

AMENDMENT TO AGREEMENT

This AMENDMENT TO AGREEMENT is dated for identification this 8<sup>th</sup> day of May 2024 and amends that certain (AGREEMENT DESCRIPTION) dated October 18, 2023 made by and between the Town of Los Gatos, ("Town,") and NBS Government Finance Group, DBA: NBS, S Corporation ("Consultant"), whose address is 870 Market Street, Suite 1223, San Francisco, CA 94102.

RECITALS

- A. Town and Consultant entered into a Consulting Agreement on October 18, 2023, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Exhibit A to this Amendment.
- B. Town desires to amend the Agreement to complete Phase 2 described in the Scope of Services.

AMENDMENT

- 1. Section 2.1 Scope of Services is amended to read as follows:

Consultant shall provide services as described in Phase 1 and Phase 2 of the Scope of Services, which is hereby incorporated by reference and attached as Exhibit A.

- 2. Section 2.6 Compensation is amended to read as follows:

Compensation for Consultant's professional services shall not exceed \$105,000, inclusive of all costs. Payment shall be based upon Town approval of each task.

- 3. All other items and conditions of the Agreement remain in full force and effect.

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

Town of Los Gatos:

Approved as to Consent:

\_\_\_\_\_  
Laurel Prevetti, Town Manager

\_\_\_\_\_  
Michael Rentner, Chief Executive Officer

Recommended by:

\_\_\_\_\_  
Katy Nomura  
Assistant Town Manager

Approved as to Form:

Attest:

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Gabrielle Whelan, Town Attorney

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Wendy Wood, CMC, Town Clerk

Exhibit A to First Amendment Dated May 8, 2024

**AGREEMENT FOR REVENUE BALLOT MEASURE CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into on October 18, 2023 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and NBS Government Finance Group, DBA: NBS, S Corporation ("Consultant"), whose address is 870 Market Street, Suite 1223, San Francisco, CA 94102. This Agreement is made with reference to the following facts.

**I. RECITALS**

- 1.1 The Town desire to engage Consultant to provide **revenue ballot measure consultant services**.
- 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 **Phase 1 of the Scope of Services**, which is hereby incorporated by reference and attached as **Exhibit A**.  
  
Town staff and Consultant shall return to the Los Gatos Town Council for direction before conducting the voter poll portion of the work.
- 2.2 Term and Time of Performance. This contract will remain in effect from **October 18, 2023 to November 5, 2024**.
- 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.

- 2.6 Compensation. Compensation for Consultant's professional services **shall not exceed \$44,600**, inclusive of all costs. 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 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: two million dollars (\$2,000,000) 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.

General Liability:

- i. The Town, its elected and appointed officials, employees, and agents, 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 automobile or professional liability insurance required for professional errors and omissions.
  - ii. The Consultant'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 elected and appointed officials, employees, and agents, 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 elected and appointed officials, employees, and agents.
  - 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 elected and appointed officials, employees, and agents, 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 the work described in this contract.

#### 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 and Venue. 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: Town Clerk  
110 E. Main Street  
Los Gatos, CA 95030

NBS Government Finance Group, DBA: NBS, S  
Corporation  
870 Market Street, Suite 1223  
San Francisco, CA 94102

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:

DocuSigned by:  
*Laurel Prevetti*  
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\_\_\_\_\_  
Laurel Prevetti, Town Manager

DocuSigned by:  
*Michael Rentner*  
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\_\_\_\_\_

Recommended by:

DocuSigned by:  
*Katy Nomura*  
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\_\_\_\_\_  
Katy Nomura, Assistant Town Manager

Michael Rentner, Chief Executive Officer  
\_\_\_\_\_  
Printed Name and Title

Approved as to Form:

DocuSigned by:  
*Gabrielle Whelan*  
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\_\_\_\_\_  
Gabrielle Whelan, Town Attorney

Attest:

DocuSigned by:  
*Wendy Wood*  
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\_\_\_\_\_  
Wendy Wood, CMC, Town Clerk



## Exhibit A: Scope of Services

# 4. Project Approach

### Summary of Approach



NBS will communicate with the Town staff throughout the duration of the project to clarify the Town's goals, identify any special circumstances, and develop a realistic project schedule. The following Work Plans detail the steps needed to put the Town in the best position to propose a viable local funding ballot measure for the November 2024 election.

Although not mentioned in the Town's Request for Qualifications, an additional service we can provide is Revenue Measure Modeling to calculate financial benefit to the Town of a Special Financing District. This is listed as an optional item in our proposed budget.

#### Phase 1 | October - December 2023 | Issue Research, Polling, Community Survey

NBS will work with your team to understand the specific needs for, and demand on, the Town's programs and services, and will provide an analysis of various tax models for the Town to understand potential options.

**Develop Stakeholder Outreach and Public Engagement Messaging:** NBS will work with staff, elected officials and stakeholders to develop agreed-upon messaging that will ensure the sharing of consistent ideas and concepts with the community during Phase One services such as polling. Standard messaging will provide clarity to community members and prevent confusion.

NBS will partner with the Town Manager, Town team, and our subconsultant GBA to provide the research needed for the Town to understand its most viable revenue measure options.

**Voter Poll:** Working with NBS and the Town team, GBA will draft a survey questionnaire for Town approval, and conduct a poll among likely voters within Los Gatos that will achieve the following objectives:

- Explore the current image of the Town of Los Gatos, voters' attitudes towards the Town, and their assessments of the strengths and weaknesses of local government;
- Determine voter perceptions of the needs of the Town and the priorities that voters set for those needs;
- Determine voter attitudes towards various revenue measures for the Town, and the optimum amount to place before the voters;

- Evaluate voters' top priorities for money raised in order to design a measure that best addresses the desires of the community;
- Determine the most effective and important reasons for your voters to support a ballot measure;
- Develop a demographic profile of Town voters, including how various demographic groups differ in their opinions and attitudes towards a possible ballot measure.

**Polling Methodology:** Our subconsultant, GBA, will select the survey sample from highly sophisticated and up-to-date voter registration files. This information, when combined with the answers to our survey questions, is essential as we identify voters who are most likely to vote in general, primary, municipal, special, or mail-only elections. It is critical to remember that any survey must interview only likely voters. Being a registered voter is not enough. Those likely to vote will have demonstrated their interest in voting through their history in previous elections.

The sample will be drawn from lists of registered voters which have been matched with telephone directories and other lists to maximize the quantity of available telephone numbers. Since this is a small city, we would expect that a smaller sample of voters will be adequate, even if it is no more than 100-200 completed interviews.

GBA believes that it is of the utmost importance to go beyond simple questions and simple answers. For example, you will never see us ask if a problem is serious or not serious. We require differentiation between those with strong opinions and those with weaker opinions, those who say the problem is "extremely serious," or "very serious" rather than those who say it is only "somewhat serious" or "not too serious." Therefore, virtually all questions in our polls will delve into the intensity of feeling that voters bring to an issue. Only in this way can we separate those voters with a general opinion on an issue from those who are moved to take action because of that same issue (even if the "action" is just voting "yes" or "no").

Telephone interviews are conducted by a regularly employed staff of full-time professional interviewers who specialize in conducting interviews for public opinion surveys. GBA supervises the interviewing process and verifies that interviews are conducted according to specifications. Supervisory procedures include continuous on-site and telephone monitoring of interviews. GBA follows established industry standards for call backs of busy or "not-at-home" numbers designed specifically to maintain the randomness of interviewee selection and the validity of the survey. A regularly employed staff of full-time professional interviewers conducts interviews in English, Spanish, Vietnamese, Cantonese, Mandarin, and other languages.

To summarize, we will provide to the Town of Los Gatos:

- Random telephone and on-line survey of likely voters
- Consultation solely with principal of Gene Bregman & Associates
- Assistance in developing topic areas to be investigated
- Development of survey questionnaire
- Scientific sample selection to assure reaching an accurate representation of the voting population
- Pre-testing of questionnaire
- Conduct of field work from our central phone bank, as well as surveys completed from text and email contacts
- Editing, coding, and electronic data processing
- A full computer printout of all cross-tabulated data





### **Engagement Activities**

Aiming to reach residents with diverse backgrounds allowing for unique perspectives, CivicMic would:

Create a customized webpage for your project on civicmic.com. This site would feature a variety of engagement tools and informational materials.

Develop an email campaign strategy to reach out to community members and stakeholders who may not have access to social media or may not regularly visit the Town website.

Include specialized mapping and graphics on CivicMic.com, such as sample maps showing community participation in the survey.

Design content related to the Town's challenges in maintaining high services levels for resident programs and services.

Coach various Stakeholders on ways to share educational materials with community members through workshops and printed materials.

Create an email list of community members who have expressed interest in receiving updates.

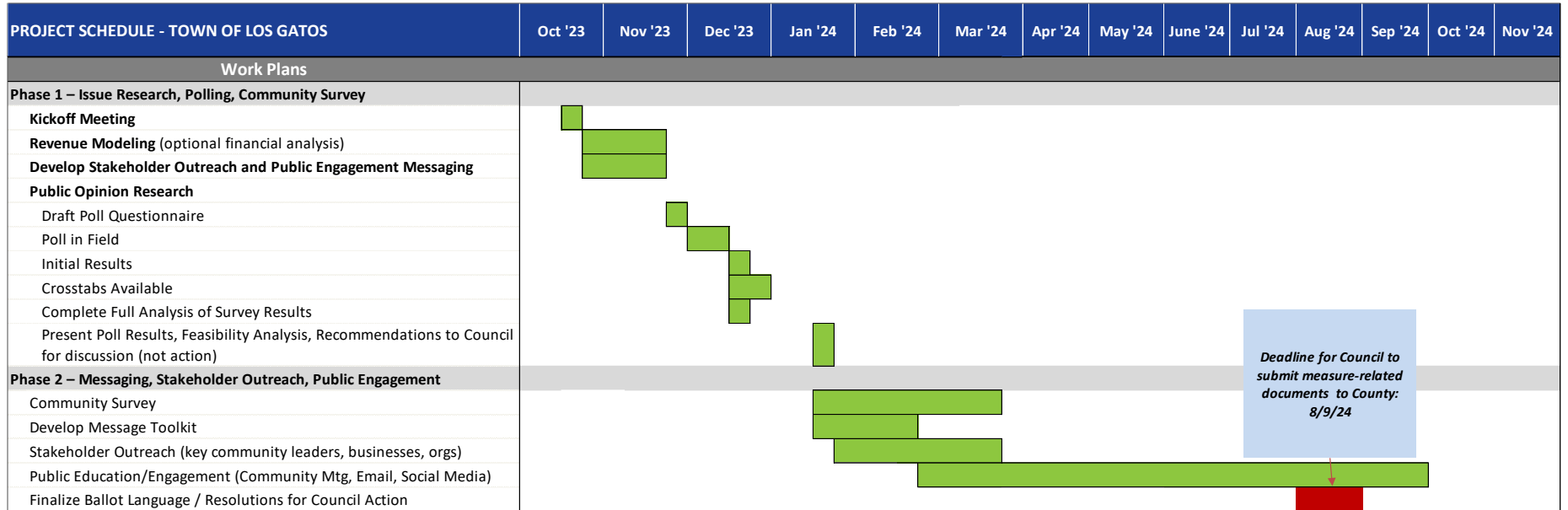
### **Finalize Ballot Measure Language and Ballot Argument**

To place a ballot measure on the November 5, 2024 ballot, all election-related Council action and resolutions must be completed and noticed to the County by August 9, 2024, providing an important window of time for informing and engaging community members around the need for additional revenue before officially proposing and finalizing the ballot measure language.

NBS will work with the Town Manager and Town Attorney to draft ballot measure language and accompanying resolutions for Town Council approval.

## DRAFT TIMELINE

The following is an overview of our proposed project schedule. We will discuss a detailed schedule at the kick-off meeting, along with the expected timing for individual tasks. *Note: This page is intentionally formatted differently to improve legibility of the table contents.*



# 5. Costs

Our professional fees are based on our understanding the Town's needs and the effort we believe is necessary to complete the scope of services described.

FEE SCHEDULE TOWN OF LOS GATOS							Grand Totals		
	Director (Wood)	Project Manager (Lewis)	GBA Flat Fee	NBS Consultant (Argerich- Valentine)	NBS Senior Consultant (Dayhoff)	NBS Specialist and Analyst (Savage)	Consultant Labor (Hrs.)	Consultant Costs (\$) with Optional Services	Consultant Costs (\$) without Optional Services
<i>Hourly Rate</i>	<i>\$250</i>	<i>\$200</i>	<i>\$30,000</i>	<i>\$175</i>	<i>\$200</i>	<i>\$150</i>			
<b>Work Plans</b>									
Phase 1 – Issue Research, Polling, Develop Communications Plan									
Kickoff Meeting	1.0	1.0	-	1.0	1.0	-	4.0	\$ 825	\$ 825
<i>Revenue Modeling (Optional)</i>	2.0	2.0	-	2.0	30.0	-	36.0	\$ 7,250	\$ -
Develop Stakeholder Outreach & Public Education Messaging	7.0	7.0	-	5.0	-	8.0	27.0	\$ 5,225	\$ 5,225
Public Opinion Research* (design voter poll, analyze data)	2.0	4.0	1.0	-	-	-	7.0	\$ 31,300	\$ 31,300
<b>Total Phase 1</b>								<b>\$ 44,600</b>	<b>\$ 37,350</b>
Phase 2 – Messaging, Stakeholder Outreach & Public Engagement									
<i>Community Survey Implementation (Optional)</i>	4.0	10.0	-	10.0	-	20.0	44.0	\$ 7,750	\$ -
Complete Stakeholder Outreach & Public Education Plan	8.0	8.0	-	5.0	-	-	21.0	\$ 4,475	\$ 4,475
Create Informational Toolkit (e.g., webpage content, Fact Sheet, FAQ)	4.0	12.0	-	12.0	-	4.0	32.0	\$ 6,100	\$ 6,100
Stakeholder Outreach & Public Education (meetings, flyers, social media)	8.0	40.0	-	20.0	-	20.0	88.0	\$ 16,500	\$ 16,500
Draft Ballot Language	5.0	5.0	-	-	-	-	10.0	\$ 2,250	\$ 2,250
Finalize Ballot Language / Resolution for Council	5.0	5.0	-	-	-	-	10.0	\$ 2,250	\$ 2,250
<b>Total Phase 2</b>								<b>\$ 39,325</b>	<b>\$ 31,575</b>
<b>GRAND TOTAL FEES</b>	<b>46.0</b>	<b>94.0</b>	<b>1.0</b>	<b>55.0</b>	<b>31.0</b>	<b>52.0</b>	<b>279.0</b>	<b>\$ 83,925</b>	<b>\$ 68,925</b>
<b>ESTIMATED EXPENSES</b>									
Mailing and printing costs	Cost associated with the design/print/postage per mailer							\$ 12,000	\$ 12,000
Travel and meeting expenses								\$ 3,500	\$ 3,500
<b>TOTAL INCLUDING ESTIMATED EXPENSES</b>								<b>\$ 99,425</b>	<b>\$ 84,425</b>
<b>OPTIONAL SERVICES PRICING</b>									
Labor & Travel Costs Per Optional In-Person Meeting								\$ 2,000	\$ 2,000

1. Travel-related cost and direct reimbursable expenses; all other expenses are included in labor rates. This cost will be \$0 if all meetings and presentations are held remotely.

## ADDITIONAL POLLING INFORMATION

\*Survey cost dependent on # of completed interviews desired.

100 completed interviews = \$15,000

200 completed interviews = \$24,000

300 completed interviews = \$30,000

Three major factors determine the cost for a survey: the number of interviews to be completed; the average length of each interview; and how easy or hard it is to reach and complete interviews with qualified voters. Of course, the more interviews that are completed, the more reliable is the data, as shown by the changes in sampling tolerance, or margin of error (MOE), at different completion rates. The following table shows how the MOE changes with the number of completes:

200 completed interviews = Margin of Error +/- 6.9%

300 completed interviews = Margin of Error +/- 5.7%

In addition, when the overall sample size increases, the sample sizes for various voter sub-groups will also increase, and their margins of error will decrease.

## HOURLY RATES

Title	Hourly Rate
Director / Senior Review	\$250
Associate Director / Engineer	\$225
Senior Consultant	\$200
Consultant	\$175
Project Analyst / Specialist	\$150
Project Resource Analyst	\$130
Clerical / Support	\$110

## TERMS

Public Engagement services are invoiced on a monthly basis. Expenses will be itemized and included in the next regular invoice. If the project is prematurely terminated by either party, NBS shall receive payment for work completed. Payment shall be made within 30 days of submittal of an invoice. If payment is not received within 90 days, simple interest will begin to accrue at the rate of 1.5% per month. Either party can cancel consulting contract with 30 days' written notice.

## **EXPENSES**

Customary out-of-pocket expenses are billed at actual cost to NBS. These expenses may include, but not be limited to, boundary map and assessment diagram preparation (time, materials, plotting and all related costs), mailing fulfillment, postage, supplies, reproduction, telephone, travel, meals and various third-party charges for data, maps, and recording fees.