

## **AGREEMENT FOR CONSULTANT SERVICES**

THIS AGREEMENT is dated for identification this 1<sup>st</sup> day of July 2021 and is made by and between the TOWN OF LOS GATOS, a California municipal corporation (“Town”) and W. Jeffrey Heid, Landscape Architect and Certified Landscape Irrigation Auditor (“Consultant”), whose address is 6179 Oneida Drive, San Jose, CA 95123. This Agreement is made with reference to the following facts.

### **I. RECITALS**

- 1.1 Town has a need for a consulting landscape and irrigation auditor professional for evaluation of landscape and irrigation plans to ensure compliance with the State’s/Town’s Water Efficient Landscape Ordinance (WELO) for properties within the Town of Los Gatos.
- 1.2 Town desires to engage a landscape and irrigation auditor professional to: review, analyze, and comment on landscape plans; prepare technical analyses and reports; conduct peer review of outside irrigation reports; and attend public meetings as needed.
- 1.3 Consultant represents and affirms that he is qualified and willing to perform the desired work pursuant to this Agreement.

### **II. AGREEMENTS**

- 2.1 Scope of Services. Consultant shall provide the services listed below:

#### Administrative Duties

- A. When needed by Town, review landscape and irrigation plans for proposed development projects to ensure compliance with the State’s/Town’s WELO.
- B. When needed by Town, work on special studies or projects including, but not limited to, preparation of a checklist for content of landscape plans and irrigation reports for application packets.
- C. When needed by Town, evaluate landscape and irrigation plans for development proposals including, but not limited to review of landscape water budget components, soil assessment and management, landscape maintenance, recommendations and conditions of approval for landscape water reduction, and project monitoring.
- D. When needed by Town, assist in the modification of Town's WELO.
- E. When needed by Town, attend meetings with Town staff, public officials, community leaders, developers, contractors, and the general public.
- F. When needed by Town, advise, support, and assist Town departments, committees, commissions, and Town Council. In addition, act as a liaison between Town and Federal, State, and Regional agencies.

ATTACHMENT 1

- G. When needed by Town, attend Town Council, Planning Commission, and special study session meetings when water efficient landscape/irrigation issues are being considered.
- H. When needed by Town, provide copies of draft and final reports and studies prepared for Town. Consultant shall provide electronic file copies of these documents as needed.

Other miscellaneous services

Town may occasionally have the need for other services not specifically listed in this Agreement that Consultant has the necessary experience and capabilities to provide. Town may authorize Consultant to perform such selected services on an as-needed basis.

- 2.2 Time of Performance. Consultant shall perform the services described in this Agreement as follows: the services of Consultant are through June 30, 2026, that will commence upon the execution of the Agreement. Should Town not renew the Agreement, the award and authorization of the Agreement shall automatically expire. Town shall give Consultant at least 30 days' notice, prior to the cancellation or expiration of the 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 Town and all reports and supportive data prepared by Consultant under this Agreement are Town's property and shall be delivered to Town upon the completion of Consultant's services or at 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 Town to the public, and Consultant shall not make any of the these documents or information available to any individual or organization not employed by Consultant or Town without the written consent of Town before such release. Town acknowledges that the reports to be prepared by 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 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.

- 2.6 Compensation. Compensation for Consultant's professional services shall not exceed the established hourly rates, as set forth in the Fee Schedule (Exhibit A), which is attached hereto and incorporated herein by reference. Fees will be reviewed annually. Payment shall be based upon Town approval of each task.
- 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 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 Town at the Consultant's offices during business hours upon written request of Town.
- 2.9 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 Town.
- 2.10 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 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.
- 2.11 Conflict of Interest. Consultant understands that its professional responsibilities are solely to Town. 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 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 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 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 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 and 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 Town all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by Town before work commences.

#### General Liability:

- i. 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 Consultant.
- 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 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 Town, its officers, officials, employees, or volunteers.
  - iv. 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 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. It is understood that Consultant currently has no employees. If employees are hired in the future, Consultant shall obtain and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town. 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 Town, its officers, 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 willful or negligent act or omissions of Consultant, or any of Consultant's officers, employees, 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. Town and 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 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 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 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:

To Town:

Joel Paulson  
Community Development Director  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

To Consultant:

W. Jeffrey Heid  
Landscape Architect and  
Certified Landscape Irrigation Auditor  
6179 Oneida Drive  
San Jose, CA 95123

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 to 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 Exhibit A, constitutes the complete and exclusive statement of the Agreement between 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, Town and Consultant have executed this Agreement.

Town of Los Gatos

Consultant:

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Laurel Prevetti  
Town Manager

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W. Jeffrey Heid  
Landscape Architect and Certified Landscape  
Irrigation Auditor

Department Approval:

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Joel Paulson  
Community Development Director

Approved as to Form:

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Robert Schultz  
Town Attorney

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W. JEFFREY HEID/LANDSCAPE ARCHITECT  
6179 Oneida Drive, San Jose, Ca. 95123  
408 691-5207 wjheidasla@comcast.net

April 28, 2021

Town of Los Gatos  
Community Development Department  
Planning Division  
110 E. Main Street  
Los Gatos, Ca. 95030

Attn: Sally Zarnowitz/Planning Staff  
Re: RFQ For Plan Review and Auditing Services in Compliance with the MWELo

To the Planning Division of the Town of Los Gatos,

Thank you for the opportunity to provide this letter of interest for this position with the Town of Los Gatos. This is a position I have held for the past 10 years and am interested in continuing to provide these services.

#### Introduction

Conservation of our natural resources is something I have been interested in my entire career, with water conservation being as critical now as it has been the past 40 years. As we are entering another drought cycle where water rationing or other mandates may become the norm, it is more important than ever that we as landscape professionals as well as business and homeowners, be good stewards when it comes to conserving water.

Through good landscape design and enforcement of the MWELo, the public is not only better educated and informed, but landscapes are more successful.

#### Experience

Over the past 10 years I have provided over 125 plan checks in reference to the local WELo for the Town of Los Gatos. I have recently begun to provide auditing services for certain projects upon request. In addition to the Town of Los Gatos, I also perform similar services for the City of Saratoga. My services have also been retained by various owners, builders and contractors to provide auditing services throughout the Bay Area.

Project examples in the Town of Los Gatos include:

Sisters Court Neighborhood  
Prospect Avenue Neighborhood  
Creekside Estates  
Hillbrook School  
Various single family homes

In my private practice I must also address local WELO compliance for many Bay Area cities. It is here where I have found different, and sometimes more challenging interpretations of the ordinance, requiring that I have additional flexibility in my thinking and approach. I believe this has helped me become better in my own design work, as well reviewing and interpreting the work of other designers.

I have made it a priority to stay current with updates to the ordinance, including changes which are forthcoming from the Department of Water Resources, along with attending various educational seminars. Most recently this included: Model Water Efficient Landscape Ordinance and the New Normal, presented by Stop Waste, and, Firescape Qualification Training through Rescape California. Both are very current topics and critical to the recent environmental changes we are seeing in California.

### Qualifications

I have been licensed as a Landscape Architect in the State of California since 1982. I was originally certified as a Landscape Irrigation Auditor back in 1987, and more recently renewed in 2008 through the Irrigation Association.

W. Jeffrey Heid Landscape Architect  
408 691-5207  
Certified Landscape Irrigation Auditor  
Bay Friendly Certified  
EPA WaterSense Partner  
QWEL

Sean Mullin/Town of Los Gatos  
Erin Walters/Town of Los Gatos  
Chris Riordan/City of Saratoga 408 868-1235  
Nicole Johnson /City of Saratoga 408 868-1209  
John Cherbone/City of Saratoga 408 868-1241

I have not been, nor am I currently involved in any litigation.

### Organization

I will be the only person providing plan check and auditing services. I have strived to provide services within a two week time frame from the notice to move forward and receipt of the landscape plans. Upon request, I can usually expedite the process sooner if needed. For auditing services, I require that the approved plans be sent to me prior to scheduling the audit and that the contractor who installed the work be present at the field audit. Scheduling of the field audit can sometimes be influenced by the availability of the contractor and access to the site.

## Project Approach

My understanding of the role as WELO Plan Checker is to make sure that the intent of the landscape and irrigation designs meet and are in compliance with the requirements of the Water Efficient Landscape Ordinance. Unless it affects compliance, it is not my role to comment on the applicant's design.

As needed, I have visited sites in the past to get a better understanding of sun/shade issues, slope, existing trees, etc., all which can have an influence on the design and plan check. This can also be key in understanding the designer's approach when it comes to wildland fire protection and proposed defensible spaces.

I have previously and am open to speaking with an applicant or designer about the WELO requirements prior to their submission of plans. Alternatively, I am happy to answer any questions the applicant may have in reference to an initial plan check report.

My approach with all plan checks includes:

- 1) Initial review of all drawings in the plan set to confirm that the submittal documents are complete.
- 2) A review of the proposed landscaped area to confirm or determine whether it qualifies for a Prescriptive compliance, or must meet the Performance method of compliance.
- 3) Check of the proposed plant palette to confirm that the WUCOLS, or water need, rating of all plants has been provided.
- 4) Mark up of the planting plan to identify the location of low, water and medium water need plants, and to look for any conflicts with mixed water need groupings.
- 5) Review of the proposed hydrozones to see that they match with the proposed plant palette and water need mix.
- 6) Review of the water budget calculations for the performance method to see that the calculations are correct.
- 7) Review of the irrigation design to confirm that the proposed equipment and application methods conform to the WELO requirements and the size of the project.
- 8) Verification that any special landscape areas, gardens, pools, water features, artificial turf, gray water use, etc. are appropriately defined and identified.
- 9) Checking that a soil management report and/or notes referencing soil preparation are included.
- 10) Preparation of a plan check report identifying either compliance with the WELO, or corrections which must be made to the plans.
- 11) Review of modified plans as needed, based on initial plan check.

I don't anticipate any constraints unless the applicant doesn't fully understand the requirements of the WELO, or the plan set submitted is incomplete. I do have a private practice as a landscape architect, thus the time requirements of that work can influence how quickly I can begin my plan check reviews, but as previously noted, I am typically able to schedule a review with no issues. Should I be planning a vacation, I will let planning staff know.

## Development Review

The number of hours to complete a plan check review depends on the size and complexity of the project. Time is also determined on whether corrections are needed and a second or third review of the plans are required based on the findings of the initial plan check.

For a relatively simple single-family residence which is approved based on the initial application, I have averaged 4-5 hours for the plan review and report. For more complex projects which require corrections and a second review, the hours have increased up to 10-12 hours. My original fee program was based on \$125.00/hour, but that was increased a few years ago to \$150.00. Since I began working for the Town of Los Gatos, a fixed fee program was put into place for each project. I don't believe I have ever needed the full amount of the fee to complete a review.

For field audits, I have a fixed fee program based on anticipated time in the field, preparation of my report and if a second visit is necessary to review any corrections. These have averaged \$750.00 for a single visit, up to \$1250.00 for two visits.

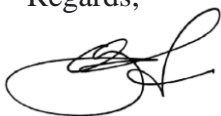
For special projects, I am happy to provide whatever is needed. I have previously been asked by planning staff to help in their understanding of the ordinance through a brief presentation and Q & A time. We recently had such an event via zoom. For this type of service, I do not charge for my time.

## Examples of Work

Attached are two examples of WELO plan checks along with one audit report.

Please contact me with any questions or if you need any further information.

Regards,



W. Jeffrey Heid  
Landscape Architect  
408 691-5207