

Contract

This public works contract (“Contract”) is entered into by and between Town of Los Gatos (“Town”) and Sposeto Engineering Inc. (“Contractor”), for work on the Shannon Road Pedestrian and Bikeway Improvement Project, TLG Project #813-0218 – Federal Project #CML-5067(024) (“Project”).

The parties agree as follows:

- 1. Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On June 18, 2024, Town authorized award of this Contract to Contractor for the amount set forth in Section 4, below. Town has elected to include the following Project alternate(s) in the Contract: No alternates.

- 2. Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.
 - 2.1** Notice Inviting Bids;
 - 2.2** Instructions to Bidders;
 - 2.3** Addenda, if any;
 - 2.4** Bid Proposal and attachments thereto;
 - 2.5** Contract;
 - 2.6** Payment and Performance Bonds;
 - 2.7** General Conditions;
 - 2.8** Special Conditions;
 - 2.9** Project Plans and Specifications;
 - 2.10** Change Orders, if any;
 - 2.11** Notice of Potential Award;
 - 2.12** Notice to Proceed; and
 - 2.13** The following: No additional documents.

- 3. Contractor’s Obligations.** Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

ATTACHMENT 1

- 4. Payment.** As full and complete compensation for Contractor’s timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, Town will pay Contractor \$2,115,930.50 (“Contract Price”) for all of Contractor’s direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.
- 5. Time for Completion.** Contractor will fully complete the Work for the Project, meeting all requirements for Final Completion, within (95) ninety-five working days from the start date set forth in the Notice to Proceed (“Contract Time”). By signing below, Contractor expressly waives any claim for delayed early completion.
- 6. Liquidated Damages.** As further specified in Section 5.4 of the General Conditions, if Contractor fails to complete the Work within the Contract Time, Town will assess liquidated damages in the amount of \$2,850 per day for each day of unexcused delay in achieving Final Completion, and such liquidated damages may be deducted from Town’s payments due or to become due to Contractor under this Contract.
- 7. Labor Code Compliance.**

 - 7.1 General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers’ compensation insurance, as further specified in Article 9 of the General Conditions.
 - 7.2 Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
 - 7.3 DIR Registration.** Town may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.
- 8. Workers’ Compensation Certification.** Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: “I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers’ 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 on this Contract.”

- 9. Conflicts of Interest.** Contractor, its employees, Subcontractors, and agents may not have, maintain, or acquire a conflict of interest in relation to this Contract in violation of any Town ordinance or requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.
- 10. Independent Contractor.** Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of Town and are not entitled to participate in any health, retirement, or any other employee benefits from Town.
- 11. Notice.** Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

Town:

Finance Department
 Town of Los Gatos
 110 E. Main St.
 Los Gatos, CA 95030
 AP@losgatosca.gov

Copy to: Gary Heap, Town Engineer
 gheap@losgatosca.gov

Contractor:

Name: Sposeto Engineering
 Address: _____
 City/State/Zip: _____
 Phone: _____
 Attn: _____
 Email: _____
 Copy to: _____

12. General Provisions.

12.1 Assignment and Successors. Contractor may not assign its rights or obligations under this Contract, in part or in whole, without Town’s written consent. This

Contract is binding on Contractor's and Town's lawful heirs, successors and permitted assigns.

- 12.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract.
- 12.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Santa Clara County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure § 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Santa Clara County, California.
- 12.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 12.5 Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between Town and Contractor.
- 12.6 Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.7 Iran Contracting Act.** If the Contract Price exceeds \$1,000,000, Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.
- 12.8 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporations Code § 313.

[Signatures are on the following page.]

The parties agree to this Contract as witnessed by the signatures below:

CITY:

Approved as to form:

s/ _____

s/ _____

Laurel Prevetti, Town Manager

Gabrielle Whelan, Town Attorney

Name, Title

Name, Title

Date: _____

Date: _____

Attest:

s/ _____

Wendy Wood, CMC, Town Clerk

Name, Title

Date: _____

CONTRACTOR: Sposeto Engineering Inc.
Business Name

s/ _____

Seal:

Name, Title

Date: _____

Second Signature (See Section 12.8):

s/ _____

Name, Title

Date: _____

Contractor's California License Number(s) and Expiration Date(s)

END OF CONTRACT

Payment Bond

Town of Los Gatos (“Town”) and Sposeto Engineering Inc. (“Contractor”) have entered into a contract for work on the Shannon Road Pedestrian and Bikeway Improvement Project, TLG Project #813-0218 – Federal Project #CML-5067(024) (“Project”). The Contract is incorporated by reference into this Payment Bond (“Bond”).

- 1. General.** Under this Bond, Contractor as principal and _____, its surety (“Surety”), are bound to Town as obligee in an amount not less than \$_____, under California Civil Code § 9550 et seq., to ensure payment to authorized claimants. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
- 2. Surety’s Obligation.** If Contractor or any of its Subcontractors fails to pay a person authorized in California Civil Code § 9100 to assert a claim against a payment bond, any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors under California Unemployment Insurance Code § 13020 with respect to the work and labor, then Surety will pay the obligation.
- 3. Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code § 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
- 4. Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety’s obligations under this Bond will be null and void. Otherwise, Surety’s obligations will remain in full force and effect.
- 5. Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845. Town waives the requirement of a new bond for any supplemental contract under Civil Code § 9550. Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Email: _____

6. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Santa Clara County Superior Court, and no other place. Surety will be responsible for Town's attorneys' fees and costs in any action to enforce the provisions of this Bond.

[Signatures are on the following page.]

7. **Effective Date; Execution.** This Bond is entered into and is effective on _____,
20__.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name

s/ _____

Date

Name, Title

APPROVED BY TOWN:

s/ _____

Date

Name, Title

END OF PAYMENT BOND

Performance Bond

Town of Los Gatos ("Town") and Sposeto Engineering Inc. ("Contractor") have entered into a contract for work on the **Shannon Road Pedestrian and Bikeway Improvement Project, TLG Project #813-0218 – Federal Project #CML-5067(024)** ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

- 1. General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to Town as obligee for an amount not less than \$_____ to ensure Contractor's faithful performance of its obligations under the Contract. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
- 2. Surety's Obligations.** Surety's obligations are co-extensive with Contractor's obligations under the Contract. If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, Surety's obligations under this Bond will become null and void. Otherwise, Surety's obligations will remain in full force and effect.
- 3. Waiver.** Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845.
- 4. Application of Contract Balance.** Upon making a demand on this Bond for completion of the Work prior to acceptance of the Project, Town will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by Town to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which Town is entitled under the terms of the Contract.
- 5. Contractor Default.** Upon written notification from Town of Contractor's termination for default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:

 - 5.1** Arrange for completion of the Work under the Contract by Contractor, with Town's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;
 - 5.2** Arrange for completion of the Work under the Contract by a qualified contractor acceptable to Town, and secured by performance and payment bonds issued by

an admitted surety as required by the Contract Documents, at Surety's expense;
or

5.3 Waive its right to complete the Work under the Contract and reimburse Town the amount of Town's costs to have the remaining Work completed.

6. Surety Default. If Surety defaults on its obligations under the Bond, Town will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.

7. Notice. Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

8. Law and Venue. This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Santa Clara County Superior Court, and no other place. Surety will be responsible for Town's attorneys' fees and costs in any action to enforce the provisions of this Bond.

9. Effective Date; Execution. This Bond is entered into and effective on _____, 20____.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name

s/ _____

Date

Name, Title

APPROVED BY TOWN:

s/ _____

Date

Name, Title

END OF PERFORMANCE BOND

Bid Schedule

This Bid Schedule must be completed in ink and included with the sealed Bid Proposal. Pricing must be provided for each Bid Item as indicated. Items marked "(SW)" are Specialty Work that must be performed by a qualified Subcontractor. The lump sum or unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead. The sum of all amounts entered in the "Extended Total Amount" column must be identical to the Base Bid price entered in Section 1 of the Bid Proposal form.

AL = Allowance CF = Cubic Feet CY = Cubic Yard EA = Each LB = Pounds
 LF = Linear Foot LS = Lump Sum SF = Square Feet TON = Ton (2000 lbs)

BID ITEM NO.	ITEM DESCRIPTION	EST. QTY.	UNIT	UNIT COST	EXTENDED TOTAL AMOUNT
1	Traffic Control	1	LS	148,000.00	\$ 148,000.00
2	Changeable Message Sign	2	EA	8,000.00	\$ 16,000.00
3	Construction Staking and Layout	1	LS	20,000.00	\$ 20,000.00
4	Tree Protection	1	LS	3,600.00	\$ 3,600.00
5	Adjust Storm Manhole to Grade	2	EA	2,100.00	\$ 4,200.00
6	Adjust Survey Monument to Grade	2	EA	600.00	\$ 1,200.00
7	Adjust Electric Pullbox	1	EA	290.00	\$ 290.00
8	Abandon Storm Drain Pipe	94	LF	75.00	\$ 7,050.00
9	Remove Tree	9	EA	1,200.00	\$ 10,800.00
10	Remove Tree Stump	1	EA	250.00	\$ 250.00
11	Remove Concrete Sidewalk & Driveway	2943	SF	8.00	\$ 23,544.00
12	Remove Concrete Curb & Gutter	178	LF	25.00	\$ 4,450.00
13	Remove Concrete Curb	192	LF	21.00	\$ 4,032.00
14	Remove Concrete Valley Gutter	10	LF	60.00	\$ 600.00
15	Remove Brick Wall	60	LF	40.00	\$ 2,400.00
16	Remove Brick Column	5	EA	400.00	\$ 2,000.00
17	Remove Decorative Paver	640	SF	8.00	\$ 5,120.00
18	Remove Drainage Inlet	4	EA	1,400.00	\$ 5,600.00
19	Remove Area Drain	1	EA	400.00	\$ 400.00
20	Remove Existing Sign Panel	5	EA	400.00	\$ 2,000.00
21	Remove Existing Roadside Sign and Sign Panel	20	EA	400.00	\$ 8,000.00
22	Remove Fence	109	LF	18.00	\$ 1,962.00

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[Handwritten signature]

BID ITEM NO.	ITEM DESCRIPTION	EST. QTY.	UNIT	UNIT COST	EXTENDED TOTAL AMOUNT
23	Remove Mailbox	3	EA	675.00	\$ 2,025.00
24	Remove Base and Surfacing	3071	SY	33.50	\$ 102,878.50
25	Cold Plane Asphalt Concrete Pavement	3221	SY	12.30	\$ 39,618.30
26	Clearing and Grubbing	1	LS	53,560.00	\$ 53,560.00
27	Excavate Unsuitable Material	120	CY	390.00	\$ 46,800.00
28	Imported Topsoil	118	CY	172.00	\$ 20,296.00
29	Tree Procurement & Planting	47	EA	1,924.00	\$ 90,428.00
30	Root Barrier	40	LF	25.00	\$ 1,000.00
31	Hot Mix Asphalt	1251	TON	225.00	\$ 281,475.00
32	Asphalt Crack Sealing	1	LS	16,000.00	\$ 16,000.00
33	Slurry Seal (Black Aggregate)	3150	SY	11.00	\$ 34,650.00
34	Concrete Sidewalk	9448	SF	20.00	\$ 188,960.00
35	Concrete Curb Ramp	865	SF	42.38	\$ 36,658.70
36	Concrete Driveway	3737	SF	30.50	\$ 113,978.50
37	Concrete Curb & Gutter per TLS-ST-210	51	LF	89.00	\$ 4,539.00
38	Concrete Curb & Gutter (MOD)	2809	LF	74.00	\$ 207,866.00
39	Concrete Curb	276	LF	60.00	\$ 16,560.00
40	Drainage Curb Inlet	9	EA	6,800.00	\$ 61,200.00
41	Drainage Manhole on Existing Pipe	1	EA	10,000.00	\$ 10,000.00
42	Drainage Manhole	1	EA	10,000.00	\$ 10,000.00
43	Adjust Inlet	1	EA	3,400.00	\$ 3,400.00
44	Full Trash Capture Device	2	EA	5,700.00	\$ 11,400.00
45	4" PVC Schedule 40	130	LF	38.00	\$ 4,940.00
46	12" Corrugated High Density Polyethylene Pipe (Drainage)	245	LF	335.00	\$ 82,075.00
47	24" Corrugated High Density Polyethylene Pipe (Drainage)	503	LF	557.00	\$ 280,171.00
48 *	Concrete Backfill (Pipe Trench)	5	CY	1,120.00	\$ 5,600.00
49	6" Thermoplastic Traffic Stripe	8115	LF	3.15	\$ 25,562.25
50	6" Thermoplastic Traffic Stripe (Broken)	1525	LF	3.15	\$ 4,803.75
51	4" Thermoplastic Traffic Stripe	299	LF	2.50	\$ 747.50
52	12" Thermoplastic Traffic Stripe	458	LF	7.50	\$ 3,435.00
53	Crosswalk - TLG STD. ST-261 Thermoplastic	105	LF	8.75	\$ 918.75

Rec

By

BID ITEM NO.	ITEM DESCRIPTION	EST. QTY.	UNIT	UNIT COST	EXTENDED TOTAL AMOUNT
54	Pavement Marking - Thermoplastic	582	SF	12.50	\$ 7,275.00
55	Blue Fire Hydrant Marker	3	EA	12.50	\$ 37.50
56	Red-Painted Curb	137	LF	3.75	\$ 513.75
57	Green Bike Lane Marking - Thermoplastic	2818	SF	20.00	\$ 56,360.00
58	Roadside Sign on New Post	20	EA	467.50	\$ 9,350.00
59	Roadside Sign on Existing Post or Luminaire	20	EA	467.50	\$ 9,350.00

* Final Pay Quantity

TOTAL BASE BID: Items 1 through 59 inclusive: \$ 2,115,930.50

Note: The amount entered as the "Total Base Bid" should be identical to the Base Bid amount entered in Section 1 of the Bid Proposal form.

BIDDER NAME: SPOSETO ENGINEERING INC

END OF BID SCHEDULE