

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on the 1st day of January, 2018 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and BSI EHS Services and Solutions (West) Inc., ("Consultant"), whose address is 4 North Second Street, San Jose, CA 95113. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desire to engage Consultant to provide Environmental Health & Safety services and support.
- 1.2 The Consultant represents and affirms that it is 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 services as described in that certain Proposal in Response to the Town of Los Gatos' Environmental Health & Safety Program RFP, sent to the Town on August 31, 2017, and an additional email summary sent to the Town on October 26, 2017, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect from January 1, 2018 to December 31, 2020. This Agreement shall remain in effect for a period of three (3) years ("Initial Term") unless terminated earlier in accordance with the relevant provisions hereof. Thereafter, this Agreement has the option to renew for an additional two (1) year periods ("Extension Term") and shall remain in effect unless terminated earlier in accordance with the relevant provisions hereof. Consultant shall perform the services described in this agreement as detailed in Appendix A, with specific task scheduling to be determined jointly by The Town and the BSI support team.
- 2.3 Compliance with Laws. The 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 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.
- 2.5a Instruments of Service. BSI's Instruments of Service consist of any document or material provided as part of the agreed-upon deliverables under this Agreement. They are prepared for the exclusive use of The Town for the sole purpose described in the scope and terms of the Instruments of Service. The Town waives any claim against BSI and agrees to provide Indemnification for any claim or liability for injury, loss, or costs allegedly arising from any use other than Authorized Use of BSI's Instruments of Service.
- 2.5b The Town Information. The Town warrants the accuracy and completeness of information, (including, but not limited to, representations, specifications, drawings, maps, surveys, reports, historical land usage and operations, results of previous site investigations and surface or subsurface conditions affecting the site), supplied by it or its agents to BSI and acknowledges that BSI is relying upon such information or data in the preparation of this Proposal and rendering of services.
- 2.6 Compensation. Compensation for Consultant's professional services **shall not exceed \$49,200.00 annually**, inclusive of all costs. Payment shall be based upon Town approval of each task. Rates will remain unchanged for the initial 3-year term. To maintain parity with economic circumstances, BSI may elect to increase rates for the 4th and/or 5th year contract options. Annual rate table increases shall not exceed 3% of the preceding year's rate table fees in the years after 2020. However, if in any of the years after 2019 the Bureau of Labor Statistics Employment Cost Index in Northern California is greater than 4.5%, the parties agree to renegotiate rates for the final two years of this contract.
- 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. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

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 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 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.

- 2.12 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 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. 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 \$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.
- v. Limits of Liability. BSI's maximum aggregate liability under this agreement shall not exceed the greater of \$1,000,000 or the total amounts paid by The Town to BSI during the twelve (12) months immediately preceding the claim.

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, 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. In addition to these policies, Consultant 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, 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.

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:

Town of Los Gatos
 Attn: Human Resources
 110 E. Main Street
 Los Gatos, CA 95030

BSI EHS Services and Solutions (West) Inc.
 Attn: Christy Foster
 4 North Second Street
 San Jose, CA 95113

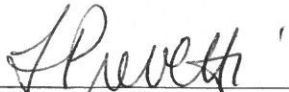
or personally delivered to Consultant to such address or such other address as Consultant designates in writing to Town.

- 4.7 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect 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.
- 4.8 Entire Agreement. This Agreement, including all Exhibits, 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.

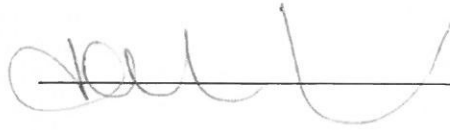
IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement.

Town of Los Gatos by:

Consultant, by:

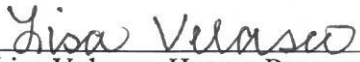


Laurel Prevetti, Town Manager



Recommended by:

Janice McKim,
Chief Financial Officer



Lisa Velasco, Human Resources Director

Title

Approved as to Form:



Robert Schultz, Town Attorney

EXHIBIT A – Scope/Cost Estimate Basis

Safety Training Services:

Time-and Materials Basis, Not-to-Exceed
\$18,000

7 In-Person Training sessions, including presentation development time, quality review, formatting, and onsite delivery time (1-2 hours/class) = \$2,200/class
Tailgate topic development = \$170/topic

Safety Committee Support:

Time-and-Materials Basis, Not-to-Exceed
\$3,200

\$800/meeting, including preparation, agenda review, and follow up actions from the meeting.

Job Hazard Analysis:

Fixed Fee of \$16,000 (\$400/JHA)

We assume 40 JHAs, and each will cost \$400. Prices would decrease accordingly if the total number of JHAs to be completed in one year was decreased.

Annual Program Review:

Time-and-Materials Basis, Not-to-Exceed
\$12,000

15 written programs would be reviewed, at a cost of \$800/program. Programs will be reviewed and returned with any edits/updates in track changes mode. This assumes an average of 4 hours of review time, plus one set of additional comments from the Town and subsequent BSI changes to the document.

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Agreement for Consulting Services – Town of Los Gatos and BSI EHS Services and Solutions, Environmental Health & Safety Program 2018-2020.

12/2017



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/19/2017

ITEM NO: 6

DATE: DECEMBER 11, 2017
TO: MAYOR AND TOWN COUNCIL
FROM: LAUREL PREVETTI, TOWN MANAGER
SUBJECT: AUTHORIZE THE TOWN MANAGER TO EXECUTE AN AGREEMENT FOR EMPLOYEE SAFETY COMPLIANCE AND TRAINING CONSULTANT SERVICES WITH BSI EHS SERVICES AND SOLUTIONS (WEST) INC., IN AN AMOUNT NOT TO EXCEED \$147,600

RECOMMENDATION:

Authorize the Town Manager to execute an agreement for employee safety compliance and training consultant services with BSI EHS Services and Solutions (West) Inc. (Attachment 1), in an amount not to exceed \$147,600.

BACKGROUND:

California's Occupational Health and Safety Administration (Cal-OSHA) sets the standards and requirements related to an employer sponsored Health and Safety Program. Components of a Health and Safety Program include employee training and Cal-OSHA compliance. Cal-OSHA requires annual or recurring periodic training for safety sensitive job classifications that have potential for exposure to illnesses or injuries resulting from bloodborne pathogens and communicable diseases, working at heights or within confined spaces, routine use of specialized equipment and machines, or lifting heavy objects. The Town's Health and Safety Program includes periodic recommended employee trainings to proactively prevent work injuries or illnesses, such as: safe driving techniques, earthquake safety, and prevention of slips/trips/falls. The Town has historically engaged the services of a safety consultant to ensure compliance with Cal-OSHA regulations, provide on-site safety training classes, and partner with the Town's Health and Safety Committee to promote a safe work environment.

PREPARED BY: LISA VELASCO
Human Resources Director

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

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EXCEED \$147,600

DECEMBER 11, 2017

DISCUSSION:

The Town has contracted with BSI since February 2013 and extended the contract in May 2016 to provide additional time to conduct a formal Request for Proposals (RFP). An RFP was initiated in August, 2017. Six firms responded to the RFP and three were invited to interview with Town staff. Based on their formal Proposal (Attachment 2) and interviews, BSI was selected based on their overall cost, breadth and depth of knowledge related to safety compliance, as well as resources to offer employee trainings, tailgate trainings, and participation at Health and Safety Committee meetings.

In addition, during the term of the prior agreement between BSI and the Town, BSI was highly effective in assisting the Town to contain costs associated with the Employee Health and Safety Program by addressing potential safety issues to ensure safe work environments for employees. BSI has also been instrumental in ensuring the Town's compliance with legally mandated Cal-OSHA training and requirements.

CONCLUSION:

Staff recommends that the Town Council authorize the Town Manager to execute a new agreement with BSI for three years effective January 1, 2018, with an option to renew for two additional one-year periods.

COORDINATION:

This report was coordinated with the Parks and Public Works Department.

FISCAL IMPACT:

The annual fiscal impact for this agreement will not exceed \$49,200 annually, or \$147,600 over the course of three years. Funding to support this agreement is included in the adopted budget for FY 2017/18 in the Workers' Compensation Program.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Agreement for Consultant Services with BSI EHS Services and Solutions (West) Inc.
2. Response to Town of Los Gatos RFP Environmental Health & Safety Program (BSI Proposal #17-0943)