

## **AGREEMENT FOR SERVICES**

THIS AGREEMENT is dated for identification on August 17, 2024 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and Rotary Club of Los Gatos ("Donor"), a California C Corporation , whose address is PO Box 1018 Los Gatos, California 95031. This Agreement is made with reference to the following facts.

### **I. RECITALS**

- 1.1 Donor has offered and Town agrees to accept the gift of an "Oak Grove" at Live Oak Manor Park.
- 1.2 The Donor represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Donor warrants it will provide the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Donor acknowledges Town has relied upon these warranties to retain Donor.

### **II. AGREEMENTS**

- 2.1 Scope of Services. Donor shall provide the labor, material and resources required to deliver the donation as shown on the project plans, which is hereby incorporated by reference and attached as Exhibit A as a donation that is free of charge to the Town. Town understands that Donor may seek donated services from professional firms to complete the work. Donor warrants that all work will be performed to professional construction standards using volunteer labor, equipment and materials. If Donor pays any workers, Donor agrees to pay prevailing wages as required by state law and to require that the employer of the paid workers be registered with the Department of Industrial Relations
- 2.2 Term and Time of Performance. This contract will remain in effect upon execution to September 30, 2025. Donor shall perform or otherwise provide the services described in this agreement and as required to complete the work shown on Exhibit A. If, for any reason, Donor is unable to complete the work shown in Exhibit A, Donor will restore the site to its original condition. Town and Donor reserve the right to terminate this Agreement upon 30 days' notice.
- 2.3 Compliance with Laws. The Donor shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Donor represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Donor to practice its profession. Donor 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. Donor 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 Donor by the Town and all reports and supportive data prepared by the Donor under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Donor's services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Donor in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Donor shall not make any of these documents or information available to any individual or organization not employed by the Donor or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Donor 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 Donor in connection with other projects shall be solely at Town's risk, unless Donor expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Donor which is and has been confirmed in writing by Donor to be a trade secret of Donor.
- 2.6 Compensation. Compensation by the Town for Donor's professional services **shall be \$0**, inclusive of all costs.
- 2.7 Fundraising. Town acknowledges that Donor will perform private fundraising activities to support construction of the project in accordance with the schedule outlined in Exhibit B. Funds raised shall be used for capital construction only. No money shall be provided to the Town by the Donor.
- 2.7 Responsibility of the Town: The Town agrees to work with the Donor throughout the course of project development, providing technical design guidance to ensure the completed Project meets the Town's design standards and maintenance requirements. Town agrees to periodically observe and guide the project during construction, and provide minor construction support (e.g., locating existing irrigation, etc.) if requested.
- 2.8 Availability of Records. Donor shall maintain the records supporting the donation for not less than three years following completion of the work under this Agreement. Donor shall make these records available to authorized personnel of the Town at the Donor'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 Donor.
- 2.10 Independent Contractor. It is understood that the Donor, 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 Donor 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. Donor agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Donor 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 Donor or is based on allegations of Donor's negligent performance or wrongdoing.

- 2.11 Conflict of Interest. Donor understands that its professional responsibilities are solely to the Town. The Donor has and shall not obtain any holding or interest within the Town of Los Gatos. Donor 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, Donor 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. Donor 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, Donor discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Donor 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. Donor warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Donor 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. Donor 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. Donor agrees to provide evidence of and maintain for the duration of the contract, non-owned 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. Donor shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Donor 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 additional insured as respects: liability arising out of activities performed by or on behalf of the Donor; products and completed operations of Donor, premises owned or used by the Donor.
- ii. The Donor'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 officers, officials, employees or volunteers shall be excess of the Donor'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 Donor'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, Donor 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, Donor shall ensure that all subcontractors employed by Donor provide the required Workers' Compensation insurance for their respective employees.

3.4 Indemnification. The Donor shall save, keep, hold harmless and indemnify and defend the Town its elected and appointed officials, agents, 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 an act or omissions of the Donor, or any of the Donor's officers, employees, or agents or any sub-Donor.

#### **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 Donor 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 Donor shall deliver to the Town all plans, files, documents, reports, performed to date by the Donor. In the event of such termination, Town shall pay Donor 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 Donor.
- 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: Town Clerk  
110 E. Main Street  
Los Gatos, CA 95030

Rotary Club of Los Gatos  
PO Box 1018  
Los Gatos, CA 95031

or personally delivered to Donor to such address or such other address as Donor 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 Donor. 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 Donor have executed this Agreement.

Town of Los Gatos by:

Donor by:

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Laurel Prevetti, Town Manager

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Doug Brent, President

Recommended by:

Recommended by:

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Nicolle Burnham  
Director of Parks and Public Works

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Mike Norcia

Approved as to Form:

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Gabrielle Whelan, Town Attorney

Attest:

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Wendy Wood, CMC, Town Clerk