

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 SHUSTER ADVISORY GROUP, LLC, ("Consultant"), whose address is 155 N. Lake Ave., Suite 950, Pasadena, CA 91101. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desire to engage Consultant to provide fiduciary investment advisory services and plan consultative services for the Town's 457(b) deferred compensation plan and 401(a) defined contribution plans..
- 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 proposal sent to the Town on April 25, 2025 and the related Consultant and Fiduciary Acknowledgements, which are hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect until terminated by either party as defined in Section 4.3 of this Agreement
. Consultant shall perform the services described in this agreement and as further defined in the Retirement Plan Consulting Services Agreement attached as Exhibit B..
- 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.

Information/Report Handling. All documents furnished to Consultant by the Town are the Town's

property. All reports and supportive data prepared by the Consultant under this Agreement are the Consultant's and Town's property and copies 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.

- 2.5 Compensation. Compensation for Consultant's professional services **shall not exceed \$31,000 per annum (\$2,583.33 per month)**, inclusive of all costs. This cost is paid directly by the plan participants. Payment shall be based upon Town approval of each task.
- 2.6 Billing. The monthly compensation will be deducted from the assets of the retirement plans identified in Exhibit A pro-rata from participant accounts and will be paid to Consultant by the record keeper of the plans as described in Exhibit B.
- 2.7 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.
- 2.8 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.
- 2.9 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.

- 2.10 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.
- 2.11 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: two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage, and a limit if not less than \$1,000,000 coverage for unowned automobiles.
- ii. 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.
- iii. 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 elected and appointed officials, employees, and agents, 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 automobile or professional liability insurance required for professional errors and omissions.
- ii. The Consultant's insurance coverage shall be primary insurance as respects the Town, its elected and appointed officials, employees, and agents. Any insurance or self-insurances maintained by the Town, its elected and appointed officials, employees, and agents, 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 elected and appointed officials, employees, and agents.
- 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 elected and appointed officials, employees, and agents, 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 the work described in this contract.

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 and Venue. 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 thirty days (30) written notice of termination. In the event of termination, upon request, 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

Shuster Advisory Group, LLC
Attn: Mark Shuster
155 N. Lake Ave., Suite 950
Pasadena, CA 91101

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:

Chris Constantin, Town Manager

Recommended by:

Gitta Ungvari, Finance Director

Approved as to Form:

Gabrielle Whelan, Town Attorney

EXHIBIT A

SCOPE OF WORK AND CONSULTANT & FIDUCIARY ACKNOWLEDGEMENTS

TOWN acknowledges the following:

1. TOWN, as the responsible plan fiduciary for the Town of Los Gatos 457(b) Deferred Compensation Plan and 401(a) defined contribution plan ("Plan(s)), has the authority to designate investment alternatives under the Plan and the related trust, and to enter into an Agreement with third parties to assist in these and related duties.
2. In performing the Fiduciary Services, CONSULTANT is acting as a fiduciary of the Plan and as a registered investment advisor under the Investment Advisers Act of 1940.
3. In performing the Non-Fiduciary Services, CONSULTANT is not acting as a fiduciary of the Plan.
4. In performing both Non-Fiduciary Services and Fiduciary Services, CONSULTANT does not act as, nor has CONSULTANT agreed to assume the duties of, a trustee or the Plan Administrator, and CONSULTANT has no discretion or responsibility to interpret the Plan documents, to determine eligibility or participation under the Plan, or to take any other action with respect to the management, administration or any other aspect of the Plan.
5. CONSULTANT will perform the Fiduciary Services described in Appendix A to the Plan based on the standard of care as set forth in the Investment Advisor Act of 1940 and, as such, in accordance with the prudent man rule set forth in ERISA Section 404(a)(1)(B).
6. CONSULTANT will perform the Non-Fiduciary Services described in Appendix B using reasonable business judgment and shall not be liable for any liabilities and claims arising thereunder, unless directly arising from CONSULTANT's intentional misconduct or gross negligence.
7. TOWN acknowledges that CONSULTANT has no responsibility to provide any services related to the following types of assets: employer securities; real estate (except for real estate funds and publicly traded REITs); stock brokerage accounts or mutual fund windows; in-plan retirement income annuity products; participant loans; non-publicly traded partnership interests; other non-publicly traded securities (other than collective trusts and similar vehicles); or other hard-to-value securities or assets. Such assets (except for real estate funds, publicly traded REITs, and collective trusts and similar vehicles) shall be referred to collectively as "Excluded Assets." The Excluded Assets shall be disregarded in determining the Fees payable to CONSULTANT pursuant to this Agreement, and the Fees shall be calculated only on the remaining assets (the "Included Assets").
8. CONSULTANT does not provide legal or tax advice.
9. Investments are subject to various market, political, currency, economic, and business risks, and may not always be profitable. As a result, CONSULTANT does not and cannot guarantee financial results.

10. CONSULTANT may, by reason of performing services for other clients, from time to time acquire confidential information. TOWN acknowledges and agrees that CONSULTANT is unable to divulge to the TOWN or any other party, or to act upon, any such confidential information with respect to its performance of this Agreement.
11. CONSULTANT is entitled to rely upon all information provided to CONSULTANT (whether financial or otherwise) from reputable third parties or by TOWN, TOWN's representatives or third-party service providers to TOWN, the Plan or CONSULTANT, without independent verification. TOWN agrees to promptly notify CONSULTANT in writing of any material change in the financial and other information provided to CONSULTANT and to promptly provide any such additional information as may be reasonably requested by CONSULTANT.
12. CONSULTANT will not be responsible for voting (or recommending how to vote) proxies of any publicly traded securities (including mutual fund shares) held by the Plan (or its trust). Responsibility for voting proxies of investments held by the Plan or its trust remain with TOWN (or, if applicable, the Plan participants).
13. TOWN understands that CONSULTANT: (i) may perform other services for other clients, (ii) may charge a different fee for other clients, and (iii) may give advice and take action that is different for each client
14. The person signing the Agreement on behalf of TOWN has all necessary authority to do so.
15. The execution of this Agreement and the performance thereof is within the scope of the investment authority authorized by the governing instrument and/or applicable laws. The signatory on behalf of TOWN represents that the execution of the Agreement has been duly authorized by appropriate action and agrees to provide such supporting documentation as may be reasonably required by CONSULTANT.
16. The Plan and related Trust permit payment of fees out of Plan assets. TOWN has determined that the fees charged by CONSULTANT are reasonable and are the obligation of the Plan; however, if TOWN desires, it may pay the fees directly, rather than with Plan assets.
17. CONSULTANT agrees to take reasonable steps to protect Private Participant Information and Plan Investment Data in its possession;

CONSULTANT is not responsible for the assessment of systems and procedures of third parties for the protection of plan and participant data;

CONSULTANT is not responsible for the actions by or the failure to act by TOWN, by other service providers, or by Plan participants to protect Data;

CONSULTANT shall have no liability in the event of a Data breach or a violation of participant privacy rights (under the California Consumer Privacy Act or otherwise) unless said breach is the direct result of negligence, recklessness, or willful misconduct of an employee of CONSULTANT.
18. Receipt of Disclosure and Consent to Electronic Delivery. TOWN acknowledges receipt and undertakes to review and consider the disclosures made by CONSULTANT (including in this Agreement, the Form ADV Part 2 and CONSULTANT's Privacy Policy), in particular the portions related to services,

compensation, and potential conflicts of interest, as well as the remainder of the disclosures concerning, among other matters, background information such as educational and business history, business practices such as the types of advisory services provided, the methods of securities analysis used, and the like.

Further, TOWN consents to electronic delivery (via email or other generally accepted method) of current and future distributions of CONSULTANT's Form ADV Part 2 and Privacy Policy. Consent to electronic delivery may be canceled at any time by sending a written request to CONSULTANT.

APPENDIX A – FIDUCIARY SERVICES

CONSULTANT will perform the following fiduciary services:

1. Development of an Investment Policy Statement (IPS). The IPS establishes the investment policies and objectives for the Plan(s), and shall set forth the asset classes and investment categories to be offered under the Plan(s), as well as the criteria and standards for selecting and monitoring the investments. The TOWN shall have the ultimate responsibility and authority to establish such policies and objectives and to adopt the investment policy statement.
2. Consistent with the Investment Policy Statement, CONSULTANT will select the initial investment options within the Plan(s).
3. CONSULTANT will periodically review the investments within the Plan(s) and shall be responsible for making additions/deletions thereto.
4. CONSULTANT will provide periodic investment advisory reports that document consistency of fund management and performance to the guidelines set forth in the IPS, and to make recommendations to maintain, or remove and replace investment options. Reports to include: Market Overview, In-Depth Portfolio Summary, Plan Asset Allocation Analysis and Fund Performance Comparison to the Index.
5. Meet with TOWN on a periodic basis to discuss reports and recommendations.
6. Annually review the IPS with the TOWN to ensure it continues to meet the TOWN's needs.
7. Selection of a default investment for participants who fail to make an investment election.
8. Coordinate the Deferred Compensation Committee meetings, record the meeting minutes and provide minutes to the attending members.

LIMITATIONS ON FIDUCIARY SERVICES

CONSULTANT shall not be responsible or liable for the recommendations of or services rendered by anyone other than CONSULTANT. The ability to perform the above services is contingent upon the rules, policies, processes, and responsiveness to our requests for information of TOWN, plan sponsor, record keeper(s), and/or third party administrator(s).

APPENDIX B – NON-FIDUCIARY SERVICES

CONSULTANT will perform the following Non-Fiduciary services:

1. Provide Plan design consulting and Plan document review
2. Provide vendor management/issue resolution
3. Provide consulting assistance on fiduciary best practices
4. Assist in the transition of previous record-keeper(s) and/or Plan provider(s)
5. Provide custom communications when needed
6. Assist in communications with recordkeeper(s) and/or Plan provider(s)
7. Distribute Plan level newsletters
8. Provide RFP services and Plan fee negotiations
9. Incumbent vendor and fee review
10. Contract review support
11. Employee education
12. Provide assistance with mandatory and optional legislative changes

LIMITATIONS ON NON-FIDUCIARY SERVICES

CONSULTANT shall not be responsible or liable for the recommendations of or services rendered by anyone other than CONSULTANT. CONSULTANT and TOWN/plan sponsor will work together to determine mutually agreed upon for services requiring both parties coordinate and/or attend. The ability to perform the above services is contingent upon the rules, policies, processes, and responsiveness to our requests for information of TOWN, plan sponsor, record keeper(s), and/or third-party administrator(s).

EXHIBIT B - FEE SCHEDULE

1. All fees are billed in arrears.
2. The initial fee will be the amount prorated for the number of days included in the initial billing period from the effective payment start date.

3. If this Agreement is terminated prior to the end of a billing period, CONSULTANT shall be entitled to a fee, prorated for the number of days in the billing period prior to the effective date of termination.
4. All fees will be due and payable within 30 days and are payable to "Shuster Advisory Group, LLC"
5. The annual fee for services shall be as follows:

Beginning with the Effective Date of this Agreement and continuing until the earlier of the date the plans are converted to a new record-keeper and assets from the prior record-keeper are transferred, the date the plans are converted to a new record-keeper and the first payroll deferral is processed by the new record-keeper, or the date it is decided to remain with the incumbent record-keeper and new pricing is implemented, if applicable, (hereafter known as the "Conversion Date") the fee for service shall be \$2,583.33 per month. Fees will accrue and be paid from Plan assets to CONSULTANT by the record keeper upon the Conversion Date.

After the "Conversion Date", the fee for service shall be \$2,583.33 per month. Fees will be deducted from Plan assets and will be paid to CONSULTANT by the record-keeper.

At CONSULTANT's discretion the billing period described above may be adjusted to quarterly.