



# AGREEMENT FOR SERVICES

## Accela Agreement

### PREAMBLE

THIS AGREEMENT is by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and Accela, Inc ("Supplier"), a Corporation and whose address is 9110 Alcosta Blvd, Suite H #3030, San Ramon, CA, 94583. This Agreement includes all exhibits and attachments hereto, including the Statement of Work attached as Exhibit A and the Accela Subscription Services Agreement attached as Exhibit B. This Agreement is made with reference to the following facts.

### I. RECITALS

- A. For the services described in this Agreement, the Contractor is the only Contractor who provides this service.
- B. Contractor represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- C. Town desires to engage Contractor to provide Subscription Services and Professional Services as set forth in the Statement of Work attached as Exhibit A and the Subscription Services Agreement attached as Exhibit B.
- D. Contractor warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Contractor acknowledges Town has relied upon these warranties to retain the Contractor.

### II. AGREEMENT

- A. Scope of Services. Supplier shall provide Professional Services as described in the Statement of Work ("SOW"), attached as Exhibit A, and Subscription Services as governed by the Accela Subscription Services Agreement ("SSA"), attached as Exhibit B, each of which is incorporated herein by reference .
- B. Term. The term of this Agreement shall be from July 1, 2026 to Monday, June 30, 2031, subject to earlier termination as provided in this Agreement and the SSA.
- C. Compliance with Laws. The Contractor shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state, and local laws. Contractor represents and warrants to Town that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for the Contractor to practice its profession. Contractor shall maintain a Town of Los Gatos business license as required in Chapter 14 of the Code of the Town of Los Gatos.
- D. Sole Responsibility. Contractor shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- E. Information/Report Handling. All documents furnished to the Contractor by the Town (excluding Supplier's proprietary materials, software, and Subscription Services) are the Town's property and shall be delivered to the Town upon the completion of services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by the Contractor in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Contractor shall not make any of these documents or information available to any individual or organization not employed by the Contractor or the Town without the written consent of the Town before such release. The Town acknowledges that the

reports to be prepared by the Contractor 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 Contractor in connection with other projects shall be solely at Town's risk, unless Contractor expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Contractor which is and has been confirmed in writing by Contractor to be a trade secret of the Contractor.

- F. Compensation. Compensation for services at the rates set forth in Exhibit A and in the amount **not to exceed \$839,305.00**, inclusive of all costs subject to appropriation of funds, notwithstanding any other provision in this agreement. Payment shall be based upon Town approval of each task.
- G. 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

Email (preferred): AP@losgatosca.gov

- H. Availability of Records. Contractor shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Contractor shall make these records available to authorized personnel of the Town at the Contractor offices during business hours upon written request of the Town.
- I. Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Contractor. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- J. Independent Contractor. It is understood that the Contractor, 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 Contractor 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. Contractor agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Contractor 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 Contractor or is based on allegations of Contractor's negligent performance or wrongdoing.
- K. Conflict of Interest. Contractor understands that its professional responsibilities are solely to the Town. The Contractor has and shall not obtain any holding or interest within the Town of Los Gatos. Contractor 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, the Contractor 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. Contractor 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 Contractor discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Contractor shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.

- L. Non-Discrimination. Contractor warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither the Contractor 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

A. Minimum Scope of Insurance:

1. Contractor 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).
2. Contractor 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.
3. Contractor shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Contractor agrees that all certificates and endorsements are to be received and approved by the Town before work commences.

B. General Liability:

1. 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 Contractor; products and completed operations of the Contractor; and premises owned or used by the Contractor.
2. The Contractor'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 agents shall be excess of the Contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the (Town, its officers, officials, employees or agents).
4. The Contractor'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.

- C. All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or 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.
- D. Workers' Compensation. In addition to these policies, Contractor 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, Contractor shall ensure that all subcontractors employed by Contractor provide the required Workers' Compensation insurance for their respective employees. As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than one million dollars (\$1,000,000) per accident for bodily injury or disease.
- E. Indemnification. The Contractor shall indemnify 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 work which may be occasioned by any negligent act or willful misconduct of the Supplier, or any of the Supplier's officers, employees, agents, or any subcontractor. Contractor shall defend the Town against any such claims. The Town shall indemnify, defend, and hold harmless the Supplier from all damages, liabilities, penalties, costs, or expenses in law or equity arising from the Town's negligent act, error, or omission, or willful misconduct. Supplier's total aggregate liability under this Section E shall not exceed the total fees paid by the Town under this Agreement during the twelve (12) months preceding the event giving rise to the claim.
- F. LIMITATION OF LIABILITY. EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION E, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES. EACH PARTY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNTS PAID OR PAYABLE BY THE TOWN TO SUPPLIER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

#### IV. GENERAL TERMS

- A. 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.
- B. 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.
- C. Mediation. Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties. In the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a blind draw. The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated

settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

- D. Termination of Agreement. Either party may terminate this Agreement upon thirty (30) days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such thirty (30) day period. The Town may also terminate this Agreement for the non-appropriation of funds at any annual anniversary date, in which event Supplier shall be paid all fees accrued through the date of termination.
- E. Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Contractor.
- F. 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

Accela, Inc  
9110 Alcosta Blvd, Suite H #3030,  
San Ramon, CA, 94583

or personally delivered to the Contractor to such address or such other address as the Contractor designates in writing to Town.

- G. 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 term and conditions of this Agreement shall prevail over attachments or other writings; provided, however, that with respect to the Subscription Services and all matters addressed in the SSA, including without limitation liability, indemnification, warranties, confidentiality, data ownership, and intellectual property rights, the terms of the Accela Subscription Services Agreement (Exhibit B) shall control.
- H. Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and the Contractor. 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.
- I. Subscription Services Agreement. The terms and conditions governing Supplier's provision of Subscription Services (SaaS) are set forth in the Accela Subscription Services Agreement attached hereto as Exhibit B and incorporated by reference (the "SSA").

Attachments:

A - Exhibit A - Order Form - Accela 5-Year SaaS Renewal (incl. OpenCities Yr 1 & OpenCounter Yr 2-5)

B - Exhibit B - Accela Subscription Services Agreement

IN WITNESS WHEREOF, the Town and the Contractor have executed this Agreement.

TOWN OF LOS GATOS:

CONSULTANT: Accela, Inc.

\_\_\_\_\_  
**SIGNATURE**

Chris Constantin

\_\_\_\_\_  
**FULL NAME**

Town Manager

\_\_\_\_\_  
**TITLE**

\_\_\_\_\_  
**DATE SIGNED**

\_\_\_\_\_  
**SIGNATURE**

Michael E. Gigliello

\_\_\_\_\_  
**SIGNATORY'S NAME**

Controller

\_\_\_\_\_  
**SIGNATORY'S TITLE**

\_\_\_\_\_  
**DATE SIGNED**

Approved as to form:

\_\_\_\_\_  
**SIGNATURE**

Gabrielle Whelan

\_\_\_\_\_  
**FULL NAME**

Town Attorney

\_\_\_\_\_  
**TITLE**

\_\_\_\_\_  
**DATE SIGNED**

Attest:

\_\_\_\_\_  
**SIGNATURE**

Wendy Wood

\_\_\_\_\_  
**FULL NAME**

CMC, Town Clerk

\_\_\_\_\_  
**TITLE**

\_\_\_\_\_  
**DATE SIGNED**

The execution date is the date on which the last party has signed.