

**TOWN OF LOS GATOS  
AGREEMENT FOR INTERIM TOWN ATTORNEY**

This Agreement is made and entered into this 21<sup>st</sup> day of December 2021, by and between the Town of Los Gatos, a California municipal corporation, hereinafter referred to as “Town” and Robert Schultz, hereinafter referred to as “Schultz”.

**RECITALS**

**WHEREAS**, the Town Attorney is an appointed position that will be vacant as of December 30, 2021 and for which the Town is conducting a recruitment for a permanent appointment; and

**WHEREAS**, during this recruitment period, the Town will have an immediate need for an attorney to temporarily perform the position of Town Attorney, a position involving specialized skills to plan, direct, manage and oversee the functions, programs, and operations of the Town Attorney Department and provide highly responsible and complex legal support to the Town Council, Town Manager, Staff and Boards and Commissions; and

**WHEREAS**, Schultz is competent and qualified to perform the legal services required by this Agreement, and Town wishes to have Schultz perform certain critically necessary on-going duties and functions of the Town Attorney on an interim basis; and

**WHEREAS**, Town desires to appoint Schultz to serve as Interim Town Attorney pending the completion of the recruitment of a new permanent Town Attorney; and

**WHEREAS**, Schultz's employment is authorized by Government Code section 21221(h), which permits the Town to appoint a CalPERS retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent replacement and provided that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits, so long as it is a single appointment that does not exceed 960 hours in a fiscal year, inclusive of all hours worked for all other CalPERS employers; and

**WHEREAS**, Schultz represents that as of December 31, 2021, he is a retired annuitant of CalPERS within the meaning of Government Code §§ 7522.56 and 21221(h) (“Statutes”) and acknowledges that his compensation is statutorily limited as provided in Government Code § 21221(h). Schultz also represents that, as of the effective date of this Agreement, he has not worked for another CalPERS state or contracting agency as a retired annuitant during the 2021-2022 fiscal year, and that he therefore acknowledges that he is restricted to working no more than 960 hours for the Town , a state agency or other CalPERS contracting agencies (collectively "CalPERS Agencies") during the 2021/2022 fiscal year; and

ATTACHMENT 2

## AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing recitals and respective and mutual covenants herein, Town and Attorney agree as follows:

1. Appointment. Town appoints Schultz and Schultz agrees to serve as Interim Town Attorney.
  
2. Duties. Schultz shall temporarily perform the functions of the Town Attorney, which is a position involving highly specialized and critically needed skills to perform the functions and duties of the Town Attorney as specified under the laws of the State of California, the Los Gatos Municipal Code, and the ordinances and resolutions of Town, and perform such other duties and functions as the Town Council may assign from time to time. Legal services shall include, but not be limited to, the preparation and review of ordinances, resolutions, agreements, and contracts; legal research; attendance at Town Council meetings and other meetings upon request; rendering of legal opinions to the Town Council and Town Manager; representation of the Town, members of the Town Council and other Town officers and employees in claims and litigation filed by or against the Town, except those that the Town Attorney or Town Council determine should be handled by outside counsel; and such other legal services as may be directed by Town Council or Town Manager.
  
3. Term. This Agreement shall commence on January 1, 2022 and shall continue until the Termination Date. The "Termination Date" means the earliest to occur of either: (a) The effective date of the Town Council's appointment of a permanent Town Attorney; (b) Schultz has worked 960 hours for the Town during the period of January 1, 2022 through June 30, 2022 as more fully described in Section 6; or (c) This Agreement is terminated by either party as set forth in Section 8 below.
  
4. Hours of Work. Schultz shall devote the time necessary to adequately perform his duties as Interim Town Attorney. The parties anticipate that Schultz will work a sufficient number of hours per week allocated between regular business hours and hours outside of regular business hours including, without limitation, attendance at regular and special Town Council and Planning Commission meetings. Toward that end, Schultz shall be allowed reasonable flexibility in setting his own office hours and may perform work off site as appropriate, provided the schedule of such hours provides reasonable availability to the Town Council, Town staff, and members of community during regular Town business hours. However, in no event shall Schultz be required to work in excess of 960 hours per fiscal year for Town, including hours worked for other CalPERS Agencies during such fiscal years, unless an exemption applies such as pursuant to the Executive Orders. The position of Interim Town Attorney shall be deemed an exempt salaried hourly position under California wage and hour law.
  
5. Compensation. Pursuant to Government Code Section 21221(h) and in accordance with the existing Town salary schedule for the position of Town Attorney, Town agrees to pay Schultz an hourly rate of \$120.14, which will be payable in installments in the same manner and at the same time as other Town employees are paid.

6. Compliance with CalPERS requirements. It is the intent of the parties to compensate Schultz only to the extent permitted under Government Code Sections 7522.56 and 21221(h), and corresponding CalPERS regulations and policy statements. The rate of pay set forth in Section 5 is based on the salary limitations established by CalPERS and is not less than the minimum, nor more than the maximum rate of pay, for the position of Town Attorney as listed on the Town's publicly available pay schedule.

7. Recordation and Reporting of Hours Worked. Schultz will comply with all applicable CalPERS regulations governing employment after retirement, including the recordation and reporting of all hours worked for the Town to CalPERS as may be required. Town shall assist in any such reporting obligations to CalPERS. Additionally, Schultz shall keep Town continually apprised of any hours worked by Schultz for other CalPERS Agencies during the term of this Agreement.

8. No Benefits. In accordance with the limitations on appointment of retired annuitants, Schultz shall not receive from the Town any benefits in addition to his hourly rate. Schultz shall receive no employment benefits (including, but not limited to, retirement, annual leave, sick leave (except as required by law), holiday/floating holiday pay, health, dental, or any other benefits given to regular, full time employees) except that the Town shall provide workers' compensation benefits as required by State law and shall pay any employer's share of the Medicare tax.

9. Reimbursement. Town shall reimburse Schultz for reasonable and necessary travel expenses and/or any other costs or expenses reasonably incurred by Schultz in the performance of his duties pursuant to this Agreement. Schultz shall document and claim said reimbursement for such travel in the manner and forms required by the Town. All reimbursements shall be for actual expenses and shall be subject to and in accordance with California and federal law and Town's adopted reimbursement policies. Such reimbursements shall not be reported to CalPERS as compensation.

10. Termination. Schultz understands and agrees that the Interim Town Attorney position is an at-will position of limited duration, subject to termination by the Town Council at any time. In addition, Schultz understands and agrees that his appointment as Interim Town Attorney will only be made once for this current vacancy and will terminate as of the date that a new permanent Town Attorney begins employment with the Town. The Town's only obligation in the event of such termination will be payment to Schultz of all compensation then due and owing as set forth in Section 5 up to and including the effective date of termination.

11. Termination Obligations. Schultz agrees that all property, including, without limitation, all equipment, tangible Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by him incident to his employment belongs to the Town and shall be returned promptly to Town upon termination of

Schultz's employment. Schultz's obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

12. Indemnification. Town agrees to defend, hold harmless and indemnify Attorney against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out an alleged act or omission occurring in the performance of Attorney's duties. Town, at is discretion, is not required to indemnify Attorney for any illegal or criminal acts committed by Attorney. The Town agrees to defend and indemnify Schultz for any fees, fines, penalties, contributions or other monetary damages claimed, asserted, or alleged against Schultz by CalPERS as a result of his employment with the Town upon a finding that the Town failed to keep or report Schultz's accurate hours worked.

13. General Provisions.

(a) The text herein shall constitute the entire Agreement between the parties.

(b) No provisions of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing by the Town and the Attorney. No waiver of either party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement shall be deemed a waiver of other provisions or conditions hereof.

(c) This Agreement contains the entire agreement and understanding between the parties and contains all of the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, or agreements. Attorney acknowledges that he has not relied on any promises, statement, representations, or warranties except as set forth expressly in this Agreement.

(d) This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, executors, administrators, successors and assigns of the parties, provided; however, that Attorney may not assign his obligations hereunder.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of California, and venue for any action concerning this Agreement shall be limited to the Superior Court for the County of Santa Clara.

(f) If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

(g) Unless provided for otherwise by this Agreement, all provisions of the Town Code which are applicable to the Town Attorney shall remain in full force and effect.

INTERIM TOWN ATTORNEY:

TOWN OF LOS GATOS:

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Robert Schultz

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Rob Rennie, Mayor

ATTEST:

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Clerk Administrator