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## Joint Meeting February 6, 2025 Item #2 Orchards are Agricultural

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**From** Maria Bautista <maria@specker.com>

**Date** Tue 2/4/2025 6:59 PM

**To** Sean Gallegos <sgallegos@losaltosca.gov>; Public Comment - HC <HCpubliccomment@losaltosca.gov>;  
Public Comment - PC <PCpubliccomment@losaltosca.gov>

 1 attachment (609 KB)

2023 City of Los Altos Maintenance Orchard Service Agreement with Museum Executed 7-31-23.pdf;

Hello,

Please clarify.

In TraenorHL Standard's Compliance Review Part 2: Categorical Exemptions Exceptions Findings, beginning page 97, the report concludes that the project is not located in an environmentally sensitive area where there are known environmental resources of critical concern like agriculture or farmland.

Our working orchard is agricultural.

The attached maintenance agreement between the City and History Museum (2023) highlights the recognition that the orchard has been in continuous production since 1901. The harvest has been sold at De Martini Orchard Market for years.

Why is it that CEQA provisions for agricultural land do not apply here?

**MAINTENANCE SERVICES AGREEMENT BETWEEN  
THE CITY OF LOS ALTOS, CALIFORNIA  
AND  
ASSOCIATION OF THE LOS ALTOS HISTORICAL MUSEUM  
FOR  
MAINTENANCE AND OPERATION OF THE LOS ALTOS  
HERITAGE ORCHARD**

**THIS AGREEMENT** is made and entered into as of the 1st of July, 2023, by and between the CITY OF LOS ALTOS, a municipal corporation, hereinafter referred to as “CITY,” and ASSOCIATION OF THE LOS ALTOS HISTORICAL MUSEUM, DBA LOS ALTOS HISTORY MUSEUM (hereinafter LAHM), a California Corporation, hereinafter referred to as “CONTRACTOR.”

**RECITALS**

**WHEREAS**, CITY, desires to retain a qualified CONTRACTOR for maintenance and operation of the Los Atos Heritage Orchard (the “Project”); and

**WHEREAS**, the vision for the Heritage Orchard, a Los Atos City Landmark, is to protect an irreplaceable historic remnant of the “Valley of Heart’s Delight” for the recognition, conservation, enhancement and use by communities visiting the Civic Center.

**WHEREAS**, the orchard has been in continuous production since it was planted by J. Gilbert Smith beginning in 1901. The land was deeded to the City of Los Atos in 1954 with the understanding that the trees within the Civic Center landscape would be maintained in perpetuity as a working orchard for the benefit of future generations and to promote a sense of place with an appreciation of the innovative agricultural heritage of the city.

**WHEREAS**, the Heritage Orchard has been managed under a contractual agreement between the City and a series of orchardists (J. Gilbert Smith, Don Speciale, Phil Doetsch), with the agreement that the orchardist has the right to market the fruit.

**WHEREAS**, the City owns the land on which the Heritage Orchard and the LAHM are located, with an agreement that LAHM manage the J. Gilbert Smith residence, surrounding landscape with outdoor agricultural exhibits and the museum building that displays indoor exhibits.

**WHEREAS**, in 1981, the Los Atos City Council designated the Civic Center Apricot Orchard as a Historical Landmark (Resolution No. 81-23). The landmark boundaries of the Civic Center Apricot Orchard were clarified in 1991 (Resolution No. 91-31), with a map (Exhibit A) describing the orchard as bounded by San Antonio (west), the Youth Center (east), the Library (south) and the Parking lot (north). The same orchard boundaries are listed in the State of California Primary Records for the Civic Center Orchard (HRI #15) and J. Gilbert Smith House (HRI #80). Currently, the online Los Atos Historic Resources Inventory (accessed 3/11/2023) lists two landmarks: (a) Civic Center

Apricot Orchard (1 N. San Antonio Rd) and (2) J. Gilbert Smith House (51 S. San Antonio Rd). However, the full document Los Altos Historical Resources Inventory, dated 2012, lists as a City Landmark only the J. Gilbert Smith

30,2026. The CITY and the CONTRACTOR by mutual agreement, may renew the contract for an additional two (2) years effective July 1,2026 if service levels are satisfactory.


4. **COMPENSATION.** CONTRACTOR'S total compensation for the services set forth for the Contract shall not exceed \$75,000 annually as specified in Exhibit B.
5. **INSURANCE.** CONTRACTOR shall procure and maintain for the duration of the Agreement insurance as described in Exhibit C against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.
6. **OWNERSHIP OF DOCUMENTS.** Not applicable.
7. **COMPLIANCE WITH LAW.** CONTRACTOR shall comply with all applicable federal, state and local laws, codes, ordinances and regulations, including Cal/OSHA requirements. CONTRACTOR represents to CITY that it has, and will maintain through the term of the Agreement, all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required for CONTRACTOR to provide contracted services. CONTRACTOR shall maintain a City of Los Altos Business License.
8. **STATUS OF CONTRACTOR.** The parties intend that CONTRACTOR, in performing the services herein specified, shall act as an independent contractor, and shall have control of the work and the manner in which it is performed. CONTRACTOR is not to be considered to be an agent or employee of CITY, and is not entitled to participate in any pension, insurance, bonus, or other similar benefit plan CITY provides its employees. In the event that CITY exercises its right to terminate this Agreement as provided herein, CONTRACTOR expressly agrees that CONTRACTOR shall have no recourse of right of appeal under rules, regulations, ordinances, or laws applicable to CITY employees.
9. **STANDARD OF CARE; PERFORMANCE OF EMPLOYEES.** CONTRACTOR'S services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.
10. **INDEMNIFICATION.** To the fullest extent permitted by law, CONTRACTOR shall defend (with counsel reasonably approved by CITY), indemnify and hold CITY, the City Council, members of the City Council, its employees, representatives, agents and volunteers harmless from any and all suits, damages, costs, fees, claims, demands, causes of action, liabilities, losses expenses, damage or injury of any kind, in law or equity, to property or persons, including wrongful death (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of CONTRACTOR or CONTRACTOR'S officers, assistants, subcontractors, employees or agents in connection with the performance of CONTRACTOR'S services or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent CONTRACTOR'S services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR. CONTRACTOR'S obligation to indemnify shall not be restricted to insurance proceeds, if any, received by CITY, the City Council, members of the City Council, its employees, or authorized volunteers.
11. **CALIFORNIA LABOR CODE REQUIREMENTS.** CONTRACTOR is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" or "maintenance"

forth in Public Contract Code section 9204. Furthermore, the resolution of claims of \$37 5,000 or less shall also comply with the claims resolution procedures set forth in Public Contract Code section 20104 et seq.

16. **PARTIAL INVALIDITY.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
17. **BINDING.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, assigns and successors-in-interest to the parties hereto.
18. **NO IMPLIED WAIVERS.** The failure of either party at any time to require performance by the other party of any provisions hereof shall not affect in any way the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.
19. **ASSIGNMENT.** CONTRACTOR shall not assign, delegate, nor transfer any interest in or duty under this Agreement without the prior written consent of CITY, and no transfer shall be of any force or effect whatsoever unless and until CITY has so consented.
20. **TAXES.** CONTRACTOR agrees to file tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement, and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold CITY harmless from any liability which it may incur to the United States of America or the State of California as a consequence of CONTRACTOR'S failure to pay, when due, all such taxes and obligations. In the event CITY is audited for compliance regarding withholding or other applicable taxes, CONTRACTOR agrees to furnish CITY with proof of payment of taxes on these earnings.
21. **DEFAULT.** In the event CONTRACTOR fails to provide the services set forth in this Agreement due to the fault of CONTRACTOR, CITY shall have the right to either do the work itself or hire an outside CONTRACTOR to perform those services.
22. **TIME OF ESSENCE.** Time is of the essence for each and every provision of this Agreement.

**CITY OF LOS ALTOS:**

APPROVED AS TO CONTENT:

  
Manny Hernandez (Aug 1, 2023 16:15 PDT)

Manny Hernandez  
Parks and Recreation Director

APPROVED AS TO FORM:

  
jolie houston (Aug 1, 2023 16:17 PDT)

Jolie Houston  
City Attorney

AGREED:

  
Gabriel Engeland (Aug 1, 2023 16:25 PDT)

Gabe Engeland  
City Manager

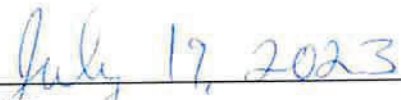
Aug 1, 2023

Date

**CONTRACTOR:**

  
\_\_\_\_\_  
Elisabeth Ward

Los Altos History Museum Executive Director

  
\_\_\_\_\_  
Date

10. CITY expects that the renovation of the orchard based on the annual and 4-yr work plans will showcase the beauty and use of the Heritage Orchard to boost civic pride in preparation for the 75th Anniversary Celebration of Los Altos.

#### LAHM

1. LAHM shall provide the leadership in preparation of a Heritage Orchard Master Plan that addresses, but is not limited to, the following topics: (a) irrigation, (b) pruning and stump removal, (c) cover crop and soil enhancement, (d) tree replacement, (e) apricot harvest, (f) integrated pest management, (g) esthetic appearance, and (h) renovations to support, accessibility and visitor enjoyment.
2. LAHM shall design and implement a plan for equitable distribution of the harvest in a manner that cultivates the goodwill of residents while considering personal safety, structural integrity of trees and financial sustainability.
3. LAHM shall be solely responsible for management operations (except as provided in CITY'S Responsibilities above) to maintain the Heritage Orchard as agreed upon in the Heritage Orchard Master Plan as updated annually.
4. LAHM shall be responsible for utilizing the established channels of communication to minimize the burden on City staff time, while keeping the CITY informed of all changes in activities on CITY property.
5. LAHM shall provide administrative personnel to arrange for all aspects of contracting services as needed to arrange for qualified persons to implement, monitor, review and revise the care of the orchard as outlined in the Heritage Orchard Master Plan with annual updates. Ultimate responsibility will lie with the LAHM Executive Director.
6. LAHM shall be responsible for ensuring that all contracts meet the standards of the CITY, including provisions for liability insurance, compliance with state and federal labor laws, purchases (i.e. trees, supplies) and availability of equipment.
7. LAHM shall be responsible for recruitment, training, supervision and scheduling of all volunteers, docents and interns engaged in orchard care.
8. LAHM shall be responsible for ensuring that all persons engaged in orchard care shall be covered by liability insurance and/or liability waivers.
9. LAHM shall be responsible for collaborating with CITY departments that also use, or potentially use, the Civic Center landscape, including the Library, Recreation and Community Services, Maintenance, Police and those with offices in City Hall.
10. LAHM is authorized to undertake fundraising drives for optional renovations and programs as appropriate.
11. LAHM shall cover the orchard in the financial report to the CITY due ninety (90) days after the close of LAHM's fiscal year.
12. LAHM shall utilize all funds received from the CITY for implementation of the Heritage Orchard Master Plan. LAHM shall account for such funds in accordance with designated gift procedures.
13. LAHM shall seek prior written approval of the CITY before installing any permanent structures (e.g. fence, barrier, sign).
14. LAHM shall extend to include orchard activities its existing two million dollar (\$1,000,000/\$2,000,000)

**EXHIBIT B**

**VENDOR FEES and PAYMENT MILESTONES**

**Total Annual Contract Services:** **\$75,000**

**Itemized Fees:** **N/A**

**Project Payment Schedule:**

<u>Milestone</u>	<u>Amount of Payment</u>
<b>Annual Payment Beginning July 1, 2023</b>	<b>\$75,000</b>

specifically include work performed under this Agreement.

5. **Umbrella or Excess Liability: Umbrella or Excess Insurance.** If umbrella or an excess liability insurance policy is used to satisfy the minimum requirements for CGL or Automobile Liability insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf;" with defense costs payable in addition to policy limits. CONTRACTOR shall provide a "follow form" endorsement or schedule of underlying coverage satisfactory to the CITY indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
6. The CITY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the umbrella or excess policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts or equipment furnished in connection with such work or operations. If CONTRACTOR maintains broader coverage, umbrella or excess coverage and/or higher limits than the minimums shown above, the CITY requires and shall be entitled to the broader coverage, umbrella or excess coverage and/or the higher limits maintained by CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and any other coverages shall be available to the CITY.

**Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

**Additional Insured Status.** The CITY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy and the Automobile Liability policy, with endorsements under CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage, with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts or equipment furnished in connection with such work or operations.

**Primary Coverage.** For any claims related to this contract, the CONTRACTOR'S insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.

**Notice of Cancellation.** Each insurance policy required above shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice (10 days for nonpayment) has been given to the CITY.

**Waiver of Subrogation.** CONTRACTOR hereby grants to CITY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the CITY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

**Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require the CONTRACTOR to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.





CERTIFICATE NUMBER: 75395525

REVISION NUMBER: DATE (MM/DD/YYYY)

BEFORE THAT THE POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED ABOVE FOR THE POLICY PERIOD INDICATED. IF ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liability, and Workers Compensation.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Los Altos Heritage Orchard Project
The City of Los Altos, the City Council, members of the City Council, its employees, representatives, agents and volunteers are named as additional insured on the General Liability policy per forms CG 2037 1219, CG 2010 1219

Digitally signed by Jon Maginot
Jon Maginot

CERTIFICATE HOLDER

City of Los Altos
1 N. San Antonio Road
Los Altos CA 94022

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

John Scroope

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ACORD 25 (2016/03)

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Any person or organization that you are required to add as an additional insured on this policy, under a written contract or agreement currently in effect, or becoming effective during the term of this policy. The additional insured status will not be afforded with respect to liability arising out of or related to your activities as a real estate manager for that person or organization.	All insured premises and operations.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the

insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:**

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or