

**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND THE
TOWN OF LOS GATOS RELATED TO THE APPLICATION OF
MICROSURFACING TREATMENTS ON SPECIFIED ROADS IN
UNINCORPORATED POCKETS IN CONJUNCTION WITH THE POCKETS'
ANNEXATION BY TOWN**

THIS AGREEMENT is made effective this _____ day of _____, 2019 (“EFFECTIVE DATE”) by and between the County of Santa Clara, a political subdivision of the State of California, hereinafter referenced to as "COUNTY" and the Town of Los Gatos, a municipal corporation of the State of California, hereinafter referred to as "TOWN".

RECITALS

WHEREAS, the TOWN has met the legal requirements necessary to annex unincorporated pockets into the TOWN as shown on Exhibit A (“UNINCORPORATED POCKETS”) attached hereto and incorporated herein by reference; and

WHEREAS, COUNTY supports the annexation because it will decrease County road-maintenance and related costs; and

WHEREAS, in order to improve local road conditions, the COUNTY agrees to pay the TOWN a fixed not-to-exceed amount to pay the estimated costs for pavement improvements (involving a microsurfacing treatment or some other pavement rehabilitation) on the road segments within the UNINCORPORATED POCKETS as indicated in Exhibit B attached hereto and incorporated herein by reference (hereinafter "PROJECT"); and

WHEREAS, TOWN agrees to accept payment from COUNTY and assume full responsibility for performing the PROJECT using the COUNTY funding; and

WHEREAS, COUNTY requires a written agreement with TOWN to effectuate payment.

NOW, THEREFORE, in consideration of their mutual promises and agreements, and subject to the terms, conditions, and provisions hereinafter set forth, the parties hereto agree as follows:

AGREEMENT

1. COMPENSATION

COUNTY shall pay TOWN and TOWN shall accept from COUNTY a not to exceed payment of a lump sum of Eighty-Three Thousand Six Hundred and Nine dollars (\$83,609) (\$2.05/SY x 40,785) for the estimated costs to complete the PROJECT. The not to exceed lump sum amount of Eighty-Three Thousand Six Hundred and Nine dollars (\$83,609) shall cover all hard and soft costs, including but not limited to necessary materials and labor, needed by the TOWN (“LUMP SUM AMOUNT”) to complete the PROJECT.

2. COMPLETION OF PROJECT

TOWN shall have sole responsibility for completion of the PROJECT consistent with applicable law including but not limited to the Labor Code and the Public Contract Code. COUNTY will have no responsibility to perform the work. TOWN agrees to complete the Project within five (5) years of the EFFECTIVE DATE, subject to extension by mutual agreement of the Parties. If TOWN does not complete the Project within five (5) years of the EFFECTIVE DATE (subject to any approved extensions), TOWN shall return the LUMP SUM PAYMENT to the COUNTY. TOWN shall provide written notice to COUNTY upon completion of the PROJECT.

3. INVOICE AND PAYMENT

Within thirty (30) calendar days of the EFFECTIVE DATE of this AGREEMENT, TOWN shall forward to COUNTY a written invoice for the not to exceed LUMP SUM AMOUNT. The invoice shall be delivered to the individual designated to receive notice on behalf of COUNTY as set forth in Section 5 below. The COUNTY shall pay the invoice within 30 days.

4. HOLD HARMLESS/INDEMNIFICATION

To the fullest extent allowed by law, TOWN shall indemnify, defend, and hold harmless the COUNTY, its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by TOWN and/or its agents, employees or TOWN, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the COUNTY. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the COUNTY. TOWN shall reimburse COUNTY for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the TOWN is obligated to indemnify, defend and hold harmless the County under this Agreement.

5. NOTICES

All correspondence relating to the AGREEMENT, including all notices required shall be delivered by first class mail addressed to the appropriate party at the following addresses:

COUNTY: Harry Freitas, Director
Roads and Airports Department
101 Skyport Drive
San Jose, CA 95110

TOWN: Matt Morley, Director
Parks and Public Works
41 Miles Avenue
Los Gatos, CA 95030

6. ADDITIONAL PROVISIONS

(a) If any term, condition or covenant of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this AGREEMENT shall be valid and binding on COUNTY and TOWN.

(b) This AGREEMENT shall be governed and construed in accordance with the laws of the State of California.

(c) Any change to this AGREEMENT must be in writing in the form of an amendment and approved by both parties.

(d) The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation of this Agreement.

(e) This Agreement shall not be construed or deemed an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

(f) The parties' waiver of any term, condition or covenant, or breach of any term, condition or covenant shall not be construed as a waiver of any other term, condition or covenant or breach of any other term, condition or covenant.

(g) This Agreement contains the entire agreement between TOWN and COUNTY related to the Project. Any prior agreements, promises, negotiations, or representations not expressly set forth in this agreement are of no force or effect.

7. COUNTY'S MANDATORY POLICY PROVISIONS:

7.1 Food and Beverage Standards

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by TOWN with County funds for County-sponsored meetings or events. If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low fat and low calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, TOWN shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the TOWN should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County's nutritional criteria are (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, provided that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided.

7.2 No Smoking

TOWN and its employees, agents and contractors, shall comply with the County's No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

7.3 Compliance With All Laws, Including Nondiscrimination, Equal Opportunity, and Wage Theft Prevention

(1) Compliance with All Laws. TOWN shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

(2) Compliance with Non-Discrimination and Equal Opportunity Laws: TOWN shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for TOWNs on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, TOWN shall not discriminate against any TOWN, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall TOWN discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

(3) Compliance with Wage and Hour Laws: TOWN shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.

(4) Definitions: For purposes of this Section 9.03, the following definitions shall apply. A "Final Judgment" shall mean a judgment, decision, determination, or order (a) which is

issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual's sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose's Office of Equality Assurance.

(5) Prior Judgments, Decisions or Orders against TOWN: By signing this Agreement, TOWN affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that TOWN violated an applicable wage and hour law or pay equity law. TOWN further affirms that it has satisfied and complied with – or has reached Agreement with the County regarding the manner in which it will satisfy – any such final judgments.

(6) Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract: If at any time during the term of this Agreement, TOWN receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then TOWN shall promptly satisfy and comply with any such Final Judgment. TOWN shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. TOWN shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

(7) Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to TOWN's records, TOWN shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County's request, TOWN shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this Subsection H, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during TOWN's normal business hours upon no less than 10 business days' advance notice.

(8) Pay Equity Notification: TOWN shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to TOWN for a job in California (collectively, "Employees and Job Applicants") with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term

of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of TOWN's Employees and Job Applicants.

(9) Material Breach: Failure to comply with any part of this Subsection H shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions:

- (i) Suspend or terminate any or all parts of this Agreement.
- (ii) Withhold payment to TOWN until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law.
- (iii) Offer TOWN an opportunity to cure the breach.

(10) Contractors: TOWN shall impose all of the requirements set forth in this section on any contractors permitted to perform work under this Agreement. This includes ensuring that any contractors receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

7.4 Living Wage

Unless otherwise exempted or prohibited by law or County policy, TOWNS that contract with the County to provide Direct Services, as defined in County of Santa Clara Ordinance Code Division B36 ("Division B36") and Board Policy section 5.5.5.5 ("Living Wage Policy"), and their contractors, where the contract value is \$100,000 or more, must comply with Division B36 and the Living Wage Policy and compensate their employees in accordance with Division B36 and the Living Wage Policy. Compliance and compensation for purposes of this provision includes, but is not limited to, components relating to fair compensation, earned sick leave, paid jury duty, fair workweek, worker retention, fair chance hiring, targeted hiring, local hiring, protection from retaliation, and labor peace. If TOWN and/or a contractor violates this provision, the Board of Supervisors or its designee may, at its sole discretion, take responsive actions including, but not limited to, the following:

- i. Suspend, modify, or terminate the Direct Services Contract.
- ii. Require the TOWN and/or contractor to comply with an appropriate remediation plan developed by the County.
- iii. Waive all or part of Division B36 or the Living Wage Policy.

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This provision shall not be construed to limit an employee's rights to bring any legal action for violation of the employee's rights under Division B36 or any other applicable law. Further, this provision does not confer any rights upon any person or entity other than the Board of Supervisors or its designee to bring any action seeking the cancellation or suspension of a County contract. By entering into this contract, TOWN certifies that it is currently complying with Division B36 and the Living Wage Policy with respect to applicable contracts, and warrants that it will continue to comply with Division B36 and the Living Wage Policy with respect to applicable contracts.

IN WITNESS WHEREOF, the parties have executed the AGREEMENT the day and year set forth above.

TOWN OF LOS GATOS, a municipal corporation

By: _____ Date: _____
Laurel Prevetti
Town Manager

APPROVED AS TO FORM:

By: _____ Date: _____
Rob Schultz
Town Attorney

COUNTY OF SANTA CLARA

S. Joseph Simitian, President
Board of Supervisors

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

Attest: _____
MEGAN DOYLE
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY

Christopher R. Cheleden
Lead Deputy County Counsel

Exhibits to Agreement:

Exhibit A—Map of Pocket Annexations

Exhibit B—Microsurfacing Treatment Calculations