

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is dated for identification this 1st day of May 2017 and is made by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and Monarch Consulting Arborists LLC, ("Consultant"), whose address is P.O. Box 1010, Felton, CA 95018. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 Town has a need for consulting arborist services for evaluation of trees on properties within the Town of Los Gatos.
- 1.2 Town desires to engage a certified arborist to review, analyze, and comment on development project plans; prepare technical analyses and reports; conduct peer review of outside arborist reports; and attend public meetings as needed.
- 1.3 Consultant represents and affirms that he is qualified and willing to perform the desired work pursuant to this Agreement.

II. AGREEMENTS

- 2.1 Scope of Services. Consultant shall provide, if available, the services listed below.

Administrative Duties

When needed by Town, assess the potential impacts to trees associated with proposed development and redevelopment projects. This shall include evaluating plans for development proposals, reviewing arborist reports and/or identifying mitigation measures and recommending preservation measures and conditions of approval.

- a. When needed by Town, work on special studies or projects including but not limited to: preparation of a checklist for content of arborist reports for application packets; emergency response and coordination; review of tree removal permits that have been denied and appealed; and review of landscape plans for hillside homes, Planned Developments, and/or commercial projects.
- b. When needed by Town, conduct field investigations, studies, and prepare reports related to tree removals and impacts from proposed construction, and develop recommendations for mitigation and preservation measures.
- c. When needed by Town, assist in the establishment and subsequent modification of Town's tree and landscape related ordinances, design guidelines, policies, and development fees.



- d. When needed by Town, attend meetings with Town staff, public officials, community leaders, developers, contractors, and the general public.
- e. When needed by Town, advise, support, and assist Town departments, committees, commissions, and Town Council. In addition, act as a liaison between Town and Federal, State, and Regional agencies.
- f. When needed by Town, attend Town Council, Planning Commission, and special study session meetings when tree and/or landscaping issues and project applications with tree removals, impacts to trees, and/or landscape plans are being considered.
- g. As requested by Town, provide final work products of reports and studies prepared for Town. Consultant shall provide electronic file copies of these documents as needed.
- h. Consultant discloses that arborists cannot detect every condition that could possibly lead to the structural failure of a tree. Since trees are living organisms, conditions are often hidden within the tree and below ground. Arborists cannot guarantee that a tree will be healthy or safe under all circumstances, or for a specific period of time. Likewise, remedial treatments cannot be guaranteed. No warranty, representation or guarantee, express or implied, is intended by Consultant.

Other Miscellaneous Services

The Town may occasionally have the need for other services not specifically listed in this document that the consultant has the necessary experience and capabilities to provide. Town may authorize consultant to perform such selected services on an as-needed basis.

- 2.2 Time of Performance. Consultant shall perform the services described in this agreement as follows: the services of Consultant are for a five year period that will commence upon the execution of the contract; should Town not renew a contract, the award and authorization of the contract shall automatically expire; and Town shall give Consultant at least 30 days' written notice, prior to the cancellation or expiration of the contract.
- 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. The Town shall inform Consultant of any other work it has undertaken relating to the purpose for which Consultant has been retained and the Town shall provide Consultant with any documentation the Town may have acquired regarding



the relevant issues. When applicable, especially relating to the treatment, pruning and/or removal of trees, it is the Town's responsibility to inform Consultant of any issues regarding property boundaries, property ownership, site lines and other related issues. Consultant shall be responsible for employing or engaging all persons necessary to perform Consultant's services under this Agreement, unless mutually agreed upon otherwise between Consultant and the Town. Consultant is not responsible for the completion or quality of work that is dependent upon or performed by the Town or third parties not under the direct control of Consultant, nor is Consultant responsible for their acts or omissions or for any damages resulting therefrom.

- 2.5 Information/Report Handling. All documents furnished to Consultant by the Town and all final reports prepared by the Consultant under this Agreement are for the exclusive use of the Town for the project specified therein 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. No other use is authorized under this agreement. 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. The Town releases Consultant and Consultant's officers, directors, shareholders, employees, agents, affiliates, successors and assigns from liability and agrees to defend, indemnify and hold harmless Consultant from any and all demands, causes of action, judgments, damages, suits, injuries, claims, liabilities, costs, losses and expenses, including reasonable attorneys' fees and all legal expenses and fees incurred through appeal, and all interest thereon, arising, in whole or in part, from such unauthorized distribution. 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 established hourly rates, as set forth in the Fee Schedule (Exhibit A), which is attached hereto and incorporated herein by reference. However, Consultant's rates are subject to change during the five year period of this Agreement and any renewal periods. Consultant shall provide thirty (30) days prior written notice to the Town of any rate change. If a rate change cannot be agreed upon within 30 (thirty) days of such notice, either party may exercise its termination right under Section 4.3 below. 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.



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 make its best efforts to be available 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 it has a professional responsibility 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 knowingly have any active agreement that is in conflict with any of the provisions of this Agreement. Consultant discloses that it represents San Jose Water Company in matters and The Town understands and acknowledges that Consultant will continue to represent San Jose Water Company. If Consultant acquires any direct or indirect interest adverse to those of the Town in the subject of this Agreement, it shall promptly inform Town of such and either party may exercise its termination right under Section 4.3 below. 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 either party may exercise its termination right under Section 4.3 below. Other than as noted above, Consultant certifies that Consultant does not currently have any outstanding agreement or obligation that is in conflict with any of the provisions of this Agreement, or that would preclude Consultant from complying with the provisions hereof. If Consultant enters into any conflicting agreement during the term of this Agreement, it shall promptly inform Town of such and either party may exercise its termination right under Section 4.3 below.

- 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 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. It is understood that Consultant currently has no employees. If employees are hired in the future, Consultant shall obtain and 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. 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. The Town shall save, keep, hold harmless, and indemnify and defend the Consultant, 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 Town, or any of the Town'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 documents furnished to Consultant by the Town and all final reports prepared by the Consultant under this Agreement. 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 mutually adjusted in light of the particular facts and circumstances involved in such termination. The limitation of liability and indemnity obligations of this Agreement shall be binding notwithstanding any termination of this Agreement.
- 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 by first class certified mail, 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

To Consultant:

Richard Gessner
Monarch Consulting Arborists LLC
P.O. Box 1010
Felton, CA 95018

Phone: (831) 331-8982
E-mail: rick@monarcharborist.com



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 Exhibit A, 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:



Laurel R. Prevetti, Town Manager
Town of Los Gatos

 4/11/2017

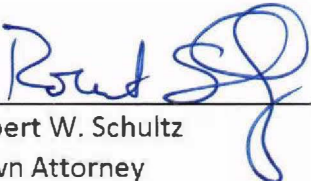
Richard Gessher
Monarch Consulting Arborists LLC

Department Approval:



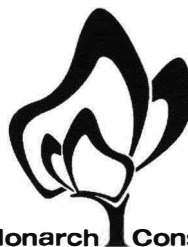
Joel Paulson
Community Development Director

Approved as to Form:



Robert W. Schultz
Town Attorney

December 13, 2016



Monarch Consulting Arborists LLC
P.O. Box 1010
Felton, CA 95018
831. 331. 8982

Basic Rate Sheet and Services

HOURLY RATE	VALUE
General consulting services	\$225.00/Hour

*Hourly rate = **\$225.00** per hour for general arborist's reports including tree protection guidelines for construction and development projects. Contracts can be billed hourly, contract price, or on a "not to exceed" basis.*

RISK ASSESSMENTS AND APPRAISALS

	VALUE
Tree Risk Assessment.....	\$225.00/Hour
Tree Appraisal/Valuation.....	\$225.00/Hour

Single tree Risk Assessment or Appraisal reports starting at \$675.00. Multi-tree assessments can be billed hourly, contract price, or on a "not to exceed" basis.

TREE INVENTORY AND MAPPING

	VALUE
Tree inventory and mapping.....	\$225.00/Hour

Includes management recommendations starting at \$675.00.

PEST AND DISEASE DIAGNOSIS AND TREE MANAGEMENT PLANS

	VALUE
Pest and disease diagnosis and recommendations.....	\$225.00/Hour
Needs assessment - Tree pruning, removal, water management, fertilization, spraying, and general campus management plans.....	\$225.00/Hour

Initial assignments will be determined prior to site visit and are subject to rate change. Written documentation will be produced for all services. Charges for ancillary services provided will apply, including but not limited to, overnight courier or mail service, messenger deliveries, facsimile and photocopy services. Any and all quotes are merely estimates and are not a maximum or fixed-fee quotation. All rates are subject to change within the absolute and sole discretion of Monarch Consulting Arborist LLC. Travel billed at \$225.00 per hour plus mileage. Expert witness and legal assistance work rates will be provided upon assignment request.

Rick Gessner, Monarch Consulting Arborists LLC, 831.331.8982, rick@monarcharborist.com
ISA Board Certified Master Arborist WE-4341B/ASCA Registered Consulting Arborist® #496
www.monarcharborist.com

EXHIBIT A



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/20/2016

ITEM NO: 6

DATE: DECEMBER 13, 2016
TO: MAYOR AND TOWN COUNCIL
FROM: LAUREL PREVETTI, TOWN MANAGER
SUBJECT: AUTHORIZE THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH
MONARCH CONSULTING ARBORISTS LLC TO PROVIDE SERVICES AS A
CONSULTING ARBORIST TO THE TOWN.

RECOMMENDATION:

Authorize the Town Manager to execute an agreement with Monarch Consulting Arborists LLC to provide services as a Consulting Arborist to the Town.

BACKGROUND:

The Town's Consulting Arborists assist Town staff and Town decision makers in the application review process for most discretionary development projects, providing necessary information on existing tree health and suitability for retention, potential impact to existing trees, and necessary mitigation measures to protect existing trees. The Consulting Arborist also assists in reviewing appeals of tree removal permits. Currently, Deborah Ellis and Walter Levison are the Town's Consulting Arborists. On August 17, 2015, the Town distributed a Request for Qualifications (RFQ) for a consulting arborist. Four proposals were received and reviewed by staff. The four applicants were all qualified to provide consulting arborist services to the Town. On October 20, 2015, Town Council authorized the Town Manager to execute agreements with Deborah Ellis and Walter Levison. Deborah Ellis informed the Town that she will be retiring on December 31, 2016. Staff recommends continuing to retain two Consulting Arborists which necessitates the execution of an agreement with the next qualified arborist from the original RFQ submittals.

PREPARED BY: JOEL PAULSON
Community Development Director

Reviewed by: Town Manager, Town Attorney, and Finance Director

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SUBJECT: AGREEMENT WITH MONARCH CONSULTING ARBORISTS LLC
DECEMBER 13, 2016

DISCUSSION:

The Consulting Arborists serve in a similar capacity to other Town development review consultants such as the consulting architect, and geotechnical and environmental consultants. Specifically, typical tasks that the Consulting Arborist may provide include the following:

- Site analysis and preparation of reports for proposed development projects
- Peer review of arborist reports submitted by applicants
- Review of landscape plans for hillside development, Planned Developments, and/or commercial projects
- Review of trees that are the subject of an appeal of a denied tree removal permit
- Review and update of the Tree Preservation Ordinance and the Hillside Development Standards & Guidelines landscape and tree preservation criteria
- Inspection of tree protection fencing
- Construction monitoring
- Attendance at public hearings

CONCLUSION:

Staff recommends that the Town continue to retain two Consulting Arborists so that there is a backup. Based on the qualifications of Monarch Consulting Arborists LLC, staff recommends that the Town Council authorize the Town Manager to execute an agreement with Monarch Consulting Arborists LLC to serve as one of the Consulting Arborists for the Town.

FISCAL IMPACT:

Arborist assessment is a cost recovery activity as part of the development review process. Applicants pay a fee to the Town to cover the consultant costs to prepare arborist documents.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachments:

1. Draft Consulting Arborist Agreement for Monarch Consulting Arborists LLC (includes Exhibit A)

Distribution:

Richard Gessner, Monarch Consulting Arborist LLC, P.O. Box 1010, Felton, CA 95018