

AGREEMENT FOR SERVICES BY AND BETWEEN THE TOWN OF LOS GATOS AND THE LOS GATOS-SARATOGA COMMUNITY EDUCATION & RECREATION FOR FISCAL YEAR 2023/2024

THIS AGREEMENT is made and entered into on _____, by and between TOWN OF LOS GATOS, a California municipal corporation, (“Town”) and **Los Gatos-Saratoga Community Education & Recreation (“LGS Recreation”)**, a Joint Powers Agency (Tax ID #77-0415139) whose address is 208 East Main Street, Los Gatos, CA 95030. This Agreement is made with reference to the following facts.

WHEREAS, TOWN appropriated funds in its Fiscal Year 2023/2024 Budget for the allocation of funds, and;

WHEREAS, Town desires to engage LGS Recreation to provide senior services, commonly referred to as the 55 Plus Program, and TOWN has appropriated funds for this purpose, to be utilized during the time period between July 1, 2023, and June 30, 2024, and;

NOW, THEREFORE, the parties agree as follows:

1. Scope of Services. LGS Recreation shall provide services as described in that certain Exhibit A, “Recommendations for Use of Potential 55 Plus Funding,” which is hereby incorporated by reference and attached as Exhibit A.
2. Term and Time of Performance. This contract will remain in effect from July 1, 2023, to June 30, 2024.
3. Compliance with Laws. LGS Recreation shall comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. LGS Recreation represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for LGS Recreation perform the scope of services. LGS Recreation shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
4. No Lobbying. LGS Recreation confirms that the Town funds will not be used for the purpose of lobbying, carrying on propaganda, or otherwise attempting to influence legislation as defined by the United States Internal Revenue Code of 1986.
5. Sole Responsibility. LGS Recreation shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.

ATTACHMENT 1

6. Information/Report Handling. All documents furnished to LGS Recreation by the Town and all reports and supportive data prepared by LGS Recreation under this Agreement are the Town's property and shall be delivered to the Town upon the completion of LGS Recreation's services or at the Town's written request.
7. Compensation. Compensation for LGS Recreation's services **shall not exceed \$225,000**, inclusive of all costs. The Town will provide one payment after execution of this Agreement.
8. Availability of Records. LGS Recreation shall maintain the records supporting this billing for at least three years. LGS Recreation shall make these records available to authorized personnel of the Town upon written request of the Town.
9. Annual Report. LGS Recreation shall provide, at a minimum, reports in December 2023 and May 2024, describing the services rendered, including services rendered for the 55 Plus Program, accounting of expenditures of the funds covered by this Agreement; and analytics and data as described in Exhibit A - Scope of Services.
10. Use of Town of Los Gatos Branding and Logo. The Town of Los Gatos will provide branding for the 55 Plus Program including a logo and color palette. The provided branding is property of the Town of Los Gatos and shall only be used by the LGS Recreation for business of and marketing collateral that is executed as a part of the 55 Plus Program. Use of the logo in social media, print, email, or other form that is not directly related to the 55 Plus Program requires explicit written permission by the Town of Los Gatos.
11. Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to LGS Recreation. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
12. Independent Contractor. It is understood that the LGS Recreation, 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. LGS Recreation employees shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the LGS Recreation 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. LGS Recreation agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. LGS Recreation 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 LGS Recreation or is based on allegations of LGS Recreation's negligent performance or wrongdoing.
13. Conflict of Interest. LGS Recreation understands that its professional responsibilities are solely to the Town. LGS Recreation has and shall not obtain any holding or interest within the Town of Los Gatos. LGS Recreation 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, LGS Recreation 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. LGS Recreation 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, LGS Recreation discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, LGS Recreation shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.

14. Minimum Scope of Insurance:

- i. LGS Recreation 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.
- ii. LGS Recreation 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 two million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage.
- iii. LGS Recreation shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. LGS Recreation agrees that all certificates and endorsements are to be received and approved by the Town before work commences.

15. 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 LGS Recreation; products and completed operations of LGS Recreation, premises owned or used by LGS Recreation.
- ii. LGS Recreation'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 LGS Recreation'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. LGS Recreation'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.
16. 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.
17. Workers' Compensation. In addition to these policies, LGS Recreation 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, LGS Recreation shall ensure that all subcontractors employed by LGS Recreation provide the required Workers' Compensation insurance for their respective employees.
18. Indemnification. LGS Recreation shall hold harmless and indemnify 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 work which may be occasioned by a willful or negligent act or omissions of LGS Recreation, or any of the LGS Recreation's officers, employees, subcontractors, or agents. LGS Recreation shall defend the Town. Its elected and appointed officials, employees, and agents, from and against any such claims.
19. 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.
20. 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.
21. Termination of Agreement. The Town and LGS Recreation shall have the right to terminate this agreement with or without cause by giving not less than one hundred eighty days written notice of termination. In the event of termination, LGS Recreation shall deliver to the Town all plans, files, documents, and reports, prepared to date by LGS Recreation. In the event of such termination, Town shall pay LGS Recreation 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.

22. Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and LGS Recreation.
23. No Pledge. This Agreement shall not be interpreted to create any pledge or any commitment by the Town to make any further grants or contributions to LGS Recreation or any other person or entity for this or any other service.
24. 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.
25. 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 Manager
110 E. Main Street
Los Gatos, CA 95030

LGS Recreation
Attn: Executive Director
208 East Main Street
Los Gatos, CA 95030

or personally delivered to LGS Recreation to such address or such other address as LGS Recreation designates in writing to Town.

26. 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.
27. Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and LGS Recreation. 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 LGS Recreation have executed this Agreement.

Recommended by:

Ryan Baker, Library Director

Town of Los Gatos by:

LGS Recreation by:

Laurel Prevetti, Town Manager

Executive Director

Approved as to Form:

Attest:

Gabrielle Whelan, Town Attorney

Wendy Wood, Town Clerk

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