

**AGREEMENT
BETWEEN
THE TOWN OF LOS GATOS
AND
THE CITY OF MONTE SERENO
FOR IMPROVEMENTS ON WINCHESTER BOULEVARD
WITHIN THE CITY LIMITS**

This Agreement (herein “Agreement”) is made and entered into this 20th day of October, 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 construct improvements on Winchester Boulevard (between Blossom Hill Road and Albright Way) over which the TOWN and CITY have partial 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 and install protected bicycle lanes and minor pedestrian safety improvements on Winchester Boulevard between Blossom Hill Road and Albright Way over which the TOWN and CITY have partial jurisdiction. The TOWN has included the section of Winchester Boulevard that is maintained by the CITY in their project with the understanding that the CITY would pay for the work via this cost sharing agreement.

The work to be performed under this Agreement within the CITY will consist of pavement restoration, adjusting of utilities, installation and retrofit of curb ramps, replacement of sidewalk, roadway striping, and installation of protected Class IV bicycle lanes. 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. For the purposes of this Agreement, the CITY’s share of the PROJECT COST is defined as the

actual amount paid for items set forth in Exhibit B to the contractor by TOWN plus ten percent (10%) for TOWN's engineering, construction and other administrative services.

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 and bonds for the project in accordance with applicable Public Contract Code and Civil Code requirements for public works; awarding the construction agreement; administering the construction agreement; providing materials control and inspection services; and making progress payments to the contractor. TOWN shall ensure that work constituting the CITY's share, as described in Exhibit A and Exhibit B, shall be bid on a unit price basis.
- B. To provide CITY with final specifications and contract documents for the PROJECT.
- C. To provide CITY with a set of As-Built plans showing all changes, modifications, deletions and additions to the plans, which have occurred during the PROJECT.
- D. To pay TOWN's share of the PROJECT COST, which shall be the entire PROJECT COST less the City's share, as defined below in section 3.A.
- E. 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.
- F. 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.
- G. The designated project manager for TOWN for the duration of the PROJECT is Suyesh Shrestha (phone number: 408-395-1437). 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 the CITY'S share of the PROJECT COST to TOWN, up to a maximum amount of \$400,000. 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: Suyesh Shrestha
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.

Each Party shall, to the fullest extent permitted by law, indemnify, defend and hold the other Party, and its elected and appointed officers, employees, and volunteers, harmless from all claims, suits or actions of every name, kind, and description brought for or on account of injuries to or death of any person or damage to property arising out of or resulting from negligent acts, errors or omissions, or willful misconduct of the Party in connection with any work or performance by such Party, or lack thereof, under this Agreement. This provision shall apply to any activities, errors or omissions of the respective Party and/or the Party's officers, employees, agents, consultants or contractor or any person or entity acting or failing to act for or on behalf of said Party. This section shall survive the termination of the Agreement.

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 AND MANDATORY CONSTRUCTION DOCUMENT TERMS:

It is mutually understood that during the term of the construction activities on the PROJECT, TOWN will require the successful contractor to carry insurance satisfying the following requirements:

1. Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$5,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than \$5,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. Town and City shall be named as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
2. For any claims related to the construction contract, the contractor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 with respect to the City or Town, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City or Town, its officers, officials, employees, or volunteers shall be excess of the contractor's insurance and shall not contribute with it. The construction contract shall also include a term binding the contractor this requirement.
3. The construction contract shall require the contractor to grant to City and Town a waiver of any right to subrogation which any insurer of said contractor may acquire against the Parties by virtue of the payment of any loss under such insurance. The contractor shall be required to agree to obtain any endorsement that may be necessary to affect this waiver of subrogation, but the construction contract shall require that a waiver of subrogation applies regardless of whether or not the contractor has received a waiver of subrogation endorsement from the insurer.

The contractor shall be required under the construction contract and verify that all subcontractors maintain insurance meeting all requirements stated herein, and the contractor shall be required under the construction contract to ensure that Town and City are additional insureds on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

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: _____
STEVEN LEONARDIS
City Manager

ATTEST:

GLOISY GONZALEZ-LANGARICA
Deputy City Clerk

EXHIBIT "A"

SCOPE OF WORK AND PROJECT LOCATION MAP

The work to be performed under this Agreement within CITY will consist of pavement restoration, adjusting of utilities, installation and retrofit of curb ramps, replacement of sidewalk, roadway striping, and installation of protected Class IV bicycle lanes of the CITY portion of Winchester Boulevard between Blossom Hill Road and Albright Way (herein the "PROJECT"). The City-owned portion of Winchester Boulevard is the full width of Winchester from 120 feet south of the southern intersection of Pleasant View Avenue north to the southern intersection of Vineland Avenue, approximately 849 feet. The Town-owned portion of Winchester Boulevard continues both north and south of the City-owned portion.

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

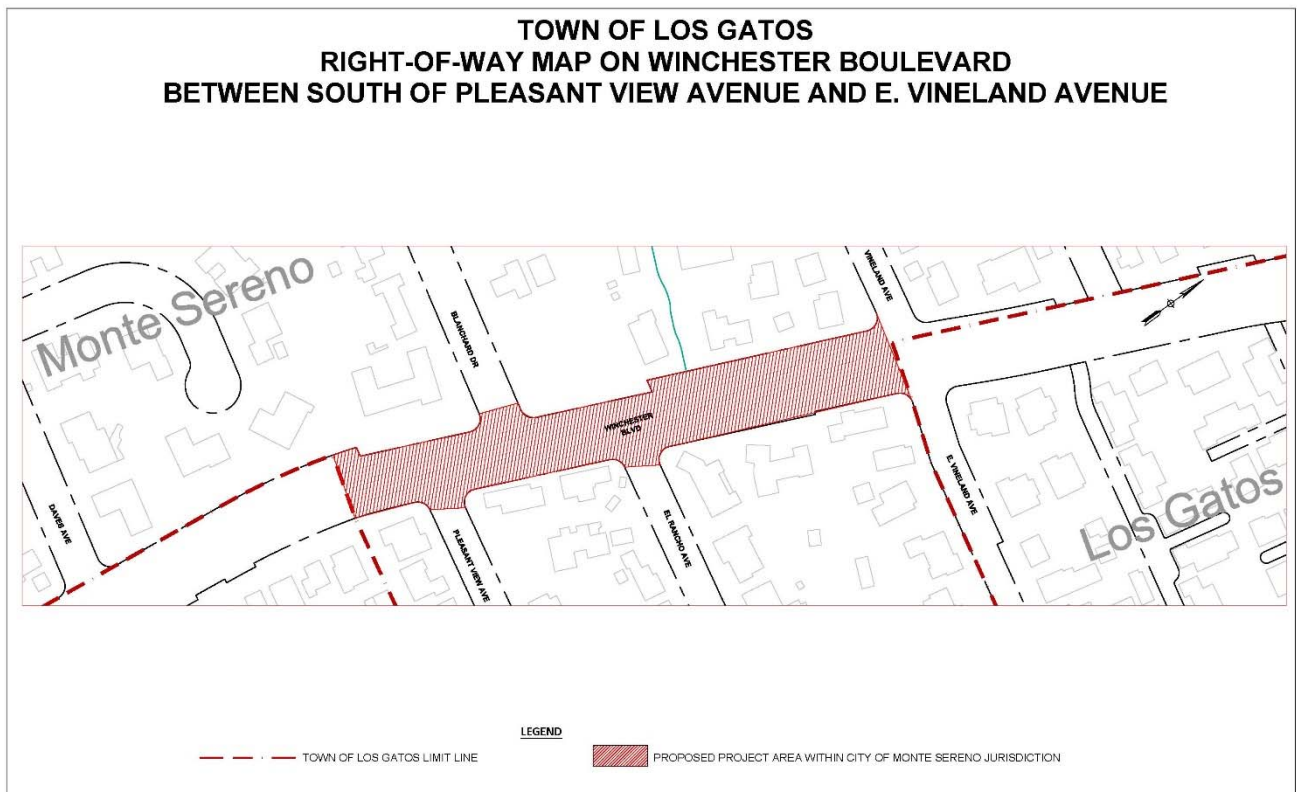


Figure: Project Limit and Location Map

EXHIBIT "B"

ENGINEER'S ESTIMATES

PROJECT NAME: Winchester Boulevard - Pavement and Concrete Work in City of Monte Sereno limits

ITEM NO	ITEM DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE	EXTENSION
1.	Remove and Replace Sidewalk	S.F.	50	\$27.50	\$1,375.00
2.	Install Vertical Curb	L.F.	10	\$38.50	\$385.00
3.	Install Curb Ramp-Case B	Ea.	1	\$9900.00	\$9,900.00
4.	Install Curb Ramp-Case F	Ea.	3	\$7700.00	\$23,100.00
5.	Install Curb Ramp-Case G	Ea.	1	\$8250.00	\$8,250.00
6.	Ramp Retrofit-Install Detectable Warning Surface	Ea.	4	\$1320.00	\$5,280.00
7.	Adjust Survey Monument to Grade	Ea.	4	\$660.00	\$2,640.00
8.	Adjust Water Valve to Grade	Ea.	6	\$770.00	\$4,620.00
9.	Adjust Storm Drain Manhole to Grade	Ea.	2	\$990.00	\$1,980.00
10.	Asphalt Removal-3" Depth	S.F.	51,770	\$1.38	\$71,183.75
11.	Hot Mix Asphalt (HMA) Overlay	TON	970	\$121.00	\$117,370.00
12.	6" Depth Digout	S.F.	5,177	\$9.35	\$48,404.95
13.	Striping	LS	1	\$11000.00	\$11,000.00
14.	Install Flexible Posts	Ea.	67	\$330.00	\$22,110.00
TOTAL					\$327,598.70
10% Contingency					\$32,759.87
10% Project Delivery					\$36,035.86
GRAND TOTAL					\$396,394.43