



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 05/07/2024

DATE: May 1, 2024
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: 2024 Annual Curb, Gutter, and Sidewalk Maintenance Project (CIP No. 813-9921):

- a. Award and Authorize the Town Manager to Execute a Public Works Contract with Villalobos and Associates in the Amount of \$409,480;
- b. Authorize Town Manager to Execute Change Orders in an Amount Not to Exceed Ten Percent (10%) of the Contract Award Amount;
- c. Authorize an Expenditure Budget Transfer in an Amount of \$185,331 from the Annual Street Repair and Resurfacing Project (CIP No. 811-9901); and
- d. Approve the Project Construction Plans as Required by Government Code 830.6 – Design Immunity

RECOMMENDATION:

2024 Annual Curb, Gutter, and Sidewalk Maintenance Project (CIP No. 813-9921):

- a. Award and authorize the Town Manager to execute a public works contract with Villalobos and Associates (Attachment 1) in the amount of \$409,480;
- b. Authorize Town Manager to execute change orders in an amount not to exceed ten percent (10%) of the contract award amount;
- c. Authorize an Expenditure Budget Transfer in an amount of \$185,331 from the Annual Street Repair and Resurfacing Project (CIP No. 811-9901); and
- d. Approve the Project Construction Plans as required by Government Code 830.6 – Design Immunity

BACKGROUND:

The adopted Fiscal Year (FY) 2023/24-2027/28 Capital Improvement Program (CIP) Budget designates funding for the 2024 Annual Curb, Gutter, and Sidewalk Maintenance Project

PREPARED BY: Gary Heap
Town Engineer

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Finance Director, and Public Works Director

BACKGROUND (continued):

(CIP No. 813-9921). The goal of this annually funded project is to replace and improve damaged or outdated curbs, gutters, sidewalks, driveways, and curb ramps within the Town's jurisdiction to address safety and operational issues and to improve accessibility.

For the 2024 Annual Curb, Gutter, and Sidewalk Maintenance (Concrete) Project, a large portion of the work focuses on replacing or retrofitting curb ramps for compliance with the Americans with Disabilities Act (ADA) and other accessibility requirements. Title II of the ADA obligates jurisdictions to upgrade non-conforming curb ramps when streets are resurfaced from one intersection to another. The United States Department of Justice has determined that surface treatments such as asphalt overlay, rubber cape seal, and micro-surfacing trigger the requirement for ADA compliant curb ramps on associated streets.

DISCUSSION:

The 2024 project was advertised for bid on Friday, March 8, 2024. On April 3, 2024, bid packages were opened and two contractors submitted bids: RK Engineering and Villalobos and Associates. A summary of bid results is presented in Table 1 with Villalobos as the apparent low bidder. A completed Bid Summary is in Attachment 2.

Table 1. Bid Summary for 2024 Curb, Gutter, Sidewalk (CIP No. 813-9921)

	Base Bid	Add. Alt. 1	Add. Alt. 2	Total Bid Amount
Engineer's Estimate	\$454,000.00	\$60,000.00	\$23,400.00	\$537,400.00
RK Engineering	\$453,140.00	\$69,250.00	\$25,720.00	\$548,110.00
Villalobos and Associates	\$349,670.00	\$42,300.00	\$17,510.00	\$409,480.00

Following the bid opening, the Town received a Letter of Bid Advisory from the Foundation for Fair Contracting (FFC) (Attachment 3). In the letter, FFC made four specific allegations against Villalobos and Associates. Specifically:

- Ongoing Violations of Prevailing Wage Laws Resulting in Wage Theft
- Failure to Comply with Bid Specifications/Unfair Competitive Advantage
- Failure to Comply with Workforce Development and Formal Apprenticeship Programs
- Occupational Safety and Health Administration (OSHA) Violations Resulting in Fines Issued and Upheld

DISCUSSION (continued):

In response to the letter, staff met with Villalobos and Associates on April 16. In addition, Villalobos has provided a written response (Attachment 4). The concerns raised in FFC's letter have been reviewed by staff and evaluated independently based on the discussions with Villalobos. Staff has determined that Villalobos had reasonable responses to each of the allegations, and that they have put measures in place to ensure that these issues will not occur on this job. The discussion of the allegations follows:

- 1) Prevailing wage violations: Complaints of prevailing wage violations were made with regard to projects in Saratoga and Morgan Hill. For the Saratoga matter, Villalobos paid a penalty. The Morgan Hill matter is currently being investigated by the Department of Labor Standards Enforcement. A determination has not been made. Villalobos has taken recent steps to assure internal compliance with prevailing wage tracking, and assured Town staff that it will comply with prevailing wage laws. This requirement is described in Section 7.2, Prevailing Wage, in the draft contract between the Town and Villalobos and Associates.
- 2) Failure to Comply with Bid Specifications/Unfair Competitive Advantage: Town staff does not have any evidence that this has occurred with the Town's bid on this project or in other jurisdictions
- 3) Failure to Comply with Workforce Development and Formal Apprenticeship Programs: A complaint regarding failure to employ apprentices in another jurisdiction are currently being investigated by the Department of Labor Standards Enforcement. A determination has not been made. The Department of Industrial Relations (DIR) requires all public works contracts valued at \$30,000 or more to carry an obligation to hire apprentices. Villalobos has assured Town staff that it will comply with the State's apprenticeship requirements. This requirement is specified by the DIR, and Section 7.3, DIR Registration, requires the contractor to register with DIR for this project.
- 4) OSHA Violations: In reviewing the FFC allegations and bid documents submitted by Villalobos and Associates to the Town, staff noted that Villalobos had not claimed any past OSHA or Cal OSHA violations even though there had been a previous determination of an OSHA violation in another jurisdiction. Villalobos stated that this was an administrative oversight by the individual who filled out the bid form. If a future OSHA violation is filed for work being done in Los Gatos or another jurisdiction while Villalobos and Associates is under contract with the Town, the draft agreement includes language that requires the firm to notify the Town immediately of the violation. This error in the bid documents does not cause the bid to be unresponsive.

DISCUSSION (continued):

Based on the meeting with Villalobos and the follow up letter, staff believes that Villalobos is working to rectify these issues. In addition, the draft agreement with Villalobos and Associates contains safeguards to address all of the issues raised in the FFC letter. Villalobos and Associates was also awarded the Town's 2021 Curb, Gutter, and Sidewalk contract and completed the work without incident or issue. Based on this, staff recommends that the Town proceed with award to Villalobos and Associates.

During execution of the contract, PPW staff monitors work site safety consistent as the Department does with all contractors that perform Town-funded work. While the Town is not responsible for verifying that the correct wages are paid to the contractor's employees, Town staff are responsible for verifying the appropriate records are submitted to the State of California for their review, and this will be completed for the Villalobos contract.

Government Code 830.6 – Design Immunity states that neither a public entity nor a public employee is liable under this chapter for an injury caused by the plan or design of a construction of, or an improvement to, public property where such plan or design has been approved in advance of the construction or improvement by the legislative body. Since this project was not brought to Town Council with a request to bid, at which time approval of the construction plans would have taken place, staff requests that the Town Council also approve the construction plans for this project. The project construction plans can be found at the following link: <https://www.losgatosca.gov/108/Capital-Improvement-Program>

CONCLUSION:

The proposed actions would allow the Town to proceed with executing an agreement for construction services with Villalobos and Associates to complete the annual curb, gutter and sidewalk work within the Town.

COORDINATION:

This memorandum has been coordinated with the Finance Department and the Town Attorney's Office.

SUBJECT: Annual Curb, Gutter, and Sidewalk Maintenance Project (CIP No. 813-9921)

DATE: May 1, 2024

FISCAL IMPACT:

Curb, Gutter, and Sidewalk Maintenance Project 2024 CIP No. 813-9921		
	Budget	Costs
GFAR	\$ 451,332	
Budget Transfer (Approved by Town Council on 11/21/23)	\$ (5,500)	
Budget Transfer (Approved by Town Council on 12/19/23)	\$ (35,150)	
Budget	\$ 410,682	
2023 Project Construction Costs (7/1/23-7/3/23 Service)		\$ 89,535
Contract with Precision Concrete for Additional Sidewalk Repair Services		\$ 44,000
Misc. Expenses		\$ 50
Costs to Date		\$ 133,585
Current Available Balance		\$ 277,097
GFAR	\$ 277,097	
Transfer from CIP #411-811-9901 - Annual Street Repair and Resurfacing (Proposed with this Staff Report)	\$ 185,331	
Budget	\$ 462,428	
Construction - Public Works Contract (Requested with this Staff Report)		\$ 409,480
Construction Contingency - Public Works Contract (10%)		\$ 40,948
Temporary/Part-Time Staff		\$ 12,000
Additional Costs Proposed in this Staff Report		\$ 462,428
Available Balance		\$ -

ENVIRONMENTAL ASSESSMENT:

This is a project as defined under CEQA as being Categorically Exempt (Section 15301(c)). A Notice of Exemption has been filed.

Attachments:

1. Construction Agreement with Exhibit A - Bid Summary
2. Bid Summary
3. Bid Advisory Letter from Foundation for Fair Contracting
4. Villalobos Response to FFC Claims