

**TOWN OF LOS GATOS, ARTS AND CULTURE COMMISSION
100 VILLA AVE, LOS GATOS, CA 95030**

REQUEST FOR PROPOSAL

**REQUEST FOR PROPOSAL FOR PROFESSIONAL
CONSULTANT SERVICES TO STUDY AND MAKE RECOMMENDATIONS FOR
A POTENTIAL PRIVATE SECTOR REQUIREMENT TO FUND PUBLIC ARTS**

PROPOSAL SUBMITTAL DEADLINE:

DATE: January 18, 2019

TIME: 3:00 P.M.



RFP

REQUEST FOR PROPOSAL

1. OVERVIEW

The Town of Los Gatos is seeking a Consultant to produce a study and recommendations for introducing a potential private sector arts requirement or development impact fee to fund public arts, sometimes referred to as “percent-for-art” fee. The Town is soliciting Request for Proposals from qualified firms to prepare the required analysis and studies, as well as to provide recommendations on implementation of and/or alternatives to, such a fee or in-lieu equivalents. The study would analyze the requirements of Government Code section 66000 et seq., commonly known as AB1600 and determine whether the Town would be subject to these or other legal requirements.

Scope of Services

The Town has identified the following tasks for this project. These tasks are suggestive and intended as a general guideline. The Consultant is encouraged to recommend alternative tasks, scopes, and services that may be appropriate.

Task 1: Develop a project strategy and hold project management meetings

The Consultant will develop a list of “percent-or art” development fees and alternative private development for public arts programs utilized by surrounding and similar cities in California.

The Consultant will convene a strategy session with the Town to determine the project’s direction, deliverables, timetables, tasks, and identify other areas of strategic importance identified by the Town and/or Consultant.

The Consultant will participate in bi-weekly conference calls or meetings with Town staff to report on progress, problems, solutions and course of action.

Task 2: Data collection and analysis

The Consultant will work with Town staff to collect all data required to fully support the project, including existing and anticipated future development projects, and other relevant information.

Task 3: Prepare administrative draft

The Consultant will prepare and provide a comprehensive administrative draft to include the methodology, findings, supporting justification, and recommendations for instituting a potential private development requirement for art funding, including recommendations for development fees or assessments, in-lieu fees, or alternative arts funding options, as well legal requirements related to implementing such fees.

Task 4: Final report and consideration by Town Council

The Consultant shall make revisions based on comments from Town staff and present a final report to the Town. The Consultant will be available to present the final report to the Town Council.

2. INSTRUCTIONS TO PROPOSERS

Information to be Submitted

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

The proposal should include the following information:

- Cover letter describing how the Consultant can meet the needs of the local jurisdiction.
- Relevant experience and expertise of the firm.
- Identification of the project team, including the main project contact.
- Resumes for the lead Consultant.
- Description of and three references for projects of similar size and scope.
- Fee structure aligned with each phase of the project and total project cost.
- Other relevant information to assist the local jurisdiction in its selection.

Submission of Proposals:

All proposals shall be submitted to:

Ryan Baker
Library Department
100 Villa Ave
Los Gatos, CA, 95030

Proposals must be delivered no later than **3:00 pm on January 18, 2019**. All proposals received after that time will not be accepted.

Proposal Documents

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

- Have carefully read and fully understand the information that was provided to serve as the basis for submission of this proposal.
- Have the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted.

- Represent that all information contained in the proposal is true and correct.
- Did not, in any way, collude, conspire to agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms or conditions of this proposal.
- Acknowledge that the local jurisdiction has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Proposer, and Proposer hereby grants the local jurisdiction permission to make these inquiries, and to provide any and all related documentation in a timely manner.

No request for modification of the proposal shall be considered after its submission on grounds that Proposer was not fully informed of any fact or condition.

The Town will not reimburse Proposers the costs associated with preparing and submitting proposals in response to the RFP.

Questions

Any questions by the Proposer regarding this RFP or the project must be put in writing and received by the contract manager no later than 3:00 p.m. on January 10, 2019. Correspondence shall be addressed to:

Ryan Baker
Library Department
100 Villa Ave
Los Gatos, CA, 95030
Telephone: (408) 354-6894
E-mail: rbaker@losgatosca.gov (Preferred)

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

Responses from the local jurisdiction to questions by any Proposer will be communicated in writing to all recipients of this RFP. Questions received after the date and time stated above will not be accepted and will be returned to sender/s without response.

Addenda

Any addenda issued by local jurisdiction shall be in writing, shall become a part of this RFP, and shall be acknowledged and responded to by Proposer.

Withdrawal of Proposals

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

3. RIGHTS OF THE LOCAL JURISDICTION

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

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

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

4. RFP TIMELINE

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

5. CONTRACT TYPE AND METHOD OF PAYMENT

It is anticipated that the agreement resulting from this RFP, if awarded, will be an Agreement for Consultant Services. The method of payment to the successful Proposer shall be for services provided based on established rates for services with a maximum “not to exceed” fee as set by the Proposer in the proposal or as negotiated between the Proposer and the local jurisdiction as being the maximum cost to perform all work. This figure shall include direct costs and overhead, such as, but not limited to, materials, delivery, transportation, communications, and any subcontracted items of work.

Proposers shall be prepared to accept the terms and conditions of the Agreement, (Attachment 1) including Insurance Requirements (see next section for more details).

6. INSURANCE REQUIREMENTS

The selected Proposer(s), at Proposer’s sole cost and expense and for the full term of the agreement or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements outlined in the Agreement (Attachment 1).

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

7. PUBLIC NATURE OF PROPOSAL MATERIAL

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

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

8. COLLUSION

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

9. DISQUALIFICATION

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

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

10. NON-CONFORMING PROPOSAL

A proposal shall be prepared and submitted in accordance with the provisions of these RFP instructions and specifications. Any alteration, omission, addition, variance, or limitation of,

from or to a proposal may be sufficient grounds for non-acceptance of the proposal, at the sole discretion of the Town.

11. GRATUITIES

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

ATTACHMENT 1 – SAMPLE AGREEMENT

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on DATE by and between TOWN OF LOS GATOS, a California municipal corporation, (“Town”) and NAME OF COMPANY, (“Consultant”), whose address is ADDRESS OF COMPANY. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desire to engage Consultant to provide Study and Recommendations for Private Sector Requirement for Public Arts Funding.
- 1.2 The Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges Town has relied upon these warranties to retain Consultant.

II. AGREEMENTS

- 2.1 Scope of Services. Consultant shall provide services as described in PROPOSAL sent to the Town on DATE, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect from DATE to DATE. Consultant shall perform the services described in this agreement as follows: SERVICE SCHEDULE.
- 2.3 Compliance with Laws. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Consultant represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.5 Information/Report Handling. All documents furnished to Consultant by the Town and all reports and supportive data prepared by the Consultant under this Agreement are the Town’s property and shall be delivered to the Town upon the completion of Consultant’s services or at the Town’s written request. All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services

pursuant to this Agreement are confidential until released by the Town to the public, and the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at Town's risk, unless Consultant expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Consultant which is and has been confirmed in writing by Consultant to be a trade secret of Consultant.

2.6 Compensation. Compensation for Consultant's professional services **shall not exceed \$XXXX**, inclusive of all costs. Payment shall be based upon Town approval of each task.

2.7 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:

Invoices:

Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

2.8 Availability of Records. Consultant shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Consultant shall make these records available to authorized personnel of the Town at the Consultant's offices during business hours upon written request of the Town.

2.9 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Consultant. No portion of these services shall be assigned or subcontracted without the written consent of the Town.

2.10 Independent Contractor. It is understood that the Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Consultant may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for

performance or assign or transfer interests under this Agreement. Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Consultant shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Consultant or is based on allegations of Consultant's negligent performance or wrongdoing.

- 2.11 Conflict of Interest. Consultant understands that its professional responsibilities are solely to the Town. The Consultant has and shall not obtain any holding or interest within the Town of Los Gatos. Consultant has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Consultant warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.12 Equal Employment Opportunity. Consultant warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Consultant nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

- 3.1 Minimum Scope of Insurance:
- i. Consultant agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
 - ii. Consultant agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.

- iii. Consultant shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by the Town before work commences.
- iv. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$1,000,000 which is sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this agreement.

General Liability:

- i. The Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of Consultant, premises owned or used by the Consultant. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
 - ii. The Consultant's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
 - iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
 - iv. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.
- 3.3 Workers' Compensation. In addition to these policies, Consultant shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further,

Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.

- 3.4 Indemnification. The Consultant shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant.

IV. GENERAL TERMS

- 4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 Termination of Agreement. The Town and the Consultant shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Consultant shall deliver to the Town all plans, files, documents, reports, performed to date by the Consultant. In the event of such termination, Town shall pay Consultant an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 4.4 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Consultant.
- 4.5 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.6 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

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

CONSULTANT NAME
CONSULTANT ADDRESS

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

4.7 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.

4.8 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Consultant. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

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

Town of Los Gatos by:

Consultant, by:

Laurel Prevetti, Town Manager

Recommended by:

Ryan Baker, Library Director

Printed Name and Title

Shelley Neis, CMC, Town Clerk

Approved as to Form:

Robert Schultz, Town Attorney

Attest:
