

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

REQUEST FOR PROPOSALS

Transportation Impact Fee Study

RFP RELEASE DATE:

December 8, 2021

PROPOSAL SUBMITTAL DEADLINE:

12:00 pm, January 21, 2022



RFP and Addenda available at:

<https://www.losgatosca.gov/2258/RFPREQ>

REQUEST FOR PROPOSALS

1. INTRODUCTION AND PROJECT BACKGROUND

The Town of Los Gatos (Town) is requesting proposals from qualified firms to prepare a Transportation Impact Fee Study to develop a Transportation Impact Fee Program. The recommended program will be presented to the Town Council for its consideration. If adopted, the Transportation Impact Fee Program will replace the Town’s current Traffic Impact Mitigation Fees.

California Senate Bill (SB) 743, which was signed into law by Governor Brown in 2013, changes the way that public agencies evaluate the transportation impacts of projects under the California Environmental Quality Act (CEQA), recognizing that roadway congestion, while an inconvenience to drivers, is not itself an environmental impact. The Town of Los Gatos (Town) started the process of transitioning to using Vehicle Miles Traveled (VMT) as a metric in conducting CEQA transportation analysis in 2019. The Town Council has made several decisions leading to the completion of the efforts.

The transition to using VMT as the metric for transportation analyses pursuant to CEQA has necessitated the update to the Traffic Impact Policy. Policy No. 1-05, currently known as the Traffic Impact Policy, is intended to provide guidance to Town staff and the development community in implementing the provisions of the Town Municipal Code, Chapter 15, Article VII, Traffic Impact Mitigation Fees. The new Transportation Impact Policy, adopted by the Town Council at its December 7, 2021 meeting, superseded Policy No. 1-05 and expanded the purpose to include “evaluating and mitigating CEQA transportation impacts”.

The Transportation Impact Policy identifies a framework of VMT mitigation measures, named VMT Reduction Strategies, to mitigate Townwide and project-level CEQA transportation impacts. The Town intends to update the current Traffic Impact Mitigation Fees to incorporate the VMT mitigation measures. To support the update, the Town will prepare a Nexus Study that will serve as the basis for requiring development impact fees under AB 1600 legislation, as codified by California Code Government Section 66000 et seq. The established procedures under AB 1600 require that a "reasonable relationship", or nexus, exist between the traffic infrastructure improvements required to mitigate the traffic impacts and the proposed development project.

The study shall satisfy the statutory requirements:

- Identify the purpose of the fee.
- Identify the use to which the fee will be put.
- Determine that there is a reasonable relationship between the fee’s use and the type of development on which the fee is to be imposed.
- Identify reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

2. SCOPE OF WORK

The Town is requesting proposals from qualified firms to prepare a Transportation Impact Fee Study develop a Transportation Impact Fee Program. The Town's impact fee must comply with the Mitigation Fee Act (California Government Code Section 66000 et seq., also known as AB 1600). The consultant should review the Town's enabling legislation (ordinances) establishing the Transportation Impact Policy.

The proposal shall include a minimum of the following tasks and deliverables:

Task 1: Project Management and Stakeholder Engagement

Deliverables

- Final project scope and schedule
- Project Team meetings and materials
- Public meetings: prepare and attend meetings with the public, stakeholders, Town Commissions, and Town Council.

Task 2: Fee Program Approach and Scope

The Consultant will advise staff on the relationship between Level of Service-based and Vehicle-Miles-Traveled (VMT)-based fees. The Transportation Impact Policy requires land use projects to mitigate CEQA transportation impacts and provide mitigation improvements, as applicable. Town staff is considering two possible approaches in the new fee program:

- A. Two fees: maintain the current LOS-based traffic impact mitigation fee and establish a new VMT-based fee
- B. A combined fee: combine the current traffic impact mitigation fee and the new VMT-based fee

The Town is interested in the Consultant's input on these two and possibly other approaches and the recommendation on the best practice. It is anticipated that the new fee program would be designed to reduce vehicle trips and vehicle miles of travel per capita within the Town to avoid or minimize the need to expand existing roadway capacity.

Deliverables

- Report: summarizes the considerations in the approach and provides a recommendation on the preferred approach

Task 3: Transportation Improvements Project List

The benefit zone of the fee program would be Townwide.

In the update to the Transportation Impact Policy, no change was made to the Transportation Mitigation Improvements Project List. This project list already has many improvements that are

consistent with the VMT Reduction Strategies. It is the Town's intent to update the project list to emphasize the VMT-reducing improvements and fund a broader range of project types.

The Consultant should review the Mobility Element of the Draft General Plan 2040 and other Town's plans and policies and formulate a draft Project List. The Consultant should identify the transportation improvements and facilities needed to serve this growth and achieve the General Plan VMT goals.

The Consultant should prepare order-of-magnitude project cost estimates and propose timing of project implementation.

Deliverables:

- Report: confirms the benefit zone, proposes criteria for capital improvement projects used to develop the fee program.
- Map and list depicting the preliminary set of projects to be considered in this study.
- Report: identifies draft capital improvement projects based on the project selection criteria.
- Project cost estimates and proposed timing for the need projects

Task 4: Fee Revenue Estimation

The Consultant should evaluate different fee calculation options and recommend a preferred option based on staff and stakeholder input. Consequently, the Consultant should develop an estimation of overall fee revenues based on the General Plan growth forecasts and the project list.

Deliverables:

- Report: fee calculation options and fee revenue estimation.

Task 5: Nexus Study

The purpose of this task is to allocate the expected unfunded costs of the transportation improvement projects in the draft project list by land use type. A portion of each project's cost must be allocated to the correction of existing deficiencies (if appropriate) and to growth in new trips and VMT.

Once the project list is refined the allocated project costs will be used to construct a fee schedule by land use type. Recommendations will be provided on different strategies for allocating the fees among residential, retail, and other commercial development.

Deliverables

- Technical Memorandum: documents the nexus analysis methods, quantification of the nexus and burden, proposed fee schedule, and an assessment of the relative economic burden imposed by the preliminary fee schedule on local residential and commercial markets. The proposed fee schedule shall include a comparative analysis for nearby like sized jurisdictions.

Task 9: Draft and Final Nexus Study Reports

The Consultant shall prepare the draft and final reports containing background information, methodology, findings, and recommendations. The report should explain the purpose of the transportation impact fee, provide sufficient information and the necessary findings to determine the appropriate development impact fees based on the proposed infrastructure requirements to support the Town's General Plan growth projections. The report shall include calculations that demonstrate the legal nexus between the recommended fees and the impact created by new development.

Deliverables

- Draft Nexus Study Report
- Final Report and recommendations

Task 10: Additional Services

The Consultant shall include in the proposal, as a separate line item, a section for Additional Services. These work items are optional depending on the project budget and the Town's needs.

3. MINIMUM QUALIFICATIONS OF PERSONNEL

The Consultant shall meet, at a minimum, the appropriate professional qualifications as required to complete the scope of work as required by State Law and the contract. qualified consultants that have demonstrated verifiable experience in assessing a comprehensive list of development impact fees, in order to identify and recommend a program of impact fees to be acted in Foster City that meet the requirements of the Mitigation Fee Act. Specifically, the study should include detailed and legally defensible justification and analysis, including nexus studies, demonstrating the financial connection between the need for each proposed fee and new development or redevelopment.

4. ADDITIONAL INFORMATION AND RELEVANT PROJECTS

Vehicle Miles Traveled (VMT) project webpage

Draft version of the Transportation Impact Policy adopted by the Town Council 12/7/2021

<https://www.losgatosca.gov/2563/Vehicle-Miles-Traveled---VMT>

Town of Los Gatos Draft 2040 General Plan and DEIR: www.losgatos2040.com

2016 Santa Clara County Measure B: <https://www.vta.org/projects/funding/2016-measure-b>

Connect Los Gatos: <https://www.losgatosca.gov/ConnectLG>

Town of Los Gatos Bicycle and Pedestrian Master Plan (BPMP):

<https://www.losgatosca.gov/2347/Bicycle-and-Pedestrian-Master-Plan>

5. INSTRUCTIONS TO PROPOSERS

5.1 Schedule

The tentative schedule is provided in Table 1. The Town may, at its own discretion, conduct interviews and other evaluations of some, all, or none of the applicants prior to selection. The performance period is no greater than twenty-four (24) months, with a project schedule determined by the Town and the select Consultant.

Table 1 - RFP Schedule (Tentative):

Task	Schedule
Request for Proposal	December 8, 2021
Questions from Proposer	December 20, 2021
Town Response to Questions from Proposers	December 30, 2021
Deadline for Proposal Submittals	Noon, January 21, 2022
Virtual Interview (if necessary)	Feb. 1 - 3, 2022
Scope Refinement and Negotiation	Feb. 7 - 11, 2022
Notice to Proceed (tentative)	February 14, 2022

5.2 Town of Los Gatos Standard Agreement: Included in Attachment A.

5.3 Examination of Proposal Documents

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

- Have carefully read and fully understand the information that was provided by the Town to serve as the basis for submission of this proposal.
- Have the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted.
- Represent that all information contained in the proposal is true and correct.
- Did not, in any way, collude, conspire to agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms or conditions of this proposal.
- 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.

5.4 The Proposer bears all costs of preparing and submitting its proposal consistent with the requirements outlined in this RFP.

5.5 Questions Regarding the RFP

Any questions by the Proposer regarding this RFP or the attachment(s) must be put in writing and received by the deadline shown on Table 1. Correspondence shall include in the

email subject line: Transportation Impact Fee Study and be addressed to:

Ying Smith, Transportation and Mobility Manager
E-mail: ysmith@losgatosca.gov

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. No oral questions or inquiries to other individuals about this RFP shall be accepted.

5.6 Addenda

Addenda to this RFP, if issued, will be sent to all prospective Consultants the Town of Los Gatos - Parks and Public Works Department has specifically e-mailed a copy of the RFP to and will be posted on the Town of Los Gatos - Parks and Public Works Department website at: <https://www.losgatosca.gov/2258/RFPFRQ>

5.7 Submittal of Proposals

Proposers are requested to submit the proposal by the deadline in Table 1 in electronic format in one of the following ways: send the proposals via email (file size is limited to 25MB); or Upload to your own file sharing website or FTP site and send a link via email. The email address for electronic submittals is: YSmith@LosGatosCA.gov.

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. Hard copies of the proposals will not be accepted.

5.8 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.

5.9 Project Funding

This phase of the project is funded with Town of Los Gatos dollars, requiring the Consultant to follow all pertinent local regulations.

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 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.

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

7.1 Consultant Qualifications and Experience: Provide details of the team's qualifications and experience, including any specific qualifications in the same type of projects in similar California Cities and Towns. Provide Examples of projects with similar scope.

7.2 Organization and Approach: Describe the roles and organization of your proposed team for this project. Describe your project and management approach and identify the Project Manager. Describe the roles of key individuals on the team. Provide resumes and references for all key team members.

7.3 Scope of Services: Prepare a detailed Scope of Services. Describe project deliverables for each phase of your work.

7.4 Schedule of Work: Provide a detailed 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 performance period identified by the Town or shall be modified with explanation as to why an alternate schedule is being proposed.

7.5 Cost Proposal: All labor costs, overhead costs, sub-consultant costs, and direct expenses should be included. 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.

7.6 Identify any exceptions taken to Attachment A – Standard Agreement.

7.7 Additional supporting documentation as the proposer's discretion.

8 EVALUATION CRITERIA AND SELECTION PROCESS

Based on the proposals and interviews, proposers will be evaluated according to each Evaluation Criteria. The Evaluation Criteria Summary and their respective weights are shown on Table 2:

Table 2 - Evaluation Criteria

No.	Written Evaluation Criteria	Weight
0	Completeness of Response	Pass/Fail
1	Consulting Firm's Experience	10
2	Team Qualifications & Experience	20
3	Organization & Approach	10
4	Scope of Services to be Provided	20
5	Schedule of Work	5
6	Cost	20
7	References	5
Subtotal:		90
No.	Interview Evaluation Criteria	Weight
8	Presentation by team	5
9	Q&A Response to panel questions	5
Subtotal:		10
Total:		100

After proposal evaluation and interviews, Town staff will meet with the top-rated firm(s) to discuss and develop a final scope of services and an updated cost proposal. If the Town is unable to reach agreement with the top-rated firm, the Town may choose to negotiate with additional firms.

9 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.

10 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.

11 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.

12 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.

13 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.

14 NON-CONFORMING PROPOSAL

A proposal shall be prepared and submitted in accordance with the provisions of these RFP instructions and specifications. Any alteration, omission, addition, 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.

15 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.

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") and _____ ("Consultant"), whose address is xxxxx. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage Consultant to provide services to **(Insert)**.
- 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** which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect upon execution to **DATE**. Consultant shall perform the services described in this agreement as described in Exhibit A.
- 2.3 Compliance with Laws. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Consultant represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.5 Information/Report Handling. All documents furnished to Consultant by the Town and all reports and supportive data prepared by the Consultant under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Consultant's services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Consultant shall not make any of these documents or information available to any

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

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

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

Invoices:

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

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

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

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

III. INSURANCE AND INDEMNIFICATION

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

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

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

General Liability:

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

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

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

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

IV. GENERAL TERMS

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

4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.

4.3 Termination of Agreement. The Town and the Consultant shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Consultant shall deliver to the Town all plans, files, documents, reports, performed to date by the Consultant. In the event of such termination, Town shall pay Consultant an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.

4.4 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Consultant.

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

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

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

Consultant
address
city st zip

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

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

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

Town of Los Gatos by:

Consultant, by:

Laurel Prevetti, Town Manager

Recommended by:

Matt Morley, Parks and Public Works Director

Printed Name and Title

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, MMC, CPMC, Town Clerk