



Town of Los Gatos

REQUEST FOR QUALIFICATIONS

**ON-CALL MATERIALS TESTING AND SPECIAL INSPECTION
SERVICES**

Date Issued: December 17, 2020

**Statement of Qualifications Deadline: Thursday, January 14, 2021 by
4:00p.m.**

Virtual Pre-Proposal Meeting: Wednesday, December 23, 2020 at 10:00 a.m.

Issued By: Town of Los Gatos
Parks and Public Works Department
41 Miles Avenue
Los Gatos, CA 95030
www.losgatosca.gov

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THIS FORM MUST BE PRINTED OUT, COMPLETED AND SUBMITTED WITH THE STATEMENT OF INTEREST (SOQ):

- ATTACHMENT 1 – QUALITY ASSURANCE PROGRAM
- ATTACHMENT 2 - CONFLICT OF INTEREST STATEMENT
- ATTACHMENT 3 – NON-COLLUSION DECLARATION
- ATTACHMENT 4 - REFERENCES
- ATTACHMENT 5 - STATEMENT REGARDING INSURANCE COVERAGE AND WORKER’S COMPENSATION INSURANCE ACKNOWLEDGMENT CERTIFICATE
- ATTACHMENT 6 - SAMPLE CONSULTANT SERVICES AGREEMENT

Schedule of Activities: The Town reserves the right to amend the schedule below as necessary.

<u>Activity</u>	<u>Anticipated Dates</u>
RFQ release	December 17, 2020
Pre-Proposal Meeting	December 23, 2020.
Deadline for Questions Submitted By	January 8, 2020
SOQ Submission Deadline (4:00 p.m.)	January 14, 2021
SOQ Evaluation	January 2021
Consultant Interviews/Presentations (if necessary)	February 2021
Contract Negotiations and Execution	March 2021

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On-Call Materials Testing and Special Inspection Services

Town's Contact: For all questions related to the RFQ, email the Town's Contact listed below:

Janice Chin
Assistant Engineer
Town of Los Gatos
Parks and Public Works Department
41 Miles Avenue
Los Gatos, CA 95030
jchin@losgatosca.gov

DRAFT

ON-CALL MATERIALS TESTING AND SPECIAL INSPECTION SERVICES

Statement of Qualifications Due: Thursday, January 14, 2021, by 4:00 p.m.

Pre-Proposal Meeting: Voluntary Pre-proposal meeting is scheduled for 10:00 am on Wednesday, December 23, 2020. The meeting shall be hosted via Zoom (web conference). At the pre-proposal meeting, Town staff will go over the Request for Qualifications (RFQ) and host a Q&A session. Consultants planning to participate should email the Town’s Contact, Janice Chin, at jchin@losgatosca.gov to obtain the web link and a password for the meeting by Tuesday, December 22, 2020.

Proposers may view and download this RFQ electronically from the Town’s website at <https://www.losgatosca.gov/2258/RFPFRFQ>. The Proposers are responsible for checking the Town’s website for any updates and addenda related to this RFQ. For any questions or assistance, please reach out to the Town’s contact.

A. PURPOSE

The Town of Los Gatos (Town) is seeking Statements of Qualification (SOQs) from qualified professional consultants (Proposers) to provide on-call materials testing and special inspection services for the Town’s capital improvement projects (CIPs) and other projects within the Town for a one-year contract term with the option to extend one additional year.

B. OVERVIEW

The Town is a general-law city incorporated in 1887. The Town’s Parks and Public Works Department (PPW) is responsible for improving and maintaining the Town’s infrastructure and assets. The budget for the Fiscal Year (FY) 2020-2021 Capital Improvement Program is \$33.5 million.

Potential CIPs that may require materials testing and special inspection services in 2021 include, but not limited to:

<u>Projects</u>	<u>Anticipated Start Timeline</u>
Annual Street Repair and Resurfacing Project	Spring or Summer 2021
Annual Curb, Gutter, and Sidewalk Maintenance	Spring 2021
Guardrail Replacement	Spring 2021
Traffic Signal Modernization	Spring or Summer 2021
Shannon Road Repair	Fall 2021
Building Replacement at Corporation Yard	Fall 2021

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Through this RFQ process, the Town is looking to secure a consultant services agreement with a qualified professional materials testing and inspection firm to provide on-call services described herein. From the SOQs received, the Town intends to hire the best qualified firm for the services for a one-year contract term with the option to extend one additional year. The Town reserves the right to award more than one contract for the services depending on the SOQs received and the capacity and expertise of the Proposers.

The selected firm will perform services on a “Time and Materials” basis based on a set fee schedule negotiated and pre-approved for the contract. Travel time and mileage to and from the Town should not be included or charged as part of the services. Travel time and mileage between jobsites within the Town related to services rendered should be incorporated into the rates in the fee schedule. Billable work hours or durations will be based on on-site hours and no more than a 2-hour minimum shall be allowed for durations less than 2 hours. Office and laboratory service hours shall be based on the actual hours expended. For materials testing and special inspection services not identified in the fee schedule, the specific scope and costs shall be specified and negotiated based on industry standards and best practices before services are rendered.

The contract amount or capacity for the services within the first one-year contract period shall not exceed \$180,000. If deemed necessary by the Town to increase the contract amount, an amendment to the consultant services agreement would be required which would need an approval from the Town Council.

On-Call Services:

The selected firm shall perform materials testing and special inspection services for various CIPs and other Town projects on an as-needed basis. Services to be performed under the contract shall be authorized and funded through individual projects that require the services. For each project, the Town’s project manager will request a time and material not-to-exceed quote or estimate for the services. The selected firm must provide quotes based on the fee schedule pre-approved for the contract. If the services required for a project is not listed on the fee schedule, the scope and fee shall be negotiated with the Town’s project manager.

The not-to-exceed quote or estimate for the services must be approved by the Town’s project manager, and a Purchase or Task Order issued by the Town (reserving the contract amount for that project) before performing services on the project. The selected firm must track testing and inspection services rendered separately for each project since separate monthly invoices would be required for projects. Invoices should include the project name, project number, Purchase/Task Order number, and date and type of services rendered, and be submitted to the Town’s project manager responsible for the project.

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The Town's Contact would act as the contract administrator to track all services rendered and address contracting requirements. Once the total invoiced amount for the contract nears the \$180,000 capacity, the Town's Contact shall be notified to address additional capacity needs.

The Town's project managers or authorized members will make best efforts to provide a minimum 48-hour notice to schedule testing and inspection services. There will be instances when only 24-hour or less notice is provided for services needed.

Once the materials testing and special inspection services is completed for the project, the remaining unbilled amounts in the Purchase or Task Orders shall be released back to the contract capacity for other projects.

Again, the Town has the option to extend the on-call contract for another year depending on the performance of the selected firm. For the contract extension, the selected firm is allowed to adjust the pre-approved fee schedule based on the Engineering News-Record's (ENR's) Construction Cost Index for the area and the period.

C. MINIMUM QUALIFICATIONS

The Town is seeking SOQs from Proposers with the following minimum qualifications with work experience within the greater San Francisco Bay Area:

1. Certified to perform typical materials testing and special inspection services for a public works agency projects and for Federal Aid transportation projects. Sampling technicians, inspectors, materials testing laboratories, and special inspectors must be trained and certified to perform services.
2. Experienced and capable of performing special inspections for structural concrete, steel, reinforcement bars, retaining walls, foundations, welding, and other structural and mechanical systems.
3. The laboratory shall be accredited/certified by the State of California and be under the management of a California Registered Professional Engineer to provide materials testing, including for federal aid projects.
4. The firm shall employ testing, inspection, and laboratory personnel who are certified by one or more of the following entities:
 - Caltrans District Materials Engineer
 - Nationally recognized non-Caltrans organizations such as the American Concrete Institute, American Asphalt Institute, National Institute of Certification of the Engineering Technologies, etc.

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- Other recognized organizations approved by the State of California and/or recognized by local governments or private associations.
5. Available and willing to frequently travel to the Town for services.

Furthermore, Proposers shall also comply with the following provisions:

1. Each Proposer is responsible for determining and complying with all applicable business licensing requirements necessary to complete the Project's scope of work. The successful Proposer shall be required to provide evidence to the Town that it is authorized to do business in California prior to the award of the contract.
2. Each Proposer is responsible for determining and complying with all applicable professional licensing requirements necessary to complete the Project's scope of work.
3. If applicable, California Department of Industrial Relations ("DIR") Registration is required. If applicable, the Proposer will be required to certify that it has verified that its subcontractors on this Project are registered with DIR in compliance with Labor Code sections 1771.1 and 1725.5 and the Proposer shall provide such proof of registration to the Town.

D. General Provisions and Requirements

1. All the services furnished by the Consultant shall be in accordance with the professional standards and quality which prevail among inspection and materials testing professionals, of similar knowledge and skill engaged in related work throughout California, under the same or similar circumstances. All documentation prepared by Consultant shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines which are in effect at the time such a documentation is prepared.
2. The Consultant, subconsultant, and laboratories must possess proper licenses to perform the services in the State of California.
3. Inspection and testing for federal aid projects must comply with the current Town's Quality Assurance Program (see Attachment 1).
4. The Consultant shall coordinate with the Town's project managers for individual projects as necessary to obtain authorization to perform and schedule services.
5. Questions related to the contract administration matters should be directed to the Town's Contact.
6. The Consultant should not assume any responsibilities or duties of contractors or the design professional.
7. The Consultant shall maintain the consultant's key personnel throughout the entire duration of services; and therefore, the Consultant shall conduct their business in a professional manner to schedule and support their personnel to provide the scope of

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services in a timely and professional manner. The Town must approve of any key personnel change in advance through personnel qualifications review and oral interviews with Town staff.

8. The Consultant shall verify that all information submitted to the Town is up to the Consultant's professional standards and satisfaction. Note and report any discrepancies observed in the course of professional activities covered by the services.
9. Deliverables will be submitted in electronic format (PDF) and in native document formats such as Word, Excel, AutoCAD, etc. unless otherwise specified.

E. Proposed Scope of Services

The Consultant shall provide the PPW Department with on-call materials testing and special inspection services for various Town CIPs and other projects within the Town. The Consultant shall coordinate with the Town's project managers for each project when services are required. Here is the general outline of the process involved to secure materials testing and special inspections services for each project:

1. As requested by the Town's project manager, the Consultant shall review the design or construction documents for the project to assess the testing and inspection needs. If the project documents are not available, the Consultant shall assess the needs of the project and make recommendations to the Town's project manager to best address the materials testing and special inspection needs. The Consultant may also need to conduct field visits and meet with Town staff as needed for the recommendations.
2. Provide a not-to-exceed proposal/quote for the services and deliverables based on the fee schedule pre-approved for the contract. Provide as much details regarding the scope of services in the proposal/quote including deliverables and project records/reports to be maintained.
3. If services required are not in the pre-approved fee schedule, negotiate appropriate fees with the Town's project manager.
4. Once the scope and cost of services for the project is negotiated and approved by the Town's project manager, obtain a copy of the approved Purchase or Task Order or a written directive from the Town before starting services.

The Consultant shall be responsible for efforts involved in assessing the materials testing and special inspection services needed, providing a quote, and securing the approval to initiate the services for a project. The Town should not be billed for efforts involved with providing a proposal/quote.

Materials testing and special inspection services shall be performed as specified in the design or construction documents, which often refers to the California Department of Transportation

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(Caltrans) Standard Specifications and Plans. If testing requirements are not identified, the Consultant shall make recommendations to the Town's project manager based on industry standards and best practices.

Here is a list of few materials testing and special inspections services sought for Town projects:

- Material sampling
- Compaction curves/R-value/sand equivalent/sieve analysis/durability
- Soil or aggregate base compaction testing
- Concrete compression strength
- Hot mix asphalt test
- AC modifier
- Crumb Rubber Modifier
- Asphalt rubber binder
- Asphaltic emulsion
- Spray rate
- Structural steel and welding
- Staff augmentation for construction inspections

Within one working day of completing each test, the Consultant shall provide the Town with a written notice describing the test performed and the results of the test, while indicating whether the results are in compliance with the standards and requirements contained in the design and construction documents. If compliance was not achieved, the written notice should include what corrective action is needed to obtain compliance.

Prepare a report of the inspection and/or testing results and conclusions/recommendations. Upon receipt of the analytical results, the Consultant shall prepare a summary letter comparing the analytical data to the governing allowable limits. The Summary Report will include copies of the laboratory reports and a sample location map. The Summary Report will provide conclusions and recommendations. Summary report shall be provided to Town staff within one week of receipt of the analytical results. The Consultant may be required to assist the Town in obtaining approvals and/or permits from County, State, and Federal agencies as required.

F. Other Services

Proposers shall list other specific services that they can provide as related to the On-Call Materials Testing and Special Inspection Services. Proposers should also state if they are able to provide hazardous materials testing services. The Town will consider other services to be included in the scope of services for the consultant services agreement. Proposers should submit their general fee schedule for all services that they can provide.

G. SOQ Format and Submission Requirements

Submitting the SOQ:

The SOQ must be received by the Town no later than Thursday, January 14, 2021 by 4:00 pm PST. The Town requires that all SOQs be submitted electronically via email or file sharing sites. The SOQ shall be clearly marked for “**Town of Los Gatos-Materials Testing and Special Inspection Services**” and emailed to:

Janice Chin
Assistant Engineer
Town of Los Gatos – Parks and Public Works
jchin@losgatosca.gov

Each Proposer is responsible for confirming the Town’s receipt of the SOQ. The Town email system has file size limitations; therefore, receipt confirmation is critical. Receipt of a SOQ by any other Town office will not constitute “delivery” as required by this RFQ. Each Proposer assumes full responsibility for timely delivery of its SOQ. Any SOQs received after the time and date specified above will be considered nonresponsive and will be returned to the consultant. No Proposer may submit more than one SOQ for the Project.

Each SOQ must include the following information:

Cover Letter (Maximum 2 pages) – Cover letter giving an overview of the Proposer’s general expertise, experience, and ability to perform the scope of services described in this RFQ. The cover letter shall be signed by an authorized representative of the firm.

Attachment 6 is the Town’s contract template for the Consultant Services Agreement. In the cover letter, state that the Town’s contract template is acceptable to the Proposer or list any exceptions or change requests to the contract provisions.

Certification Forms – Complete and sign the following certification forms:

Attachment 2-Conflict of Interest Statement

Attachment 3-Non-Collusion Declaration

Attachment 5-Statement regarding Insurance Coverage and Worker’s
Compensation Insurance Acknowledgment Certificate

Review of Scope of Services (Maximum 2 pages) – Proposers must comment on the firm’s ability to realistically provide the services listed in the Proposed Scope of Services as outlined. Provide comments and suggest modifications, changes, and/or additions as

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appropriate. Indicate how your firm/team would approach the project and what specialized services or unique insights your team would bring to the project.

Experience and Expertise – Discuss prior related project experience satisfying Minimum Qualifications for the Project and what would make the firm the best qualified for this Project. Emphasize projects of similar scope and magnitude. Discuss the firm’s experience in the accurate coordination of trades and sub-consultants and the quality control process. Discuss the firm’s ability to meet schedules and ability to control costs.

Qualifications of Key Personnel – Identify the project manager and key individuals on the consultant team and their resumes highlighting relevant qualifications and experiences. State projects that they were assigned to and their specific roles and responsibilities. Provide a statement regarding the firm’s commitment to keep the same personnel throughout the Project. Indicate how your firm’s resources will work together to complete this Project. Identify additional resources available in your firm.

Sub-Consultants – Identify any sub-consultants your firm may utilize. Include resumes of key individuals who will be directly involved in this Project and briefly describe any past involvement in joint projects with these sub-consultants. Indicate why the particular sub-consultant has been selected to work on the Project team. Indicate how the prime firm will ensure quality control and coordination of documents between the prime and the various sub-consultants.

References (complete **Attachment 4**) – A minimum of three (3) current references from past projects (of similar scope) completed by the proposed project manager and/or project team should be provided. All references must contain relevant projects completed within the past five (5) years. Provide the following information for each reference:

Firm, Owner, or Agency Name
Address, Telephone Number
Email Address
Project Description
List of Services Provided

Insurance Coverage – Identify carriers, A.M. Best ratings, and types and limits of insurance carried by your firm. If selected by the Town, the Consultant shall maintain minimum coverage requirements for commercial general liability, automobile liability, professional liability, and workers’ compensation as specified in the Consultant Services Agreement. The Consultant may achieve the required limits and coverage through a

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combination of primary and excess or umbrella liability insurance provided such policies result in the same or greater coverage as the coverages required by Town, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. If selected by the Town, the Consultant shall cause the insurance policies required herein to include the Town, and their respective officials, officers, employees, and volunteers as additional insureds for claims caused in whole or in part by the Consultant's negligent acts or omissions. The Consultant shall provide certificates of insurance to the Town that evidence compliance with the above.

Preliminary Fee Schedule – Submit a Preliminary Fee Schedule for various services provided by the Proposer. The Preliminary Fee Schedule shall be inclusive of all work and labor including, but not limited to, the Consultant's costs for site visits and travel expenses. Also, submit the Preliminary Fee Schedule of sub-consultants.

Addenda

If any revisions to this RFQ become necessary, the Town shall provide responses and clarifications to questions via addenda. The last day for issuance of an addendum is Monday, January 11, 2021. A Proposer shall submit any questions or requests for clarification to the Town's Contact by Friday, January 8, 2021.

Addenda to this RFQ, if issued, will be posted on the Town's website at <https://www.losgatosca.gov/2258/RFPREQ>. All proposers shall verify that the Town has issued any addenda for this Project prior to submitting the SOQ and ensure that all requirements of addenda are included.

H. Evaluation Process

Town staff will review the SOQs and will rank the Proposers. The evaluation of SOQs shall be within the sole judgment and discretion of the Town. All contacts during the evaluation phase shall be through the Town's Contact only. Proposers shall neither contact nor lobby evaluators during the evaluation process. Attempts by the Proposer to contact any reviewers of the SOQs with the exception of the Town's Contact may jeopardize the integrity of the evaluation and selection process and risk possible disqualification.

During the SOQ evaluation process, written questions or requests for clarification may be submitted by the Town to a Proposer regarding its SOQ or related matters. Failure to respond in a timely manner to any such questions or requests may be grounds for elimination of the Proposer from further consideration.

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Town staff will evaluate each SOQ meeting the qualification requirements set forth in this RFQ. After the review of SOQ, the highest-ranked Proposers may be invited for oral interviews as part of the selection process, if necessary. The Proposer will be notified of the time and place of oral interviews and if any additional information may be required to be submitted.

The Town shall be the sole judge of the evaluation of all SOQs. The Town's decision(s) shall be final. The Town reserves the right to reject any and all SOQs and waive any irregularity or minor defects in any SOQ received.

SOQ Evaluation Criteria

Following criteria shall be used to evaluate the SOQs:

- 1. Conflict of Interest Statement and Non-Collusion Declaration (Pass/Fail)**
 - a. Discloses any financial, business or other relationship with the Town that may have an impact upon the outcome of the contract or the construction project.
 - b. Lists current clients who may have a financial interest in the outcome of this contract or the construction project that will follow.
 - c. Discloses any financial interest or relationship with any construction company that might submit a bid on the construction project.
- 2. Completeness/Organization of the SOQ (15 points)**
 - a. SOQ that is current, accurate, and complete in accordance with the requirements of this RFQ. The SOQ format and organization shall follow the requirements herein. SOQs that do not include the content requirements identified within this RFQ and subsequent addenda and do not address items listed shall be considered incomplete.
- 3. Organization and Approach (20 points)**
 - a. Describes familiarity of the Project and demonstrates understanding of any work completed to date, if applicable, and Project objectives moving forward.
 - b. Project team and management approach when responding to Project issues. The team structure shall provide adequate capability to perform both volume and quality of needed work within Project schedule milestones.
 - c. Roles and Organization of Proposed Team
 - i. Propose adequate and appropriate disciplines of the Project team.
 - ii. Some or all of team members have previously worked together on similar project(s).
 - iii. Overall organization of the team relevant to Town's needs.
 - d. Working Relationship with the Town
 - i. The team and its leaders have experience working in the public sector and knowledge of public sector procurement process.

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- ii. Team leadership understands the nature of public sector work and its decision-making process.

4. Qualifications & Experiences (20 points)

- a. Meets Minimum Qualifications.
- b. Relevant experience, specific qualifications, and technical expertise of the firm and sub-consultants related to the Project.

5. Qualifications of Key Individuals (20 points)

- a. Team is managed by an individual(s) with appropriate experience in similar projects. This person's time is appropriately committed to the Project.
- b. Team members, as demonstrated by enclosed resumes, have relevant experience for their role in the project.
- c. Key positions required to execute the project team's responsibilities are appropriately staffed.

6. Proposer Accessibility (15 points)

- a. A statement addressing the firm's ability to fulfill regular on-site Project responsibilities.

7. References (10 points)

- a. Provide a reference the name of at least three (3) agencies the Proposer has previously consulted for in the past five (5) years.

Oral Interview (if necessary)

If necessary, the top-ranking Proposers may be invited to participate in Oral Interviews for a consultant presentation and Q&A session. A Proposer will be notified of the time and place for oral interviews and if any additional information may be required to be submitted.

Following the Town's determination of the firm best qualified for this work, scope of services and final terms will be negotiated, and the Consultant and the Town will execute the Town's standard Consultant Services Agreement (**Attachment 6**). If negotiations with the top-ranked Proposer are not successful, the Town will select the next-ranked Proposer for award and negotiate the final terms of the contract.

The proposed schedule is as follows:

<u>Activity</u>	<u>Anticipated Dates</u>
RFQ release	December 17, 2020
Pre-Proposal Meeting	December 23, 2020.
Deadline for Submitting Questions	January 8, 2020
SOQ Submission Deadline (4:00 pm)	January 14, 2021

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SOQ Evaluation	January 2021
Consultant Interviews/Presentations (if necessary)	February 2021
Contract Negotiations and Execution	March 2021

I. Additional Information

- 1. Reservation of Rights.** The Town reserves the right to accept or reject any or all SOQs, or to alter the selection process if warranted, to postpone the selection process for its own convenience at any time, and to waive any defects in the RFQ. The Town also reserves the right to accept or reject any individual subconsultant that a candidate proposes to use. This RFQ and the interview process shall in no way be deemed to create a binding contract or agreement of any kind between the Town and the Proposers. The Town's standard form of consultant agreement will form the basis of the contract between the parties.
- 2. Proposer's Costs.** Each Proposer responding to this RFQ acknowledges and agrees that the preparation of all materials for submittal to the Town and all presentations, related costs, and travel expenses, including but not limited to vehicle miles, vehicle rentals, flights, transit fares, and meals, are at the Proposer's sole expense. The Town shall not, under any circumstances, be responsible for any cost or expense incurred by the Proposer. In addition, each Proposer acknowledges and agrees that all documentation and/or materials submitted with the RFQ shall remain the property of the Town.
- 3. DIR Monitoring.** This Project may be subject to compliance monitoring and enforcement by the DIR.
- 4. Communicating with Town.** If you have any questions regarding this RFQ, please contact the Town's Contact:

Janice Chin
Parks and Public Works Department
Town of Los Gatos
41 Miles Avenue, Los Gatos CA 95030
jchin@losgatosca.gov
(408) 395-3460

The Town's sole point of contact for this RFQ shall be the Town's Contact who shall administer the RFQ process. All communications shall be submitted in writing and shall specifically reference this RFQ (identify in the subject line the Project). Only answers issued by Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect. No contact with other Town staff, Town council members, or

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any other public official concerning the Project during the procurement process is allowed. A violation of this provision may result in the disqualification of the consultant.

5. **Assumptions of Proposers.** The Town is not responsible for the assumptions of Proposers. Neither the participation of the Town in any pre-proposal meeting, nor the subsequent award of the contract by the Town shall in any way be interpreted as an agreement or approval by the Town that a Proposer's assumptions are reasonable or correct. The Town specifically disclaims responsibility or liability for any Proposer's assumptions in developing its SOQ.
6. **Public Record.** All responses to this RFQ become property of the Town and will be kept confidential, subject to the requirements of the California Public Record Act, until a recommendation for award of a contract has been announced. Submittals are subject to public inspection and disclosure under the California Public Records Act. (Cal. Govt. Code sections 6250 *et seq*). Unless the information is exempt from disclosure by law, the content of any SOQ, request for explanation, or any other written communication between the Town and any Proposer, and between Town employees or consultants, regarding the procurement, shall be available to the public. In any event, the Town shall have no liability to Proposer for making disclosures required by the California Public Records Act or other law, court order, legal proceeding discovery request, investigative demand, subpoena, or order from a regulatory body having jurisdiction over either of the parties. Nothing contained herein shall be construed as requiring or obligating the Town to withhold information in violation of the California Public Records Act or other laws.
7. **Equal Opportunity.** The Town hereby notifies all Proposers that it will affirmatively insure that in any contract entered into pursuant to this procurement, minority business enterprises will be afforded full opportunity to submit SOQs in response to this RFQ and will not be discriminated against on the grounds of race, creed, color, national origin, ancestry, sexual orientation, political affiliations or beliefs, sex, age, physical disability, medical condition, marital status, pregnancy, or other protected characteristic as set forth hereunder.
8. **Appeal.** The Town will entertain appeals regarding this RFQ process only as set forth herein. The appeal process presented in this RFQ will take precedence in the case of any conflict with the appeal processes contained in the Town's Policies and Procedures. The Town will not entertain appeals regarding, or reconsider, substantive scores or determinations made in the evaluation process.

Appeals may be based upon restrictive requirements or alleged improprieties in the RFQ that are apparent or reasonably should have been discovered prior to the Town's receipt of SOQs. Such appeals shall be written and hand delivered or sent via certified mail to be received by the Town's Contact at least fourteen (14) calendar days prior to

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the Town's receipt of SOQs. The appeal must clearly specify in writing the grounds and evidence on which the appeal is based.

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

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

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

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

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

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On-Call Materials Testing and Special Inspection Services

9. **Governing Law.** The laws of the State of California shall govern the interpretation and enforcement of the contract. Legal action may be instituted only in the Superior Court of the County of Santa Clara, State of California, or in the Federal District Court in the Northern District of California.

10. **Adherence to All Local, State, and Federal Laws and Requirements.** The Proposer shall adhere to all applicable federal, state, and local laws, ordinances, statutes, rules and regulations, and rulings or directives of any agencies having jurisdiction including without limitation those relating to the environment (including, but not limited to, those promulgated by EPA, California Department of Public Health), wages, hours, health and safety (including, but not limited to, those promulgated by CAL-OSHA and FED-OSHA), equal employment opportunity, and working conditions or which pertain in any way to the Project and/or Proposer's scope of work on the Project.

J. Attachments

The following attachments are incorporated into the Request for Qualifications:

- ATTACHMENT 1 – QUALITY ASSURANCE PROGRAM
- ATTACHMENT 2 – CONFLICT OF INTEREST STATEMENT
- ATTACHMENT 3 – NON-COLLUSION DECLARATION
- ATTACHMENT 4 – REFERENCES
- ATTACHMENT 5 – STATEMENT REGARDING INSURANCE COVERAGE AND WORKER'S
COMPENSATION INSURANCE ACKNOWLEDGMENT CERTIFICATE
- ATTACHMENT 6 – SAMPLE CONSULTANT SERVICES AGREEMENT

ATTACHMENT 1 – QUALITY ASSURANCE PROGRAM

[ATTACHED BEHIND THIS PAGE]



TOWN OF LOS GATOS

PARKS AND PUBLIC WORKS DEPARTMENT

PHONE: (408) 399-5770

FAX: (408) 354-8529

FAX (408) 354-8529

SERVICE CENTER
41 MILES AVENUE
LOS GATOS, CA 95030

QUALITY ASSURANCE PROGRAM (QAP)

The purpose of this program is to provide assurance that the materials incorporated into the construction projects are in conformance with the contract specifications. This program should be updated every five years or more frequent if there are changes of the testing frequencies or to the tests themselves. To accomplish this purpose, the following terms and definitions will be used:

DEFINITION OF TERMS

- Acceptance Testing (AT): Sampling and testing, or inspection, to determine the degree of compliance with contract requirements.
- Independent Assurance Program (IAP): Verification that AT is being performed correctly by qualified testers and laboratories.
- Quality Assurance Program (QAP): A sampling and testing program that will provide assurance that the materials and workmanship incorporated into the construction project are in conformance with the contract specifications. The main elements of a QAP are the AT, and IAP.
- Source Inspection: AT of manufactured and prefabricated materials at locations other than the job site, generally at the manufactured location.

MATERIALS LABORATORY

Town of Los Gatos will use a private consultant material laboratory to perform AT on Federal-aid and other designated projects. The materials laboratory shall be under the responsible management of a California-registered Engineer with experience in sampling, inspection and testing of construction materials. The Engineer shall certify the results of all tests performed by laboratory personnel under the Engineer's supervision. The materials laboratory shall contain certified test equipment capable of performing the tests conforming to the provisions of this QAP.

The materials laboratory used shall provide documentation that the laboratory complies with the following procedures:

1. Correlation Testing Program: The materials laboratory shall be a participant in one or more of the following testing programs:
 - a. AASHTO Materials Reference Laboratory (AMRL)
 - b. Cement and Concrete Reference Laboratory (CCRL)
 - c. Caltrans Reference Sample Program (RSP)

2. Certification of Personnel: The materials laboratory shall employ personnel who are certified by one or more of the following:
 - a. Caltrans Materials Engineering and Testing Services Representatives (METS Reps)
 - b. Nationally recognized non-Caltrans organizations such as the American Concrete Institute, Asphalt Institute, National Institute of Certification of the Engineering Technologies, etc.
 - c. Other recognized organizations approved by the State of California and/or recognized by local governments or private associations
3. Laboratory and Testing Equipment: The materials laboratory shall only use laboratory and testing equipment that is in good working order. All such equipment shall be calibrated at least once each year. All testing equipment must be calibrated by impartial means using devices of accuracy traceable to the National Institute of Standards and Technology. A decal shall be firmly affixed to each piece of equipment showing the date of the last calibration. All testing equipment calibration decals shall be checked as part of IAP.

ACCEPTANCE TESTING (AT)

AT will be performed by a materials laboratory certified to perform the required tests. The tests results will be used to ensure that all materials incorporated into the project are in compliance with the contract specifications.

Testing methods will be in accordance with the California Test Methods (CTM) or a national recognized standard (i.e., AASHTO, ASTM, etc.) as specified in the contract specifications.

Sample locations and frequencies may be in accordance with the contract specifications. If not so specified in the contract specifications, samples shall be taken at the locations and frequencies as shown in Attachment #1 (Appendix D, "Acceptance Sampling and Testing Frequencies of the QAP Manual for Use by Local Agencies")

INDEPENDENT ASSURANCE PROGRAM (IAP)

IAP shall be provided by personnel from Caltrans, the Town's certified material laboratory, or consultant's certified materials laboratory. IAP will be used to verify that sampling and testing procedures are being performed properly and that all testing equipment is in good condition and properly calibrated.

IAP personnel shall be certified in all required testing procedures, as part of the IAP, and shall not be involved in any aspect of AT.

IAP shall be performed on every type of material test required for the project. Proficiency tests shall be performed on Sieve Analysis, Sand Equivalent, and Cleanness Value tests. All other types of IAP shall be witness tests.

Poor correlation between acceptance tester's results and other test results may indicate probable deficiencies with the accordance sampling and testing procedures. In cases of unresolved discrepancies, a complete review of AT shall be performed by the IAP personnel or an independent materials laboratory chosen by the Town of Los Gatos. IAP samples and tests are not to be used for determining compliance with contract requirements. Compliance with contract requirements is determined only by the AT.

REPORTING ACCEPTANCE TESTING RESULTS

The following are time periods for reporting material test results to the Resident Engineer:

- When the aggregate is sampled at material plants, test results for Sieve Analysis, Sand Equivalent, and Cleanness Value should be submitted to the Resident Engineer within 24 hours after sampling.
- When materials are sampled at the job site, test results for compaction and maximum density should be submitted to the Resident Engineer within 24 hours after sampling.
- When soils and aggregates are sampled at the job site:
 - (1) Test results for Sieve Analysis, Sand Equivalent, and Cleanness Value should be submitted to the Resident Engineer within 72 hours after sampling.
 - (2) Test results for "R" Value and asphalt concrete extraction should be submitted to the Resident Engineer within 96 hours after sampling.

When sampling products such as Portland Cement Concrete (PCC), cement-treated base (CTB), hot mix asphalt (HMA), and other such materials; the time of such sampling shall be varied with respect to the time of the day insofar as possible, in order to avoid a predictable sampling routine. The reporting of AT results, if not performed by the Resident Engineer's staff, shall be done on an expedited basis such as by fax or telephone.

TESTING OF MANUFACTURED MATERIALS

During the Design phase of project, the Project Engineer may submit a "Source Inspection Request" to the Agency, consultant, or Caltrans for inspection and testing of manufactured and prefabricated materials by their material laboratory. A list of materials that can be typically accepted on the basis of certificates of compliance during construction is found in Attachment #2 (Appendix F of the QAP Manual). All certificates of compliance shall conform to the requirements of the contract specifications, for examples see Attachment #3 (Appendix J of the QAP Manual).

Should the Town of Los Gatos request Caltrans to conduct the source inspection, and the request is accepted, all sampling testing, and acceptance of manufactured and prefabricated materials will be performed by Caltrans' Office of Materials Engineering and Testing Services. See Attachment #4 (Exhibit 16-W of the LAPM).

For Federal-aid projects on the National Highway System (NHS), Caltrans will assist in certifying the materials laboratory and the acceptance samplers and testers. For Federal-aid

projects off the NHS, Caltrans may be able to assist in certifying the materials laboratory and the acceptance samplers and testers.

PROJECT CERTIFICATION


Upon completion of a Federal-aid project, a “Materials Certificate” shall be completed by the Resident Engineer. The Town of Los Gatos shall include a “Material Certificate” in the Report of Expenditures submitted to the Caltrans District Director, Attention: District Local Assistance Engineer. A copy of the “Materials Certificate” shall also be included in the Town of Los Gatos construction records. The Resident Engineer in charge of the construction function for Town of Los Gatos shall sign the certificate. All materials incorporated into the work, which did not conform to specifications, must be explained and justified on the “Materials Certification,” including changes by virtue of contract change orders. For an example, see Attachment #5 (Appendix K of the QAP Manual).

RECORDS

All material records of samples and tests, material releases, and certificates of compliance for the construction project shall be incorporated into the Resident Engineer’s project file. If a Federal-aid project:

- The files shall be organized as described in Section 16.8, “Project Files,” of the Local Assistance Procedure Manual.
- It is recommended that the complete project file be available at a single location for inspection by Caltrans and Federal Highway Administration (FHWA) personnel.
- The project files shall be available for at least three years following the date of final voucher.
- The use of a “Log Summary” as shown in Attachment #6 (Appendix H of the QAP Manual), facilitates reviews of material sampling and testing by Caltrans and FHWA, and assists the Resident Engineer in tracking the frequency of testing.

When two or more projects are being furnished identical materials simultaneously from the same plant, it is not necessary to take separate samples or perform separate tests for each project; however, copies of the test reports are to be provided for each of the projects to complete the records.

APPROVED BY: 
(Signature)

46792, 6/30/21
(CE# and Expiration Date)

NAME: Lisa Petersen

DATE: 4/14/2020

TITLE: Assistant Director/Town Engineer

Attachment #1

Town of Los Gatos Acceptance Sampling and Testing Frequencies of the QAP Manual for Use by Local Agencies (Replaces Appendix D in the Caltrans QAP Manual)

Soil, Aggregates, And HMA (Paving)

Quality Characteristics	Test Method	Sample Size/Location	Frequency
In-Place Density of Soil and Aggregates	CT 231	Five 6"x12" or 4"x8" samples from mixer per CTM 125	One set every 1,000 C.Y. and parts thereof, min. 1 set per project
Sieve Analysis (Soil/Aggregates)	CT 202	One 50 lbs. sample taken at plant/stockpile per CTM 125	One per project per source
Aggregate Graduation (HMA)	CT 202	One 50 lbs. sample taken at plant per CTM 125	One per mix design, at least once per project
Sand Equivalent (HMA)	CT 217	One 50 lb. sample taken at plant per CTM 125	One per mix design, at least once per project
Asphalt Binder Content	CT 382	Three 15 lbs. carton samples taken behind paver/plant per CTM	One sample every 1,000 tons at least once per project
In-Place Density of HMA	CT 375	Random locations per CTM 375	One set every 500 tons, min. 1 set per project
Stability	CT 366	Behind paver or sample from plant	One per mix design per project
Air Void	CT 367	Three 15 lbs. carton samples taken behind paver/plant per CTM	One sample every 1,000 tons, at least once per project

*ASTM/AASHTO tests will be performed if required by specifications

Structural Concrete

Quality Characteristics	Test Method*	Sample Size/Location	Frequency
Compressive Strength	CT 521	Five 6"x12" or 4"x8" samples from mixer per CTM 125	One set every 1,000 C.Y. and parts thereof, min. 1 set per project

*ASTM/AASHTO tests will be performed if required by specifications

Minor Concrete/Sidewalk/Curb and Gutter

Quality Characteristics	Test Method*	Sample Size/Location	Frequency
Compressive Strength**	CT 521	Five 6"x12" or 4"x8" samples from mixer per CTM 125	One set every 1,000 C.Y. and parts thereof, min. 1 set per project

*ASTM/AASHTO tests will be performed if required by specifications

** Accept based on visual inspection; test only if quality is questionable

Concrete Pavement

Quality Characteristics	Test Method*	Sample Size/Location	Frequency
Modulus of Rupture	CT 523	1 set of 2 beams; 6x6x32 inch for center point loading; 6x6x20 inch for third point	One set every 1,000 C.Y. and parts thereof, min. 1 set per project

*ASTM/AASHTO tests will be performed if required by specifications

Slurry Seal/Microsurfacing

Quality Characteristics	Test Method*	Sample Size/Location	Frequency
Aggregate Gradation	CT202	One 50 lb. sample taken at plant per CTM 125	One set every 1,000 tons, at least once per project
Sand Equivalent	CT 217	One 50 lb. sample taken at plant per CTM 125	One set every 1,000 tons, at least once per project

*ASTM/AASHTO tests will be performed if required by specifications

Structural Steel

Quality Characteristics	Test Method*	Sample Size/Location	Frequency
Splicing	As specified in section 55	Field/Source	As Specified in section 52
Bolts	As specified in section 55	2 samples for each size	Once per project
Welding Inspection	As per project specification	Field Inspection	As defined in project source inspection quality management plan or visual inspection once material arrives in the field

*ASTM/AASHTO tests will be performed if required by specifications

ATTACHMENT 2 - CONFLICT OF INTEREST STATEMENT

THIS FORM MUST BE PRINTED OUT, COMPLETED AND SUBMITTED WITH THE STATEMENT OF INTEREST (SOQ)

ON-CALL MATERIALS TESTING AND SPECIAL INSPECTION SERVICES

The undersigned declares:

I/We _____ (Insert Company Name) have the following financial, business, or other relationship with Town that may have an impact upon the outcome of the contract or the construction Project. If none, please specify that no other relationships may have an impact on this contract or Project.

I/We _____ (Insert Company Name) have the following current clients who may have a financial interest in the outcome of this contract or the construction Project. If none, please specify that no other clients may have a financial interest with an impact on this contract or Project.

I/We _____ (Insert Company Name) have the following financial interests or relationships with a construction company that might submit a bid for the construction of the Project. If none, please specify that no such relationships exist.

Pursuant to Government Code section 1090 and any other laws, rules and regulations that may apply, the Proposer covenants that neither it, its subcontractors nor employees presently have an interest, and shall not acquire any interest, direct or indirect, financial or otherwise that would conflict in any

manner or degree with contract awarded from this RFQ. Proposer certifies that to the best of its knowledge, no one who has or will have any financial interest in the contract awarded from this RFQ is an officer or employee of the Town. Through its submittal of a SOQ, Proposer acknowledges that it is familiar with Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California and will immediately notify the Town if it becomes aware of any facts concerning the contract to be awarded that constitute a violation of said provisions.

Furthermore, if there is reason to believe that collusion exists among the Proposers, the Town may refuse to consider SOQ's from participants in such collusion. No person, firm, or corporation under the same or different name, shall make, file, or be interested in more than one SOQ for the same work unless alternate SOQ's are called for. A person, firm, or corporation who has submitted a sub-proposal to a Proposer, or who has quoted prices on materials to a Proposer, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Proposers. Reasonable ground for believing that any Proposer is interested in more than one proposal for the same work will cause the rejection of all proposals for the work in which a Proposer is interested. If there is reason to believe that collusion exists among the Proposers, the Town may refuse to consider SOQ's from participants in such collusion. Proposers shall submit as part of their SOQ documents the completed Non-Collusion Declaration provided herein as Attachment 4.

I, on behalf of the Proposer, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

Proposer Name (Person, Firm, Corp.) Title of Authorized Representative

Address Name of Authorized Representative

City, State, Zip

(Date) (Signed)

ATTACHMENT 3 – NON-COLLUSION DECLARATION

THIS FORM MUST BE PRINTED OUT, COMPLETED AND SUBMITTED WITH THE STATEMENT OF INTEREST (SOQ)

ON-CALL MATERIALS TESTING AND SPECIAL INSPECTION SERVICES

The undersigned declares:

I am the _____ [Insert Title] of _____, [Insert name of company, corporation, LLC, partnership or joint venture] the party making the foregoing SOQ.

The SOQ is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The SOQ is genuine and not collusive or sham. The Respondent has not directly or indirectly induced or solicited any other respondent to put in a false or sham SOQ. The Respondent has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham SOQ, or to refrain from responding. All statements contained in the SOQ are true.

Any person executing this declaration on behalf of a respondent that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the respondent.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

By: _____

Name: _____

Title: _____

ATTACHMENT 4 - REFERENCES

THIS FORM MUST BE PRINTED OUT, COMPLETED AND SUBMITTED WITH THE STATEMENT OF INTEREST (SOQ)

ON-CALL MATERIALS TESTING AND SPECIAL INSPECTION SERVICES

List three (3) references for work of a similar nature to the Services performed within the last five (5) years. Use additional sheets as necessary.

1. _____

_____	_____
Name of Agency	Agency Address
_____	_____
Contact Name	Contact Title
_____	_____
Contact Telephone	Contact Email Address
_____	_____
Contract Period	Contract Amount

Description of services performed including project cost estimates and actual costs.

2. _____

_____	_____
Name of Agency	Agency Address
_____	_____
Contact Name	Contact Title
_____	_____
Contact Telephone	Contact Email Address
_____	_____
Contract Period	Contract Amount

Description of services performed including project cost estimates and actual costs.

3. _____

_____	_____
Name of Agency	Agency Address
_____	_____
Contact Name	Contact Title
_____	_____
Contact Telephone	Contact Email Address
_____	_____
Contract Period	Contract Amount

Description of services performed including project cost estimates and actual costs.

I hereby certify that the Proposer performed the work listed above.

Signature of Proposer

Name

Date

**ATTACHMENT 5 - STATEMENT REGARDING INSURANCE COVERAGE AND WORKER'S COMPENSATION
INSURANCE ACKNOWLEDGMENT CERTIFICATE**

**THIS FORM MUST BE PRINTED OUT, COMPLETED AND SUBMITTED WITH THE STATEMENT OF
INTEREST (SOQ)**

ON-CALL MATERIALS TESTING AND SPECIAL INSPECTION SERVICES

PROPOSER HEREBY CERTIFIES that the Proposer has reviewed and understands the insurance coverage requirements specified in the RFQ. Should the Proposer be awarded the contract for the Services, Proposer further certifies that the Proposer can meet the specified requirements for insurance, including insurance coverage of the subcontractors, and agrees to name the Town as additional insured for the Services specified.

By certifying this form, the Proposer also understands the Worker's Compensation insurance requirement per the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Name of Proposer (Person, Firm, or Corporation)

Signature of Proposer's Authorized Representative

Name & Title of Authorized Representative

Date of Signing

ATTACHMENT 6 – SAMPLE CONSULTANT SERVICES AGREEMENT

[ATTACHED BEHIND THIS PAGE]

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 **On-Call Materials Testing and Special Inspection** services for the Town.
- 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), 2020, 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 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, MMC, CPMC, Town Clerk