

TOWN ATTORNEY EMPLOYMENT AGREEMENT

This Agreement is made and entered into the ____ day of April 2022, by and between the Town of Los Gatos, a municipal corporation in the State of California ("TOWN"), and Gabrielle Whelan ("ATTORNEY").

RECITALS

- A. The Town Council of the Town of Los Gatos desires to appoint Gabrielle Whelan to the position of Town Attorney of the Town of Los Gatos on May 16, 2022.
- B. It is the desire of the Town Council to establish the terms and conditions of employment of Gabrielle Whelan as Town Attorney of the Town of Los Gatos, including the duties, salary, and benefits of employment.
- C. Gabrielle Whelan desires to accept employment as Town Attorney of the Town of Los Gatos under the terms set forth herein.

NOW, THEREFORE, in consideration of the respective and mutual covenants hereinafter contained and made, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and subject to all the terms and conditions hereof, the parties agree as follows:

SECTION I. DUTIES AND RESPONSIBILITIES:

A. **Appointment as Town Attorney.** TOWN hereby agrees to employ ATTORNEY in the capacity of Town Attorney for TOWN during the term of this Agreement. ATTORNEY will perform the functions and duties specified in Section 2.30.505 of the Los Gatos Municipal Code for this position and perform such other legally permissible and proper duties and functions as the Town Council may from time to time assign or delegate. Legal services shall include, but not be limited to, the preparation and review of ordinances, resolutions, agreements, and contracts; legal research; attendance at Town Council meetings and other meetings upon request (such as high profile Planning Commission meetings); rendering of legal opinions to the Town Council and Town Manager; representation of the Town, members of the Town Council and other Town officers and employees in claims and litigation filed by or against the Town, except those that the Town Attorney or Town Council determine should be handled by outside counsel; and such other legal services as may be directed by Town Council or Town Manager. Consistent with other demands of the office, Attorney will use best efforts to handle general municipal and land use litigation herself to reduce costs of outside counsel.

B. **Exclusive Employment.** During the term of this Agreement, ATTORNEY shall be in the exclusive employ of TOWN; provided, however, that the term "exclusive employ" shall not prohibit future part-time employment which the Employee may desire to accept with appropriate prior knowledge and approval of the Town Council. "Appropriate prior knowledge and approval of the Town Council" shall mean that ATTORNEY shall give four (4) weeks written notice to the Town Council prior to accepting part-time employment and approval of the Town Council shall be deemed given unless any Town Council member states in writing that they desire a closed session to discuss the part-time employment. Such part-time employment shall not in any way conflict in time or interest with ATTORNEY's responsibilities to TOWN. Town Council shall have uncontrolled discretion in granting part-time outside employment and its determination to grant or deny part-time outside employment shall be final.

SECTION 2. SALARY:

A. Initial Salary. TOWN agrees to pay ATTORNEY for her services rendered in the amount of \$249,900 annually, payable in installments at the same time as other employees of TOWN are paid.

B. Performance Evaluations. The Town Council shall evaluate the ATTORNEY's performance on or before November 30, 2022, and in November annually thereafter.

C. Salary Increases. Should the Town Council, upon completion of its review of ATTORNEY's performance pursuant to this Agreement, determine that ATTORNEY has met its performance expectations; the Town Council shall increase ATTORNEY's compensation at least consistent with compensation increases granted by Town Council to other Town Management (At-Will/Unrepresented) Employees. ATTORNEY understands and agrees that she has no entitlement to an increase in compensation. Any decision to increase ATTORNEY's compensation shall be retroactive to the beginning of the pay period immediately preceding the evaluation conducted in accordance with Section 2(B) above.

SECTION 3. BENEFITS:

All provisions of the Town Code and regulations and rules of Town relating to vacation and sick leave, medical, dental, vision, retirement (2% at 60 formula, 36-month highest average salary) and pension system contributions, holidays, cash out provisions, and other fringe benefits and working conditions pertaining to Town Management (At-Will/Unrepresented) Employees as they now exist or hereafter may be amended, except as otherwise set forth herein, also shall apply to ATTORNEY. Nothing in this Agreement shall affect any vacation, personal leave, administrative leave, sick time, pension system contributions or accruals, or other benefits which ATTORNEY has accrued and is owed or attributable to ATTORNEY as of the date of this Agreement, all of which shall remain accrued, owing, and attributable to ATTORNEY until used or redeemed by ATTORNEY.

SECTION 4. HOURS OF WORK AND LEAVE BENEFITS:

A. Regular Hours. ATTORNEY's duties may involve expenditures of time in excess of eight (8) hours per day and/or forty (40) hours per week, and may also include time outside normal office hours such as attendance at Town Council and other meetings. ATTORNEY shall not be entitled to additional compensation for any work performed in excess of the TOWN's regular workweek.

B. Administrative Leave. It is recognized that ATTORNEY must devote a great deal of her time outside normal office hours without benefit of paid overtime in the conduct of TOWN business, and, to that end, ATTORNEY shall be entitled to administrative leave in an equivalent amount to that granted Town Management (At-Will/Unrepresented) Employees, which the parties agree is five (5) days per year. ATTORNEY shall be entitled to accrue, use or redeem administrative leave in whatever manner is permitted pursuant to Town policy, as same may be amended from time to time by action of the Town Council.

C. Personal Leave. ATTORNEY shall be entitled to personal leave in the amount of five (5) days per year. ATTORNEY shall be entitled to accrue, use or redeem personal leave in whatever manner is permitted pursuant to Town policy, as same may be amended from time to time by action of the Town Council.

D. Vacation Leave. ATTORNEY shall be entitled to vacation leave in the amount of 25 days per year. ATTORNEY shall be entitled to accrue, use or redeem personal leave in whatever manner is permitted pursuant to Town policy, as same may be amended from time to time by action of the Town Council.

E. Sick Leave. ATTORNEY shall be entitled to sick leave in the amount of 12 days per year. ATTORNEY shall be entitled to accrue, use or redeem personal leave in whatever manner is permitted pursuant to Town policy, as same may be amended from time to time by action of the Town Council.

F. Mileage Reimbursement, Cell Phone Stipend, Holidays, Bereavement/Compassion Leave, Flexible Health Spending Account, Employee Assistance Program, and Other Fringe Benefits. ATTORNEY shall be entitled to mileage reimbursement, cell phone stipend, holidays, bereavement/compassion leave, Flexible Health Spending Account, Employee Assistance Program, and other fringe benefits as they now exist or hereafter may be amended for Town Department Directors.

SECTION 5. TECHNOLOGY:

A. Technology. TOWN agrees to budget, within the budget amount approved by the TOWN, a technology budget to assist ATTORNEY in keeping technologically current and personal productivity high. The technology improvements will be used to pay the cost of acquisition of equipment and purchase of services related to information systems, data handling, communications and productivity and shall be budgeted for the good of the Town in accordance with approved budgeting limitations. Purchases for technology improvements shall remain the property of the TOWN.

SECTION 6. ADDITIONAL EXPENSES:

A. Dues and Subscriptions. TOWN agrees to pay the professional dues and subscriptions of ATTORNEY necessary for her continuation and full participation in such national, regional, state and local associations and organizations as are necessary and desirable for her continued professional participation, growth, and advancement and for the good of TOWN in accordance with approved budgetary limitations.

B. Professional Development. TOWN agrees that attendance at State Bar Association, Santa Clara County Bar Association, League of California Cities (Attorneys Department), the Bay Area City Attorneys Association, Santa Clara County City Attorneys Association, and other professional development activities is both beneficial and expected. TOWN hereby agrees to pay the travel, lodging, and subsistence expenses of ATTORNEY for professional and official travel, lodging, meetings, and occasions, and for short courses, institutes, and seminars necessary to continue the professional development of ATTORNEY, and to adequately pursue necessary official and other functions for TOWN, in accordance with approved budgetary limitations.

C. Executive Expenses. TOWN recognizes that certain expenses of a non-personal and job-affiliated nature are incurred by ATTORNEY and hereby agrees to reimburse such expenses upon presentation of a receipt and submission of the appropriate confining purchase requisition to the Mayor and Town Finance Department, in accordance with approved budgetary limitations and subject any policies and guidelines the Town Council may impose.

SECTION 7. TERM: TERMINATION:

A. **Term of Agreement.** This Agreement shall commence upon execution by the parties and become effective May 16, 2022 and extend indefinitely until terminated as provided hereinafter.

B. **At-Will Employment.** ATTORNEY's employment with the Town is "at-will" and ATTORNEY serves at the pleasure of the Town Council. As such, a majority of the Town Council may terminate ATTORNEY's employment at any time, with or without cause pursuant to the provisions in this agreement.

C. **Termination Without Cause.** In the event that TOWN terminates ATTORNEY's employment for reasons other than those set forth in subsection D below, including without limitation, for no reason stated, within the term of this Agreement, or any extensions, TOWN agrees to pay ATTORNEY a cash payment equal to six (6) months of the ATTORNEY's then current salary and any benefits that are lawfully required to be continued pursuant to COBRA and other statutes. Following such six (6) month period, ATTORNEY retains the right to participate in Town health and related benefit programs, should such programs be instituted during the term of this Agreement, at ATTORNEY's own and sole expense pursuant to the terms of COBRA. ATTORNEY shall be compensated for any unused vacation leave, holidays, and other benefits then accrued consistent with Town policies. The schedule of the payment pursuant to this section shall be at the sole discretion of the ATTORNEY.

D. **Termination With Cause.** The TOWN may terminate ATTORNEY's employment hereunder at any time for cause. No lump sum cash payment or other severance pay shall be due ATTORNEY upon any termination for cause. For purposes of this Agreement, "cause" shall mean any of the following: (i) a gross or habitual failure to perform the functions and duties of the Town ATTORNEY or any other obligations *as* required by the terms of this Agreement; (ii) Any other intentional or grossly negligent action or inaction by ATTORNEY that materially and substantially: (A) impedes or disrupts the operations of the TOWN or its organizational units; (B) is detrimental to employee or public safety; or (C) violates properly established rules or procedures of the Town causing a material and substantial adverse effect on the TOWN's interests as clearly defined and delineated by properly established Town Council action taken by the Town Council as a body, policy, regulations or ordinances of the TOWN; (iii) That ATTORNEY has been willfully and intentionally absent without leave, or has willfully and intentionally failed to report after leave of absence has expired; (iv) That ATTORNEY has willfully failed or refused to appear in obedience to lawful process or order of the Town Council or to answer questions under oath, before the TOWN Council or before a duly authorized committee of Congress of the United States or of the Legislature of the State of California, or a committee or subcommittee of said Congress or Legislature, or before any authorized court, office or tribunal, or before a Grand Jury, on any subject relating to (I) matters connected with the conduct of official business of the TOWN or of any division, department, board or commission thereof, or (2) any of the matters set forth in sections 1028 and 1028.1 of the Government Code of the State of California; or (v) That ATTORNEY has been convicted of a misdemeanor involving a crime of moral turpitude or a felony, or entry of a plea of nolo contendere with regard to a misdemeanor involving a crime of moral turpitude or a felony.

E. **Voluntary Resignation.** ATTORNEY may voluntarily resign her position with TOWN before expiration of the term of this Agreement by giving TOWN sixty (60) days prior written notice. No lump sum cash payment or other severance pay shall be due ATTORNEY upon any voluntary resignation.

F. Termination Based on Disability or Death. In the event ATTORNEY is permanently disabled, as determined by ATTORNEY's duly licensed physician, or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health reasons for a period of three (3) consecutive months beyond any accrued sick leave, Town may terminate this Agreement.

G. Limitation on Obligation. Notwithstanding anything to the contrary herein, TOWN shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under this agreement if ATTORNEY is terminated in the event ATTORNEY is convicted of a crime involving an abuse of her office or position. Any paid leave salary offered by TOWN to ATTORNEY pending an investigation shall be fully reimbursed by ATTORNEY if ATTORNEY is convicted of a crime involving an abuse of her office or position. For the purposes of this section, "abuse of office or position" means and is limited to the definition under Government Code section 53243.4 either of the following: (a) an abuse of public authority including but not limited to waste, fraud, and violation of the law under color of authority; or (b) a crime against public justice, including but not limited to, a crime described in Title 7 (commencing with Section 92) of Part I of the California Penal Code.

SECTION 8. GENERAL PROVISIONS:

A. Entire Agreement. This Agreement shall constitute the full, complete and exclusive agreement between the parties hereto and shall supersede all prior and contemporaneous agreements, understandings and representations regarding the subject matter hereof, whether oral or written.

B. Indemnification. TOWN agrees to defend, hold harmless and indemnify ATTORNEY against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of ATTORNEY's duties. TOWN, at its direction, is not required to indemnify ATTORNEY for any illegal or criminal acts for which a court of competent jurisdiction has determined, without possibility of appeal, was committed by ATTORNEY.

C. Bonding Requirements. TOWN shall bear full cost of the Fidelity Bond required of ATTORNEY under any law or ordinance.

D. Assignment. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by TOWN and ATTORNEY and their respective successors, assigns, heirs and executors, except that ATTORNEY may not assign this Agreement or delegate any of her obligations hereunder and may only assign her rights hereunder with the prior written consent of TOWN.

E. Severability. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement or portion thereof shall be deemed severable, shall not be affected and shall remain in full force and effect.

F. Notices. Any notice required under this Agreement shall be in writing, shall be sent by personal delivery, courier or first class mail, return receipt requested, and shall be deemed effective upon receipt.

G. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without regard to its conflicts of laws principles.

H. Attorney's Fees. In the event of any dispute between the parties hereto relating to or arising out of this Agreement, the prevailing party shall be entitled to receive its reasonable attorneys' fees and costs, in addition to any other relief it may receive.

IN WITNESS WHEREOF, the Town of Los Gatos has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested to by its Town Clerk, and the ATTORNEY has signed and executed this Agreement the day and year first above written.

ATTORNEY:

DocuSigned by:
Gabrielle Whelan 4/14/2022
86F60A7912C8444...
Gabrielle Whelan

TOWN OF LOS GATOS:

DocuSigned by:
Robert Rennie 4/20/2022
B046DDF418AB47F...
Robert Rennie, Mayor

Approved As To Form:

DocuSigned by:
Robert W. Schultz 4/18/2022
2FE0938555B744C...
Robert Schultz, Interim Town Attorney

Attest:

DocuSigned by:
Shelley Neis 4/21/2022
B9666F65B1F34F6...
Shelley Neis, MMC, CPMC, Town Clerk