

AGREEMENT FOR CONSULTANT SERVICES IHH

THIS AGREEMENT is made and entered into on April 12, 2018 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and Whitlock & Weinberger Transportation, Inc. (W-Trans), ("Consultant"), whose address is 505 17th Street, 2nd Floor, Oakland, CA 94612. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage Consultant to provide project management services for the system evaluation and engineering phases of the controller upgrade and system purchase projects for the Los Gatos Smart Signals project based on time and materials (T&M).
- 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 April 6, 2018, which is hereby incorporated by reference and attached as Exhibit A. The services include:
 - Develop schedule
 - Meetings and progress reports
 - Visionary Meeting
 - System evaluation
 - Design drawing
 - On-Call services
- 2.2 Term and Time of Performance. This contract will remain in effect from April 12, 2018 to June 30, 2020
- 2.3 Compliance with Laws. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Consultant represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.

- 2.5 Information/Report Handling. All documents furnished to Consultant by the Town and all reports and supportive data prepared by the Consultant under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Consultant's services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at Town's risk, unless Consultant expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Consultant which is and has been confirmed in writing by Consultant to be a trade secret of Consultant.
- 2.6 Compensation. Compensation for Consultant's professional services **shall not exceed \$125,000**, inclusive of all costs. Payment shall be based upon Town approval of each task.
- 2.7 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

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

Invoices:

Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

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

by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Consultant shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Consultant or is based on allegations of Consultant's negligent performance or wrongdoing.

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

III. INSURANCE AND INDEMNIFICATION

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

- iii. Consultant shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by the Town before work commences.
- iv. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$1,000,000 which is sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this agreement.

General Liability:

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

- 3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.
- 3.3 Workers' Compensation. In addition to these policies, Consultant shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Indemnification. The Consultant shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities,

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

IV. GENERAL TERMS

- 4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 Termination of Agreement. The Town and the Consultant shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Consultant shall deliver to the Town all plans, files, documents, reports, performed to date by the Consultant. In the event of such termination, Town shall pay Consultant an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 4.4 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Consultant.
- 4.5 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.6 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

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

Whitlock & Weinberger Transportation, Inc.
(W-Trans)
505 17th Street, 2nd Floor
Oakland, CA 94612

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

- 4.7 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any

attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.

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


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

Town of Los Gatos by:



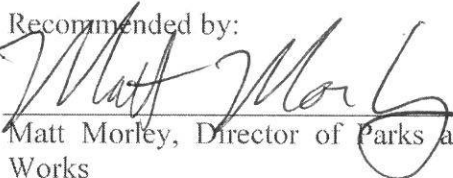
Laurel Prevetti, Town Manager

Consultant, by:



Mark E Spencer

Recommended by:



Matt Morley, Director of Parks and Public Works

Principal

Title

Approved as to Form:



Robert Schultz, Town Attorney



April 6, 2018

Ms. Ying Smith
Town of Los Gatos
41 Miles Avenue
Los Gatos, CA 95030

Proposal for On-Call Services to serve as Project Manager for the Los Gatos Smart Signals project

Dear Ms. Smith;

W-Trans is pleased to present this proposal for project management services for the system evaluation and engineering phases of the controller upgrade and system purchase projects. Following are the assumptions relied upon in preparing our scope of services and fee proposal.

- Project 0 (P0) replaces controller assemblies and upgrades detection Town-wide. The software in the new controllers might differ from current Town preferences as the adaptive project may need a different solution.
- Project 1 (P1) involves adding adaptive and system performance measures (SPMs) to the controller capabilities.
- Project 2 (bicycle app) is not to be addressed by the current scope but the "cloud computing" requirements must be understood and addressed.
- The focus of the current effort is to coordinate with MTCs System Evaluation and to assist with hiring a consultant to prepare contract documents.
- Assistance during the installation and implementation phases, and with all aspects of Project 2, are not addressed in this proposal.
- The schedule for this effort is listed in the IDEA grant application as 6 months for design and environmental clearance. Bid, award, and construction/installation activities are to be covered in a supplemental procurement.

Steve Fitzsimons, PE, TE, is our proposed key staff. He has recently completed a similar project for Rohnert Park and gained valuable, relevant insights.

Scope of Services

1. Develop schedule. Starting with the grant schedule requirements and Town expectations, W-Trans will develop a detailed schedule for the P0 and P1 efforts, and we will maintain and update the schedule throughout the project as needed.
2. Meetings and progress reports. W-Trans will schedule weekly calls with Town staff and other involved parties, focused on deliverables and due dates. We will provide monthly progress reports. We will attend up to six meetings with the MTC system engineering consultant, and up to two meetings with MTC staff. Following each meeting we will prepare meeting minutes.
3. Visionary Meeting. We will schedule and lead a visioning meeting with Town staff for P0 and P1 to include a thorough description of existing conditions on Los Gatos streets and desired performance once the P0 and P1 projects are complete. The product of the Visioning meeting will be turned into a performance specification for the adaptive system and a list of ASPMs to be configured for the Town's use by the system vendor.
4. System evaluation. W-Trans will review the Request for Proposal prepared by the MTC system engineering consultant and the Draft, Pre-Final, and Final levels of completion. We will coordinate with Town staff on

general conditions and dates, and check to see if performance specification from task 3 is incorporated. We will participate in system vendor interviews and selection, including reference checking. This proposal assumes no more than three vendors will be shortlisted and interviewed.

5. Design Drawing. We will prepare a request for proposal for design consultants. We will review design drawings and specifications at the 30%, 50%, 80%, 100% and Bid Set levels of completion, and provide comments on marked-up paper plots and in an Excel comment matrix. Coordination with Town engineering and inspection staff is assumed in this task.
6. On-Call Services. W-Trans will provide additional services that are not already described in Tasks 1-5 on an on-call basis. All on-call work will be documented via an email describing the scope, fee, and schedule before starting work. On-Call service may include, but are not limited to, the following:
 - Vendor interviews and negotiation meetings
 - Reference checks
 - Support with grant coordination
 - Acceptance testing
 - Responding to vendor questions

Exclusions: The scope of services does not include items that are not specifically identified above. Any additional services needed would be provided on a time and materials basis after receiving written authorization.

Schedule and Budget

The schedule for services in Tasks 1-5 will match the expected six-month schedule stated in the IDEA grant application. On-call services are expected to occur over the following 12 months. A detailed schedule will be prepared and updated by W-Trans throughout the project.

Our services will be conducted on a time and materials basis at the rates indicated on the enclosed sheet. Monthly invoices will be provided electronically unless a hard copy via mail is requested. The estimated maximum fee for Tasks 1-5 \$37,650 and the Task 6 budget is \$12,350, resulting in a total budget of \$50,000.

Steve Fitzsimons will be your primary contact for these service. Please contact him at 650-314-8313 or sfitzsimons@w-trans.com if you have any questions about this proposal.

Please issue a Purchase Order if you wish to initiate services. This proposal will remain a firm offer for 90 days from the date of this letter. Thank you for giving us the opportunity to propose on these services.

Sincerely,


Mark E. Spencer, PE
Principal

MES/smf/LGA006.P1

Enclosures: 2018 Fee Schedule
Project Fee Estimate

**Smart Signals PM Services for Los Gatos
W-Trans Fee Estimate**

Task	HOURS BY STAFF MEMBER				Total Hours
	Steve Fitzsimons	Assistant Engineer 1	Tech/ Admin 1	Misc	
1. Prepare and Update Schedule	10	8	0	\$0	18
2. Meetings and Progress Reports	57	42	0	\$106	99
3. Visioning Meeting	8	9	2	\$38	19
4. System Evaluation	20	14	0	\$26	34
5. Design drawings	33	18	9	\$0	60
6. On-Call Services	44	29	0	\$65	73
	172	120	11	\$235	303

Task	FEE AT HOURLY RATES INDICATED				TOTAL
	\$210	\$105	\$95	LS	
1. Prepare and Update Schedule	\$2,100	\$840	\$0	\$0	\$2,940
2. Meetings and Progress Reports	\$11,970	\$4,410	\$0	\$106	\$16,486
3. Visioning Meeting	\$1,680	\$945	\$190	\$38	\$2,853
4. System Evaluation	\$4,200	\$1,470	\$0	\$26	\$5,696
5. Design drawings	\$6,930	\$1,890	\$855	\$0	\$9,675
6. On-Call Services	\$9,240	\$3,045	\$0	\$65	\$12,350
	\$36,120	\$12,600	\$1,045	\$235	\$50,000

These rates are valid for work initiated prior to December 31, 2018. Work completed after January 1, 2019, and any subsequent year may be billed at the revised rates established for that year. Mileage charges will be based on the IRS Standard Mileage Rate (set at \$0.545 effective January 1, 2018; subject to change) plus 10 percent.



Fee Schedule

2018 Staff Billing Rates

Position	Billing Rate (per hour)
Principal	\$205 – \$290
Associate Principal	\$185 – \$205
Senior Engineer/Planner	\$175 – \$200
Engineer/Planner	\$150 – \$175
Associate Engineer/Planner	\$130 – \$150
Assistant Engineer/Planner	\$100 – \$130
Technician/Administrative	\$85 – \$100
Intern	\$30 – \$80
Field Technician	\$20 – \$40

2018 Expense Charges

Item	Charge
Mileage	\$0.60/mile*
Services and Expenses	10% surcharge

These rates are valid for work initiated prior to December 31, 2018. Work initiated after January 1, 2019, and any subsequent year may be billed at the revised rates established for that year.

* Mileage charge will be based on the IRS Standard Mileage Rate (set at \$0.545 effective January 1, 2018; subject to change) plus 10 percent.

490 Mendocino Avenue, Suite 201 **SANTA ROSA**, CA 95401 707.542.9500

505 17th Street, 2nd Floor **OAKLAND**, CA 94612 510.444.2600

1276 Lincoln Avenue, Suite 204 **SAN JOSE**, CA 95125 650.314.8313

w-trans.com



Ms. Ying Smith
Town of Los Gatos
Parks and Public Works Department
41 Miles Avenue
Los Gatos, CA 95030

RE: Project Management Services for Town's Smart Signals Project

Thank you for the opportunity for TJKM to provide project management services to the Town for the Smart Signals Project, which includes Project 0, 1, and 2. TJKM assisted the Town with preparation of MTC's IDEA grant application and was successful in the Town being awarded the federal funds for Project 1 and 2.

Based on our meeting on March 14, 2018, the Town would like the Consultant to assist in project management of the System Evaluation and Engineering (PS&E) phases of Project 0 and Project 1. Scope and responsibilities for the future phases, including P0 and P1 installation & implementation and P2, will be determined on a future date.

TJKM will assist the Town in the following tasks outlined by the Town in their email dated March 16, 2018:

- ▶ The Project Manager (PM) shall function on behalf of Town staff and assume full project management role and responsibility, ensuring project success from selection/evaluation of system and equipment, through RFP for design and overseeing the preparation of the bid contract documents. The PM would also assist with final implementation of a functioning system, within the project schedule. The scope and fee for providing project management services during bid and construction support will be a separate contract.
- ▶ The PM shall be responsible for communications with all parties: Town staff, MTC staff and consultants, Caltrans, and consultants and vendors hired by the Town.
- ▶ The PM shall submit written updates to designated Town staff on a regular basis and as requested by Town staff. For example, updates upon each meeting with MTC, design consultants, and vendors.
- ▶ The PM shall participate with the Town's Traffic Engineer in system evaluation as performed by MTC's consultant to ensure appropriate selection of system for the Town of Los Gatos.
- ▶ Based on the system evaluation completed by MTC's consultant, the PM shall prepare an RFP for a design consultant to prepare PS&E of Project 0 and 1. The Town's City Traffic Engineer will issue the RFP and the PM will be available to assist with questions that arise during the advertising phase.
- ▶ The PM shall review PS&E and provide comments to design consultants through redline markups scanned and emailed back to the design consultant.
- ▶ TJKM estimates the duration of the system evaluation and PS&E phases to be at least 24 months.



Ms. Ying Smith

March 19, 2018

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- The Town's Traffic Engineer is anticipated to be involved in the system evaluation phase meetings with MTC, review of the system engineering documentation, selection of the central signal system, review of the design RFP prepared by TJKM, and meetings with the Town's selected design consultant. TJKM will coordinate with the Town's Traffic Engineer during these instances and provide updates to the Town on other meetings attended without the Town's Traffic Engineer.

Based on the workscope above, TJKM anticipates a minimum of 10 hours a week of time for the PM or other staff assisting for at least an 18 month timeframe. Based on our experience, we estimate 6 months for the System Engineering Project 0 and 1 phase and 12 months for the PS&E phase. The PM and other staff assisting would invoice the Town on a time and materials basis using the latest rate schedule attached. TJKM will invoice monthly to the Town and inform the Town's Traffic Engineer once the budget is close to 90% expended.

The estimated fee for the workscope is $\$200/\text{hr} \times 10 \text{ hrs/week} \times 78 \text{ weeks} = \$156,000$ plus direct expenses (estimated at $\$10,000$) = $\$166,000$ total.

If the estimated duration is expected to be longer than 18 months, TJKM will revise the proposal accordingly and resubmit to the City for approval.

Please feel free to call me at 925-264-5003 or email at apatel@tjkm.com for any questions regarding this proposal.

Sincerely,

A handwritten signature in cursive script that reads "Atul Patel".

Atul Patel, T.E.
Director of Design & ITS



VISION THAT MOVES YOUR COMMUNITY

Rate Schedule

Principal	\$250/hour
Director	230/hour
Senior Project Manager	210/hour
Project Manager	180/hour
Senior Transportation Engineer	165/hour
Transportation Engineer	145/hour
Assistant Transportation Engineer	125/hour
Transportation Planner	120/hour
Assistant Transportation Planner	115/hour
Graphics Designer	110/hour
Designer	100/hour
Technical Staff II	90/hour
Administrative Staff	80/hour
Production Staff	55/hour

Reimbursable Expenses

Plotting (per sheet)	\$18.00
Travel Cost (per mile, subject to change; based on IRS standard mileage rates)545

All outside services are billed at cost plus a ten percent margin for handling.

Expert Witness charges available upon request.

Invoices are due and payable within 30 days. Invoices paid after 30 days will be subject to separate billings of one and one half percent per month of unpaid balance. Late charges are not included in any agreement for maximum charges.

Rates Effective January 1, 2018

Rates Subject to Change