

TOWN OF LOS GATOS
DEPARTMENT OF PARKS AND PUBLIC WORKS
41 MILES AVENUE, LOS GATOS, CA 95030

REQUEST FOR PROPOSALS

Winchester Boulevard Complete Streets Conceptual Design

PROPOSAL SUBMITTAL DEADLINE:

DATE: October 28, 2019
TIME: 4:00 pm

Submit by email to: ysmith@losgatosca.gov



REQUEST FOR PROPOSALS

1. INTRODUCTION

The Town of Los Gatos (Town) is issuing this Request for Proposals (RFP) for the Winchester Boulevard Complete Streets Conceptual Design. The selected Consultant team is expected to provide the following areas of expertise: professional conceptual engineering design, Complete Streets concepts and principles, and project management as outlined in the RFP. Project background and scope of work, including a project location map, are included in Attachment A.

Minimum Qualifications of Personnel – The Consultant shall meet, at a minimum, the appropriate professional qualifications as required to complete the work outlined in the RFP and as required by State Law and the contract. The responsible consultant/engineer shall sign all Plans, Specifications, Special Provisions, and Estimate (PS&E) and engineering data and reports furnished under the contract including the engineer's registration number and expiration date.

2. ATTACHMENTS

The attachments below are included with this RFP.

Attachment A – Project Background and Scope of Work

Attachment B – Town of Los Gatos Standard Agreement

3. INSTRUCTIONS TO PROPOSERS

- 3.1 Pre-proposal Conference: None
- 3.2 Examination of Proposal Documents.

The submission of a proposal shall be deemed a representation and certification by the Proposer that they:

- 3.2.1 Have carefully read and fully understand the information that was provided by the Town to serve as the basis for submission of this proposal.
- 3.2.2 Have the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted.
- 3.2.3 Represent that all information contained in the proposal is true and correct.
- 3.2.4 Did not, in any way, collude, conspire to agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms or conditions of this proposal.
- 3.2.5 Acknowledge that the Town has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Proposer, and Proposer hereby grants the Town permission to make these inquiries, and to provide any and all related documentation in a timely manner.

- 3.3 No request for modification of the proposal shall be considered after its submission on grounds that Proposer was not fully informed of any fact or condition.
- 3.4 The Proposer bears all costs of preparing and submitting its proposal consistent with the requirements outlined in this RFP

3.5 Questions

Any questions by the Proposer regarding this RFP or the attachments must be put in writing and received by the Town per Item 5, RFP Timeline. Correspondence shall include in the email subject line: **Winchester Boulevard Complete Streets Conceptual Design RFP** and be addressed to:

Ying Smith, Transportation and Mobility Manager

E-mail: ysmith@logatosca.gov

The Town shall not be responsible for nor be bound by any oral instructions, interpretations, or explanations issued by the Town or its representatives.

Responses from the Town to questions by any Proposer will be communicated in writing to all recipients of this RFP. Questions received after the date and time stated above will not be accepted or responded.

3.6 Addenda

Addenda to this RFP, if issued, will be sent to all prospective Consultants the Town of Los Gatos - Parks and Public Works Department has specifically e-mailed a copy of the RFP to and will be posted on the Town of Los Gatos - Parks and Public Works Department website at: <https://www.logatosca.gov/2258/RFPREQ>

Submittal of Proposals

Proposals should be in electronic format, submitted via email as attachment(s) with the email subject line: **Winchester Boulevard Complete Streets Conceptual Design**. Verification of receipt of proposal is the responsibility of the submitting firm.

Proposals must be delivered per Item 5, RFP Timeline. Town staff may request printed copies on a later date if necessary. All proposals received after that time will not be accepted. All proposals shall be submitted to:

Ying Smith

Department of Parks and Public Works

41 Miles Avenue

Los Gatos, CA 95030

E-mail: ysmith@logatosca.gov

3.7 Withdrawal of Proposals

A Proposer may withdraw its proposal at any time before the expiration of the time for submittal of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of, the Proposer.

3.8 Project Funding

This phase of the project is funded with Town of Los Gatos dollars, requiring the Consultant to follow all pertinent local regulations.

4. RIGHTS OF THE TOWN OF LOS GATOS

This RFP does not commit the Town to enter into a contract, nor does it obligate the Town to pay for any costs incurred in preparation and submittal of proposals or in anticipation of a contract. The Town reserves the right to:

- Make the selection based on its sole discretion;
- Reject any and all proposals;
- Issue subsequent Requests for Proposals;
- Postpone opening proposals for its own convenience;
- Remedy errors in the Request for Proposals process;
- Approve or disapprove the use of particular subconsultants;
- Negotiate with any, all or none of the Proposers regarding project scope;
- Accept other than the lowest cost offer;
- Waive informalities and irregularities in the Proposals; and/or
- Enter into an agreement with another Proposer in the event the originally selected Proposer defaults or fails to execute an agreement with the Town.

An agreement shall not be binding or valid with the Town unless and until it is executed by authorized representatives of the Town and of the Proposer.

5. RFP TIMELINE

The Town intends to select a firm within thirty days following the submission deadline. The Town may, at its own discretion, conduct interviews and other evaluations of some, all, or none of the applicants prior to selection. The Town will select the firm that best meets the needs of the Town.

RFP and Project Schedule (Tentative):

| Task | Schedule |
|---|----------------------|
| Request for Proposal | October 2, 2019 |
| Questions from Proposer | October 9, 2019 |
| Town Response to questions from proposers | October 14, 2019 |
| Deadline for Proposal Submittals | October 28, 4:00 pm |
| Interview (if required) | November 6 - 8, 2019 |
| Selection of top-rated firms for scope refinement | November 15, 2019 |
| Contract Award (Council) | December 3, 2019 |
| Notice to Proceed (tentative) | December 4, 2019 |
| First Draft Design | April 1, 2020 |
| Final Delivery | June 30, 2020 |

6. INFORMATION TO BE SUBMITTED

These guidelines govern the format and content of the proposal. The intent of the RFP is to encourage responses that clearly communicate the Proposer's understanding of the Town's requirements and the firm's ability to meet those requirements.

In addition to the items included within this RFP, including Attachments A and B, the proposal should include the following information referenced by letter for ease of identification:

- 6.1 Consultant Qualifications and Experience: Provide details of the team's qualifications and experience, including any specific qualifications in Complete Streets design and engineering. Provide Examples of projects with similar scope.
- 6.2 Organization and Approach: Describe the roles and organization of your proposed team for this project. Describe your project and management approach and identify the Project Manager. Describe the roles of key individuals on the team. Provide resumes and references for all key team members.
- 6.3 Scope of Services: Prepare a detailed Scope of Services per Attachment A of the RFP. Describe project deliverables for each phase of your work.
- 6.4 Schedule of Work: Provide a detailed schedule for all tasks/phases of the project and the proposed Consultant's services, including time for reviews and approvals. The schedule shall meet the Project Schedule as shown in Item 5 of the RFP or shall be modified with explanation as to why an alternate schedule is being proposed.
- 6.5 Cost Proposal: All labor costs, overhead costs, sub-consultant costs, and direct expenses should be included. Costs must be shown in a matrix format, by task grouping (as negotiated), and show hours per staff member, base labor rates, and overhead and profit rates.
- 6.6 Identify any exceptions taken to Attachment B – Standard Agreement, per Item 8, Contract Type and Method of Payment.
- 6.7 Additional supporting documentation as the proposer's discretion.

7. EVALUATION CRITERIA AND SELECTION PROCESS

Based on the proposals and interviews, proposers will be evaluated according to each Evaluation Criteria. The Evaluation Criteria Summary and their respective weights are as follows:

| No. | Evaluation Criteria | Weight |
|-----|----------------------------------|-----------|
| 1 | Completeness of Response | Pass/Fail |
| 2 | Qualifications & Experience | 20 |
| 3 | Organization & Approach | 20 |
| 4 | Scope of Services to be Provided | 25 |

| | | |
|---------------|------------------|------------|
| 5 | Schedule of Work | 15 |
| 6 | Cost | 20 |
| Total: | | 100 |

After proposal evaluation and interviews, Town staff will meet with the top-rated firm(s) to discuss and develop a final scope of services and an updated cost proposal. If the Town is unable to reach agreement with the top-rated firm, the Town may choose to negotiate with additional firms.

8. CONTRACT TYPE AND METHOD OF PAYMENT

It is anticipated that the agreement resulting from this RFP, if awarded, will be an Agreement for Services.

Proposers shall be prepared to accept the terms and conditions of the Agreement, including Insurance Requirements. If a Proposer desires to take exception to the Agreement, Proposer shall provide the following information of their submittal package.

- Proposer shall clearly identify each proposed change to the Agreement, including all relevant Attachments.
- Proposer shall furnish the reasons for each proposed change, as well as specific recommendations for alternative language.

The above factors will be taken into account in evaluating proposals.

The Town pays net 30 days of invoice for work performed.

9. INSURANCE REQUIREMENTS

The selected Proposer(s), at Proposer’s sole cost and expense and for the full term of the agreement or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements as outlined in the Town Standard Agreement.

All policies, endorsements, certificates and/or binders shall be subject to the approval of the Town of Los Gatos as to form and content. These requirements are subject to amendment or waiver, if so approved in writing by the Town of Los Gatos. The selected Proposer agrees to provide the Town with a copy of said policies, certificates and/or endorsement upon award of Agreement.

10. PUBLIC NATURE OF PROPOSAL MATERIAL

Responses to this RFP become the exclusive property of the Town of Los Gatos. At such time as the Town awards a contract, all proposals received in response to this RFP become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are defined by the Proposer as business or trade secrets and plainly marked as “Confidential,” “Trade Secret,” or “Proprietary.” The Town shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as “Confidential,” “Trade Secret,” or “Proprietary,” or if disclosure, in the Town’s sole discretion, is required under the California Public Records Act as addressed below. Any proposal which contains language purporting to render all or significant portions of the proposal “Confidential,” “Trade

Secret,” or “Proprietary” shall be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the Town of Los Gatos may determine, in its sole discretion that the information that a Proposer submits is not a trade secret. If a request is made for information marked “Confidential,” “Trade Secret,” or “Proprietary,” the Town shall provide the Proposer who submitted the information reasonable notice to allow the Proposer to seek protection from disclosure by a court of competent jurisdiction, at the Proposer's sole expense.

11. COLLUSION

By submitting a proposal, each Proposer represents and warrants that its proposal is genuine and made in the interest of or on behalf of any person named therein; that the Proposer has not directly induced or solicited any other person to submit a sham proposal or any other person to refrain from submitting a proposal; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

12. DISQUALIFICATION

Factors, such as, but not limited to, any of the following, may disqualify a proposal without further consideration:

- Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms or conditions of this proposal;
- Any attempt to improperly influence any member of the evaluation team;
- Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the Town;
- Evidence of incorrect information submitted as part of the proposal;
- Evidence of Proposer’s inability to successfully complete the responsibilities and obligations of the proposal; and
- Proposer’s default under any previous agreement with the Town.

13. NON-CONFORMING PROPOSAL

A proposal shall be prepared and submitted in accordance with the provisions of these RFP instructions and specifications. Any alteration, omission, addition, variance, or limitation of, from or to a proposal may be sufficient grounds for non-acceptance of the proposal, at the sole discretion of the Town.

14. GRATUITIES

No person shall offer, give or agree to give any Town employee any gratuity, discount or offer of employment in connection with the award of contract by the Town. No Town employee shall solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with a Town contract.

ATTACHMENT A
Project Background and Scope of Work
Winchester Boulevard Complete Streets Conceptual Design

Project Location and Limits

The project is located on Winchester Boulevard between Blossom Hill Road and Knowles Drive in Los Gatos, as shown on Exhibit 1.

Purpose and Needs

Winchester Boulevard is a major arterial parallel to Highway 17, bordering the Town of Los Gatos and the City of Monte Sereno. For the most part between Blossom Hill Road and Knowles Drive (Town Limits), the street contains two travel lanes in each direction, sidewalks, and Class II bike lanes on both sides between Shelburne Way and Albright Way.

Despite the Class II bike lanes and sidewalks, the street is considered a high stress street for bicyclists and pedestrians because of the high speed and high volume of automobile traffic. It is envisioned that Winchester Boulevard can be improved with Complete Streets treatments, including enhanced bike lanes, pedestrian crossings, sidewalk improvements, pedestrian refuge islands, landscaped median, and intersection modifications for safer biking and walking. The goal of the Complete Streets improvements is to provide a safer and lower stress street that will encourage more biking and walking trips. Additional considerations should be given to the venerable street users, including school-age children, the elderly and people with disabilities. Collectively, the improvements will minimize the conflicts between the active transportation users and vehicles and discourage vehicle speeding. It is anticipated that the improvements will shift a significant number of vehicle trips to bicycling and walking trips and reduce on-road vehicle emissions.

The Complete Streets treatments should be master-designed, with construction completed over time. Completing the design for the entire corridor will help identify and cost out separate projects, some of which can be funded by various sources, including grant funds.

The Los Gatos Bicycle and Pedestrian Master Plan (BPMP) identified two projects on Winchester Boulevard. The project is also endorsed by the City of Monte Sereno.

#36 (prioritized): Class IV between Shelburne and Albright

#33: Class IV between Albright and Knowles

Scope of Work

The vision for Winchester Boulevard is a Complete Streets corridor with upgraded bicycle and pedestrian facilities. Town intends to complete a corridor-level Conceptual Design work for the Complete Streets improvements.

The pavement is near the end of its useful life and new pavement improvements will be required in the next two to three years. Given the length and width of the street, pavement improvements will be expensive. The Conceptual Design work should consider re-configuring the street cross sections to narrow the travel lanes where appropriate, allow additional width for the bike lanes, and incorporate phasing of the construction projects to achieve efficiency and cost savings.

The Town is pursuing grant funding for the construction of a Winchester Boulevard Class IV Protected Bike Lanes project. If funded, the Class IV protected bike lanes can be one of the first Complete Streets improvements that the Town implements over time. If the Town is successful in securing grant funds for the bicycle and pedestrian improvements, it can potentially lower the cost of pavement work.

The next steps, Preliminary Engineering and Final Design of individual projects will be completed separately pending funding availability.

Tasks and Deliverables

The Town is soliciting a qualified engineering consultant to complete the scope of work described above and deliver the following tasks:

1. Prepare a preliminary evaluation of the street and;
2. Recommend and provide conceptual design of the most appropriate Complete Streets treatments;
3. Prepare conceptual design of three typical cross sections;
4. Support Town staff in outreach activities, including the preparation of exhibits and project information sheet, etc.;
5. Recommend phasing options to maximize flexibility and efficiency in project delivery.

Additional Information

Exhibit 2 includes bicycle, pedestrian and traffic data and other background information.

Bicycle and Pedestrian Master Plan (BPMP):

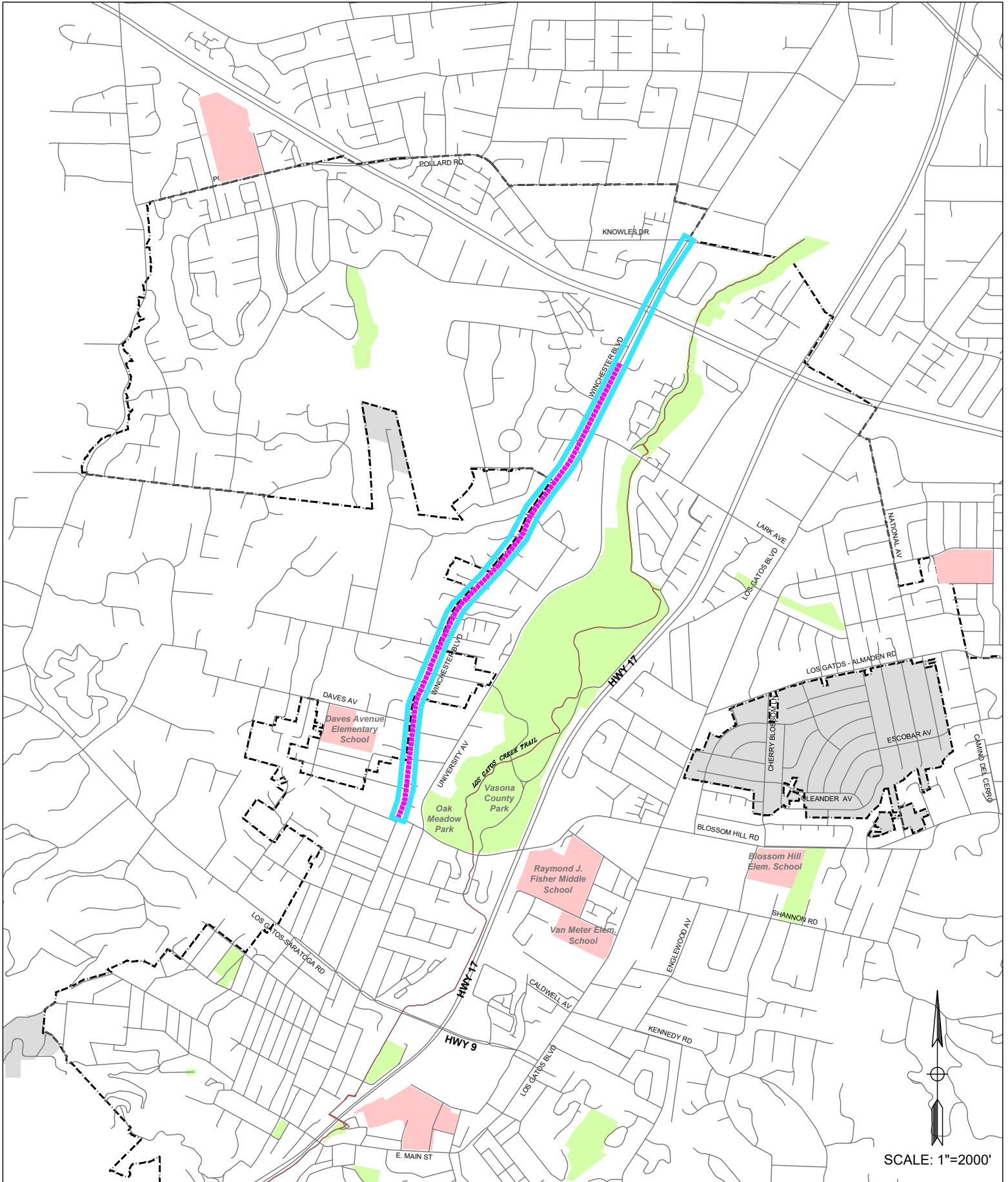
https://www.losgatosca.gov/DocumentCenter/View/18924/Los-Gatos-BPMP_March-2017-small?bidId=

Student Travel Survey 2018:

<https://www.losgatosca.gov/DocumentCenter/View/22097/Student-Travel-Survey-Draft-Report-and-Appendix-A-121018>

Winchester Boulevard CS Conceptual Design Project Location

TOWN OF LOS GATOS



LEGEND

 Project Location

 Proposed Class IV Protected Bike Lanes

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") and _____ NAME OF COMPANY, ("Consultant"), whose address is _____ ADDRESS OF COMPANY. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage Consultant to provide BRIEF DESCRIPTION OF SERVICES TO BE PERFORMED.
- 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 NAME OF DOCUMENT (EX: ENGAGEMENT LETTER, PROPOSAL, ETC.) sent to the Town on DATE DOCUMENT SENT, which is hereby incorporated by reference and attached as Exhibit A. IF NO DOCUMENT DESCRIBES SERVICES, then INSERT DESCRIPTION OF WHAT CONSULTANT WILL BE DOING HERE.
- 2.2 Term and Time of Performance. This contract will remain in effect from _____ to _____. Consultant shall perform the services described in this agreement as follows: ENTER DESCRIPTION OF SERVICE SCHEDULE.
- 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 \$AMOUNT**, 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 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.
- 4.5 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.

4.6 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
Attn: Town Clerk
110 E. Main Street
Los Gatos, CA 95030

CONSULTANT NAME
Attn:
ADDRESS HERE

or personally delivered to Consultant to such address or such other address as Consultant designates in writing to Town.

4.7 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.

4.8 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:

Name and Title

Matt Morley, Director of Parks and Public Works

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, CMC, Town Clerk