



REQUEST FOR PROPOSALS (RFP)
BUSINESS LICENSE TAX CONSULTING SERVICES

Proposals Due:

January 26, 2022 by 5:00 pm

RFP Contact:

Gitta Ungvari

Finance and Budget Manager

gungvari@losgatosca.gov

408-354-6805

Deliver To:

Town of Los Gatos
Finance Department
110 E. Main Street
Los Gatos, CA 95030

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1. INTRODUCTION

The Town of Los Gatos (the “Town”) is seeking proposals from qualified firms for business license tax consulting services. The Town has not thoroughly updated its business license tax rates since 1991. The Town is seeking to modernize its business license tax structure that is fair and equitable among businesses based on size and category. Respondents will conduct a comprehensive study on the Town’s current business license tax ordinance and provide recommendations to the business license tax structure.

2. TOWN OVERVIEW

The Town of Los Gatos is a small community nestled at the base of the Santa Cruz Mountains, approximately 60 miles south of San Francisco. The Town of Los Gatos is guided by the principles of Small Town Service, Community Stewardship, and Future Focus. The Town government is fiscally healthy, and focuses on teamwork, collaboration, and civic engagement. Los Gatos is a General Law Town with a five-member Council and an annually rotating Mayor’s position. The Town Council sets the policies for which the Town employees implement under the leadership of the Town Manager.

The Town operates one Civic Center, one Police Operations building, one Service Center, and one Library and employs approximately 150 personnel.

3. BUSINESS LICENSE TAX OVERVIEW

The Town currently has 2,557 businesses in active pay status and another 2,577 registered on the books of which it is estimated that one-third may still be active in Town. This Tax, which is charged to business owners, currently generates approximately \$1.4 million annually.

The Town issues different types of business licenses based on the type of activity. The amount of business license tax paid by each business is also based on its business activity. Fees for activities such as wholesales and manufacturing are charged on a sliding scale based on gross receipts, as is retail, with retail being capped at \$975. These gross receipt activities account for approximately 25% of annual business licenses, while the remaining 75% are flat fee businesses. While the Town ordinance lists a multitude of license types, the most common ones are listed below with the appropriate business license tax and fees.

The entire Los Gatos Business License Tax Ordinance is included as Appendix A to the RFP.

Typical Business License Taxes and Fees			
Business License Processing Fee (Annual)	\$40 at the Time of Establishment/ \$30 at Renewal - Located In Los Gatos \$20 - Not Located in Los Gatos		
Planning Fees - Businesses Located in Los Gatos (One-time)	\$161.20 Home Occupancy Permit - Home Based Businesses \$176.70 Change of Occupancy / \$262.20 Change of Use - Commercial Zoning		
State Mandated Fee (Annual)	\$4		
Type of Business License	Business License Tax - Without Penalty Minimum (Annual)	Business License Tax - Without Penalty Maximum (Annual)	Typical Businesses
Retail (Based on Gross Receipt)	\$75	\$975	Restaurant, Grocery Store , Gas Station, Hair Salon
Wholesale/Manufacturee/Wholesale/Ecommerce (Based on Gross Receipt)	\$150	Based on sliding scale \$4,837.50 for \$12,000,000 in gross receipt plus \$75 for each \$550,000 or fracntion therfor in excess of \$12,000,000	Netflix, Manufacturers
Professional/Semiprofessional (per employee)	\$200	\$200	Medical Doctor, Attorney, Tutor, Massage Therapist, Broker
Support Staff - Professional/Semiprofessional (per employee)	\$15	\$15	Real Estate Agent
Service (per business)	\$100	\$100	Gardeners, Repair Service, Hair Stylist, Janitorial service
Contractor (per business)	\$224	\$224	Licensed California State Contractor

4. SCOPE OF SERVICES

The Town is seeking proposals from qualified firms to provide a comprehensive study on the Town’s current business license tax ordinance and provide recommendations to the business license tax structure.

The awarded firm must (at a minimum):

1. Meet with Town staff to refine the project scope, purpose, uses and goals of the Town’s business license tax to ensure that the proposal will be appropriate to Los Gatos’s needs.
2. Meet with Town staff to access data as needed to understand the Town’s methodology of calculating the current business license tax.
3. Compare Los Gatos’ business license tax with other local jurisdictions and provide an analysis of comparable cities’ business license tax structures.
4. Develop a written study of the current business license tax fee structure.
5. Provide an analysis of alternative business license tax fee structures and formula.
6. Present to Town staff and the Town Council the recommended changes, as well as the alternatives, providing documentation and reasoning as to why the proposed methodology is superior to the current business license tax structure and the other alternatives. Focus on:
 - Reviewing the business license tax fees in all categories;
 - Seamless business transactions from the business community’s perspective;

- Ease of administration of the proposed modernized business license tax program; and
- Adopting to the changing business needs of the community.

5. PROPOSED TENTATIVE TIMELINE

Timeline	
Distribution of RFP	12/21/2021
Deadline for Questions	01/12/2022
Proposals Due to the Town	01/26/2022
Selection Panel Review of Proposals	Week of February 4, 2022
Vendor Presentations/Interviews	Week of February 7, 2022
RFP Award	Week of March 1, 2022

6. SUBMITTAL INSTRUCTIONS

The Town of Los Gatos invites qualified firms to submit proposals to provide business license tax consulting services for the Town. Proposals must be received by 5:00 p.m. on Wednesday January 26, 2022 to the address indicated on the cover of this RFP.

The submittal package shall include the following:

- One executed original and four printed copies of the proposal
- One electronic copy (sent via email)

7. PROPOSAL FORMAT REQUIREMENTS

Each proposer must carefully examine the requirements contained herein. Upon receipt of responses hereunder, each proposer shall be thoroughly familiar with all requirements contained herein. The failure or omission to examine any form or document shall in no way relieve a proposer from any obligation in respect to this proposal submitted. Any misinterpretation of the requirements is solely that of the proposer's.

In addition, any material that will add to the persuasiveness of your proposal may be included. However, if the materials do not directly address the stated requirements, please include them in an appendix or separate volume. The Town will review and consider all material submitted but will concentrate on the material that directly addresses the Town's stated needs.

Proposals must include in the following, specified order:

A. COVER LETTER

The cover letter should include the title of this RFP; name and mailing address of firm; contact person, telephone number, fax number and email address.

B. PROJECT UNDERSTANDING AND PLAN

Based on the available information, supplemental research, field observations, and experience with similar projects, provide a narrative describing the firm's understanding of the services requested in this RFP, the firm's general approach and any major challenges to achieving the Town's stated goals. Include any issues that will require special considerations for this project. Also identify any unique approaches or strengths that the firm may have related to this project. Town staff will assess the firm's understanding of all aspects of the project based on the overview.

Provide a detailed discussion of the firm's approach to the successful implementation of this project. Include thorough discussions of methodologies that are essential to accomplishing this project. Include a proposed work schedule to complete all the required tasks within the desired timeline. Identify the staff who would be assigned to each task, including sub-consultants and sub-contractors.

C. FIRM PROFILE AND EXPERIENCE

Include profile of the firm including firm history and structure; firm corporate office and local office locations; and profiles of at least three representative projects that best demonstrate the firm's qualifications and experience applicable to the services, knowledge of the local environment, and record of success as measured by client satisfaction.

The firm's profiles of the representative projects will be used as references and therefore shall identify the client contact persons with telephone numbers, and services provided by the firm.

D. COST PROPOSAL

Provide a total cost proposal for all services to be delivered, and a breakdown of costs delineated by tasks as described in the project plan. Define any reimbursable expenses requested to be paid by the Town.

E. CONFLICT OF INTEREST

The proposal must include the name of entities associated with the firm and any associated service provider who may have a conflict of interest with any activity of this RFP. Provide details and reasons. Firms/service providers are subject to disqualification based on conflict of interest as determined by the Town of Los Gatos.

F. EXCEPTIONS

Describe all proposed exceptions, alterations, or amendments to the scope of services or other requirements of this RFP. The nature and scope of the proposed exceptions may negatively affect the evaluation of the submittal and the Town's determination of whether it is possible to successfully negotiate a contract with the firm.

8. REVIEW AND SELECTION PROCESS

Award of the RFP shall be made to the responsible and responsive proposer whose proposal is determined, through a formal evaluation panel process, to be the most advantageous to the Town.

The successful proposer will enter a contract with the Town incorporating all prescribed requirements and conditions of this request for proposal. If the successful proposer refuses or fails to execute the contract, the Town may consider the next most qualified proposer. The Town shall be the sole judge as to the successful proposer. The Town reserves the right to split the award of any contract to replace copiers, copier services and/or copier and printer management and maintenance services.

The Town reserves the right to reject any or all responses to this RFP and to waive any informality or irregularity in this RFP or in responses, to negotiate with all qualified sources, or to cancel, in part or in its entirety, this RFP, in the best interest of the Town. This RFP does not commit the Town to award a contract, or to procure or contract for services or goods.

Before award, proposers may be required to furnish evidence of capability and financial resources to adequately perform the job.

SELECTION PANEL

Selection Panel comprised of Town staff will be established for this project by the Town. The Panel will review and rank the proposals and negotiate with qualified firms based on the content of the proposals relative to firm experience, qualifications, and past record of performance. The Town may request an interview and/or site visit from any or all the qualified firms to further assist in the selection process.

SPECIAL CONSIDERATIONS

- **Public Records:** All proposals submitted in response to the RFP become the property of the Town and are subject to release under the California Public Records Act and may be subject to public review.
- **Right to Cancel:** The Town reserves the right to cancel, in part or in its entirety, this RFP. If the Town cancels or revises this RFP, the Town will notify all proposers in writing.
- **Additional Information:** The Town reserves the right to request additional information and/or clarifications from any or all proposers to this RFP.
- **Insurance Requirements, Permits, Licenses, Agreement:** The successful firm shall always maintain in force at its own cost during the performance of the assignment insurance. If the firm cannot or will not provide insurance as identified, the Town will not contract with the firm
- **Contractual Requirements:** The successful firm will be required to enter a contract with the Town using the Town's Standard Agreement for Services. Provisions

include, but are not limited to, indemnification, insurance requirements, applicable compliance to ordinances, laws, regulations, and licenses, Town business tax licenses and other terms and conditions. If a firm is not prepared to accept the terms of this Agreement, the firm should not submit a proposal. No changes will be made to the general contract requirements.

- Waiver: By submitting a response to this RFP, each proposer expressly waives any and all rights it may have to object to, protest, or seek legal remedies whatsoever related to any aspects of this RFP, Town's selection of consultant or rejection of any or all responses.

9. GENERAL TERMS AND CONDITIONS

The following "General Terms and Conditions" shall be applicable to any contract or agreement entered as a result of this proposal. The terms "proposer," "contractor" and "firm" may be used interchangeably in this solicitation and shall refer exclusively to the person, company, or corporation with whom the Town enters into a contract as a result of this solicitation.

- A. All work performed shall be completed in a competent manner according to standard practices of the industry. All persons engaged in the work, including subcontractors, will be considered as employees of the contractor. The contractor will be held responsible for its work. The Town will deal directly with and make all payments to the prime contractor.
- B. The Town may make such investigations as necessary to determine the ability of the contractor to perform the services as required. The Town reserves the right to reject any proposal if the evidence submitted by, or investigation of, such contractor fails to satisfy the Town that the contractor is qualified to carry out the obligation of the contract.
- C. The contractor shall continuously maintain adequate protection of all its work from damage and shall protect the Town's property from any and all injury or loss arising in connection with any contract entered into hereunder. The contractor shall take all necessary precaution for the safety of employees on the job and shall comply with all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to person on/or about or adjacent to the premises where the work is being performed.
- D. The contractor shall comply with all applicable federal, state and local laws, ordinances, regulations and codes and shall obtain and maintain throughout the term of the contract, all required permits, certificates and licenses, including a Town of Los Gatos business tax license.
- E. The contractor shall be an independent contractor in performing services for the Town as a party of any contract entered into as a result of this proposal. Contractor and

contractor's agents, employees, subcontractors and other persons acting on the contractor's behalf are not employees of the Town.

- F. Except as the Town may specify in writing, contractor and its agents, employees and subcontractors shall have no authority, expressed or implied, to act on behalf of the Town in any capacity as agents or otherwise to bind the Town to any obligation whatsoever.
- G. The contractor agrees that all persons employed by contractor shall be treated equally by contractor without regard to or because of race, color, religion, ancestry, national origin, handicap, sex, marital status, or age and in compliance with all anti-discrimination laws of the United States of America, the State of California and Town of Los Gatos.
- H. The contractor agrees to indemnify, hold harmless and defend the Town, its Town Council, and each member thereof, and every officer, employee, representative or agent of the Town, from any liability, claims demand actions damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and omissions related to the agreement performed by the contractor or contractor's agents, employees, subcontractor, or other persons acting on contractor's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, passive negligence, willfulness or acts for which contractor or contractor's agents, employees, subcontractors, or other persons acting on contractor's behalf would be held strictly liable.
- I. The contractor shall obtain and maintain throughout the term of the contract, insurance coverage, with the Town as additional insured.
- J. Town may terminate contract at any time, with or without cause, by giving notice to contractor. Such termination shall be effective ten (10 calendar days from the date of delivery or mailing of such notice).
- K. In the event of any dispute with regard to the provisions of any contract entered into hereunder, the dispute may be submitted to arbitration upon mutual agreement of the parties, under such procedures as parties may agree upon, or, if the parties cannot agree, then under the applicable rules of the American Arbitration Association.
- L. Town agrees to pay contractor upon satisfactory completion of services provided and upon submission to Town of any invoices for said services performed. Town shall pay contractor within thirty (30) days of receipt and acceptance of invoices.
- M. Neither Consultant (or, vendor) nor any of its employees shall provide, directly or indirectly, any gifts or gratuities to any elected or appointed Town official, or to any

Town employee responsible for administering any provisions of this Agreement. Elected or appointed Town officials affected by this provision include members of the Town Council, the Town Manager and assistant, deputy, or interim Town Manager, any department directors, and any other employee involved in the administration of this Agreement. Gift has the meaning ascribed to that term in California Government Code section 82028(a) and includes anything that confers a personal benefit on the recipient to the extent that consideration of equal or great value is not received.

- N. Proposals are due no later than 5:00 p.m. on January 26, 2022 at 110 East Main Street, Los Gatos, CA 95030 as stated on the cover sheet of this RFP.

10. ATTACHMENTS

The following attachments are incorporated into the Request for Qualifications:

ATTACHMENT 1 – CONFLICT OF INTEREST STATEMENT (FOR SUBMITTAL)

ATTACHMENT 2 – NON-COLLUSION DECLARATION (FOR SUBMITTAL)

ATTACHMENT 3 – REFERENCES (FOR SUBMITTAL)

ATTACHMENT 4 – STATEMENT REGARDING INSURANCE COVERAGE AND WORKER'S
COMPENSATION INSURANCE ACKNOWLEDGMENT CERTIFICATE (FOR SUBMITTAL)

ATTACHMENT 5 – SAMPLE CONSULTANT SERVICES AGREEMENT (INFORMATION)

ATTACHMENT 1 - CONFLICT OF INTEREST STATEMENT

THIS FORM MUST BE PRINTED OUT, COMPLETED AND SUBMITTED WITH THE PROPOSAL

BUSINESS LICENSE TAX CONSULTING SERVICES

The undersigned declares:

I/We _____ (Insert Name) have the following financial, business, or other relationship with Town of Los Gatos that may have an impact upon the outcome of the contract. If none, please specify that no other relationships may have an impact on this contract or Project.

I/We _____ (Insert Name) have the following current clients who may have a financial interest in the outcome of this contract. If none, please specify that no other clients may have a financial interest with an impact on this contract or Project.

Pursuant to Government Code section 1090 and any other laws, rules and regulations that may apply, the Proposer covenants that neither it, its subcontractors nor employees presently have an interest, and shall not acquire any interest, direct or indirect, financial or otherwise that would conflict in any manner or degree with contract awarded from this RFP. Proposer certifies that to the best of its knowledge, no one who has or will have any financial interest in the contract awarded from this RFP is an officer or employee of the Town. Through its submittal of a proposal, Proposer acknowledges that it is familiar with Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California and will

immediately notify the Town if it becomes aware of any facts concerning the contract to be awarded that constitute a violation of said provisions.

Furthermore, if there is reason to believe that collusion exists among the Proposers, the Town may refuse to consider proposals from participants in such collusion. No person, firm, or corporation under the same or different name, shall make, file, or be interested in more than one proposal for the same work unless alternate proposals are called for. A person, firm, or corporation who has submitted a sub-proposal to a Proposer, or who has quoted prices on materials to a Proposer, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Proposers. Reasonable ground for believing that any Proposer is interested in more than one proposal for the same work will cause the rejection of all proposals for the work in which a Proposer is interested. If there is reason to believe that collusion exists among the Proposers, the Town may refuse to consider proposals from participants in such collusion. Proposers shall submit as part of their proposals documents the completed Non-Collusion Declaration provided herein.

I, on behalf of the Proposer, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

Proposer Name (Person, Firm, Corp.)

Title of Authorized Representative

Address

Name of Authorized Representative

City, State, Zip

Date

Signed

ATTACHMENT 2 – NON-COLLUSION DECLARATION

THIS FORM MUST BE PRINTED OUT, COMPLETED AND SUBMITTED WITH THE PROPOSAL

BUSINESS LICENSE TAX CONSULTING SERVICES

The undersigned declares:

I am the _____ [Insert Title] of _____, [Insert name of company, corporation, LLC, partnership or joint venture] the party making the foregoing proposal.

The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The proposal is genuine and not collusive or sham. The Respondent has not directly or indirectly induced or solicited any other respondent to put in a false or sham proposal. The Respondent has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham proposal, or to refrain from responding. All statements contained in the proposal are true.

Any person executing this declaration on behalf of a respondent that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the respondent.

ATTACHMENT 3 - REFERENCES

THIS FORM MUST BE PRINTED OUT, COMPLETED AND SUBMITTED WITH THE PROPOSAL

BUSINESS LICENSE TAX CONSULTING SERVICES

List three (3) references for work of a similar nature to the Services performed within the last five (5) years. Use additional sheets as necessary.

1.

_____	_____
Name of Agency	Agency Address
_____	_____
Contact Name	Contact Title
_____	_____
Contact Telephone	Contact Email Address
_____	_____
Contract Period	Contract Amount
_____	_____
_____	_____

Description of services performed including costs.

2.

_____	_____
Name of Agency	Agency Address
_____	_____
Contact Name	Contact Title
_____	_____
Contact Telephone	Contact Email Address
_____	_____
Contract Period	Contract Amount
_____	_____
_____	_____

Description of services performed including costs.

3.

Name of Agency

Agency Address

Contact Name

Contact Title

Contact Telephone

Contact Email Address

Contract Period

Contract Amount

Description of services performed including costs.

I hereby certify that the Proposer performed the work listed above.

Signature of Proposer

Name

Date

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____[date], at _____[city], ___[state].

By: _____

Name: _____

Title: _____

**ATTACHMENT 4 - STATEMENT REGARDING INSURANCE COVERAGE AND WORKER'S COMPENSATION
INSURANCE ACKNOWLEDGMENT CERTIFICATE**

**THIS FORM MUST BE PRINTED OUT, COMPLETED AND SUBMITTED WITH THE PROPOSAL
BUSINESS LICENSE TAX CONSULTING SERVICES**

PROPOSER HEREBY CERTIFIES that the Proposer has reviewed and understands the insurance coverage requirements specified in the RFP. Should the Proposer be awarded a contract for Services, Proposer further certifies that the Proposer can meet the specified requirements for insurance, including insurance coverage of any subcontractors, and agrees to name the Town as additional insured for the Services specified.

By certifying this form, the Proposer also understands the Worker's Compensation insurance requirement per the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Name of Proposer (Person, Firm, or Corporation)

Signature of Proposer's Authorized Representative

Name & Title of Authorized Representative

Date of Signing

ATTACHMENT 5 – SAMPLE CONSULTANT SERVICES AGREEMENT

[ATTACHED BEHIND THIS PAGE]

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 BRIEF DESCRIPTION OF SERVICES TO BE PERFORMED.
- 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 that certain NAME OF DOCUMENT (EX: ENGAGEMENT LETTER, PROPOSAL, ETC.) sent to the Town on DATE DOCUMENT SENT, which is hereby incorporated by reference and attached as Exhibit A. IF NO DOCUMENT DESCRIBES SERVICES, then INSERT DESCRIPTION OF WHAT CONSULTANT WILL BE DOING HERE.
- 2.2 Term and Time of Performance. This contract will remain in effect from _____ to _____. Consultant shall perform the services described in this agreement as follows: ENTER DESCRIPTION OF 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 \$AMOUNT**, 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

Attn:
ADDRESS HERE

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:

Department Head

Printed Name and Title

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, MMC, CPMC
Town Clerk