

**AGREEMENT  
BETWEEN  
THE TOWN OF LOS GATOS  
AND  
THE CITY OF MONTE SERENO  
FOR THE PAVEMENT REHABILITATION OF  
BICKNELL ROAD  
FROM QUITO ROAD TO ELM PARK**

This Agreement (herein “Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020, (herein the “Effective Date”) by and between the Town of Los Gatos, a California, municipal corporation (herein “TOWN”), and City of Monte Sereno, a California, municipal corporation (herein “CITY”). The TOWN and CITY may be referred to herein individually or collectively as the “Parties”.

**RECITALS**

**WHEREAS:**

- A. TOWN and CITY find that it is in the public interest to resurface the roadways at Bicknell Road (between Quito Road and Elm Park) over which the TOWN and CITY have dual jurisdiction;
- B. It is in the public interest for TOWN and CITY to complete the PROJECT in a cooperative and economical manner by constructing both TOWN and CITY portions of the PROJECT together; and
- C. Each Party has agreed to perform its portion of the work as described herein, under its direction.

In consideration of the above referenced recitals and the following mutual covenants, agreements and obligations of the parties, TOWN and CITY agree as follows:

**AGREEMENT PROVISIONS**

**1. PROJECT DESCRIPTION:**

The Town of Los Gatos is planning to have its contractor resurface the roadway at Bicknell Road between Quito Road and Elm Park over which the TOWN and CITY have dual jurisdiction. The plan calls for resurfacing a total of 0.55 miles of Bicknell Road between Quito Road and Elm Park, which is owned and maintained by the Town of Los Gatos. The TOWN has included the section of Bicknell Road that is maintained by the CITY in the project with the understanding that the CITY would pay for the work via this cost sharing agreement. This section of roadway is in need of rehabilitation given its current condition. Based on StreetSaver, the pavement management system database used by the TOWN, the average pavement condition index on Bicknell Road is 75.

The work to be performed under this Agreement within the CITY will consist of installing leveling course (as needed), placing a slurry seal treatment, adjusting storm drain manholes, and striping. The work to be performed is more fully described in the document entitled “Scope of Work” and “Engineer’s Estimate” set forth in Exhibit A and Exhibit B, attached and incorporated by reference. Approximately 50% of Bicknell Road between Quito Road and Elm Park is within the TOWN jurisdiction and 50% is within the CITY’s jurisdiction.

**2. TOWN’S OBLIGATIONS:**

TOWN agrees as follows:

- A. To act as the lead agency to administer the design and construction of the PROJECT. Administration shall include preparation of specifications, contract documents and cost estimate; notification of local business; coordination with various agencies; preparation of all necessary environmental documents; obtaining permits; obtaining bids; awarding the construction agreement; administering the construction agreement; providing materials control and inspection services; and making progress payments to the contractor.
- B. To provide CITY with final specifications and contract documents for the PROJECT.
- C. To pay TOWN’s share of the PROJECT cost. The total PROJECT cost is defined as the actual amount paid to the contractor plus ten percent (10%) for TOWN’s engineering, construction and other administrative services.
- D. To cause the contractor to provide a warranty period of at least two (2) years from the acceptance date, consistent with Town of Los Gatos Construction Agreement.
- E. To cooperate with CITY should CITY raise any issues concerning contractor’s work in CITY’s jurisdiction that requires correction prior to acceptance or within the warranty period.
- F. The designated project manager for TOWN for the duration of the PROJECT is Kevin Selfridge (phone number: 408-827-3549). TOWN’s project manager shall have all the necessary authority to review and approve and accept technical and professional work within the scope of the Agreement and shall serve as the principal point of contact with CITY. CITY may request documentation of such costs, and may review the original invoices and weight certificates or request copies of same, which shall be provided within a reasonable time.

**3. CITY'S OBLIGATION:**

CITY agrees as follows:

- A. To pay CITY's share of the total PROJECT cost to TOWN, including the CITY's share of the TOWN's engineering, construction and other administrative services . CITY's share of the Cost is 100%, of the PROJECT Cost, up to a maximum amount of \$70,000, for the CITY-owned portion of the road, which is located on Bicknell Road between Quito Road and Elm Park. Any changes to the scope of work as identified by TOWN or CITY that is beyond the PROJECT description identified in this Agreement that may increase design or construction costs shall receive prior written approval and agreement on a funding plan from both TOWN and CITY. TOWN will not authorize its contractors to perform work which would result in any additional cost above and beyond the agreed amount as set forth in this Agreement without prior agreement and written approval from CITY.
  
- B. To pay its share of the PROJECT cost within forty-five (45) business days of receiving and approving the detailed invoice from TOWN, provided that the following conditions are met:
  - 1. The PROJECT has been completed and CITY has approved the portion of the work in its jurisdiction. Acceptance by CITY shall be made in writing to TOWN; and
  - 2. The detailed invoice sets forth the cost of construction of all PROJECT work based on the actual contract unit prices paid and negotiated change order(s), if any.
  
- C. The designated project manager for CITY for the duration of the PROJECT is Jessica Kahn (phone number: (408) 354-7635). CITY's project manager shall have all the necessary authority to direct technical and professional work within the scope of the Agreement and shall serve as the principal point of contact with TOWN.

**4. TERM OF AGREEMENT:**

Unless otherwise modified by a written amendment to this Agreement, the term of this Agreement shall be one (1) year from the Effective Date or until the PROJECT acceptance by both parties and final payments of all outstanding balances.

**5. OWNERSHIP AND MAINTENANCE:**

- A. Upon completion of all work under this Agreement, ownership and title to all materials, equipment and appurtenances installed as a part of the PROJECT within the Town limits of Los Gatos will automatically be vested in TOWN, and all materials, equipment and appurtenances installed as a part of the PROJECT within the CITY limits will be vested in CITY, and no further agreement will be necessary to transfer ownership.

B. This Agreement does not change any authority or responsibility between TOWN and CITY with regard to maintenance, operation, or further repair responsibility.

**6. CONTRACTOR SHALL BE AN INDEPENDENT CONTRACTOR:**

Any contractor(s) hired by either Party to perform the work included in the PROJECT shall not be an agent or employee of either Party and will perform such work as independent contractor. All persons employed by or contracted with such contractor(s) to furnish labor and/or materials in connection with the work in the PROJECT shall not be employees of either Party in any respect.

**7. TERMINATION:**

Once TOWN has awarded the construction contract for the PROJECT, the Agreement can be terminated only upon the mutual written consent and terms acceptable to both parties.

**8. NO PLEDGING OF EITHER TOWN'S CREDIT:**

Under no circumstances shall either TOWN or CITY have authority or power to pledge the credit of the other public entity or incur obligation in the name of the other public entity.

**9. NO THIRD PARTY BENEFICIARY:**

This Agreement shall not be construed or deemed to be 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.

**10. AMENDMENTS:**

No alternation or violation of the terms of this Agreement shall be valid unless made in writing and signed by the parties and incorporated into this Agreement

**11. NOTICES:**

Notices are to be sent as follows:

To TOWN: Kevin Selfridge  
Town of Los Gatos  
41 Miles Avenue  
Los Gatos, CA 95030

To CITY: Jessica Kahn  
City of Monte Sereno  
18041 Saratoga-Los Gatos Rd.  
Monte Sereno, CA 95030

**12. SEVERABILITY CLAUSE:**

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal, or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

**13. ENCROACHMENT PERMITS:**

Both Parties to this Agreement will cooperate and /or provide access to its consultants, engineers and contractors for the PROJECT in the jurisdictional boundaries of each Party. Contractor shall obtain street opening permit from CITY and CITY shall provide such a permit at no cost.

**14. HOLD HARMLESS/INDEMNIFICATION:**

Neither of the respective Parties, employees, officers, agents and assigns shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the other party in connection with the PROJECT.

It is understood and agreed that pursuant to California Government Code Section 895.4, the respective Parties shall fully indemnify and hold the other harmless from any liability imposed for injury (as defined in Government Code Section 810.8) by reason of anything done or omitted to be done by TOWN or CITY in connection with any work, authority or jurisdiction delegated to the respective Party under this Agreement. This hold harmless and indemnification provision shall apply to any activities, error or omission of the respective Party and/or the Party's officers, employees, agents, consultants or contractor or any person or entity acting or omitting to act for or on behalf of said TOWN or such person or entities as are specifically authorized and empowered by the respective Party to act for the Party.

**15. CAPTIONS:**

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.

**16. INSURANCE REQUIREMENTS:**

It is mutually understood that during the term of the construction activities on the PROJECT, TOWN will require the successful contractor to carry commercial general liability in amounts of not less than Ten Million Dollars (\$10,000,000); automobile liability in an amount not less than One Million Dollars (\$1,000,000); and, a Workers' Compensation Insurance policy with policy limits in an amount not less than One Million Dollars (\$1,000,000).

**17. STATUTES AND LAW GOVERNING CONTRACT:**

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California.

**18. WAIVER:**

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.

**19. ENTIRE AGREEMENT:**

This Agreement contains the entire Agreement between TOWN OF LOS GATOS and CITY OF MONTE SERENO to the PROJECT. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

**20. OTHER AGREEMENTS:**

This Agreement shall not prevent either Party from entering into similar agreements with others. The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is intent of the Parties that this Agreement shall become operative on the effective date.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

TOWN OF LOS GATOS, CALIFORNIA, a California municipal corporation

APPROVED AS TO FORM:

\_\_\_\_\_  
ROBERT SCHULTZ  
Town Attorney

By: \_\_\_\_\_  
LAUREL PREVETTI  
Town Manager

CITY OF MONTE SERENO, CALIFORNIA, a California municipal corporation

APPROVED AS TO FORM:

\_\_\_\_\_  
SERGIO RUDIN  
City Attorney

By: \_\_\_\_\_  
STEVE LEONARDIS  
City Manager

ATTEST:

\_\_\_\_\_  
NAME  
Title

## EXHIBIT "A"

### SCOPE OF WORK AND PROJECT LOCATION MAP

The work to be performed under this Agreement within CITY will consist of installing leveling course (as needed), placing a slurry seal treatment, adjusting storm drain manholes, and striping of the CITY portion of Bicknell Road between Quito Road and Elm Park (herein the "PROJECT"). Approximately 50% of Bicknell Road between Quito Road and Elm Park is within the TOWN jurisdiction and 50% is within the CITY's jurisdiction. The Town-owned portion is the eastbound lane on Bicknell Road between Quito Road and Elm Park. The City-owned portion is the westbound lane on Bicknell Road between Quito Road and Elm Park.

The service agreement documents are herein incorporated to this Agreement by reference.

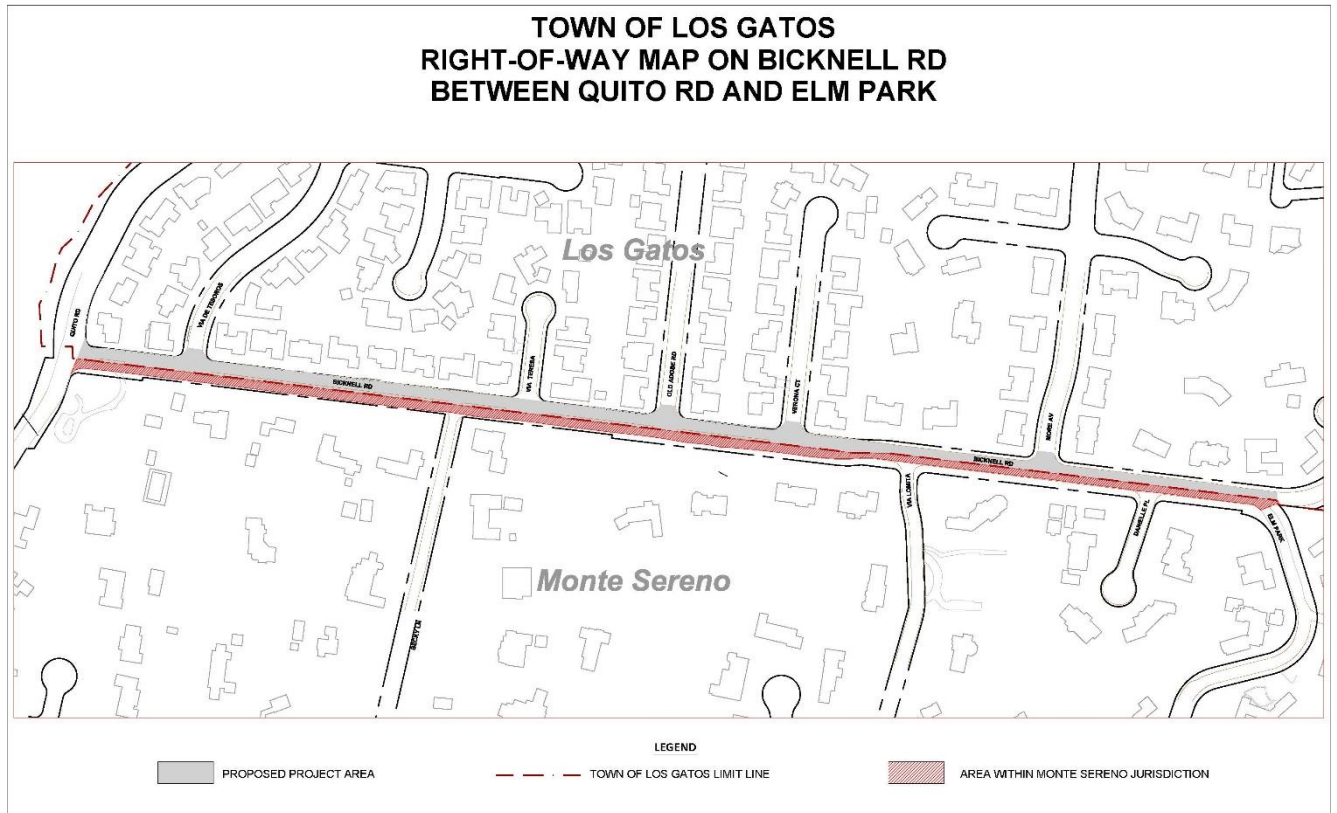


Figure: Project Limit and Location Map



**EXHIBIT "B"**

**ENGINEER'S ESTIMATES**

**PROJECT NAME:** Annual Street Repair and Resurfacing (Slurry Seal) - Bicknell Rd.

<b>ITEM NO</b>	<b>SPEC. SECTION</b>	<b>ITEM DESCRIPTION</b>	<b>UNIT</b>	<b>EST. QTY.</b>	<b>UNIT PRICE</b>	<b>EXTENSION</b>
1.	10-3	Adjust Storm Manhole to Grade (Revocable)	EA.	4	\$500.00	\$2,000.00
2.	10-5	Hot Mix Asphalt Leveling Course	Ton	50	\$160.00	\$8,000.00
3.	10-7	Slurry Seal	S.Y.	6,700	\$3.50	\$23,450.00
4.	10-10	Limit Line (Stop Line) - Thermoplastic	L.F.	20	\$5.50	\$110.00
5.	10-10	"STOP" Legend - Thermoplastic	Ea.	2	\$120.00	\$240.00
6.	10-10	"AHEAD" Legend - Thermoplastic	Ea.	1	\$150.00	\$150.00
7.	10-10	"25" Legend - Thermoplastic	Ea.	1	\$90.00	\$90.00
8.	10-10	Blue Fire Hydrant Marker (Revocable)	Ea.	5	\$25.00	\$125.00
<b>TOTAL</b>						<b>\$38,165.00</b>
<b>10% Contingency</b>						<b>\$3,816.50</b>
<b>10% Project Delivery</b>						<b>\$4,198.15</b>
<b>GRAND TOTAL</b>						<b>\$46,179.65</b>