

AGREEMENT BY AND BETWEEN THE TOWN OF LOS GATOS AND SUSTAINABLE WAZE FOR SPONSORSHIP OF THE LOS GATOS MUSIC IN THE PARK SUMMER CONCERT SERIES

THIS AGREEMENT is made and entered into on February 29, 2024 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and SUSTAINABLE WAZE, a Non-Profit Corporation ("Contractor"), whose address is 124 A Edelen Avenue, Los Gatos, California. This Agreement is made with reference to the following facts.

I. RECITALS

WHEREAS, on March 3, 2020, the Town Council selected Sustainable Waze to produce, manage, and promote the Music in the Park Summer Music Concert Series; and

WHEREAS, on February 7, 2023, the Town Council reconfirmed their selection of Sustainable Waze to produce, manage, and promote the Music in the Park Summer Music Concert Series; and

WHEREAS, Town has agreed to purchase the naming rights and sponsor Music in the Park for the amount not to exceed \$20,000 annually for the event name: "Los Gatos Music in the Park" with no additional sponsor name in the title; and,

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

WHEREAS, the Town has agreed to provide additional support in the form of in-kind services and the relief of Town fees to support for the following items, as resources and scheduling is available: installation, usage and removal of the Town owned stage, installation and removal of Music in the Park banner at the Civic Center, special event permit, banner permit, park use, chamber lobby use, and no parking sign fees, and two Los Gatos-Monte Sereno Police Officers at each concert as resources are deemed necessary and available, as directed by the Chief of Police or his or her designee.

- 1.1 Contractor represents and agrees that it is willing to comply with the terms of this Agreement.

II. AGREEMENTS

- 2.1 Term of Agreement. The term shall commence upon the execution of this Agreement and shall terminate on September 30, 2024; with one option to renew for an additional year if mutually agreed upon between the Town and Contractor.
- 2.2 Termination of Agreement. The Town and Contractor shall have the right to terminate this Agreement with or without cause by giving not less than 90 days' written notice of termination. In the event of termination, Contractor shall deliver to Town all plans, files,

documents, reports, performed to date by the Contractor. In the event of such termination, Town shall pay Contractor 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.

- 2.3. Scope of Agreement. In exchange for a \$20,000 sponsorship fee and in-kind services from the Town and relief of specific Town fees associated with Music in the Park, Contractor will provide the Summer Music Concert Series, as described in Exhibit A.
- 2.4 Special Event Permit. As part of the terms of the original Request for Proposal (RFP), Contractor is required to apply for, and follow the special event permit application process. As such, all conditions, including the scope of work, use of premises, timelines, requirements, and Town commitments will be included in the special event permit conditional letter of approval.
- 2.5 In-Kind Services. the Town has agreed to provide in-kind services and the relief of Town fees to support for the following items, as resources and scheduling is available: installation, usage and removal of the Town owned stage, installation and removal of Music in the Park banner at the Civic Center, special event permit, temporary banner permit, park use, Town staff attendant for Council Chamber Lobby, Council Chamber Lobby use, and no parking sign fees, and two Los Gatos-Monte Sereno Police Officers at each concert as resources are deemed necessary and available, as directed by the Chief of Police or his or her designee.
- 2.6 Terms of Sponsorship.
 - 2.6.a. The Town shall remain the sole naming rights sponsor for Music in the Park to remain "Los Gatos Music in the Park" with no additional sponsor name in the title.
 - 2.6.b. The Town will be recognized as a Premier Sponsor in all print, web, and social media marketing, including large logo on main sign located behind main stage.
 - 2.6.c. The Town shall have a sponsor tent at all concerts in premier location on the Civic Center Lawn.
 - 2.6.d. Large feather banners, exclusively with the Town logo prominently displayed at each concert.

- 2.7 **Compensation.** Compensation for naming rights sponsorship shall not exceed **\$20,000 annually.**

An initial payment of \$10,000 shall be made prior to the first concert. A second payment of up to \$10,000 shall be made at the conclusion of the concert series.

- 2.8 **Billing.** Contractor must provide the Town with a detailed invoice in order for payment to be made. All invoices and statements to the Town shall be addressed as follows:

Email to: Jertell@losgatosca.gov

Or, Mail to: Town of Los Gatos

Attn: Jessica Ertell

110 E. Main Street

Los Gatos, CA 95030

- 2.9 **Use of Funds.** Contractor shall not use any monies received under this Agreement for anything other than items related to the direct marketing or production of the Music in the Park summer concert series.

III. INSURANCE AND INDEMNIFICATION

- 3.1. **Indemnification.** The Contractor 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 work which may be occasioned by a willful or negligent act or omissions of the Contractor, or any of the Contractor's officers, employees, or agents or any subconsultant.

- 3.2. **Minimum Scope of Insurance:**

- i. Contractor 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. Contractor 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 one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iii. Contractor 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.

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 Contractor; products and completed operations of Contractor, premises owned or used by the Contractor.
 - ii. The Contractor'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, or agents, shall be excess of the Contractor'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, or agents.
 - iv. The Contractor'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.
- 3.3 **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.
- 3.4 **Workers' Compensation.** In addition to these policies, Contractor 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, Contractor shall ensure that all subcontractors employed by Contractor provide the required Workers' Compensation insurance for their respective employees.

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. Entire Agreement. This Agreement constitutes the complete and exclusive statement of the Agreement between the Town and Contractor. 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 Contractor have executed this Agreement.

Town of Los Gatos by:

DocuSigned by:
Laurel Prevetti
853FEEA2EB30470...

Laurel Prevetti, Town Manager

Contractor, by:

DocuSigned by:
Neal Turley
F8DE022DE7D2406...

Neal Turley

Founder

Title

Approved as to Form:

DocuSigned by:
Gabrielle Whelan
EFD6738A5534428...

Gabrielle Whelan, Town Attorney

Attest:

DocuSigned by:
Wendy Wood
8F8EBC9E2C214F8...

Wendy Wood, CMC, Town Clerk

