

TOWN OF LOS GATOS
DEPARTMENT OF PARKS AND PUBLIC WORKS
41 MILES AVENUE, LOS GATOS, CA 95030

REQUEST FOR PROPOSALS

Stormwater Master Plan

PROPOSAL SUBMITTAL DEADLINE:

DATE: September 30, 2019

TIME: 1:00 pm

DEADLINE TO SUBMIT QUESTIONS:

DATE: September 09, 2019

TIME: 5:00 pm



August 29, 2019

REQUEST FOR PROPOSALS

1. INTRODUCTION

The Town of Los Gatos – Parks and Public Works Department is issuing this request for proposal (RFP) for Professional Engineering Services for the Los Gatos Stormwater Master Plan project. The purpose of the Stormwater Master Plan is to identify a series of projects to increase the efficiency and effectiveness of the existing storm drain system. The Master Plan shall put forth practical and cost-effective improvements to the Town's storm drain system that can address deferred maintenance of the Town's stormwater infrastructure and mitigate recurring stormwater-related problems experienced by Town residents. These problems include:

- Debris from hillside areas entering the Town's storm drain system;
- Absence of storm drain system in parts of the Town;
- Siltation of flood-carrying channels, such as Shannon Road Canal;
- Ponding and flooding of streets due to clogged drainage inlets, and inadequate capacity;

The Master Plan shall also advance the Town's compliance with applicable State and Federal regulations related to storm water. The Master Plan shall consider existing and projected uses in the watershed area, existing and projected drainage and flooding problems as well as open space needs, habitat protection, community priorities, and economics. The Master Plan shall identify priority of improvements and identify potential funding mechanisms for the proposed improvements. The Master Plan shall also propose changes to Town ordinances to enhance stormwater quality and result in compliance with current State and Federal regulations. The Town has allocated a total of \$200,000 for this effort. The project is locally funded.

2. SCOPE OF WORK

At a minimum, the project shall include the following scopes of work. You may provide recommendations of additions or deletions to the requested scope of work to reduce costs, increase efficiency, and improve quality. Through this scope of work, the Town wishes to achieve the following outcome:

- Prioritized needs list based on agreed upon defined criteria
- Capital improvement projects with cost estimates
- 1% and 10% storm event areas of risk
- Infill data to complete existing GIS information
- Identified areas for further analysis.

2.1. Project Management

- Project Administration - Direct, coordinate and monitor the activities of the project with respect to budget, schedule and contractual obligations.

- Meetings - Hold regularly scheduled meetings with Town's project manager. Prepare meeting agenda and minutes. The consultant should identify the number of meetings deemed necessary for the successful completion of the project.
- Project Schedule - prepare a master project schedule and provide regular update on the progress of the project.
- Quality Control - perform quality control review of project deliverables.

2.2. Data Collection

- The Town has a GIS database of the existing storm drain system. However, the information is incomplete and outdated. Consultant shall review the GIS information and update the database by locating storm drain infrastructure elements, including pipes, inlets, manholes, open channels, creeks, trash capture devices, easements and watershed areas; Town of Los Gatos will provide aerial maps, aerial topographic map, and GIS layers for the storm drain system, and storm drain block maps. Consultant shall collect additional information necessary for the evaluation of the existing storm drain network.

2.3. Evaluation of Storm Drain System

- Supplemental Hydrologic and Hydraulic Evaluation - Hydrologic and hydraulic study for the Town was previously performed in Year 2000 by RBF Consulting. The Town has a hard copy of the study and will make it available for the selected consultant to reproduce at consultant's own cost. Consultant shall review the previous study and perform a supplemental evaluation as needed. A comprehensive hydrologic and hydraulic study is not anticipated for this project.
- Deficiencies in the Storm Drain System - Assess conditions of storm drain infrastructure and determine capacities of existing storm drain facilities; include identification of isolated flooding locations, and determination of capacity improvement needs.
- Recommendations to address deficiencies – Provide recommendations on improvements to the storm drain network to address the identified deficiencies. Include control measures for erosion of sediment for the Town's hillside areas. In the development of the recommendations, Consultant shall coordinate with internal and external stakeholders, including the Community Development Department, Public Works Department, and Valley Water.
- Trash capture device analysis – evaluate the use of large and small trash capture devices at strategic locations within the Town's drainage area, considering effectiveness, cost, and maintenance needs.

2.4. Master Plan Report

- Prepare draft and final Master Plan document. At a minimum, the Master Plan shall include the following:
 - Description of the existing storm drain system and identified deficiencies
 - Compliance with State and Federal regulations.
 - Description of recommended improvements to address deficiencies.
 - Cost estimate and suggested priority of recommended improvements.
 - Financial analysis and funding strategies.
 - Operation and maintenance recommendations.

3. ATTACHMENTS

The attachments below are included with this RFP.

Attachment A – Town of Los Gatos Standard Agreement

4. INSTRUCTIONS TO PROPOSERS

4.1. Pre-proposal Conference: None.

4.2. Examination of Proposal Documents.

The submission of a proposal shall be deemed a representation and certification by the Proposer that they:

4.2.1. Have carefully read and fully understand the information that was provided by the Town to serve as the basis for submission of this proposal.

4.2.2. Have the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted.

4.2.3. Represent that all information contained in the proposal is true and correct.

4.2.4. Did not, in any way, collude, conspire to agree, directly or indirectly, with any person, firm, corporation or other Proposer regarding the amount, terms or conditions of this proposal.

4.2.5. Acknowledge that the Town has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Proposer, and Proposer hereby grants the Town permission to make these inquiries, and to provide any and all related documentation in a timely manner.

4.3. No request for modification of the proposal shall be considered after its submission on grounds that Proposer was not fully informed of any fact or condition.

4.4. Questions

Any questions by the Proposer regarding this RFP or the attachments must be put in writing and received by the Town no later than 5:00 p.m. on September 09, 2019. Correspondence shall be addressed to:

Admas Zewdie, Project Manager
Email: admas@activewayz.engineering
Phone: (408) 219-5678

The Town shall not be responsible for nor be bound by any oral instructions, interpretations, or explanations issued by the Town or its representatives.

Responses from the Town to questions by any Proposer will be communicated in writing to all recipients of this RFP. Questions received after the date and time stated above will not be accepted or responded to.

4.5. Addenda

It shall be the Consultant's responsibility to check the Town's website to obtain any addenda that may be issued. Any addenda issued by Town shall become a part of this RFP, and shall be acknowledged and responded to by Proposer.

4.6. Submittal of Proposals

Proposers are requested to submit three (3) hard copies of the Consultant's proposal and an electronic copy in PDF format. The proposal package shall be clearly marked "PROPOSAL FOR TOWN OF LOS GATOS STORMWATER MASTER PLAN". All proposals shall be submitted to:

Admas Zewdie, Project Manager
Department of Parks and Public Works
41 Miles Avenue
Los Gatos, CA 95030
E-mail: admas@activewayz.engineering

Proposals must be delivered no later than **1:00 pm on September 30, 2019**. All proposals received after that time will not be accepted.

Unsigned proposals or proposals signed by an individual not authorized to bind the prospective Consultant will be considered nonresponsive and rejected.

Verification of receipt of proposal is the responsibility of the submitting firm.

5. Withdrawal of Proposals

A Proposer may withdraw its proposal at any time before the expiration of the time for submittal of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of, the Proposer.

6. RIGHTS OF THE TOWN OF LOS GATOS

This RFP does not commit the Town to enter into a contract, nor does it obligate the Town to pay for any costs incurred in preparation and submittal of proposals or in anticipation of a contract. The Town reserves the right to:

- Make the selection based on its sole discretion;
- Reject any and all proposals;
- Issue subsequent Requests for Proposals;
- Postpone opening proposals for its own convenience;
- Remedy errors in the Request for Proposals process;
- Approve or disapprove the use of particular subconsultants;
- Negotiate with any, all, or none of the Proposers regarding project scope;
- Accept other than the lowest cost offer;
- Waive informalities and irregularities in the Proposals; and/or
- Enter into an agreement with another Proposer in the event the originally selected Proposer defaults or fails to execute an agreement with the Town.

An agreement shall not be binding or valid with the Town unless and until it is executed by authorized representatives of the Town and of the Proposer.

7. RFP TIMELINE

The Town intends to select a firm within thirty days following the submission deadline. The Town may, at its own discretion, conduct interviews and other evaluations of some, all, or none of the applicants prior to selection. The Town will select the firm that best meets the needs of the Town.

RFP and Implementation Schedule (Tentative):

Public release of Request for Proposal	August 29, 2019
Questions from Proposer	September 09, 2019 by 5:00 pm
Town Response to Questions	September 16, 2019
Deadline for Proposal Submittals	September 30, 2019 by 1:00 p.m.
Interview (if required)	October 21 - 25
Selection of top-ranked firm for scope refinement	October 28, 2019
Notice of Award (approximate)	November 06, 2019
Council Approval of Contract (tentative)	December 03, 2019
Notice to Proceed	December 05, 2019
Complete Project	May 13, 2020

8. INFORMATION TO BE SUBMITTED

These guidelines govern the format and content of the proposal. The intent of the RFP is to encourage responses that clearly communicate the Proposer's understanding of the Town's requirements and the firm's ability to meet those requirements. The proposal shall not exceed 25 pages (8 ½"x11"), including attachments. Folded 11"x17" pages can be used for exhibits and schedule. Section separators are not included in the page count. Minimum font size of 11 is required.

In addition to the items included within this RFP, including Attachment A, the proposal should include the following information referenced by letter for ease of identification:

- A. Details of the firm's and key staff's experience and qualifications, including any unique qualifications of the firm.
- B. Examples of projects with similar scope for similar size jurisdictions, including reference contacts.
- C. Resumes and other relevant information specific to the project team.
 - C-1. Identify the project lead and the percentage of time available to work on the project for each key team member.**
- D. Provide details on the project understanding and approach to the project.
- E. Provide a detailed scope of work for the project. The scope of work shall clearly state deliverables for each task, as well as any underlying assumptions and exclusions.
- F. Provide a project schedule in a Gantt chart format.
 - E-1. The first day shall be the notice to proceed date and noted as Day 1 on the schedule.
 - E-2. Include all milestones.
 - E-3. Clearly identify critical path elements.
 - E-4. Include recommendations for formal progress reports to staff and the Town Council.
- G. Identify any exceptions taken to Attachment A – Standard Agreement, per Item 9 below.
- H. Provide your firm's rate sheet that would apply to this project.
- I. Additional supporting documentation as the proposer's discretion.

9. Evaluation Criteria

In making the award, the Town will apply the following evaluation criteria:

- Completeness and quality of the proposal.
- Demonstrated understanding of the project.

- Technical approach to the project.
- Experience of the project team.
- Completion of similar projects.
- Cost proposal (to be submitted later).

The top-rated firm(s) will meet with Town staff to discuss and develop a final scope of services. The consultant firms will have seven days to provide project costs. The cost proposal shall include all labor costs, overhead costs, sub-consultant costs, and an itemized list for estimated direct expenses. Costs must be shown in a matrix format, by task grouping (as negotiated), and show hours per staff member, base labor rates, and overhead and profit rates.

Upon receipt of the cost proposal, the Town will enter final negotiations with the top-rated consulting firm. If the Town is unable to reach agreement with the top rated firm, the Town may choose to negotiate with additional firms.

10. CONTRACT TYPE AND METHOD OF PAYMENT

It is anticipated that the agreement resulting from this RFP, if awarded, will be an Agreement for Services.

Proposers shall be prepared to accept the terms and conditions of the Agreement, including Insurance Requirements. If a Proposer desires to take exception to the Agreement, Proposer shall provide the following information of their submittal package.

- Proposer shall clearly identify each proposed change to the Agreement, including all relevant Attachments.
- Proposer shall furnish the reasons for each proposed change, as well as specific recommendations for alternative language.

The above factors will be taken into account in evaluating proposals.

The Town pays net 30 days of invoice for work performed.

11. PREVAILING WAGE COMPLIANCE.

If this Agreement includes work performed during the “design and preconstruction phases of construction” (including inspection or field surveying services), as defined by “Prevailing Wage Laws” (as set forth in the California Labor Code, including section 1720 et seq.), the Town hereby determines that those Services are “public works,” and this Agreement is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, and all related regulations, including requirements pertaining to ages, working hours, and workers’ compensation insurance.

12. INSURANCE REQUIREMENTS

The selected Proposer(s), at Proposer’s sole cost and expense and for the full term of the agreement or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements as outlined in the Town Standard Agreement.

All policies, endorsements, certificates and/or binders shall be subject to the approval of the Town of Los Gatos as to form and content. These requirements are subject to amendment or waiver, if so approved in writing by the Town of Los Gatos. The selected Proposer agrees to provide the Town with a copy of said policies, certificates and/or endorsement upon award of Agreement.

13. PUBLIC NATURE OF PROPOSAL MATERIAL

Responses to this RFP become the exclusive property of the Town of Los Gatos. At such time as the Town awards a contract, all proposals received in response to this RFP become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are defined by the Proposer as business or trade secrets and plainly marked as “Confidential,” “Trade Secret,” or “Proprietary.” The Town shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as “Confidential,” “Trade Secret,” or “Proprietary,” or if disclosure, in the Town’s sole discretion, is required under the California Public Records Act as addressed below. Any proposal which contains language purporting to render all or significant portions of the proposal “Confidential,” “Trade Secret,” or “Proprietary” shall be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the Town of Los Gatos may determine, in its sole discretion that the information that a Proposer submits is not a trade secret. If a request is made for information marked “Confidential,” “Trade Secret,” or “Proprietary,” the Town shall provide the Proposer who submitted the information reasonable notice to allow the Proposer to seek protection from disclosure by a court of competent jurisdiction, at the Proposer's sole expense.

14. COLLUSION

By submitting a proposal, each Proposer represents and warrants that its proposal is genuine and made in the interest of or on behalf of any person named therein; that the Proposer has not directly induced or solicited any other person to submit a sham proposal or any other person to refrain from submitting a proposal; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

15. DISQUALIFICATION

Factors, such as, but not limited to, any of the following, may disqualify a proposal without further consideration:

- Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms or conditions of this proposal;
- Any attempt to improperly influence any member of the evaluation team;
- Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the Town;
- Evidence of incorrect information submitted as part of the proposal;
- Evidence of Proposer’s inability to successfully complete the responsibilities and obligations of the proposal; and
- Proposer’s default under any previous agreement with the Town.

16. NON-CONFORMING PROPOSAL

A proposal shall be prepared and submitted in accordance with the provisions of these RFP instructions and specifications. Any omission, variance, or limitation of, from or to a proposal may be sufficient grounds for non-acceptance of the proposal, at the sole discretion of the Town.

17. GRATUITIES

No person shall offer, give or agree to give any Town employee any gratuity, discount or offer of employment in connection with the award of contract by the Town. No Town employee shall solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with a Town contract.

ATTACHMENT A

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on (DATE) by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") Name of Consultant, ("Consultant"), whose address is (Address). This Agreement is made with reference to the following facts.

I. RECITALS

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

II. AGREEMENTS

- 2.1 Scope of Services. Consultant shall provide services as described in that certain Proposal sent to the Town on (DATE), 2019, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect from date of execution to XXX.
- 2.3 Compliance with Laws. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Consultant represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.5 Information/Report Handling. All documents furnished to Consultant by the Town and all reports and supportive data prepared by the Consultant under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Consultant's services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and

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

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

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

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

Invoices:

Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

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

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

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

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

2.11 Conflict of Interest. Consultant understands that its professional responsibilities are solely to the Town. The Consultant has and shall not obtain any holding or interest within the Town of Los Gatos. Consultant has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Consultant warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.

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

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

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

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

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

General Liability:

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

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

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

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

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

IV. GENERAL TERMS

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

- 4.4.2 Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime, weekend and holiday pay, and shift pay must be paid pursuant to applicable Labor Code section.
- 4.4.3 The public entity for which work is being performed or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violations identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.
- 4.4.4 As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, the contractor agrees to present to the TOWN, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the Agency or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.
- 4.4.5 In addition to submitting the certified payrolls and related documentation to the TOWN, the contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and final payment.
- 4.4.6 No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- 4.4.7 No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.

- 4.4.8 Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the TOWN for any fines assessed by the California Department of Industrial Relations against the TOWN for such violation, including all staff costs and attorney's fee relating to such fine.
- 4.4.9 The TOWN shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., the TOWN may continue to hold sufficient funds to cover estimated wages and penalties under the contract.
- 4.5 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Consultant.
- 4.6 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.7 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:
- | | |
|---------------------|--------------|
| Town of Los Gatos | (Consultant) |
| Attn: Town Clerk | (Address) |
| 110 E. Main Street | |
| Los Gatos, CA 95030 | |
- or personally delivered to Consultant to such address or such other address as Consultant designates in writing to Town.
- 4.8 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.
- 4.9 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Consultant. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

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

Town of Los Gatos by:

Consultant, by:

Laurel Prevetti, Town Manager

Recommended by:

Matt Morley
Director of Parks and Public Works

Printed Name and Title

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, CMC, Town Clerk