

AGREEMENT FOR ENVIRONMENTAL CONSULTANT SERVICES

THIS AGREEMENT is dated for identification January 1, 2021, and is made by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and EMC Planning Group, Inc. ("Consultant"), who's address is 301 Lighthouse Avenue, Suite C, Monterey, CA 93940. This Agreement is made with reference to the following facts. This contract will remain in effect from January 1, 2021 to December 31, 2025.

I. RECITALS

- 1.1 To streamline the environmental review process and improve efficiency the Town, since 1998, has retained environmental consultants to conduct environmental assessments and prepare environmental documents for projects in the Town.
- 1.2. The Town desires to engage Consultant to provide environmental consultant services.
- 1.3. Consultant represents and affirms that it is qualified and willing to perform the desired work pursuant to this Agreement.
- 1.4 Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges that the Town has relied upon these warranties to retain Consultant.

II. AGREEMENTS

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

- 2.1 Scope of Services. The Consultant shall provide the services as detailed below:
 - a. Attend a minimum of one preliminary scoping meeting with staff and additional meetings with staff if necessary.
 - b. Visit the project site, document existing site conditions, identify issues and determine whether additional technical studies are needed.
 - c. Recommend whether an Initial Study or EIR should be prepared.
 - d. Prepare a scope of work with cost estimate (if amount will exceed initial fee) and schedule.
 - e. Consult with other Town departments and outside agencies as needed.
 - f. Prepare Initial Study and Negative Declaration and Notice of Intent to Adopt or Negative Declaration. Provide 5 copies of the draft and 25 copies of the final draft. The consultant shall also provide electronic copies of the final document in the approved work process software at the time the final draft copies are delivered to the Town.
 - g. Prepare Mitigation Monitoring Programs, when required.
 - h. Attend a minimum of one Planning Commission and one Town Council meeting as needed. Additional meetings will be authorized by the Community Development Director on an "as needed basis", and the Town will be charged only for time and materials. Funds to pay for additional meetings shall be provided by the applicant to the Town prior to the meetings.

ATTACHMENT 1

- i. Prepare follow-up clarification letters to respond to public review comments and provide documentation for any Initial Study or Negative Declarations as needed at no additional cost to the Town.
 - j. If an EIR is recommended as a result of the Initial Study or if significant evidence is clearly evident that an EIR is warranted, the Community Development Director has the discretion to choose one the following three options: 1) Ask the consultant for an estimate to prepare the EIR based on a scope of work developed by the Community Development Department; 2) Ask the Alternate Environmental consultant for an estimate to prepare a scope of work developed by the Community Development Department; or 3) Prepare a Request for Proposal for the EIR and solicit proposals from other consultants and enter into a contract for its preparation. The requirements and scope of work for each EIR shall be developed by the Planning Department on a case-by-case basis and shall be incorporated into the contract for the EIR.
- 2.2 Term and Time of Performance. The services of Consultant are fixed for a five year period that will commence upon the execution of the contract and the Town. At the end of this period, should the Town not renew the contract, the contract shall automatically expire. The individual time of performance schedule for each project referred to the Consultant is required to be performed as outlined in the scope of services section of this Agreement.
- 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. 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 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 the these documents or information available to any individual or organization not employed by Consultant or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and the Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at the Town's risk, unless Consultant expressly consents to such use in writing. The 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. Prior to the Town authorizing the preparation of an Initial Study, the Community Development Director will send Consultant an "Authorization to Proceed" letter. Consultant shall sign the authorization and return it to the Town. Upon receipt of this letter, the Town shall compensate the firm on the following basis:

- a. An initial deposit of \$5,000 per project (which may be re-evaluated and modified at the beginning of the new fiscal year upon written authorization of the Community Development Director) for the preparation of an Initial Study, Negative Declaration, and/or Mitigation Monitoring Plan. This shall include attendance at meetings, the specified number of draft, final, and electronic file copies, and follow up clarification letters or documentation regarding the preparation of these documents.
- b. Costs incurred by Consultant for additional tasks beyond the scope of work of the original Initial Study or Negative Declaration that are not specifically required to clarify information within the documents or clarify issues relating to the preparation of the environmental assessment shall be authorized by the Town prior to the preparation of the analysis or supplementary documents.
- c. Cost for the preparation for an EIR shall be determined by a scope of work developed on a project specific basis. The full cost of preparing the EIR shall be borne by the project applicant.

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 Consultant's offices during business hours upon written request of the Town.

2.9 Project Manager. The Project Managers for Consultant for the work under this Agreement shall be Teri Wissler Adam.

2.10 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to Consultant. No portion of these services shall be assigned or subcontracted without the written consent of the Town.

2.11 Independent Contractor. It is understood that 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, 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.

- 2.12 Conflict of Interest. Consultant understands that its professional responsibilities are solely to the Town. Consultant has no 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.
- 2.13 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 and Housing

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, personal 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 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. 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 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, officials, 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 either 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, Consultant shall deliver to the Town all plans, files, documents, and reports, performed to date by 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 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:

<p>To Town:</p> <p>Laurel R. Prevetti Town Manager Town of Los Gatos 110 E. Main Street Los Gatos, CA 95030</p>	<p>To Consultant:</p> <p>EMC Planning Group, Inc. Attn: Teri Wissler Adam 301 Lighthouse Avenue, Suite C Monterey, CA 93940</p>
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or personally delivered to Consultant to such address or such other address as Consultant designates in writing to the 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 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 as of the date indicated on page one.

Town of Los Gatos by:

Consultant, by:

Laurel Prevetti, Town Manager

Teri Wissler Adam, Senior Principal
EMC Planning Group, Inc.

Joel Paulson, Community Development Director

Approved as to Form by:

Robert Schultz, Town Attorney

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