




MEETING DATE: 8/1/05
ITEM NO. 4

COUNCIL AGENDA REPORT

DATE: JULY 28, 2005

TO: MAYOR AND TOWN COUNCIL

FROM: DEBRA J. FIGONE, TOWN MANAGER 

SUBJECT: ADOPT RESOLUTION AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH BETWEEN THE TOWN OF LOS GATOS AND THE CITY OF MONTE SERENO FOR THE 2005 JOINT STREET RESURFACING PROJECT

RECOMMENDATION:

Adopt resolution authorizing the Town Manager to execute an agreement (Exhibit A) between the Town of Los Gatos and the City of Monte Sereno for the 2005 joint Street Resurfacing Project.

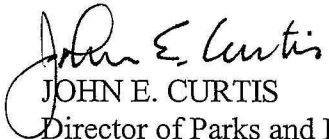
BACKGROUND:

The City of Monte Sereno contracts for its maintenance services and has in the past contracted with Saratoga and Santa Clara County to provide various maintenance functions. The City currently contracts with the Town of Los Gatos for street sweeping.

Western States Surfacing, Inc. is the lowest qualified bidder to provide slurry seal on several streets in Los Gatos. Their bid provided for additional work that would be performed on streets in Monte Sereno, contingent upon an agreement between the two towns to have the work in Monte Sereno added to the Western States, Inc. contract.

Staff from both agencies believe that it would be mutually beneficial for the contractor to perform the slurry seal project in both jurisdictions under this contract.

PREPARED BY:


JOHN E. CURTIS

Director of Parks and Public Works

Reviewed by: RS Assistant Town Manager OK Attorney _____ Clerk Administrator _____
Finance SL Community Development _____ Revised: 7/28/05 3:50 pm

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MAYOR AND TOWN COUNCIL

SUBJECT: ADOPT RESOLUTION AUTHORIZING THE TOWN MANAGER TO
EXECUTE AN AGREEMENT WITH BETWEEN THE TOWN OF LOS GATOS
AND THE CITY OF MONTE SERENO FOR THE 2005 JOINT STREET
RESURFACING PROJECT

JULY 28, 2005

DISCUSSION:

The proposed agreement between the Town and Monte Sereno represents another step forward in partnering to deliver municipal services. Partnering produces efficiencies and can result in lower unit costs.

The agreement proposes a joint Street Resurfacing Project. The work would be identified in advance by representatives from both jurisdictions with regard to scope, estimated cost, and timing. Monte Sereno work would be scheduled around projects that are scheduled to be undertaken in Los Gatos.

An important term of the agreement concerns liability. Each jurisdiction mutually indemnifies the other. Any contractor retained for work would indemnify both the City and the Town from any liability stemming from the work. The term of the agreement is one year, and calls for complete cost recovery of the services provided to Monte Sereno, including reimbursement for overhead associated with the services.

CONCLUSION:

An agreement between the Town and the City of Monte Sereno provides an opportunity for both agencies to test the practice and benefits of municipal partnerships as a way to provide an efficient and cost effective 2005 Joint Street Resurfacing Project.

It is recommended that the Council adopt the attached resolution authorizing the Town Manager to execute an agreement with the City of Monte Sereno.

ENVIRONMENTAL ASSESSMENT:

The project is Categorically Exempt pursuant to Sections 15301 (c), 15303(e) and 15304(b) of the State CEQA guidelines.

FISCAL IMPACT:

The City of Monte Sereno will pay for all services received in accordance with the payment terms specified in the accompanying agreement.

Attachments:

Resolution approving agreement (Exhibit A) with the City of Monte Sereno

RESOLUTION

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
APPROVING AN AGREEMENT
BETWEEN THE TOWN OF LOS GATOS AND THE CITY OF MONTE
SERENO FOR THE 2005 JOINT STREET RESURFACING PROJECT**

WHEREAS, the City of Monte Sereno (CITY) desires to utilize the services of the Town to provide a joint Street Resurfacing Project in the CITY; and

WHEREAS, it is the public interest for CITY to be able to utilize the services of the Town of Los Gatos (TOWN) as a reliable, timely and cost effective means of obtaining necessary services to perform certain limited and time sensitive slurry seal; and

WHEREAS, the TOWN is willing to provide such services to the CITY.

NOW, THEREFORE, BE IT RESOLVED, that the Town Council does hereby approve an agreement (Exhibit A) between the Town of Los Gatos and the City of Monte Sereno to provide contract public works services for the City of Monte Sereno and authorizes the Town Manager to execute said agreement.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos held on the day of , 2005, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

AGREEMENT BY AND BETWEEN THE CITY OF MONTE SERENO AND

**AGREEMENT BY AND BETWEEN THE CITY OF MONTE SERENO
AND THE TOWN OF LOS GATOS FOR
THE 2005 JOINT STREET RESURFACING PROJECT**

THIS AGREEMENT is made and entered into this _____ day of _____, 2004 by and between the CITY OF MONTE SERENO, a municipal corporation of the State of California, hereinafter referred to as "MONTE SERENO" and the Town of Los Gatos, a municipal corporation of the State of California, hereinafter referred to as "TOWN".

RECITALS

WHEREAS, it is in the public interest to rehabilitate and resurface roads throughout both cities (describe the general area), hereinafter referred to as "PROJECT"; and

WHEREAS, the PROJECT primarily lies within the jurisdictional limits of TOWN and the portions within MONTE SERENO have been approved for street maintenance by MONTE SERENO and by TOWN as part of the Fiscal Year 2004-05 Street Repair and Resurfacing project; and

WHEREAS, it is in the public interest for MONTE SERENO and TOWN to perform the PROJECT in an cooperative and economic manner by performing both MONTE SERENO and TOWN portions of the PROJECT together; and

WHEREAS, MONTE SERENO and TOWN desire to proportionally share the costs of the PROJECT;

NOW, THEREFORE, in consideration of their mutual promises and agreements, and subject to the terms, conditions, and provisions hereinafter set forth, the parties hereto agree as follows:

AGREEMENT

1. SCOPE OF PROJECT

- 1.1 The PROJECT consists of removing and replacing isolated areas of pavement failures, removing and replacing traffic striping and markings, placing pavement fabric, resurfacing the roadway with asphalt concrete, chip seal and/or slurry seal within the PROJECT limits, and performing incidental work.

2. SCOPE OF WORK

- 2.1 TOWN is in the process of selecting a contractor for the PROJECT ("Contract"). TOWN shall be responsible for the management of the

Contract including construction inspection, issuing change orders, approving and processing progress payments, coordinating final walk through, preparing punch list, recommending final acceptance and completing as-builts for work performed within MONTE SERENO and TOWN.

- 2.2 MONTE SERENO shall field mark areas of failed pavement within MONTE SERENO to be included in the Contract within 15 days of executing this agreement. TOWN shall coordinate with MONTE SERENO on final walk through and preparing punch list. MONTE SERENO shall promptly review and respond to all requests by TOWN for review and approval of plans or work in connection with the PROJECT.
- 2.3 MONTE SERENO shall approve the plans and specifications for the PROJECT and shall approve and become a party to the Contract. MONTE SERENO shall determine whether to accept and, as appropriate, accept the work done on that portion of the PROJECT located within the jurisdiction of MONTE SERENO.
- 2.4 TOWN shall administer the Contract and, as such, shall possess all powers common to both TOWN and MONTE SERENO that may be necessary to effectuate the purpose of this Agreement, subject only to the manner of exercise of such powers provided herein and the restrictions imposed by law upon TOWN in exercise of such powers.
- 2.5 The designated project manager for TOWN for the duration of the PROJECT is John Curtis. TOWN'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 MONTE SERENO. The designated project manager for MONTE SERENO for the duration of PROJECT is Gordon Siebert, City Engineer. MONTE SERENO'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 TOWN.

3. COST SHARING OF PROJECT

- 3.1 MONTE SERENO agrees to pay TOWN for all actual PROJECT costs for work performed within the jurisdictional limits of MONTE SERENO up to \$50,000 plus a proportionate share of engineering, inspection and testing costs, based on the proportion of CITY to TOWN construction costs, plus 17% of such TOWN labor and equipment costs, to cover environmental review, engineering, construction inspections, PROJECT management, printing, advertising, and other required incidental expenditures. MONTE SERENO total is estimated to be and shall not exceed \$60,000.

3.2 Upon completion and acceptance of PROJECT by TOWN, TOWN shall forward to MONTE SERENO, within thirty (30) days, or as soon thereafter as TOWN has paid for work performed under the Contract, a statement of all PROJECT costs and an invoice for funds due TOWN for work within MONTE SERENO. This statement shall list the costs of construction of all PROJECT work completed within the jurisdictional limits of MONTE SERENO based on the actual prices paid pursuant to the Contract and any subsequent change orders approved by Monte Sereno.

3.3 MONTE SERENO shall pay TOWN the total amount due within 45 days of billing.

4. MAINTENANCE AND OPERATION AND CONDITION PRECEDENT TO OBLIGATIONS

This AGREEMENT does not change any authority or responsibility between TOWN and MONTE SERENO with regard to maintenance, operation or future repair responsibility for the portion of any roads located within MONTE SERENO.

5. INSURANCE AND IDEMNIFICATION

5.1 Neither MONTE SERENO nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by TOWN under or in connection with any work, authority or jurisdiction delegated to TOWN under this agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, TOWN shall indemnify, defend, and hold MONTE SERENO harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by TOWN under this agreement. It is understood and agreed that the foregoing indemnity applies solely to liability arising from the acts or omissions of TOWN and does not extend to liability for injury or claims arising from the acts or omissions of the contractor performing the work.

5.2 Neither TOWN nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by MONTE SERENO under or in connection with any work, authority or jurisdiction delegated to MONTE SERENO under this agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, MONTE SERENO shall indemnify, defend, and hold TOWN harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by MONTE SERENO under this agreement.

- 5.3 TOWN shall require the contractor performing the work to secure and maintain in full force and effect at all times during construction of the PROJECT and until the PROJECT is accepted by TOWN, public liability and property damage insurance in forms and limits of liability acceptable to both MONTE SERENO and TOWN naming MONTE SERENO and TOWN and their respective officers, employees and agents as additional insured from and against all damages and claims, loss of liability, cost or expense arising out of or in any way connected with the construction of the PROJECT.

6. ADDITIONAL PROVISIONS

- 6.1 A party's 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 reach of any other term, condition or covenant.
- 6.2 This Agreement contains the entire Agreement between TOWN and MONTE SERENO relating to the PROJECT. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.
- 6.3 If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on TOWN and MONTE SERENO.
- 6.4 This Agreement shall be governed and construed in accordance with laws of the State of California.
- 6.5 This Agreement may be executed in counterparts.
- 6.6 The term of this Agreement shall commence upon execution of the Agreement by both parties and terminate upon PROJECT acceptance and final payments or upon mutual written consent of both parties. Warranty period shall be one (1) year from the acceptance date as specified in the Town of Los Gatos Standard Specifications. For all work performed within the jurisdictional limits of Monte Sereno the warranty shall be assigned to Monte Sereno.
- 6.7 All changes or extensions to this Agreement must be in writing in the form of an amendment and approved by both parties.
- 6.8 This Agreement is entered only for the benefit of the parties executing this Agreement and not for the benefit of any other individual, entity or person.

7. NOTICES

All correspondence relating to the PROJECT, including all notices required under this Agreement may be delivered by first class mail addressed to the appropriate party at the following addresses.

MONTE SERENO: Gordon Siebert, City Engineer
Public Works Department
18041 Saratoga-Los Gatos Road
Monte Sereno, CA 95030-4299

TOWN: John Curtis
Director of Parks and Public Works
41 Miles Avenue
Los Gatos, CA 95030

IN WITNESS WHEREOF, the parties have executed the AGREEMENT the day and year set forth above.

TOWN:

TOWN OF LOS GATOS, a municipal corporation

By: _____
Debra Figone, Town Manager

Date: _____

ATTEST:

By: _____
Marlyn Rasmussen, Clerk Administrator

Date: _____

APPROVED AS TO FORM:

By: _____
Orry Korb, Town Attorney

Date: _____

MONTE SERENO:

CITY OF MONTE SERENO

By: _____
Brian Loventhal, City Manager
MONTE SERENO

Date: _____

ATTEST:

By: _____
Andrea M. Chelemengos, City Clerk
MONTE SERENO

Date: _____

APPROVED AS TO FORM:

By: _____
Kirsten Powell, City Attorney
MONTE SERENO

Date: _____