. 5 [“ ‘Statements must be written . . . early enough so that whatever information is contained can practically serve as an input into the decision making process’ ”]; see also *Citizens for Responsible Government v. City of Albany* (1997) 56 Cal.App.4th 1199, 1221 [CEQA review should not be delayed to the point where it would “call for a burdensome reconsideration of decisions already made”].) The full consideration of environmental effects CEQA mandates must not be reduced “ ‘to a process whose result will be largely to generate paper, to produce an EIR that describes a journey whose destination is already predetermined.’ ” (*Natural Resources Defense Council, Inc. v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 271.)

We note as well that postponing EIR preparation until after a binding agreement for development has been reached would tend to undermine CEQA’s goal of transparency in environmental decisionmaking. Besides informing the agency decision makers themselves, the EIR is intended “to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its actions.” (*No Oil, Inc., supra*, 13 Cal.3d at p. 86; accord, *Laurel Heights I, supra*, 47 Cal.3d at p. 392.) When an agency reaches a binding, detailed agreement with a private developer and publicly commits resources and governmental prestige to that project, the agency’s reservation of CEQA review until a later, final approval stage is unlikely to convince public observers that before committing itself to the project the agency fully considered the project’s environmental consequences. Rather than a “document of

accountability” (*Laurel Heights I*, at p. 392), the EIR may appear, under these circumstances, a document of post hoc rationalization.

On the other hand, we cannot agree with the suggestion of the Court of Appeal, supported by Save Tara, that any agreement, conditional or unconditional, would be an “approval” requiring prior preparation of CEQA documentation if at the time it was made the project was sufficiently well defined to provide “ ‘meaningful information for environmental assessment.’ ” (*Citizens for Responsible Government v. City of Albany*, *supra*, 56 Cal.App.4th at p. 1221, quoting Cal. Code Regs., tit. 14, § 15004, subd. (b).) On this theory, once a private project had been described in sufficient detail, *any* public-private agreement related to the project would require CEQA review.

This rule would be inconsistent with the CEQA Guidelines’ definition of approval as involving a “commit[ment]” by the agency. (Cal. Code Regs., tit. 14, § 15352, subd. (a).) Agencies sometimes provide preliminary assistance to persons proposing a development in order that the proposal may be further explored, developed or evaluated. Not all such efforts require prior CEQA review. (See, e.g., Cal. Code Regs., tit. 14, § 15262 [conduct of feasibility or planning studies does not require CEQA review].) Moreover, privately conducted projects often need some form of government consent or assistance to get off the ground, sometimes long before they come up for formal approval. Approval, within the meaning of Public Resources Code sections 21100 and 21151, cannot be equated with the agency’s mere interest in, or inclination to support, a project, no matter how well defined. “If having high esteem for a project before preparing an environmental impact statement (EIR) nullifies the process, few public projects would withstand judicial scrutiny, since it is inevitable that the agency proposing a project will be favorably disposed to it.” (*City of Vernon v. Board of Harbor Comrs.*, *supra*, 63 Cal.App.4th at p. 688.)

As amicus curiae League of California Cities explains, cities often reach purchase option agreements, memoranda of understanding, exclusive negotiating agreements, or other arrangements with potential developers, especially for projects on public land, before deciding on the specifics of a project. Such preliminary or tentative agreements may be needed in order for the project proponent to gather financial resources for environmental and technical studies, to seek needed grants or permits from other government agencies, or to test interest among prospective commercial tenants. While we express no opinion on whether any particular form of agreement, other than those involved in this case, constitutes project approval, we take the League's point that requiring agencies to engage in the often lengthy and expensive process of EIR preparation before reaching even preliminary agreements with developers could unnecessarily burden public and private planning. CEQA review was not intended to be only an afterthought to project approval, but neither was it intended to place unneeded obstacles in the path of project formulation and development.

In addition to the regulatory definition of "approval" quoted earlier (Cal. Code Regs., tit. 14, § 15352, subd. (b)), Save Tara relies on *Citizens for Responsible Government v. City of Albany*, *supra*, 56 Cal.App.4th 1199 (*Citizens for Responsible Government*) for the principle that an EIR must be prepared before a public agency executes a detailed agreement for development. In that case, the city council decided to place before the voters a proposal for development of a gaming facility at a racetrack; included in the proposal was an agreement with the private developer setting out details of the proposed facility and its operation. (*Id.* at p. 1206.) Although the agreement called for the developer to submit any studies needed " 'to address any potential adverse environmental impact of the Project' " and provided that " '[a]ll reasonably feasible mitigation measures shall become conditions' " of the city's implementation agreement (*id.* at pp. 1219-1220), the

appellate court held the city council had approved the project, for CEQA purposes, by putting it on the ballot, and thus the agreed-to environmental analysis came too late: “[T]he appropriate time to introduce environmental considerations into the decision making process was during the negotiation of the development agreement. Decisions reflecting environmental considerations could most easily be made when other basic decisions were being made, that is, during the early stage of ‘project conceptualization, design and planning.’ Since the development site and the general dimensions of the project were known from the start, there was no problem in providing ‘meaningful information for environmental assessment.’ At this early stage, environmental review would be an integral part of the decisionmaking process. Any later environmental review might call for a burdensome reconsideration of decisions already made and would risk becoming the sort of ‘*post hoc* rationalization[] to support action already taken,’ which our high court disapproved in [*Laurel Heights I*].” (*Citizens for Responsible Government*, at p. 1221.)

Again, without questioning the correctness of this decision on its facts, we find it falls short of demonstrating a general rule against use of conditional agreements to postpone CEQA review. The development agreement in *Citizens for Responsible Government*, once approved by the voters, vested the developer with the right to build and operate a card room within particular parameters set out in the agreement. The city had thus “contracted away its power to consider the full range of alternatives and mitigation measures required by CEQA” and had precluded consideration of a “no project” option. (*Citizens for Responsible Government*, *supra*, 56 Cal.App.4th at pp. 1221-1222.) “Indeed, the purpose of a development agreement is to provide developers with an assurance that they can complete the project. After entering into the development agreement with [the

developer], the City is not free to reconsider the wisdom of the project in light of environmental effects.” (*Id.* at p. 1223.)¹²

Desirable, then, as a bright-line rule defining when an approval occurs might be, neither of those proposed — the execution of an *unconditional* agreement irrevocably vesting development rights, or of *any* agreement for development concerning a well-defined project — is consistent with CEQA’s interpretation and policy foundation. Instead, we apply the general principle that before conducting CEQA review, agencies must not “take any action” that significantly furthers a project “in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.” (Cal. Code Regs., tit. 14, § 15004, subd. (b)(2)(B); accord, *McCloud*, *supra*, 147 Cal.App.4th at p. 196 [agreement not project approval because, inter alia, it “did not restrict the District’s discretion to consider any and all mitigation measures, including the ‘no project’ alternative”]; *Citizens for Responsible Government*, *supra*, 56 Cal.App.4th at p. 1221 [development agreement was project approval because it limited city’s power “to consider the full range of alternatives and mitigation measures required by CEQA”].)

In applying this principle to conditional development agreements, courts should look not only to the terms of the agreement but to the surrounding

¹² *Citizens for Responsible Government*’s references to a “development agreement” were to development agreements as described in Government Code section 65865.2, which allows for only such conditions as “shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement.” The purpose of such agreements is to give “[a]ssurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations” (Gov. Code, § 65864, subd. (b); see *Citizens for Responsible Government*, *supra*, 56 Cal.App.4th at pp. 1213-1214.)

circumstances to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project. (See Cal. Code Regs, tit. 14, § 15126.6, subd. (e).) In this analysis, the contract's conditioning of final approval on CEQA compliance is relevant but not determinative.

A frequently cited treatise on CEQA (Remy et al., Guide to the Cal. Environmental Quality Act (CEQA) (11th ed. 2006)) summarizes this approach in a useful manner. “First, the analysis should consider whether, in taking the challenged action, the agency indicated that it would perform environmental review before it makes any further commitment to the project, and if so, whether the agency has nevertheless effectively circumscribed or limited its discretion with respect to that environmental review. Second, the analysis should consider the extent to which the record shows that the agency or its staff have committed significant resources to shaping the project. If, as a practical matter, the agency has foreclosed any meaningful option to going forward with the project, then for purposes of CEQA the agency has ‘approved’ the project.” (*Id.* at p. 71.) As this passage suggests, we look both to the agreement itself and to the surrounding circumstances, as shown in the record of the decision, to determine whether an agency's authorization or execution of an agreement for development constitutes a “decision . . . which commits the agency to a definite course of action in regard to a project.” (Cal. Code Regs., tit. 14, § 15352.)

Our analysis does not require CEQA analysis before a definite project has been formulated and proposed to the agency. An agency cannot be deemed to have approved a project, within the meaning of Public Resources Code sections 21100 and 21151, unless the proposal before it is well enough defined “to provide

meaningful information for environmental assessment.” (Cal. Code Regs., tit. 14, § 15004, subd. (b).) Moreover, when the prospect of agency commitment mandates environmental analysis of a large-scale project at a relatively early planning stage, before all the project parameters and alternatives are reasonably foreseeable, the agency may assess the project’s potential effects with corresponding generality. With complex or phased projects, a staged EIR (Cal. Code Regs., tit. 14, § 15167) or some other appropriate form of tiering (see *In re Bay-Delta et al.* (2008) 43 Cal.4th 1143, 1170; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, *supra*, 40 Cal.4th at p. 431) may be used to postpone to a later planning stage the evaluation of those project details that are not reasonably foreseeable when the agency first approves the project.

IV. Application to City’s Decisions

We turn finally to whether the city council’s approval of the draft agreement on May 3, 2004, and the city manager’s execution of the revised agreement on August 9 of the same year constituted approval of the 1343 Laurel project for purposes of sections 21100 and 21151. From the agreements and the surrounding circumstances, we conclude City did approve the 1343 Laurel project in substance, though it reserved some of the project’s design details for later environmental analysis and final decision.

The contract between City and Laurel Place demonstrates City’s commitment to the project. Both the May 3 draft and the August 9 executed agreements forthrightly stated their purpose was to “cause the reuse and redevelopment” of 1343 Laurel in accordance with the project as outlined in the agreements and in the earlier HUD grant application. The city council’s May 3

resolution, similarly, stated the intent to “facilitate development of the project” — while allowing further public input on “the design of project elements.”

In both versions of the agreement, moreover, City agreed to initially lend the developer nearly half a million dollars, a promise *not* conditioned on CEQA compliance. This predevelopment portion was to be advanced in the first phase of the agreement’s performance, before EIR approval and issuance of other final approvals, and was to be repaid from project receipts over a period of up to 55 years. If City did not give final approval to the project, therefore, it would not be repaid. For a relatively small government like City’s, this was not a trivial outlay, and it would be wasted unless City gave final approval to the project in some form.

While both versions of the agreement conditioned conveyance of the property and disbursement of the second half of the loan on CEQA compliance, among other conditions, the May 3 draft agreement significantly circumscribed City’s remaining authority in this regard. Under the draft agreement, whether CEQA requirements had been met was to be “reasonably determined by the City Manager,” language that could have left City open to charges it acted unreasonably, had it ultimately declined to certify the EIR or make any needed CEQA findings.

In addition, the May 3 draft agreement, in setting the condition that all “requirements of CEQA” be “satisfied,” arguably left open the question whether City remained free to find that the EIR was legally adequate and yet to reject the project on substantive environmental grounds. An EIR that “satisfies” CEQA “requirements” may nonetheless demonstrate the project carries with it significant immitigable adverse effects. The May 3 draft agreement’s condition does not clearly encompass the possibility that in such a situation City could decline to find,

pursuant to section 21081, subdivision (b), that the project's benefits outweigh such immitigable effects.

Finally, the May 3 draft agreement had no provision for appealing to the city council the city manager's decision on, or waiver of, CEQA compliance. Such a delegation of the council's authority was itself an impermissible attempt to approve the project without prior CEQA review. (See *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307 [permit condition requiring applicant to submit environmental study to the planning commission and adopt any mitigation measures formulated by commission staff was an improper delegation of CEQA responsibility to staff and an impermissible postponement of environmental review].)

After Save Tara sued, alleging some of these same flaws in the May 3 draft agreement, City staff revised the agreement to repair them. Under the August 9 executed agreement, the city manager no longer had authority to determine or waive CEQA compliance, and City's "complete discretion" over CEQA matters was expressly acknowledged. But the city council had already approved the May 3 draft agreement, by which it had shown a willingness to give up further authority over CEQA compliance in favor of dependence on the city manager's determination. Given that history, as well as the other circumstances discussed below, City's "apprehensive citizenry" (*No Oil, Inc., supra*, 13 Cal.3d at p. 86) could be forgiven if they were skeptical as to whether the city council would give adverse impacts disclosed in the EIR full consideration before finally approving the project.

Circumstances surrounding City's approval of the agreements confirm City's commitment to the 1343 Laurel project. In aid of Laurel Place's HUD grant application, the city manager told the federal agency City "has approved the sale of the property" and "will commit" up to \$1 million in financial aid. Once the

grant was awarded, City's mayor announced it "will be used" for Laurel Place's project, and the City newsletter stated that, using the grant, City and Laurel Place "will redevelop the property." City officials told residents who opposed the project that while "variations" on the proposal would be entertained, City "must continue on a path that fulfills this obligation" to redevelop the property for senior housing. Similarly, at the May 3, 2004, city council meeting, City's housing manager stated that while there were "options to consider" regarding project design, options for other uses of the property (as a park, library, or cultural center) had already been ruled out.¹³

Finally, City proceeded with tenant relocation on the assumption the property would be redeveloped as in the proposed project. After HUD awarded the grant, City's housing manager told a tenant that she would be relocated, though not for a year or so. Around the same time, other tenants reported being contacted by relocation consultants, who told them they would soon be given one-year notices. As part of its May 3, 2004, resolution, the city council authorized the predevelopment loan in order to, among other things, "begin the process of working with tenants to explore relocation options." The May 3 draft and

¹³ At oral argument, counsel for City and Laurel Place urged strenuously that expressions of enthusiasm for a project by an agency's staff members should not be confused with official approval of a project. We agree. In isolation, such statements could rarely, if ever, be deemed approvals for CEQA purposes. Here, of course, we weigh statements by City officials not in isolation but as one circumstance shedding light on the degree of City's commitment when it approved the May 3 and August 9 agreements. It bears noting, as well, that one of the statements upon which we rely was a communication from City's mayor, another appeared in an official City newsletter, and others were from City's housing manager, who, having been named in the mayor's announcement as the contact person for residents with questions about the proposed development, had apparent authority to speak for City on this topic.

August 9 executed agreements provided that Laurel Place would “complete the relocation of tenants” in the agreement’s first performance phase, that is, *before* final project approval was given and the property conveyed to Laurel Place. A staff report on the May 3 draft agreement stated that relocation notices, with a one-year period, would be sent shortly after the agreement was executed. The August 9 executed agreement further specified the process was to begin within 30 days.

Relocation of tenants is a significant step in a redevelopment project’s progress, and one that is likely to be irreversible. City’s willingness to begin that process as soon as the conditional development agreement was executed, and to complete it before certifying an EIR and finally approving the project, tends strongly to show that City’s commitment to the 1343 Laurel project was not contingent on review of an EIR.

In summary, City’s public announcements that it was determined to proceed with the development of low-income senior housing at 1343 Laurel, its actions in accordance with that determination by preparing to relocate tenants from the property, its substantial financial contribution to the project, and its willingness to bind itself, by the May 3 draft agreement, to convey the property if the developer “satisfied” CEQA’s “requirements, as reasonably determined by the City Manager,” all demonstrate that City committed itself to a definite course of action regarding the project before fully evaluating its environmental effects. That is what sections 21110 and 21151 prohibit.

CONCLUSION

For the reasons given above, we agree with the Court of Appeal that City must be ordered to “declare void its approval of the May and August 2004 Agreements” and to reconsider those decisions in light of a legally adequate EIR for the project. (See § 21168.9, subd. (a)(1).) If that reconsideration leads to

approval of the project, City must make any appropriate findings under section 21081.

Unlike the Court of Appeal, however, we do not believe City necessarily must prepare a new EIR before reconsidering its approval of the project. The parties agree City certified a final EIR for the project in 2006, during pendency of this appeal, and Save Tara did not judicially challenge that EIR's legal adequacy. Under section 21167.2, the 2006 EIR is conclusively presumed to comply with CEQA's standards unless a subsequent or supplemental environmental EIR is needed for any of the reasons set out in section 21166 (discussed below).

The 2006 EIR was prepared after City approved the May 3 and August 9, 2004, agreements, which approvals must be now vacated. To the extent the 2006 EIR's discussion of project alternatives and mitigation measures was premised on City's 2004 approvals, that discussion may need revision. Moreover, by the time of our remand more than two years will have passed since the EIR was certified in October 2006. Because of both these factors, it is possible that "[s]ubstantial changes [have] occur[red] with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report" or that "[n]ew information, which was not known and could not have been known at the time the environmental impact report was certified as complete, [has] become[] available." (Pub. Resources Code, § 21166, subds. (b), (c); see also Cal. Code Regs., tit. 14, §§ 15162, 15163 [subsequent and supplemental EIR's].) Whether this is so must be decided in the first instance by City and reviewed by the superior court on a substantial evidence standard. (See *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 704.)

This matter must therefore be returned to the superior court for that court (1) to order City to set aside its prior approval of the project; (2) if City decides no subsequent or supplemental EIR is required under section 21166, to review that decision; and (3) to make any other order necessary and proper under section 21168.9.

DISPOSITION

The judgment of the Court of Appeal is affirmed in part and reversed in part. The matter is remanded to the Court of Appeal for further proceedings consistent with our opinion.

WERDEGAR, J.

WE CONCUR:

GEORGE, C. J.

KENNARD, J.

BAXTER, J.

CHIN, J.

MORENO, J.

CORRIGAN, J.

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion Save Tara v. City of West Hollywood

Unpublished Opinion
Original Appeal
Original Proceeding
Review Granted XXX 147 Cal.App.4th 1091
Rehearing Granted

Opinion No. S151402
Date Filed: October 30, 2008

Court: Superior
County: Los Angeles
Judge: Ernest M. Hiroshige

Attorneys for Appellant:

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**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/01/2020

ITEM NO: 12

DESK ITEM

DATE: December 1, 2020

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Highway 17 Bicycle and Pedestrian Overcrossing (Project 818-0803):

- a. Authorize the Town Manager to Negotiate and Execute a Measure B Funding Agreement with the Santa Clara Valley Transportation Authority (Attachment 1) to Accept a Measure B Grant in the Amount of \$2,754,990 for the Highway 17 Bicycle and Pedestrian Overcrossing Project Final Design Phase;
- b. Authorize Revenue and Expenditure Budget Increases in the Total Amount of \$3,701,200 (\$2,754,990 in Grant Fund and \$946,210 in General Fund Appropriated Reserve) in the Fiscal Year 2020/21 – 2024/25 Capital Improvement Program (CIP) Budget for the Highway 17 Bicycle and Pedestrian Overcrossing Project to Recognize the Receipt of Grant Funds in FY 2020/21;
- c. Authorize the Release of a Request for Proposals (Attachment 2) for the Highway 17 Bicycle and Pedestrian Overcrossing Design Project;
- d. Authorize the Town Manager to Negotiate and Execute a Consultant Agreement with the Highest Ranked Firm in an Amount Not to Exceed \$3,000,000; and
- e. Approve the Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan (Attachment 3).

REMARKS:

Attachment 7 reflects public comments received from 11:01 a.m., Monday, November 30, 2020 through 11:00 a.m., Tuesday, December 1, 2020.

In addition, the following question was received from a Councilmember.

Is there a deadline to accept the Measure B funds?

PREPARED BY: Ying Smith
Transportation and Mobility Manager

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

REMARKS (continued):

Staff Response: There is no immediate deadline to accept the funds, although some dynamics playing out with Measure B and the need for BART funding makes delaying any project risky. There is a need for additional funding to keep the project moving - the current phase is complete and the next step will be an RFP to get the next consultant on board so that the environmental work and then the next phase of design can begin.

Attachments Previously Received with Staff Report:

1. Draft Measure B Funding Agreement with the Santa Clara Valley Transportation Authority.
2. Draft Request for Proposals for Professional Engineering Design Services.
3. Draft Highway 17 Bicycle and Pedestrian Overcrossing Community Engagement Plan.
4. Highway 17 Bicycle and Pedestrian Overcrossing Project Background.
5. Public Comment Received.

Attachment Previously Received with Addendum:

6. Public Comment Received from 11:01 a.m., Wednesday, November 25, 2020 through 11:00 a.m., Monday, November 30, 2020.

Attachment Received with this Desk Item:

7. Public comment received from 11:01 a.m., Monday, November 30, 2020 through 11:00 a.m., Tuesday, December 1, 2020.

From: Dean strausl
Sent: Tuesday, December 1, 2020 8:59 AM
To: Council <Council@losgatosca.gov>
Cc: john@bikesiliconvalley.org
Subject: Blossom Hill Bike & Ped Bridge

Town Council

Of course access is a major factor in considering this crossing. As the community (regrettably) expands links to the town's many physical assets can become a means of integrating rather than simply housing the new. I have lived three years on the east side of 17 after 20 on the west side. I drove my daughter to Fisher and LGHS and still watch as kids stream across. Let's make it easier and safer.

Dean Strausl

From: Paul Brennan
Sent: Tuesday, December 1, 2020 8:16 AM
To: Council <Council@losgatosca.gov>; Town Manager <Manager@losgatosca.gov>
Cc: Patty Charles < Leah Angulo <; Mary Lonhart < Clare Vickers < >
Subject: Highway 17 bicycle & pedestrian bridge

Dear Town Council members,

On behalf of R.J. Fisher Middle School I wanted to express our support for the Highway 17 bicycle and pedestrian bridge project. The Safe Routes to School program has done a fantastic job encouraging students to walk or roll (bike, scooter or skateboard) to school. During normal times, both before and after school, one would find hundreds of Fisher students traveling down Blossom Hill road. We hope that the Town can do whatever it takes to make this passageway as safe as possible.

Sincerely yours,

From: Scott, Marty
Sent: Monday, November 30, 2020 8:57 PM
To: Council <Council@losgatosca.gov>
Subject: Blossom Hill - 17 Pedestrian/Cycling Bridge .. YES

As a longtime Los Gatos resident, avid cyclist, mother of two daughters who ride bikes and grandmother to several grandchildren who rides bikes (to school when they can, and around town for fun!) ...
PLEASE build this bridge.

Thank you for your consideration!
Marty Scott

ATTACHMENT 7

From: Mr Irvine
Sent: Monday, November 30, 2020 8:41 PM
To: PublicComment <PublicComment@losgatosca.gov>
Subject: Public Comment Item #12

As a 10 year Los Gatos resident and lifelong Santa Clara county cyclist I strongly support infrastructure to improve cycling and pedestrian safety and increase participation in these activities. While my two boys attended Fisher I strongly encouraged them to ride bicycles to school, riding through Vasona and up Blossom Hill road to the school. While the Blossom Hill / Highway 17 overpass appears safe on an early Saturday morning ride it can become quite congested with pedestrians, scooter riders, cyclists and cars during the busy morning commute. The proposed bicycle and pedestrian bridge would greatly expand capacity for traffic in this critical area and would be a great asset to the community.

--

Tim Irvine

From: Yi, Sooky
Sent: Monday, November 30, 2020 8:11 PM
To: Council <Council@losgatosca.gov>
Cc: john@bikesiliconvalley.org
Subject: blossom hill footbridge

yes. and yes.

A bridge would be an asset to the town. Connecting east and west will only create a stronger sense of community.

As a long time resident who has run, walked, and biked every inch of Los Gatos, I assure you a bridge would be an amazing improvement. If we create a bridge they will come. People will walk, run and ride more! Just Do it.

Sooky Yi
Marchmont Dr.