

FIRST AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES

THIS FIRST AMENDMENT AGREEMENT is dated for identification this 1st day of March 2022, and is made by and between TOWN OF LOS GATOS, a California municipal corporation, (“Town”) and M-Group, (“Consultant”), whose address is 51 E. Campbell Ave. #1247, Campbell, CA 95009. This Agreement is made with reference to the following facts.

RECITALS

- A. The Town and Consultant entered into an Agreement dated March 16, 2021, to provide Planning Consultant Services for preparation of by right findings and objective standards for review of housing development applications as provided in the Town of Los Gatos SB 2 Planning Grant Program (Exhibit A).
- B. The Town desires to extend the Agreement to September 30, 2023.

AMENDMENT

- 1. Time of Performance of the Amendment Agreement is hereby amended to provide that the term of the Agreement is for the period March 1, 2022, through September 30, 2023.
- 2. Contingency as described in the amended Scope of Services attached as Exhibit B.
- 3. Scope of services as described in the amended Scope of Services attached as Exhibit B.
- 4. Compensation as described in the amended Fee Schedule attached as Exhibit B.
- 5. All other terms and conditions of the Agreement dated March 16, 2021, remain in full force and effect.

IN WITNESS WHEREOF, the Town and Consultant have executed this First Amendment Agreement as of the date indicated above.

Town of Los Gatos:

Consultant:

By: _____
Laurel Prevetti
Town Manager

By: _____
Geoff Bradley,
M-Group (Metropolitan Planning
Group)

Department Approval:

Joel Paulson
Director of Community Development

Approved as to Form:

Robert Schultz
Town Attorney

Attest:

Shelley Neis, MMC, CPMC
Town Clerk

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is dated for identification this 16th day of March 2021 and is made by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and M-Group, ("Consultant"), whose address is 51 East Campbell Avenue, Campbell, CA 95009. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 Town desires to engage Consultant to provide services for preparation of by right findings and objective standards for the review of housing development applications as provided in the Town of Los Gatos SB 2 Planning Grant Program application.
- 1.2 Consultant represents and affirms that they are qualified and 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 the services as described in the Scope of Services attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect from the date of execution through February 28, 2022.
- 2.3 Compliance with Laws. 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, or under contract with, 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 the \$88,185** inclusive of all costs. Payment shall be made against tasks at costs as set forth in Exhibit B (Fee Schedule). Consultant shall be compensated for services in addition to those described in Exhibit A only if Consultant and Town execute a written amendment to this Agreement describing the additional services to be performed and the compensation to be paid for such services.
- 2.7 Flexibility. The distribution of hours between staff categories and tasks in Exhibit B (Fee Schedule) is an estimate. While the total costs shall not exceed amount in Section 2.6 above, the distribution of hours/costs may vary depending on actual execution.
- 2.8 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.

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

planning@losgatosca.gov

- 2.9 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.

- 2.10 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.
- 2.11 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.
- 2.12 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.
- 2.13 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 insuring 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 one million dollars (\$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; and 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. Consultant shall maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town. Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Indemnification. 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:

To Town:

Joel Paulson
Community Development Director
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
Fax: (408) 354-7593
Phone: (408) 354-6879
E-mail: jpaulson@losgatosca.gov
planning@losgatosca.gov

To Consultant:

Geoff I. Bradley
M-Group
51 E. Campbell Ave. #1247
Campbell, CA 95009

Phone: (408) 340-5642

E-mail: gbradley@m-group.us

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 to 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 Exhibits A and B, 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

Consultant:

DocuSigned by:

Laurel Prevetti 6/16/2021

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Laurel R. Prevetti, Town Manager
Town of Los Gatos

Geoff Bradley
geoff bradley (Apr 6, 2021 13:12 PDT)

Geoff Bradley
M-Group

Department Approval:

DocuSigned by:

Joel Paulson 6/14/2021

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Joel Paulson
Community Development Director

Approved as to Form:

DocuSigned by:

Robert W. Schultz 6/16/2021

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Robert W. Schultz
Town Attorney

Attest:

DocuSigned by:

Shelley Neis 6/16/2021

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Shelley Neis
MMC, CPMC, Town Clerk



SCOPE OF SERVICES

The tasks detailed below provide a scope of services for M-Group to develop the Objective Standards and By-Right Findings for the Town of Los Gatos.

PHASE 1: BACKGROUND AND INVESTIGATION

During this initial phase of the project, M-Group will initiate a scope of work and develop a fundamental understanding of the goals for the objective standards and by right findings.

Task 1.1 – Project Initiation

M-Group will work with Town staff to finalize a scope of work and set the parameters for the project.

Task 1.2 – Background Information and Preliminary Issues

Through a review of existing documents and tours of the existing context, M-Group would develop a baseline understanding. The documents M-Group will review include but are not limited to:

- **The North 40 Specific Plan.** The Specific Plan includes development standards and design guidelines for residential development, including specific directives or guidance for setbacks, private open space, and building form.
- **Affordable Housing Overlay Zone (AHOZ).** The AHOZ section of the zoning ordinance, which contains development standards, incentives, and directives for the development review process.
- **Housing Element.** The current Housing Element contains an action item directing for amendments to the Town Code to facilitate approval of affordable housing projects consistent with criteria contained in the North 40 Specific Plan and the AHOZ.
- **General Plan Update.** Draft GPU Elements, as identified by Town staff, including General Plan Advisory Committee recommendations by that inform the Objective Standards process.

M-Group will prepare a preliminary understanding of development issues to be addressed through the process, for review with committees or Town bodies identified in coordination with Town staff.

Task 1.3 – Committee Meeting

M-Group will meet with identified committee members for review and discussion of development issues and potential issues to be addressed by the objective standards.



Task 1.4 – Public Workshop

In coordination with Town staff, M-Group will prepare and host a community meeting to introduce the Objective Standards process to community members. It is assumed that the workshop will be an online event to educate the community about the relevance and importance of objective standards in the context of recent housing legislation and solicit input from community members.

PHASE 2: OBJECTIVE STANDARDS DEVELOPMENT

In this phase of the project, M-Group would provide Town staff, committee members, and other members of the community with initial draft standards to address development priorities identified in Phase I.

Task 2.1 – Preliminary Objectives Standards Development

M-Group will develop draft language that demonstrates potential objective solutions to design and development issues in keeping with identified development and design guideline goals.

Task 2.2 – Committee Meeting

M -Group will provide committee members with the draft material as a follow up to Phase I meetings and discussion.

Task 2.3 – Stakeholder Group

M-Group will hold additional a meeting with potential stakeholders identified with Town staff, such as multi-family developers, housing advocates, and neighborhood groups.

Task 2.4 – Meeting with Town Staff

M-Group will finalize this task by meeting with Town staff to solidify the work product developed and discussed during this phase and identify the parameters for refinement of the objective standards in the next phase.

PHASE 3: REVIEW AND REVISIONS

During the Review and Revisions Phase of the project, M-Group will work with appropriate committees and Town staff to refine the objective standards in advance of final review and preparation for the adoption process in Phase 4.

Task 3.1 – Administrative Draft Preparation

M-Group will prepare an administrative draft of the standards and other parts of the identified Code amendments.



Task 3.2 – Committee Meeting

M-Group will work with Town staff and a final committee meeting to refine the administrative draft documents.

Task 3.3 – Revised Administrative Draft for Staff Review

M-Group will prepare the Code amendment documents in advance of the review and adoption process in the final phase.

PHASE 4: PRESENTATION AND ADOPTION

The final phase of the project will be focused on the review and adoption process with Town decision makers.

Task 4.1 – Planning Commission Meeting

M-Group will prepare the staff report and presentation to the Planning Commission in advance of the Commission’s meeting to review and recommend the Code amendments.

Task 4.2 – Town Council Hearing

M-Group will prepare the staff report and presentation to the Town Council together with a memorandum of any edits or augments recommended by the Planning Commission. M-Group will attend the hearing to present the proposed Code amendments.

Task 4.3 – Final Documentation

Following adoption, M-Group will update and deliver to Town staff the finalized project documents.



REVISED SCOPE OF SERVICES

M-Group proposes adjustments to the existing scope of work and budget for the contract to prepare Objective Standards for the Town of Los Gatos. These adjustments reflect changes to the work program and public outreach effort and have been developed in coordination with Town staff. The net changes to the project budget and Fee Schedule, including the contingency, are \$19,494 and are shown in Table 1.

CONTRACT EXTENSION

Extend the agreement with the Town through September 30, 2023.

PHASE 1: BACKGROUND AND INVESTIGATION \$4,730

Task 1.3 – Committee Meeting

To accommodate additional meetings with the Planning Commission Subcommittee, this Task will provide four additional meetings. Two of these meetings can be accommodated by reassigning meetings in other Tasks and two meetings will be added the scope and fee.

PHASE 2: OBJECTIVE STANDARDS DEVELOPMENT (\$1,825)

Task 2.3 – Stakeholder Group

This task will be folded into Community Meeting #1, to be conducted as part of Task 1.4 in the existing scope of work.

PHASE 3: REVIEW AND REVISIONS \$6,800

(NEW) Task 3.2 – Community Meeting #2

A second community meeting will allow for a public presentation of the Objective Standards following their preparation but in advance of the adoption review process with the Planning Commission and Town Council.

PROJECT CONTINGENCY \$9,789

A contingency to allow for budget adjustments up to 10 percent of the total budgeted amount (\$97,890) with approval of the Town Manager. Contingency funds may only be used with written authorization from the Town's Project Manager. A contingency fee is also being added to provide for future minor adjustments during the period of the contract and made at the direction of Town staff.



TABLE 1

PHASE	TASK	COST
1	Task 1.3 (additional Subcommittee meetings)	\$4,730
2	Task 2.3 (combine with Community Meeting #1)	-\$1,825
3	NEW Task 3.2 (Community Meeting #2)	\$6,800
	Existing Contract	\$88,185
	Revised Total Fee	\$97,890
Contingency	10% of Revised Total Fee	\$9,789
	TOTAL NOT TO EXCEED	\$107,679

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