



SPECIAL MEETING

TOWN OF LOS GATOS TOWN COUNCIL POLICY COMMITTEE

Council Policy Committee – (2016)

*Marico Sayoc, Vice Mayor
Marcia Jensen, Council Member*

AGENDA
TOWN COUNCIL CHAMBERS
110 EAST MAIN STREET
March 24, 2016 – 10:00 A.M.

MEETING CALLED TO ORDER

ROLL CALL

VERBAL COMMUNICATIONS *(Three minute time limit)*

1. Approval of the March 7, 2016 Council Policy Committee Draft Minutes
2. Review and discuss staff recommendations to amend Council Policy 2-11 entitled Commission Appointments
3. Review and discuss issues related to an Entertainment Policy

ADJOURNMENT

Enclosures:

1. March 7, 2016 Policy Committee Draft Minutes (Item 1)
2. Review and discuss staff recommendations to amend Council Policy 2-11 entitled Commission Appointments (Item 2)
3. Review and discuss issues related to an Entertainment Policy (Item 3)

cc: Post *(also posted on Town Web)*
Town Council

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Town Manager's Office at (408) 354-6834. Notification 48 hours before the meeting will enable the Town to make reasonable arrangements to ensure accessibility to this meeting [28 CFR §35.102-35.104]

DRAFT

TOWN OF LOS GATOS
COUNCIL POLICY COMMITTEE
March 7, 2016, 11:00 a.m.

110 E. Main Street
Town Council Chambers
Los Gatos, California

MINUTES

Call to Order

The Council Policy Committee meeting was called to order at 11:01 a.m.

Members and Staff present:

Vice Mayor Marico Sayoc
Councilmember Marcia Jensen
Laurel Prevetti, Town Manager
Rob Schultz, Town Attorney
Joel Paulson, Community Development Director
Monica Renn, Economic Vitality Manager
Christina Gilmore, Assistant to the Town Manager

Verbal Communications

None.

Agenda Items

**1. Approval of February 25, 2016 Council Policy Committee Meeting Minutes
Committee Action:**

The Committee unanimously approved the draft minutes.

**2. Review, discuss, and make recommendations to the Council on next steps
regarding:**

a. Draft resolutions for formula retail and the suspension of ordinance 2021

- The Committee reviewed and discussed the draft resolutions and decided:

**1. Suspension of the Conditional Use Permit (CUP) Requirement for
Formula Retail**

- a. Recommend to the Council a suspension of the formula retail CUP requirement for an 18-month pilot period.
- b. Include in the staff report the metrics for changing formula retail, parking, and current property lease restrictions.

review and discuss additional information regarding specialty retail, definitions, placemaking, and traffic impact fees.

Meeting adjourned at 12:24 p.m.



MEETING DATE: 03/24/16
ITEM NO: 2

POLICY COMMITTEE REPORT

DATE: MARCH 16, 2016
TO: POLICY COMMITTEE
FROM: LAUREL PREVETTI, TOWN MANAGER *Laurel Prevetti*
SUBJECT: REVIEW AND DISCUSS STAFF RECOMMENDATIONS TO AMEND COUNCIL POLICY 2-11 ENTITLED COMMISSION APPOINTMENTS

RECOMMENDATION:

Review and discuss staff recommendations to amend Council Policy 2-11 entitled Commission Appointments.

BACKGROUND:

At its March 1, 2016 Town Council meeting, the Town Council discussed and considered staff recommendations to amend Council Policy 2-11 entitled Commission Appointments. As this issue had not been agendaized for Policy Committee review prior to the March 1 meeting, the Council voted to return this Policy to the Committee for its review, discussion, and recommendation.

DISCUSSION:

Attachment 1 to this report includes the staff report provided to the Town Council at its March 1, 2016 meeting. Attachment 2 includes the redline changes to Policy 2-11 and Attachment 3 includes a clean version of the proposed Policy 2-11.

CONCLUSION AND NEXT STEPS:

Review and discuss staff recommendations to amend Council Policy 2-11 entitled Commission Appointments. The Committee's recommendations to amend this Policy will be forwarded to the Town Council for its review and consideration.

PREPARED BY: CHRISTINA GILMORE *CG*
Assistant to the Town Manager

Reviewed by: _____ Assistant Town Manager _____ Town Attorney NA Finance

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POLICY COMMITTEE

SUBJECT: REVIEW AND DISCUSS STAFF RECOMMENDATIONS TO AMEND COUNCIL
POLICY MANUAL 2-11 ENTITLED COMMISSION APPOINTMENTS

MARCH 16, 2016

COORDINATION:

The preparation of this report was coordinated with the Town Manager's Office and the Town Attorney.

Attachments:

1. Staff report from March 1, 2016



MEETING DATE: 03/01/2016
ITEM NO: 7

COUNCIL AGENDA REPORT

DATE: FEBRUARY 17, 2016
TO: MAYOR AND TOWN COUNCIL
FROM: ROBERT SCHULTZ, TOWN ATTORNEY
SUBJECT: APPROVE STAFF RECOMMENDATIONS TO AMEND COUNCIL POLICY MANUAL 2-11 ENTITLED COMMISSION APPOINTMENTS

RECOMMENDATION

Approve staff recommendations to amend Council Policy Manual 2-11 entitled Commission Appointments.

BACKGROUND

In 1990, the Town Council adopted Council Policy 2-11 entitled Commission Appointments. Policy 2-11 addresses such topics as the responsibility and actions of the Town Clerk Administrator, the Applicant and the Town Council during commission appointments. Periodically, the Town Council adopted revisions to this Policy, with the last update on April 7, 2015.

DISCUSSION

During the past couple of Commission appointments, issues have surfaced related to the ballot procedure. Most recently, another issue surfaced regarding the appointment of an Applicant who has applied to more than one Commission. Staff drafted amendments to Council Policy 2-11 to address these issues, Attachment 1 is a red-lined version of the current policy on Commission Appointments and Attachment 2 is a clean version of the revised policy.

The changes to Policy 2-11 proposed by staff clarify the balloting process procedure and also allow the selection to occur at either a regular, adjourned, or special meeting of the Town Council. In addition, the proposed changes to Policy 2-11 would require that once an Applicant is selected to a Commission they are not eligible for any other Commission. These changes

PREPARED BY: ROBERT SCHULTZ
TOWN ATTORNEY

Reviewed by: _____ Assistant Town Manager _____ Town Manager _____ Finance

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MAYOR AND TOWN COUNCIL
SUBJECT: CONSIDER STAFF RECOMMENDATIONS TO AMEND COUNCIL POLICY
MANUAL 2-11 ENTITLED COMMISSION APPOINTMENTS
MARCH 1, 2016

DISCUSSION (Cont'd)

will hopefully eliminate the problems and issues that have surfaced during past Commission appointments.

CONCLUSION:

Approve staff recommendations to amend Council Policy Manual 2-11 entitled Commission Appointments.

ALTERNATIVES:

1. Not approve staff recommended amendments.
2. Refer the issues to the Policy Committee.

ATTACHMENTS:

1. Redline changes to Policy 2-11
2. Final Proposed Policy 2-11



Title: Commission Appointments

Policy Number: 2-11

Effective Date: 2/28/90

Pages: 4

Enabling Actions:

Revised Date: 6/13/94; 6/16/14; 4/7/15

Approved:

PURPOSE

To establish a policy to encourage participation by the Town's residents on Town Boards, Commissions and Committees (hereinafter referred to as "Commissions"). The Town will encourage residents to participate on Commissions by advertising vacancies on Commissions for at least 30 days, preparing easily understood applications, maintaining clear descriptions of the role of each Commission and Commissioners/Committee and Board Members (Commission members), and conducting public interviews of all Commission applicants, except as provided for in this Policy.

SCOPE

This Policy applies to all applicants to Town Boards, Commissions and Committees.

POLICY

The Town Council encourages public participation in all decision making. To be successful in achieving public participation, residents must be assured that the participation is meaningful and that their input will be valued. The widest representation from the community can only be achieved if vacancies are well advertised so that anyone interested will have the opportunity to apply. Public interviewing of the applicants by the Town Council demonstrates that the Council values these appointments and that everyone has an equal opportunity to be appointed.

To ensure the greatest possible participation by the public, it is the Town's policy that no person shall be appointed to more than one Commission except in those cases where they are ex-officio members of other Boards, Commissions and Committees. This Policy does not apply to Commission members serving as representatives of their Commission who have been appointed by the Town Council. (Revised on 4/07/15)

Title: Commission Appointments	Page: 2 of 5	Policy Number: 2-11
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PROCEDURES

The following procedures will be followed by the applicant, the Town Clerk Administrator and the Town Council for the appointment of applicants to Town Commissions:

Responsibility and Actions: Town Clerk Administrator

A. Annual Recruitments

Commission members' terms begin on January 1, with the exception of the Student Commissioners, whose terms begin on September 1. The Town Clerk Administrator shall perform the following duties in conducting an annual recruitment for Commission members:

1. Notify Town Council of vacancies on Commissions by indicating the names of the Commissions, the number of terms expiring or being vacated, names of individual(s) with expiring terms or vacating seats, advertising periods (at least 30 days) and the recommended date of interview.
2. Advertise the vacancies, including the application deadline and the interview date, which shall be set for the second Town Council meeting in December.
3. Prepare and maintain easily understood applications for appointment to Commissions. Applications shall include the following policy information:
 - a. Prior to initial appointment to any Commission, non-incumbent applicants must be interviewed by the Town Council. The applications of those not appearing will be held for the next recruitment.
 - b. If an incumbent is requesting reappointment to a Town Commission, the incumbent will be re-interviewed, or must submit a letter for distribution to the Council prior to the interviews, describing the reason why the applicant cannot be present for an interview and why the applicant should be reappointed to the Commission. Incumbent interviews by telephone may be considered under extraordinary circumstances.
 - c. Submissions deadlines are mandatory; no exceptions are permitted.
 - d. Applicants may apply to multiple Commissions, and will only be considered for those Commissions to which they apply. Applicants applying for more than one Commission will only be interviewed once. Once appointed to a Commission by the Town Council, the Applicant will not be eligible to be appointed to any other Commission.
4. Applicants

Title: Commission Appointments	Page: 3 of 5	Policy Number: 2-11
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- a. *For adult applicants* — Accept applications, verify eligibility, and distribute copies of the applications of eligible applicants to the Town Council prior to the interviews for appointment.
 - b. *For student applicants* — Accept applications, verify eligibility, and distribute copies of the applications of eligible applicants to the Town Council Selection Committee prior to the interviews for appointment.
5. Notify the applicant by letter or email as to the date and time of the interview.
 6. Facilitate the Council voting process set forth below by informing Council as to how many votes are possible on each Commission, calling out applicants' names, and identifying the applicants receiving sufficient votes for appointment. This process does not apply to student applicants.
 7. Applicants
 - a. *For adult applicants* — After the interviews and Council vote are completed, notify all applicants of the Council's action, and explain Town policy of keeping application active for one year with notification of subsequent openings on that Commission to the interested applicants.
 - b. *For student applicants* — After the interviews are completed, notify all applicants of the Council Committee's action, and prepare a staff report for the Town Council to ratify the Committee's appointment at an official Town Council meeting.

B. Mid-Term Recruitments

During the year, Commissions may experience vacancies that drop the number of filled seats to a number of members that is not sufficient to conduct Commission business. The Commission may request the Town to conduct a mid-term recruitment to fill seats. To the extent possible, the Town Clerk Administrator will consolidate mid-term recruitments to minimize the number of recruitments occurring though the year. In the event of a vacancy on the Planning Commission, the Town will automatically conduct a mid-term recruitment. Mid-term recruitments will not be conducted for student commissioners. The Town Clerk Administrator shall advertise mid-term vacancies on Commissions for at least 15 days.

Responsibility and Action: Applicant

1. Complete and submit to the Town Clerk Administrator the application for appointment to a Town Commission.
2. *For adult applicants:* Attend the Council meeting to be interviewed for Commission appointment.
For student applicants: Attend the Council Selection Committee interview session.

3. If a Commission member is requesting reappointment to a Town Commission and cannot be present for the interview, submit a letter to the Town Clerk Administrator by Friday prior to the interview, describing why applicant cannot be present for the interview and why the applicant should be reappointed to the Commission.
4. If appointed, prior to starting the Commission term, see Town Clerk Administrator to take "Oath of Office" and file any documents required by the Fair Political Practices Commission.
5. Attend Commission meetings once term begins.
6. Read the Commissioner Handbook.

Balloting Process

Unless determined otherwise, the Town Council shall conduct a hand vote for the appointment of individuals to fill the vacancy(ies) on Town Commissions. Such hand vote may be conducted at either a regular, adjourned, or special meeting of the Town Council. The hand vote process shall be conducted as follows:

1. Prior to the vote, the Town Clerk Administrator shall publicly announce the position vacancy, all applicant names that are eligible to be selected for appointment and the number of vacancies;
2. Each Town Council Member shall hand vote for the same number of applicants as there are current vacancies on the respective Town Commission. In no case, can a Council Member cast more votes than there are vacancies;
3. Each Town Council Member's hand shall remain up until the Town Clerk Administrator publicly announces the name of each Town Council Member and how that Town Council Member cast their respective vote.
4. Applicants receiving a majority number of votes shall be deemed appointed to the Commission. In the event of a tie, a run-off hand vote shall be conducted of only the applicants receiving the highest number of votes from the previous round. This shall continue until a majority consensus on an applicant(s) is reached for the number of vacancies to be filled. In the event of an unbreakable tie, the Town Council may determine an alternative method for selecting the appointee(s).

Responsibility and Action: Town Council

1. Review applications.
2. *For adult applicants* – Interview applicants at a public meeting.

Title: Commission Appointments	Page: 5 of 5	Policy Number: 2-11
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For student applicants – Town Council Selection Committee interviews applicants.

3. Determine if the incumbents not in attendance and having submitted a letter pursuant to this Policy should be considered for reappointment.
4. If there are limited applications for any vacancy to a Town Commission, the Mayor, on behalf of the Council, may request that the Town Clerk Administrator re-advertise the vacancy, reschedule the interviews, and notify all applicants of the new interview date.

APPROVED AS TO FORM:

Robert Schultz, Town Attorney



Title: Commission Appointments

Policy Number: 2-11

Effective Date: 2/28/90

Pages: 4

Enabling Actions:

Revised Date: 6/13/94; 6/16/14; 4/7/15; 2/16/16

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 - c. Submissions deadlines are mandatory; no exceptions are permitted.
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Title: Commission Appointments	Page: 3 of 5	Policy Number: 2-11
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4. Applicants

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5. Notify the applicant by letter or email as to the date and time of the interview.

6. Facilitate the Council voting process set forth below by informing Council as to how many votes are possible on each Commission, calling out applicants' names, and identifying the applicants receiving sufficient votes for appointment. This process does not apply to student applicants.

7. Applicants

- a. *For adult applicants* — After the interviews and Council vote are completed, notify all applicants of the Council's action, and explain Town policy of keeping application active for one year with notification of subsequent openings on that Commission to the interested applicants.
- b. *For student applicants* — After the interviews are completed, notify all applicants of the Council Committee's action, and prepare a staff report for the Town Council to ratify the Committee's appointment at an official Town Council meeting.

B. Mid-Term Recruitments

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Responsibility and Action: Applicant

- 1. Complete and submit to the Town Clerk Administrator the application for appointment to a Town Commission.
- 2. *For adult applicants:* Attend the Council meeting to be interviewed for Commission appointment.

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For student applicants: Attend the Council Selection Committee interview session.

3. If a Commission member is requesting reappointment to a Town Commission and cannot be present for the interview, submit a letter to the Town Clerk Administrator by Friday prior to the interview, describing why applicant cannot be present for the interview and why the applicant should be reappointed to the Commission.
4. If appointed, prior to starting the Commission term, see Town Clerk Administrator to take "Oath of Office" and file any documents required by the Fair Political Practices Commission.
5. Attend Commission meetings once term begins.
6. Read the Commissioner Handbook.

Balloting Process

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2. Each Town Council Member shall hand vote for the same number of applicants as there are current vacancies on the respective Town Commission. In no case, can a Council Member cast more votes than there are vacancies;
3. Each Town Council Member's hand shall remain up until the Town Clerk Administrator publicly announces the name of each Town Council Member and how that Town Council Member cast their respective vote.
4. Applicants receiving a majority number of votes shall be deemed appointed to the Commission. In the event of a tie, a run-off hand vote shall be conducted of only the applicants receiving the highest number of votes from the previous round. This shall continue until a majority consensus on an applicant(s) is reached for the number of vacancies to be filled. In the event of an unbreakable tie, the Town Council may determine an alternative method for selecting the appointee(s).

Title: Commission Appointments	Page: 5 of 5	Policy Number: 2-11
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Responsibility and Action: Town Council

1. Review applications.
2. *For adult applicants* – Interview applicants at a public meeting.
For student applicants – Town Council Selection Committee interviews applicants.
3. Determine if the incumbents not in attendance and having submitted a letter pursuant to this Policy should be considered for reappointment.
4. If there are limited applications for any vacancy to a Town Commission, the Mayor, on behalf of the Council, may request that the Town Clerk Administrator re-advertise the vacancy, reschedule the interviews, and notify all applicants of the new interview date.

APPROVED AS TO FORM:

Robert Schultz, Town Attorney



MEETING DATE: 03/24/16
ITEM NO: 3

POLICY COMMITTEE REPORT

DATE: MARCH 18, 2016
TO: POLICY COMMITTEE
FROM: LAUREL PREVETTI, TOWN MANAGER *Laurel Prevetti*
SUBJECT: REVIEW AND DISCUSS ISSUES RELATED TO AN ENTERTAINMENT POLICY

RECOMMENDATION:

Review and discuss issues related to an entertainment policy.

BACKGROUND AND DISCUSSION:

In October and November 2015, the Town Council held two study sessions to discuss amending the existing Alcohol Beverage Policy (APB) and researching the implementation of a new entertainment permit process.

At its March 7, 2016 Policy Committee meeting, the Committee discussed separating the APB and the entertainment policy. The Committee requested the approved agreements for Music in the Park (MIP) and Jazz on the Plazz (JOTP) which include provisions for alcohol and amplified sound for Policy Committee review and discussion.

DISCUSSION:

The Town Council held two study sessions on this issue on October 6 and November 3, 2015. Links to the staff reports can be found at the following URLs:

October 6, 2016 Study Session

http://losgatos.granicus.com/ViewerServlet.action?clip_id=1454&meta_id=148955

November 3, 2015 Study Session

http://losgatos.granicus.com/ViewerServlet.action?clip_id=1465&meta_id=150062

Past Policy Committee discussion on this issue took place on July 30 and August 27, 2015. Links to the staff reports can be found at the following URLs:

PREPARED BY: CHRISTINA GILMORE *CG*
Assistant to the Town Manager

Reviewed by: _____ Assistant Town Manager _____ Town Attorney NA Finance

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POLICY COMMITTEE

SUBJECT: REVIEW AND DISCUSS ISSUES RELATED TO AN ENTERTAINMENT POLICY
MARCH 18, 2016

July 30, 2015 Policy Committee Meeting

<http://www.losgatosca.gov/AgendaCenter/ViewFile/Agenda/07302015-516>

August 27, 2015 Policy Committee Meeting

<http://www.losgatosca.gov/AgendaCenter/ViewFile/Agenda/08272015-566>

CONCLUSION AND NEXT STEPS:

Following this discussion, the Policy Committee may identify next steps for the development of an entertainment policy. Alternately, the Policy Committee may make a recommendation to the Council on a draft entertainment policy.

COORDINATION:

The preparation of this report was coordinated with the Town Manager's Office and the Town Attorney.

Attachments:

1. Music in the Park Summer Concert Series Agreement
2. Jazz on the Plazz Summer Concert Series Agreement

**AGREEMENT BY AND BETWEEN THE TOWN OF LOS GATOS AND LOS GATOS
COMMUNITY CONCERTS FOR THE PRODUCTION AND PROMOTION OF THE
MUSIC IN THE PARK SUMMER MUSIC CONCERT SERIES**

THIS Agreement is made and entered into this 2ND day of February 2016, by and between the Town of Los Gatos, a municipal corporation of the State of California (hereinafter "Town"), and Los Gatos Community Concerts, a California nonprofit organization (hereinafter "LGCC").

WITNESSETH

WHEREAS, the Town of Los Gatos has authorized "Music in the Park," (the "Events") a free summer concert series that has enriched the community and added vitality to the downtown area, since 1988; and

WHEREAS, on January 19, 2016, the Town Council selected LGCC to produce, manage, and promote the Music in the Park Summer Music Concert Series; and

WHEREAS, to insure the Town will have adequate advance notice of "Music In The Park" summer music concert series and to adequately plan Town services and to preserve the Town's commitment to attract quality events with significant entertainment and cultural enrichment for the community at-large an agreement is necessary; and

WHEREAS, Los Gatos Community Concerts is a local organization (in the process of obtaining nonprofit status) that has shown its interest to produce this Summer Music Concert Series and desires to enter into an agreement with the Town; and

WHEREAS, the Town desires to enter into an Agreement with LGCC to administer, promote and produce the Music in the Park Summer Music Concert Series (the "Events") subject to the following terms and conditions:

NOW, THEREFORE, THE PARTIES AGREE, as follows:

1. TERM OF AGREEMENT

The term shall commence upon the execution of this Agreement and shall terminate on September 30, 2017. An amendment to this Agreement may be made to renew its term, pursuant to Section 10, Terms and Amendments; such amendment must be approved by the Town Council prior to December 30, 2017.

2. EVENT DATES & TIMES

The Events will take place on Sundays in the months of June, July and August on the Civic Center Lawn and end on the Saturday of Labor Day Weekend at Oak Meadow Park. Set up shall be allowed to begin at 8:00 AM on the day of the event. The Events shall consist of 10 concerts at Civic Center Lawn and 1 concert at Oak Meadow Park. Prior to May 15th of each year, LGCC shall provide the Town with dates of each concert.

3. PREMISES

The initial 10 Events shall take place on the grounds of the Civic Center, as designated on the map attached as Exhibit A (the "CC Grounds"). The Los Gatos Park Dance shall take place at the Lyndon Bandstand at Oak Meadow Park, as designated on the map attached as Exhibit B (the "OM Park Grounds").

4. SCOPE OF SERVICES

LGCC shall provide the following scope of services:

1. LGCC shall provide the Town annually with documentation establishing its non-profit status. (It is understood that LGCC as a new organization, will be filing for non-profit status as soon as possible).
2. LGCC agrees to plan, organize, produce and manage the Music in the Park Summer concert series that provides a positive, high quality, social experience through music for families and community members.
3. LGCC shall be responsible for all financial costs (other than the sum of \$6,000 and other services agreed to with Town under Section 4. paragraph 26-38) and management services required for production and promotion of the Events and raise funds sufficient to cover production costs, through solicitation of sponsorships, merchandise sales and other fundraising activities.
4. LGCC shall provide an adequate number of staff and volunteers to run the Events, and cleaning after the Events.
5. LGCC shall maintain a clean, safe, and attractive environment for the Events.
6. LGCC shall reimburse the Town for any and all fees paid to the American Society of Composers, Authors and Publishers (ASCAP); Broadcast Music Inc. (BMI); and Society of European Stage Authors and Composers (SESAC).
7. LGCC shall pay the non-profit Special Event Administrative Annual Fee to the Town in the amount of \$ 169.00 and an Annual Banner Fee of \$90.60 to the Town which shall be subject to annual adjustments set forth in the Town's Master Fee Schedule. All other fees and permits for LGCC are waived by the town unless specifically set forth in this agreement.
8. LGCC shall not sell any alcohol. If LGCC offers winetasting to sponsors in designated private hospitality area, LGCC shall comply with all Alcohol Beverage Control (ABC) regulations and obtain all necessary permits, including a Temporary Alcohol Sales Permit from the Los Gatos Police Department and pay a permit fee as set forth in the Master Fee Schedule. If LGCC offers winetasting to sponsors in a designated private hospitality

area, LGCC will also designate people to monitor compliance with alcohol use in accordance with the permits issued.

9. LGCC shall limit amplified sound between the hours of 2 p.m. and 10 p.m. and amplified sound shall not exceed a noise level of 98 decibels, as measured from a distance of 300 feet from the property line. If noise complaints are submitted to Town Staff, for any given event, the Town reserves the right to direct LGCC to reduce the volume level not to exceed 95 decibels, as measured from a distance of 300 feet from the CC Grounds or OM Park Grounds. Sound company provided by LGCC shall provide industry standard sound measuring equipment and establish that sound is within the limits.
10. LGCC shall be allowed to sell Event items only, such as sponsorships and other fundraising activities for the Event, performer's CD's, MIP T-Shirts and other memorabilia and relevant items.
11. LGCC shall encourage that the attendees of the Events do not interfere with pedestrian or vehicular traffic in the area. LGCC shall submit a site plan to include a layout of the Events. LGCC shall submit a separate site plan for any concert proposing a different layout at least 10 days before the Event to the Town Manager or his/her designee for approval.
12. LGCC shall provide best estimate of attendance prior to each date of Events for Town management planning.
13. LGCC shall include clearly designated access throughout the CC Grounds and OM Park Grounds for mobility impaired attendees, both near the stage and through the main seating area.
14. LGCC shall notify the Town Manager or his/her designee at the earliest opportunity of any Event which is likely to exceed the ordinary boundaries of the CC Grounds or OM Park Grounds as set forth on Exhibit "A" and "B".
15. LGCC shall notify the Town Manager or his/her designee should any single Event exceed the capacity of the CC Grounds or OM Park Grounds as determined by the Director of Parks and Public Works.
16. LGCC shall contract, transport, provide and pay for restrooms and modern full feature hand wash stations at a ratio recommended by rest room vendor. Restrooms shall be delivered the morning of the Events and picked up the following morning prior to 10:00 a.m. unless a Special Encroachment Permit is obtained from the Town for the restrooms to remain at designated location throughout the concert series. If a special encroachment permit is obtained, LGCC shall pay an Encroachment Permit Fee of \$112.00 and any annual adjustments thereto.
17. LGCC shall pay for extra trash/recycle/glass containers and pick up costs as determined and required by the Town. LGCC shall be responsible for the cleanliness of the Grounds, including the removal of trash-refuse not contained in any designated container before

vacating the site for any single event. Should LGCC fail to perform adequate cleanup or damage occurs to Town property, the Town will invoice LGCC at full recovery rates, plus overhead for cleanup and repair.

18. LGCC shall be responsible for notifying neighboring businesses and residences within 300 feet of the Events, to address any concerns, prior to the first performance and provide proof of notice to event coordinator. Town shall provide LGCC with names and addresses of businesses and residences affected by this requirement.
19. LGCC shall provide signage posted in the audience area prohibiting blankets and other items that might interfere with the Events. LGCC shall not allow the unattended staking of any spots and will take action to prevent reservations prior to 3 p.m. on date of any event. LGCC shall collect any articles in violation of this section, and relocate them to a convenient area that does not obstruct the flow of foot traffic. (For the Los Gatos Park Dance, this paragraph is waived).
20. LGCC shall not require the use of police officers outside their regularly scheduled deployment. If possible, without disruption of ordinary police services or compromise of public safety, regularly scheduled on-duty personnel will police the event. If additional police are deemed necessary by the Chief of Police, he/she shall so inform LGCC. LGCC shall have the duty to secure the protection deemed necessary by the Chief of Police, at the sole expense of LGCC. Should the Event require extra assignment of police officers to protect public safety, then LGCC shall compensate the Town at an hourly police officer rate of \$166.21.
21. LGCC shall not close any streets or parking spaces unless clearly designated on Exhibit "A" or Exhibit "B".
22. LGCC shall limit advertising to the local region.
23. LGCC shall be responsible for any portion of Civic Center and Oak Meadow park that is damaged by the act, default or negligence of LGCC, its agents, employees, contractors, sub-contractors, patrons, guests, and will repair it or pay to the Town, within thirty (30) days of written invoice, such actual and documented sum as shall be reasonably necessary to restore the Civic Center and Oak Meadow Parks to its condition as received by LGCC at the beginning of the Event Series, excluding normal wear and tear. In connection with the repairs and/or restoration referenced herein, designated representatives of the parties shall conduct a walk-through of pertinent areas of Civic Center prior to the first Event and periodically during the Events and again after the last Event. During the walk-through, the parties will assess and identify, as applicable, pre-existing conditions that need to be repaired and maintained by the Town and any damages, if any, that may have occurred during LGCC's use, and will consult and agree in good faith as to what, if any, repair or restoration costs will be paid for by LGCC. In regard to normal wear and tear, the Town acknowledges that the Civic Center Lawn and Oak Meadow Park are significantly used the other six days of the week and this wear and

tear will be taken into account when assessing and identifying the condition of the Civic Center Lawn and Oak Meadow Park.

24. LGCC shall participate in a joint meeting with the Town following the 3rd concert to assess suitability of current controls and the Town Manager has authority to add additional requirements to the Events to protect the health and safety of the community. If LGCC is unable to meet any additional requirements, the Town and LGCC will meet as soon as possible to discuss workable remedies.
25. LGCC agrees that the Town Manager or his/her designee reserves the right to adjust any of the above conditions based on the conduct at any of the Events, as well as based on legitimate complaints received by the Town from the community at large regarding the Events. The Town agrees that any adjustment of the above conditions constitutes a change in this Agreement and must be feasible for LGCC to accomplish. If the any conditions the Town adjusts are not feasible for LGCC, the parties shall meet to discuss a workable remedy. If not possible, the particular Events in question may be cancelled by either party.

Town shall provide the following scope of services:

26. Town shall provide the use of Civic Center for all Music in the Park concerts.
27. Town shall provide the Lyndon Bandstand and the use of Oak Meadow Park for the Los Gatos Park Dance.
28. Town shall provide and maintain a stage (in safe and useable condition) and electrical power to the stage area by 11:00 am each Event day.
29. Town shall provide the use of the Council Chambers Lobby Area as a “green room/staging area” for the bands LGCC hires for each of the Events (with the exception of the Los Gatos Park Dance). LGCC agrees to pay the Town Attendant fee of \$20.00 per hour to open and then secure the building at the end of the Events unless other arrangements are made with the Town. LGCC agrees to provide an attendant in the Lobby Area during the Events to keep the public from entering the building and also to provide clean up after the Events. Should LGCC fail to perform adequate cleanup or damage occurs to Town property, the Town will invoice LGCC at full recovery rates, plus overhead for cleanup and repair.
30. Town agrees to grant LGCC \$6,000 per annum (for each of the 2016 and 2017 MIP Seasons). Payment of the \$6,000 grant is due to LGCC not later than March 1st of each season in order to cover early expenses before the season is announced and sponsor money is collected.
31. Town shall provide LGCC with use of the parking spaces along Main Street adjacent to the Civic Center lawn as set forth on Exhibit “A” beginning at 8 AM. on the day of each Event for equipment unloading/loading, and sponsor parking/car displays etc. and use of the civic center back parking areas/lots (for band and equipment staging and parking).

32. Town shall supply 2 generator powered halogen lighting trees for safety and comfort at the Los Gatos Park Dance at no cost.
33. Town shall supply “A frame” signs to LGCC in the quantity necessary to properly secure the areas named in paragraph 31 in sufficient time and at no cost to LGCC.
34. Town shall supply “A frame” signs to LGCC in the quantity necessary to properly secure the areas needed for the Los Gatos Park Dance at no cost to LGCC.
35. Town shall supply and temporarily “install” without cost to LGCC the existing, Town owned, removable “artificial turf” for the Los Gatos Park Dance to cover the dirt area between the end of the dance floor that LGCC will have installed, and the stage.
36. Town shall work with LGCC to coordinate communication regarding and to promote the Events on its municipal website and in the lobby of Town Hall.
37. Town shall allow LGCC to hang banners, with payment of an Annual Banner Fee (See 4.7), advertising the Event concert series. The duration, size and location of any banners shall be subject to the Town Banner Policy and subject to the Town Manager’s approval.

5. PROGRAM COORDINATION

The Town Manager or his /her designee shall be the Contract Manager for the Town and shall render overall supervision of the progress and performance of this Agreement by the Town.

The Chairperson of LGCC, or a designated LGCC Board officer, shall be the Program Director for LGCC, and shall have overall responsibility for the progress and execution of this Agreement on its behalf. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Program Director, the Town shall be notified immediately of such occurrence in writing.

All notices or other correspondence required or contemplated by this Agreement shall be sent to the parties at the following addresses:

TOWN:
Town Manager
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

LGCC:
(to be completed)

6. REPORTING

LGCC shall submit an annual report to the Town each year prior to October 1 on a Report Form as provided by the Town and any relevant supporting documents shall be attached.

7. DEFAULT, CURE AND TERMINATION

LGCC shall be deemed to be in default of its obligations under this Agreement if the Contract Manager determines that LGCC is providing services below the established minimum standard of service set forth in this Agreement. In this event, LGCC shall be notified in writing and provided the opportunity to cure the default by providing the Town with a plan for improvement of services required of LGCC by this Agreement provided hereunder within ten (10) business days of receipt of written notice of the Town's determination of a default. Said plan shall address each and every service issue referred to in the Town's notice, providing the method for improvement, an explanation, as necessary, for how the method will result in an improvement, and a schedule for the actions necessary to ensure the planned improvement of services. The Town shall review LGCC's plan for improvement and determine within ten (10) business days after receipt of the plan and at its sole discretion whether the plan is satisfactory to cure the default. In the Event the plan is not deemed satisfactory, the Town may, at its sole discretion, suspend or cancel this Agreement without incurring any liability to LGCC.

In addition to the above paragraph, this Agreement shall automatically terminate without a right to cure upon the occurrence of any of the following circumstances:

1. If LGCC (with or without knowledge) has made any material misrepresentation of any nature with respect to any information or data furnished to the Town.
2. The existence of pending litigation against LGCC that may in any manner affect its ability to perform any of its duties or obligations under this Agreement.
3. LGCC taking any action requiring Town approval without first having obtained such approval.
4. LGCC submits to the Town any reports that are purposely false or incomplete in any material respect.
5. LGCC declares bankruptcy or otherwise indicates that it is no longer willing or able to meet its obligations under this Agreement.
6. LGCC refuses to accept any additional conditions that may be imposed by federal or state requirements.
7. The Town, at its sole discretion, determines there are imminent health and safety issues involved with the Events.

8. ASSIGNABILITY AND INDEPENDENT CONTRACTOR REQUIREMENTS

The relationship of LGCC to the Town is that of an independent contractor. LGCC is responsible for the results of its services and compliance with the terms of this Agreement. LGCC has full rights to manage employees subject to the requirements of the law. All persons employed by LGCC in connection with this Agreement shall be employees, contractors, or volunteers of LGCC and not employees of the Town in any respect. LGCC shall be responsible for all employee benefits, including, but not limited to, statutory workers' compensation benefits.

None of the work or services to be performed hereunder shall be subcontracted to third parties without notice to the Town. All subcontractors are deemed to be contractors of LGCC, and LGCC agrees to be responsible for their performance and any liabilities attached to their actions or omissions.

This Agreement is based on the unique services of LGCC. This Agreement shall not be assigned or transferred without the written consent of the Town. No changes or variations of any kind are authorized without the written consent of the Town Manager. No changes of the Town's responsibilities to LGCC are authorized without the written consent of LGCC.

9. COMPLIANCE WITH LAW

LGCC shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state, and local laws, ordinances, codes, regulations, and decrees. Failure of LGCC to, in any manner, observe and adhere to law as described herein or as amended shall in no way relieve LGCC of responsibility to adhere to same and LGCC herein acknowledges this responsibility. LGCC represents and warrants to the Town that it has, or will have, all licenses, permits, qualifications and approvals of whatsoever nature which are legally required to practice its profession and to provide the services required hereunder, including all licenses necessary to use and or display any artistic works in the performance of the services required by this Agreement. LGCC represents and warrants to Town that LGCC shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals which are legally required to provide its services, including all licenses necessary to use and or display any artistic works in the performance of the services required by this Agreement.

10. TERMS AND AMENDMENTS

Amendments to the terms and conditions of this Agreement shall be requested in writing by the party desiring such revision, and any such adjustment to this Agreement shall be determined and effective only upon the mutual Agreement in writing of the parties hereto unless the Amendments are made by the Town as corrective actions, in which case they will be adopted as ordered.

11. LEGAL MATTERS

This document, including Exhibits represents the entire and integrated Agreement between the Town and LGCC, and supersedes all prior negotiations, representations, and agreements, either written or oral.

The terms of this Agreement shall bind, and inure to the benefit of, the parties, their heirs, successors, and assigns.

12. HOLD HARMLESS AND INDEMNIFICATION

LGCC hereby assumes full responsibility for the acts and conduct of all persons admitted to the Civic Center and Oak Meadow during the Events and hereby releases and agrees to protect, defend, hold harmless, and indemnify the Town, its Town Council, its officers, employees and elected officials, boards and commissions, from and against all claims, injury, liability, loss, costs and expense, or damage, however same may be caused, including all cost and reasonable attorney's fees in providing the defense to any claim arising therefrom, for any loss or damage to property (real and/ or personal) and for personal injury to or death of any person or persons arising out of, occurring by reason of, or in any way connected with LGCC' s activities under this Agreement, or in consequence thereof, except to the extent arising from the Town's or its officers', agents', employees' or representatives' gross negligence, willful misconduct or criminal act.

13. INSURANCE REQUIREMENTS

LGCC shall supply proof of General Liability (GL) insurance and Automobile Liability (AL) insurance from an insurance company licensed to do business in the state of California and having a financial rating in Best's Insurance Guide of not less than AA. Both the GL and AL insurance will provide "occurrence" coverage against liabilities for death, personal injury or property damage arising out of or in any way connected with the Events. Both the GL and AL insurance will be in the minimum amount of \$1,000,000.00 combined single limit, and will name the Town and the Town officers, employees, agents, and registered volunteers as additional insured under the coverage afforded. Such insurance will be primary and noncontributing with respect to any other insurance available to the Town and will include a severability of interest (cross-liability) clause.

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.

In addition to these policies, Service Provider 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, Service Provider shall ensure that all subcontractors employed by Service Provider provide the required Workers' Compensation insurance for their respective employees.

A copy of the policy or a certificate of insurance along with an additional endorsement naming the Town as an Additional Insured must be filed in the Town Clerks Office at least ten (10) business days prior to the scheduled Events. The Additional Insured Endorsement, effective for ongoing and completed operations, must be approved in advance by the Town.

14. MISCELLANEOUS PROVISIONS

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 shall have any claim or right of action hereunder for any cause whatsoever.

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.

Under no circumstances shall LGCC have the authority or power to pledge the credit of the Town, or incur any obligation in the name of the Town. LGCC shall save and hold harmless the Town, its Town Council, its officers, employees and boards and commissions from expenses arising out of this Agreement.

In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, as well as reasonable costs.

Neither LGCC nor any of its subcontractors shall discriminate in the employment of persons because of their race, color, national origin, sex, age, ancestry, sexual orientation, religion, physical or mental disability, or marital status, unless based upon a bona fide qualification under the California Fair Employment and Housing Act. Neither LGCC nor any of its subcontractors shall discriminate in the provision of any services or programs because of race, color, national origin, sex, age, ancestry, sexual orientation, religion, physical or mental disability, or marital status, unless based upon a bona fide qualification under the California Fair Employment and Housing Act.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first herein above set forth.

TOWN OF LOS GATOS

LOS GATOS COMMUNITY
CONCERTS

Laurel Prevetti
Town Manager

Ron Simner
Chairman of the Board

APPROVED AS TO FORM

Town Attorney

**AGREEMENT BY AND BETWEEN THE TOWN OF LOS GATOS AND LOS GATOS
MUSIC AND ARTS FOR THE PROMOTION AND PRODUCTION OF THE JAZZ ON
THE PLAZZ SUMMER MUSIC CONCERT SERIES**

THIS Agreement is made and entered into this 2ND day of February 2016, by and between the Town of Los Gatos, a municipal corporation of the State of California (hereinafter "Town"), and Los Gatos Music & Arts, a California nonprofit corporation (hereinafter LGM&A").

WITNESSETH

WHEREAS, the Town has authorized and coordinated with Los Gatos Music & Arts for, "Jazz on the Plazz", a free Wednesday night summer music concert series that has enriched the community and added vitality to the downtown area, since 2004; and

WHEREAS, to insure the Town will have adequate advance notice of "Jazz on the Plazz" summer music concert series and to adequately plan Town services and to preserve the Town's commitment to attract quality Events with significant cultural and entertainment enrichment for the community at-large an agreement is necessary; and

WHEREAS, Los Gatos Music & Arts is a local nonprofit agency that has shown its ability to coordinate this Summer Music Concert Series and desires to enter into an agreement with the Town; and

WHEREAS, the Town desires to enter into an Agreement with LGM &A to administer, promote and produce the Jazz on the Plazz Summer Music Concert Series (the "Events") subject to the following terms and conditions:

NOW, THEREFORE, THE PARTIES AGREE, as follows:

1. TERM OF AGREEMENT

The term shall commence upon the execution of this Agreement and shall terminate on September 30, 2018. An amendment to this Agreement may be made to renew its term, pursuant to Section 8, Terms and Amendments. Such amendment must be approved by the Town Council prior to December 30, 2018.

2. EVENTS DATES & TIMES

The Events will take place on Wednesday nights in the months of June, July and August. Set up shall be allowed to begin at 11:00 AM on the day of the Events. Prior to May 15th of each year, LGM&A shall provide the Town with dates of the Events.

3. PREMISES

The Events shall take place on the grounds of the Town Plaza, as designated on the map attached as Exhibit A (the "Grounds").

4. SCOPE OF SERVICES

LGM&A shall provide the following scope of services:

1. LGM&A shall provide the Town annually with documentation establishing its non-profit status.
2. LGM&A agrees to plan, organize, produce and manage the Jazz on the Plazz Summer concert series that provides a positive, high quality, social experience through music for families and community members.
3. LGM&A shall be responsible for all financial costs and management services required for production and promotion of the Events and raise funds sufficient to cover production costs, through solicitation of sponsorships, merchandise sales and other fundraising activities.
4. LGM&A shall provide an adequate number of staff and volunteers to run the Events, and cleaning after the Events.
5. LGM&A shall maintain a clean, safe, and attractive environment for the Events.
6. LGM&A shall reimburse the Town any and all fees to the American Society of Composers, Authors and Publishers (ASCAP); Broadcast Music Inc. (BMI); and Society of European Stage Authors and Composers (SESAC).
7. LGM&A shall pay the non-profit Special Events Administrative Annual Fee in the amount of \$169.00 and an Annual Banner Fee of \$90.60 to the Town which shall be subject to annual adjustments set forth in the Town's Master Fee Schedule. All other fees and permits are waived by the Town unless specially set forth in this Agreement.
8. LGM&A shall not sell any alcohol. If LGM&A offers winetasting to sponsors in a designated private hospitality area, LGM&A shall comply with all Alcohol Beverage Control (ABC) regulations and obtain all necessary permits, including a Temporary Alcohol Sales Permit from the Los Gatos Police Department and pay a permit as set forth in the Master Fee Schedule. If LGM&A offers winetasting to sponsors in a designated private hospitality area, LGM&A will designate people to monitor alcohol use and compliance with alcohol use in accordance to the permits issued.
9. LGM&A shall limit amplified sound between the hours of 2 p.m. and 9 p.m. and amplified sound shall not exceed a noise level of 98 decibels, as measure from a distance of 300 feet from the property line. If noise complaints are submitted to Town Staff, for any given event, the Town reserves the right to direct LGM&A to reduce the volume level not to exceed 95 decibels, as measured from a distance of 300 feet from the Town Plaza Grounds. Sound company provided by LGM&A shall provide industry standard sound measuring equipment and establish that sound is within the limits.

10. LGM&A shall be allowed to sell Events items only, such as sponsorships and other fundraising activities for the Events, performer's CD's, Jazz T-Shirts and other memorabilia.
11. LGM&A shall encourage attendees of the Events to not interfere with pedestrian or vehicular traffic in the area. Exhibit "A" shall include a site plan of the layout of the Events. LM&A shall submit a separate site plan for any concert proposing a different layout at least 10 days before the Event to the Town Manager or his/her designee for approval.
12. LGM&A shall provide a best estimate of attendance prior to each date of Events for Town management planning.
13. LGM&A shall include clearly designated access throughout the site grounds for mobility impaired attendees, both near the stage and through the main seating area.
14. LGM&A shall notify the Town Manager or his/her designee at the earliest opportunity of any Events which is likely to exceed the ordinary boundaries of the Grounds as set forth on Exhibit "A".
15. LGM&A shall notify the Town Manager or his/her designee should any single Events exceed the capacity of the park as determined by the Director of Parks and Public Works.
16. LGM&A shall contract, transport, provide and pay for restrooms and modern full feature hand wash stations at a ratio recommended by rest room vendor. Restrooms shall be delivered the morning of the Events and picked up the following morning prior to 10:00 a.m. unless a Special Encroachment Permit is obtained from the Town for the restrooms to remain at designated location throughout the concert series. If a special encroachment permit is obtained, LGM&A shall pay an Encroachment Permit Fee of \$112.00 and any annual adjustments thereto.
17. LGM&A shall pay for extra trash/recycle/glass containers and pick up costs as determined and required by the Town. LGM&A shall be responsible for the cleanliness of the Grounds, including the removal of trash-refuse not contained in any designated can before vacating the site for any single Events. Should LGM&A fail to perform adequate cleanup or damage occurs to Town property, the Town will invoice LGM&A at full recovery rates, plus overhead for cleanup and repair.
18. LGM&A shall be responsible for notifying neighboring businesses and residences within 300 feet of the Events, to address any concerns, prior to the first performance and provide proof of notice to Events coordinator. Town shall provide LGCC with names and addresses of businesses and residences affected by this requirement.
19. LGM&A shall provide signage posted in the audience area prohibiting blankets and other items that might interfere with the Events. LGM&A shall not allow the unattended staking of any spots and will take action to prevent reservations prior to 3 p.m. on date of

any Events. LGM&A shall collect any articles in violation of this section and relocate them to a convenient area that does not obstruct the flow of foot traffic.

20. LGM&A shall not require the use of police officers outside their regularly scheduled deployment. If possible, without disruption of ordinary police services or compromise of public safety, regularly scheduled on-duty personnel will police the event. If additional police are deemed necessary by the Chief of Police, he/she shall so inform LGM&A. LGM&A shall have the duty to secure the protection deemed necessary by the Chief of Police, at the sole expense of LGM&A. Should the Event require extra assignment of police officers to protect public safety, then LGM&A shall compensate the Town at an hourly police officer rate of \$166.21.
21. LGM&A shall not close any streets or parking spaces unless clearly designated on Exhibit "A". A barricade with an attendant shall be placed at the entrance of Montebello/Broadway beginning at 4:00 p.m. on the day of the Events to ensure that parking spaces on that street are used for patrons of businesses and the Post Office until the close of business and to provide for the unloading of Events equipment.
22. LGM&A shall limit advertising to the local region.
23. LGM&A shall be responsible for any portion of Town Plaza that is damaged by the act, default or negligence of LGM&A, its agents, employees, contractors, sub-contractors, patrons, guests, and will pay to the Town, within thirty (30) days of written invoice, such actual and documented sum as shall be reasonably necessary to restore the Town Plaza to its condition as received by LGM&A at the beginning of the Events Series, excluding normal wear and tear. In connection with the repairs and/or restoration referenced herein, designated representatives of the parties shall conduct a walk-through of pertinent areas of Town Plaza prior to the first Events and periodically during the Events and again after the last Events. During the walk-through, the parties will assess and identify, as applicable, pre-existing conditions and damages, if any, that may have occurred during LGM&A's use, and will consult and agree in good faith as to what, if any, repair or restoration costs will be paid for by LGM&A. In regard to normal wear and tear, the Town acknowledges that Town Plaza is significantly used the other six days of the week and this wear and tear will be taken into account when assessing and identifying the condition of Town Plaza.
24. LGM&A shall participate in a joint meeting with the Town following the 3rd concert to assess suitability of current controls and the Town Manager has authority to add additional requirements to the Events to protect the health and safety of the community. If LGM&A is unable to meet any additional requirements the Town Manager may add, the Town and LGM&A will meet to discuss workable remedies.
25. LGM&A agrees that the Town Manager or his/her designee reserves the right to adjust any of the above conditions based on the conduct at any of the proposed Events, as well as based on legitimate complaints received by the Town from the community at large regarding the Events. The Town agrees that any adjustment of the above conditions

constitutes a change in this Agreement and must be feasible for LGM&A to accomplish. If any conditions the Town adjusts are not feasible for LGM&A, the parties shall meet to discuss a workable remedy. If not possible, the particular Events in question may be cancelled by either party.

Town shall provide the following scope of services:

26. Town shall provide the use of Town Plaza for all Jazz on the Plazz concerts.
27. Town shall provide electrical power to the stage area by 11:00 am each Events day.
28. Town shall promote the Events on its municipal website and in the lobby of Town Hall.
29. Town shall allow LGM&A to hang banners, with the payment of an Annual Fee, advertising the Events concert series. The size and location of any banners shall be subject to the Town Banner Policy and subject to the Town Manager's approval.
30. Town shall provide "NO Parking Signs" along the Plaza side of South Santa Cruz Avenue at least 72 hours prior to the Events.

5. PROGRAM COORDINATION

The Town Manager or his /her designee shall be the Contract Manager for the Town and shall render overall supervision of the progress and performance of this Agreement by the Town.

The Chairperson of LGM&A, or a designated LGM&A Board officer, shall be the Program Director for LGM&A, and shall have overall responsibility for the progress and execution of this Agreement on its behalf. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Program Director, the Town shall be notified immediately of such occurrence in writing.

All notices or other correspondence required or contemplated by this Agreement shall be sent to the parties at the following addresses:

TOWN:
Town Manager
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 9503

LGM &A:
President and Chairperson
Los Gatos Music & Arts
101 W. Main Street
Los Gatos, CA 95030

6. REPORTING

LGM&A shall submit an annual report to the Town each year prior to October 1 on a Report Form as provided by the Town and any relevant supporting documents shall be attached.

7. DEFAULT, CURE AND TERMINATION

LGM&A shall be deemed to be in default of its obligations under this Agreement if the Contract Manager determines that LGM&A is providing services below the established minimum standard of service set forth in this Agreement. In this Events, LGM&A shall be notified in writing and provided the opportunity to cure the default by providing the Town with a plan for improvement of services required of LGM&A by this Agreement provided hereunder within ten (10) business days of receipt of written notice of the Town's determination of a default. Said plan shall address each and every service issue referred to in the Town's notice, providing the method for improvement, an explanation, as necessary, for how the method will result in an improvement, and a schedule for the actions necessary to ensure the planned improvement of services. The Town shall review LGM&A's plan for improvement and determine within ten (10) business days after receipt of the plan and at its sole discretion whether the plan is satisfactory to cure the default. In the Events the plan is not deemed satisfactory, the Town may, at its sole discretion, suspend or cancel this Agreement without incurring any liability to LGM&A.

In addition to the above paragraph, this Agreement shall automatically terminate without a right to cure upon the occurrence of any of the following circumstances:

1. If LGM&A (with or without knowledge) has made any material misrepresentation of any nature with respect to any information or data furnished to the Town.
2. The existence of pending litigation against LGM&A that may in any manner affect its ability to perform any of its duties or obligations under this Agreement.
3. LGM&A taking any action requiring Town approval without first having obtained such approval.
4. LGM&A submits to the Town any reports that are purposely false or incomplete in any material respect.
5. LGM&A declares bankruptcy or otherwise indicates that it is no longer willing or able to meet its obligations under this Agreement.
6. LGM&A refuses to accept any additional conditions that may be imposed by federal or state requirements.
7. The Town, at its sole discretion, determines there are imminent health and safety issues involved with the Events.

8. ASSIGNABILITY AND INDEPENDENT CONTRACTOR REQUIREMENTS

The relationship of LGM&A to the Town is that of an independent contractor. LGM&A is responsible for the results of its services and compliance with the terms of this Agreement. LGM&A has full rights to manage employees subject to the requirements of the law. All persons employed by LGM&A in connection with this Agreement shall be employees of LGM&A and not employees of the Town in any respect. LGM&A shall be responsible for all employee benefits, including, but not limited to, statutory workers' compensation benefits.

None of the work or services to be performed hereunder shall be delegated or subcontracted to third parties without prior written Town approval. All subcontractors are deemed to be contractors of LGM&A, and LGM&A agrees to be responsible for their performance and any liabilities attached to their actions or omissions.

This Agreement is based on the unique services of LGM&A. This Agreement shall not be assigned or transferred without the written consent of the Town. No changes or variations of any kind are authorized without the written consent of the Town Manager.

9. COMPLIANCE WITH LAW

LGM&A shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state, and local laws, ordinances, codes, regulations, and decrees. Failure of LGM&A to, in any manner, observe and adhere to law as described herein or as amended shall in no way relieve LGM&A of responsibility to adhere to same and LGM &A herein acknowledges this responsibility. LGM&A represents and warrants to the Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required to practice its profession and to provide the services required hereunder, including all licenses necessary to use and or display any artistic works in the performance of the services required by this Agreement. LGM&A represents and warrants to Town that LGM&A shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals which are legally required to provide its services, including all licenses necessary to use and or display any artistic works in the performance of the services required by this Agreement.

10. TERMS AND AMENDMENTS

Amendments to the terms and conditions of this Agreement shall be requested in writing by the party desiring such revision, and any such adjustment to this Agreement shall be determined and effective only upon the mutual Agreement in writing of the parties hereto unless the Amendments are made by the Town as corrective actions, in which case they will be adopted as ordered.

11. LEGAL MATTERS

This document, including Exhibits represents the entire and integrated Agreement between the Town and LGM&A, and supersedes all prior negotiations, representations, and agreements, either written or oral.

The terms of this Agreement shall bind, and inure to the benefit of, the parties, their heirs, successors, and assigns.

12. HOLD HARMLESS AND INDEMNIFICATION

LGM&A hereby assumes full responsibility for the acts and conduct of all persons at the Town Plaza during the Events and hereby releases and agrees to protect, defend, hold harmless, and indemnify the Town, its Town Council, its officers, employees and elected officials, boards and commissions, from and against all claims, injury, liability, loss, costs and expense, or damage, however same may be caused, including all cost and reasonable attorney's fees in providing the defense to any claim arising therefrom, for any loss or damage to property (real and/ or personal) and for personal injury to or death of any person or persons arising out of, occurring by reason of, or in any way connected with LGM&A's activities under this Agreement, or in consequence thereof, except to the extent arising from the Town's or its officers', agents', employees' or representatives' gross negligence, willful misconduct or criminal act.

13. INSURANCE REQUIREMENTS

LGM&A shall supply proof of General Liability (GL) insurance and Automobile Liability (AL) insurance from an insurance company licensed to do business in the state of California and having a financial rating in Best's Insurance Guide of not less than AA. Such insurance will provide "occurrence" coverage against liabilities for death, personal injury or property damage arising out of or in any way connected with the Events. Both the GL and AL insurance will be in the minimum amount of \$1,000,000.00 combined single limit, and will name the Town and the Town officers, employees, agents, and registered volunteers as additional insured under the coverage afforded. Such insurance will be primary and noncontributing with respect to any other insurance available to the Town and will include a severability of interest (cross-liability) clause.

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.

In addition to these policies, Service Provider 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, Service Provider shall ensure that all subcontractors employed by Service Provider provide the required Workers' Compensation insurance for their respective employees.

A copy of the policy or a certificate of insurance along with an additional endorsement naming the Town as an Additional Insured must be filed in the Town Clerks Office at least ten (10) business days prior to the scheduled Events. The Additional Insured Endorsement, effective for ongoing and completed operations, must be approved in advance by the Town.

14. MISCELLANEOUS PROVISIONS

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 shall have any claim or right of action hereunder for any cause whatsoever.

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.

Under no circumstances shall LGM&A have the authority or power to pledge the credit of the Town, or incur any obligation in the name of the Town. LGM&A shall save and hold harmless the Town, its Town Council, its officers, employees and boards and commissions from expenses arising out of this Agreement.

In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, as well as reasonable costs.

Neither LGM&A nor any of its subcontractors shall discriminate in the employment of persons because of their race, color, national origin, sex, age, ancestry, sexual orientation, religion, physical or mental disability, or marital status, unless based upon a bona fide qualification under the California Fair Employment and Housing Act. Neither LGM&A nor any of its subcontractors shall discriminate in the provision of any services or programs because of race, color, national origin, sex, age, ancestry, sexual orientation, religion, physical or mental disability, or marital status, unless based upon a bona fide qualification under the California Fair Employment and Housing Act.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first herein above set forth.

TOWN OF LOS GATOS

LOS GATOS MUSIC & ARTS

Laurel Prevetti
Town Manager

Teri Hope
President

APPROVED AS TO FORM

Town Attorney