

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is dated for identification on this 18th day of June 2024 by and between TOWN OF LOS GATOS, a California municipal corporation, (“Town”) and Los Gatos-Monte Sereno Safe Route to School (SR2S) (“Consultant”), identified as a 501(c)(3) and whose address is 17010 Roberts Road, Los Gatos CA 95032. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to support access to safe walking and bicycling routes to schools located in the Town through the use of contracted crossing guards and by implementing education and encouragement programs.
- 1.2 The Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement, by administering and operating the Town’s program consistent with the Town’s goals as set forth herein.
- 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.
- 1.4 Parties agree that this Agreement supersedes all prior agreements between the Town and Consultant.

II. AGREEMENTS

- 2.1 Scope of Services. Consultant shall provide services consistent with their mission, consistent with the goals and objectives of the Valley Transportation Authority’s (VTA) Measure B Education and Encouragement Program, and the requirements of a crossing guard program for select schools. The services are further described in Exhibits A-1 and A-2.
- 2.2 Term and Time of Performance. This Agreement will remain in effect upon execution to June 30, 2029, subject to the appropriation of funds, notwithstanding any other provision of this agreement.
- 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 perform the services under this Agreement. 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 reports and supportive data prepared for the Town by the Consultant under this Agreement shall be delivered to the Town upon the completion of Consultant's services or at the Town's written request. Unless otherwise agreed to by the Parties all reports, information, data, and exhibits prepared or assembled by Consultant for the Town in connection with the performance of its services pursuant to this Agreement and which are not generally known to the public, shall not be made available to any individual or organization not employed by the Consultant or the Town without the written consent of the Town before such release, or unless otherwise required to be released by law. 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. Base compensation for Consultant's services **shall not exceed \$70,190 in Fiscal Year 2024/25**, inclusive of all costs. Payment is based on \$20,000 per year for education and encouragement services and \$50,190 per year for crossing guard services. Compensation will be subject to Budget Appropriations.

Charges may be increased annually on the anniversary date of this Agreement, subject to prior written notice and with Town's written approval, based on either: a) the San Francisco-Oakland-San José Metropolitan Area Consumer Price Index for all Urban Consumers for all items (CPI) of the preceding year ending on December 31; or b) cost increases from contracted services from the service provider for crossing guard services. If the CPI indicates a downward adjustment compensation would remain at the level of the preceding year. It is understood by both parties that this compensation is not intended to fully fund either of these programs and that the Consultant will seek funding sources outside of the Town for all costs.

Year 1 – FY 2024/25 = \$70,190

Year 2 – FY 2025/26 = \$70,190

Year 3 – FY 2026/27 = \$70,190

Year 4 – FY 2027/28 = \$70,190

Year 5 – FY 2028/29 = \$70,190

For a total agreement **not to exceed \$350,950**, plus CPI increases that may arise.

Consultant's ordinary business expenses, such as administrative, overhead, administrative support time/overtime, information systems, software and hardware, photocopying, telecommunications (telephone, internet), in-house printing, insurance and other ordinary business expenses, are included within the scope of payment for Services and are not reimbursable expenses hereunder. There are no reimbursable expenses permitted under this Agreement.

- 2.7 **Billing**. Billing shall be semi-annually by invoice on October 1 and March 1 and shall be accompanied by a detailed explanation of the work performed, including adequate information for the Town to secure reimbursement from the VTA for Education and Encouragement Measure B Programs.

Payment shall be made within 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
e-mail: AP@losgatosca.gov

- 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**. This Agreement shall not be assigned without the written consent of the Town.
- 2.10 **Independent Contractor**. It is understood that the Consultant, including each of Consultant's employees, agents, subcontractors, or others under Consultant's supervision or control, 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: Two million dollars (\$2,000,000) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.
- ii. Consultant shall provide to the Town all certificates of insurance, with original endorsements affecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by the Town before work commences.

3.2 General Liability.

- i. The Town, its elected and appointed officers, officials, employees, and, volunteers are to be covered as additional insured as respects: the commercial general liability policy to cover 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 with respect to this Agreement, its elected and appointed 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.

3.3 **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.

3.4 **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.

3.5 **Indemnification.**
Consultant agrees, to the fullest extent permitted by law, to indemnify, defend, and hold harmless the Town, its officials, officers, employees, agents, and volunteers (collectively, "Indemnitees") from and against any and all liability, claim, action, loss, injury, damage, judgment, or expense, including attorneys' fees and costs ("Losses") caused by or resulting from the negligence, recklessness, or willful misconduct of Consultant, Consultant's officers, employees, agents, or subcontractors in any way related to this Agreement. Consultant's duty to indemnify and hold harmless Indemnitees shall not apply to the extent such Losses are caused by the sole or active negligence or willful misconduct of Indemnitees. Consultant's obligation to defend shall arise regardless of any claim or assertion that Indemnitees caused or contributed to the Losses.

3.6 **Subcontractors.**

- a. Consultant will require its subcontractors or agents who will perform any portion of the scope of services set forth in this Agreement, to maintain in force, during the term of this Agreement, a policy of general liability insurance, naming Town, its officers, officials, employees, and volunteers as additional insureds in the same amount and same terms as set forth in Sections 3.1(i) and 3.2(i) above. Coverage shall be evidenced by a certificate of insurance and an endorsement in a form satisfactory to the Town that shall be delivered to the Town with a copy of any contract between Consultant and its subcontractor/agents for provision of services related to this Agreement. Upon Consultant's written request, Town may agree to waive or lower insurance policy limits including waiving the additional insurance requirement after consideration of the risk and special circumstances relevant to the subcontractor's scope of work.
- b. Consultant will require its subcontractors or agents who will perform any portion of the scope of services set forth in this Agreement, to comply with the indemnification requirement set forth in Section 3.5 above. Consultant shall require such subcontractors or agents to defend, indemnify, and hold harmless the Town, its officers, officials, employees, and volunteers to the same extent and under the same terms and conditions as Consultant is required to defend, indemnify, and hold harmless the Town, its officers, officials, employees, and volunteers herein. Consultant shall provide Town with a copy of any contract between Consultant and its subcontractor/agents for provision of services related to this Agreement to verify compliance with this obligation.

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 without cause by giving not less than ninety (90) days notice prior to the end of the Town's fiscal year. The Town and Consultant shall each have the right to terminate with cause (if the party in breach fails to cure the breach within a 30 day time period after notice of the breach) by giving not less than ninety (90) days 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.
- 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	Los Gatos-Monte Sereno Safe Routes to
Attn: Town Clerk	School
110 E. Main Street	17010 Roberts Road
Los Gatos, CA 95030	Los Gatos, CA 95032

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 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.
- 4.9 **Severability.** The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal.
- 4.10 **Contract Interpretation.** Each party acknowledges that it has reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
- 4.11 **Counterparts.** The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be deemed an original but all of which, together, shall constitute one and the same instrument. A scanned, electronic, facsimile or other copy of a party's signature shall be accepted and valid as an original.

4.12 **Warranty of Authority.** The signatories to this Agreement warrant and represent that each is authorized to execute this Agreement and that their respective signatures serve to legally obligate their respective representatives, agents, successors and assigns to comply with the provisions of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement.

Town of Los Gatos by:

DocuSigned by:



6/26/2024

Laurel Prevetti, Town Manager

Consultant by:

DocuSigned by:



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6/21/2024

Wendy Riggs, Executive Director

Recommended by:

DocuSigned by:



6/21/2024

Nicolle Burnham

Director of Parks and Public Works

Approved as to Form:

DocuSigned by:



6/25/2024

Gabrielle Whelan, Town Attorney

Attest:

DocuSigned by:



6/26/2024

Wendy Wood, CMC, Town Clerk

Exhibit A-1 – Scope of Services between the Town of Los Gatos and the Los Gatos-Monte Sereno Safe Routes to School Program

Town of Los Gatos

Task 1 - Measure B Bicycle & Pedestrian Education & Encouragement Program of Projects

This schedule depicts the nature of the programs to be provided. Additions, deletions and changes may occur.

July 1, 2024 - June 30, 2025

Project Title	Project Activities Description	Project Locations	Frequency	Project Goals*	Proposed Evaluation Metrics*
Pre K Education Opportunities: Learn to Ride Balance Bikes	30 minutes of outdoor on-bike training. Using class time to introduce balance bike curriculum to students.	LGUSD elementary schools. Local preschools.	Once a month depending on participation rates.	<ul style="list-style-type: none"> To encourage children to learn to ride bikes. Encourage parents to teach kids bike skills. 20 student participants 	<ul style="list-style-type: none"> Number of children participating Number of locations we offer the program Number of sessions offered
Kindergarten Pedestrian Training	Use a combination of a visual presentation and outdoor crosswalk practice to teach kindergarteners how to be more aware as a pedestrian.	LGUSD elementary schools.	1 presentation per kindergarten class at each LGUSD school per year.	<ul style="list-style-type: none"> 2 schools = Present to 25% of kindergarteners. 	<ul style="list-style-type: none"> Number of students participating Number of schools participating
Grade 1 - Advanced Pedestrian Training	To build on the Kindergarten Training by adding traffic flow and more advanced traffic situations. In class visual presentation and playground.	LGUSD elementary schools.	1 presentation per first grade class at each LGUSD school per year.	<ul style="list-style-type: none"> 2 schools = Present to 25% of first graders. 	<ul style="list-style-type: none"> Number of students participating Number of schools participating
Grade 2 - Scooter Training and Traffic Understanding	To build on Pedestrian training with focus on scooter safety and the acknowledgment of traffic flow. Outdoor on-scooter training.	LGUSD elementary schools.	1 presentation per school at each LGUSD school per year.	<ul style="list-style-type: none"> 1 school = Engage with 15% of second graders. 	<ul style="list-style-type: none"> Number of students participating Number of schools participating
Grade 3 or 4- Helmet Safety Training	Middle school students present the importance of	LGUSD elementary schools.	1 assembly per LGUSD school.	<ul style="list-style-type: none"> 2 Schools = 50% of 3rd or 4th graders. 	<ul style="list-style-type: none"> Number of students participating

	wearing a helmet and how to properly fit it. Indoor assembly.				• Number of schools participating
Grade 4 - Bike Rodeo	<i>Practical outdoor on-bike training for kids, showing them various traffic situations and how to best navigate them.</i> <i>Develops a sense of responsibility, confidence and empowerment.</i>	<i>LGUSD elementary schools.</i>	<i>1 Bike Rodeo per school per year.</i>	<i>4 Schools = 100% of 4th graders.</i>	<ul style="list-style-type: none">• Number of students that participate (maintain current participation levels)• Number of schools that participate
Grade 5 & 6 - Middle School Cycling Proficiency	<i>Practical outdoor on-bike training for kids.</i> <i>Reviewing basic safety manoeuvres and road riding.</i> <i>Develops a sense of responsibility, confidence and empowerment.</i>	<i>Daves Elementary School - Monte Sereno Neighborhood</i>	<i>4 week course - 2 hours per week.</i>	<i>10 students who graduate the program.</i> <i>1-2 courses offered.</i>	<ul style="list-style-type: none">• Number of students that graduate the program.• Number of courses offered.
Grade 7 & 8 - Train the Trainer: Helmet Safety	<i>Train Middle school students to teach elementary school kids about the importance of wearing helmets.</i>	<i>Fisher Middle School - Leadership Class</i>	<i>1-2 times per year.</i>	<i>1-2 training sessions completed. 15 student participants.</i>	<ul style="list-style-type: none">• Number of students that participate.• Number of training sessions completed.
Los Gatos High School - Implementation into Life Fitness Course	<i>High school students learn about key elements of riding on the roads.</i> <i>On road experience on the town roads navigating traffic.</i>	<i>Los Gatos High School - Town of Los Gatos</i>	<i>1 class per week - 90 minutes.</i> <i>Ongoing class.</i>	<i>Number of students that participate - 20-30</i> <i>Total hours of education and practical road experience - goal is to keep cycling in the HS curriculum</i>	<ul style="list-style-type: none">• Number of students that participate• Total hours of education and practical road experience

LCI training	<i>Encourage Town members to obtain their Licensed Cycling Instructor License through the American League of Cyclists to help expand our programs going forward.</i>	Los Gatos Location.	3 classes, 4 hour per class.	10 trained and licensed community members.	Number of community members trained and licensed.
Educational Videos	<i>Online education on key areas of concern in the community regarding routes to school and student transportation (ie. key intersections, helmets, bike route mapping, key bike manoeuvres.)</i>	LGUSD newsletters and website, SR2S social media and website.	Ongoing	<ul style="list-style-type: none"> • 2 Videos. • Develop a rollout procedure to maximize views. • Metrics to be developed along with rollout procedure 	Number of students/families that see videos.
Safety Lessons in a Set Curriculum / Lesson Plan (rainy day/substitute teacher plans)	<i>Provide teachers/PE teachers set curriculums to satisfy learning initiatives and target safety education using videos & games- target elementary school classes.</i>	LGUSD Schools	Ongoing	1-2 schools using the curriculum.	<ul style="list-style-type: none"> • Number of schools using the lesson plans • Number of teachers that use lesson plans • Number of students that participate in lessons

Task A-2 – Crossing Guard Services

Consultant shall provide Crossing Guard Services as defined below.

1. Manage and coordinate the Crossing Guard program to the satisfaction of the school districts served. Consultant to hire, train, and manage contractors, define the scope of work to be completed and oversee the contractor's performance to provide adequate crossing guard services at schools within the Town's school districts during the school year and summer sessions, provide payroll and worker's compensation coverage for all guards with a waiver of subrogation in favor of the Town, and provide all necessary safety equipment.
2. Serve as liaison to the school districts with regard to the crossing guard program. Consultant to provide communication and other services as needed to meet the needs of school districts and coordinate payment of contract services as required for funding of the program. Town will provide annual funding as noted in Section 2.6 of the Agreement.
3. Consultant is responsible for conducting background checks, finger-printing, and hiring crossing guards who do not have any felony convictions, misdemeanor convictions involving crimes against children, or convictions involving any violent crime, or not be a registered sex offender or narcotics offender.
4. Consultant must comply with all applicable laws related to the operating and administering the Crossing Guard program.