

**TOWN MANAGER EMPLOYMENT AGREEMENT BETWEEN TOWN OF LOS GATOS AND CHRIS CONSTANTIN**

This Agreement made and entered into the \_\_\_ day of \_\_\_\_\_, 2024, by and between the Town of Los Gatos, a municipal corporation in the State of California ("TOWN"), and Chris Constantin ("MANAGER").

**RECITALS**

A. The Town Council of the Town of Los Gatos desires to appoint Chris Constantin to the position of Town Manager of the Town of Los Gatos on November 4, 2024.

B. It is the desire of the Town Council to establish the terms and conditions of employment of Chris Constantin as Town Manager of the Town of Los Gatos, including the duties, salary and benefits of employment.

C. Chris Constantin desires to accept employment as Town Manager 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 1. DUTIES AND RESPONSIBILITIES:**

**A. Appointment as Town Manager.** TOWN hereby agrees to employ MANAGER in the capacity of Town Manager for TOWN during the term of this Agreement. MANAGER will perform the functions and duties specified in Section 2.30.295 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.

**B. Work Schedule.** It is recognized that MANAGER is expected to engage in the hours of work that are necessary to fulfill the obligations of the position and is expected to devote a great deal of time both during and outside the normal office hours to the business of the TOWN. MANAGER acknowledges that proper performance of the duties of MANAGER will require the MANAGER to generally be accessible during normal and outside normal business hours and will also often require the performance of necessary services outside of normal business hours. MANAGER will be responsible to set their work schedule and will ensure accessibility when not physically present during normal business hours. Notwithstanding the foregoing, the TOWN will permit MANAGER such reasonable "time off" as is customary for exempt employees of the TOWN, so long as the time off does not interfere with normal business. MANAGER's compensation (whether salary or benefits or other allowances) is not based on hours worked, and MANAGER shall not be entitled to any compensation for overtime unless otherwise permitted by law in the case of reimbursement from a federal agency. While the MANAGER will remain reasonably available outside normal working hours and during "time off", non-normal working hours and time off shall not be considered TOWN working time unless such time is a TOWN

event, TOWN community event, or performing TOWN work where the MANAGER is attending or performing in their official capacity.

**C. Exclusive Employment.** During the term of this Agreement, MANAGER shall be in the exclusive employ of the TOWN; provided, however that the term "exclusive employ" shall not prohibit future part-time, compensated employment which the Employee may desire to accept with appropriate prior knowledge and approval of the Town Council. Additionally, "exclusive employ" shall not include activities specified under Section D and E of this Agreement. "Appropriate prior knowledge and approval of the Town Council" shall mean that MANAGER shall give four (4) weeks written notice to the Town Council prior to accepting part-time, compensated 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, compensated employment. Such part-time, compensated employment shall not in any way conflict in time or interest with MANAGER's responsibilities to TOWN. Town Council shall have uncontrolled discretion in granting part-time, compensated outside employment and its determination to grant or deny part-time outside employment shall be final.

**D. Other Business Activities.** MANAGER shall focus their professional time, ability, and attention to TOWN business during the term of this Agreement. MANAGER shall not engage in other business activity, without the express prior written consent of the Town Council, that is competitive or may be a conflict-of-interest with the TOWN, or that otherwise interferes with the business or operation of TOWN or the satisfactory performance of MANAGER's duties. Nothing in this Agreement shall abridge the MANAGER's ability to participate in activity outside normal TOWN business hours when such activity is not competitive, a conflict of interest, or impairing the MANAGER's ability to perform their TOWN duties, including but not limited to, volunteer reserve police officer duty and participating in religious activity.

**E. Other Activities.** Without materially impacting their primary focus on TOWN business, the MANAGER may continue their academic, teaching, and professional development activity which provides a reasonable benefit to the TOWN and the public administration profession. However, the MANAGER will evaluate interference to TOWN business as identified by the Town Council and consider ceasing and/or modifying such activity when the impact outweighs the benefit.

**F. Town Documents.** The MANAGER will have access to and develop TOWN documents in furtherance of TOWN business, including but not limited to data, studies, reports, computer data and other documents. All data, studies, reports and other documents prepared by TOWN while performing their duties during the term of this Agreement shall be furnished to and become the property of the TOWN, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to the MANAGER in connection with the performance of this Agreement shall be held confidential by MANAGER to the extent permitted by applicable law, except as may be required by any governmental agency or court of competent jurisdiction. Such materials shall not be used by MANAGER, without the prior written consent of the Town Council, for any purposes other than the performance of their duties. Additionally, no such materials may be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by (a) law, (b) any governmental agency, (c) subpoena, or (d) an order issued by a court of

competent jurisdiction. Nothing in this section shall abridge the MANAGER's use and ownership of any material, documents, ideas, or other intellectual property developed, authored, or created on their own time outside of TOWN working hours on non-TOWN owned equipment.

**G. Town Council Commitments.** Except for the purpose of inquiry, the Town Council and its members shall deal with all subordinate Town employees, officers, contracts, and consultants through the MANAGER or the MANAGERS's designee, and neither the Town Council nor any member thereof shall give direction to any subordinate of the MANAGER, either publicly or privately. No member of the Town Council will order the appointment or removal of any person to any office or employment under the supervision and control of the MANAGER. Neither the Town Council nor any of its members shall interfere with the execution of the powers and duties of the Town Manager, as specified in the Town Code, this Agreement, or any other lawfully adopted and authorized document.

## **SECTION 2. SALARY:**

**A. Initial Salary.** TOWN agrees to pay MANAGER for their services rendered in the amount of \$329,000 annually, payable in installments at the same time as other employees of TOWN are paid.

**B. Performance Evaluation.** The performance review and evaluation process set forth herein is intended to provide review and feedback to MANAGER so as to facilitate a more effective management of the TOWN.

- 1. Annual Evaluation.** Town Council shall review and evaluate the performance of MANAGER annually on or about the one (1) year anniversary of MANAGER's start date and every year thereafter. The Town Council and MANAGER shall mutually agree on the criteria, metrics, and/or expectations used to evaluate the MANAGER. It shall be the obligation of MANAGER and/or the Town Clerk to notify Town Council of the need to conduct the evaluation required by this Section.
- 2. Development and Mentoring.** Town Council will support the continuous development and mentoring of the MANAGER to stay current on local government matters, enhance knowledge, skills, and abilities to effectively manage TOWN operations, and will annually budget the resources necessary to further this objective. Such development and mentoring shall include funding for training and business expenses provided for in Section 6 of this Agreement.
- 3. Written Summary.** Town Council and MANAGER agree to jointly prepare a written summary of each performance evaluation of MANAGER, and to include the same in their personnel file within two (2) weeks following conclusion of the review and evaluation process. Town Council shall schedule at least one (1) closed personnel session with MANAGER to deliver and discuss the evaluation.

**C. Salary Increases.** Should the Town Council, upon completion of its annual review of MANAGER's performance pursuant to this Agreement, determine that MANAGER has met its

performance expectations; the Town Council may increase MANAGER's compensation. In addition, in the event that the Town Council grants a cost of living increase or performance-based increase to their at-will management employees, the Town Council will not unreasonably withhold those increases from MANAGER. However, MANAGER understands and agrees that they have no entitlement to an increase in compensation.

**D. Discretionary Manager Retention Payment.** Town Council agrees to consider whether to afford MANAGER a performance-based employee retention payment up to a maximum of Fifteen Thousand Dollars (\$15,000.00). The determination of whether, and in what amount (up to the maximum noted herein), to afford an employee retention payment shall be in the sole and unfettered discretion of the Town Council and shall not be the subject of any right of appeal or review.

### **SECTION 3. RETIREMENT BENEFITS:**

All provisions of the Town Code and regulations and rules of Town relating to vacation and sick leave, medical, dental, vision, retirement (2 @ 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 MANAGER. Nothing in this Agreement shall affect any vacation, personal leave, administrative leave, sick time, pension system contributions or accruals, or other benefits which MANAGER has accrued and is owed or attributable to MANAGER as of the date of this Agreement, any of which shall remain accrued, owing, and attributable to MANAGER until used or redeemed by MANAGER.

MANAGER shall be eligible to participate in the Town's Deferred Compensation program provided to all full-time employees, subject to the terms and conditions in the Town's Personnel Rules, as may be amended from time to time. As of the Effective Date of this Agreement, the Town will match MANAGER's deferred compensation contributions dollar for dollar up to the applicable limits specified in Internal Revenue Code Section 457.

### **SECTION 4. HOURS OF WORK AND LEAVE BENEFITS:**

**A. Regular Hours.** As specified in Section 1.B of this Agreement, MANAGER's duties may involve expenditures of time in excess of the typical full-time hours per week and may also include time outside normal office hours such as attendance at Town Council and other meetings. MANAGER shall not be entitled to additional compensation for any work performed in excess of the TOWN's regular workweek unless otherwise permitted by law in the case of reimbursement from a federal agency.

**B. Management Leave.** It is recognized that MANAGER must devote a great deal of their time outside normal office hours without benefit of paid overtime in the conduct of TOWN business, and, to that end, MANAGER shall be entitled to management leave in an equivalent amount to five (5) days per calendar year, granted in December of each year for the following year. MANAGER shall be entitled to accrue, use or redeem management 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.** MANAGER shall be entitled to personal leave in the amount of six (6) days per year. MANAGER shall be entitled to accrue, use, or redeem personal leave in whatever manner is permitted pursuant to Town policy as it may be amended from time to time by action of the Town Council.

**D. Vacation Leave.** MANAGER shall accrue vacation leave at the rate of 7.69 hours biweekly (200 hours per year) with a maximum accrual balance of 500 hours. Vacation leave shall be taken for any period exceeding four (4) hours in a day and any vacation exceeding a full day will require notification to the Mayor. Upon beginning employment, MANAGER is awarded a onetime vacation leave starting balance of 80 hours.

**E. Sick Leave.** MANAGER shall be entitled to sick leave which shall accrue, without limitation at the amount of eight (8) hours per month. Sick leave may be used for actual personal sickness of or injury to MANAGER or MANAGER's family member, and for medical, dental and vision care appointments. "Family member" includes a spouse, children, step-children, parent, step-parents and parents-in-law. Time off work as a result of a proven job-related illness shall not be charged against accumulated sick leave. Upon beginning employment, MANAGER is awarded a onetime sick leave starting balance of 40 hours.

Sick leave shall be deducted from accrued sick leave on an hour-for-hour basis when the total leave exceeds two hours. If MANAGER utilizes all of the MANAGER's accrued sick leave and is still unable to return to work due to illness or injury, MANAGER shall automatically be placed on leave without pay, unless MANAGER advises the Finance Department to charge the additional sick time against accrued leaves.

Upon termination of service, no compensation for accrued sick leave shall be made except that: 1) upon retirement, MANAGER may convert accrued sick leave to cash, in an amount not to exceed what is permitted pursuant to Town policy; and 2) upon retirement, accumulated sick leave may be converted to sick leave credit in accordance with CalPERS requirements and the Town's contract with CalPERS, except that in the event of any election to convert such sick leave to cash, the retirement sick leave credit shall be reduced commensurately.

**F. Mileage Reimbursement, Cell Phone Stipend, Holidays, Bereavement/Compassion Leave, Flexible Health Spending Account, Employee Assistance Program, and Other Fringe Benefits.** MANAGER shall be entitled to various benefits, including but not limited 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. In the case benefits are provided to Town Department Directors and are not provided for in this Agreement, the MANAGER shall be entitled to those benefits. In the case benefits provided in this Agreement conflict from what is provided to Town Department Heads, the Agreement shall prevail.

**G. Medical, Dental, and Vision Insurance.** The Town shall continue to provide to

MANAGER medical, dental, and vision insurance at the same level as its Department Directors.

**H. Life and long-term disability insurance.** The TOWN shall provide the MANAGER the same life insurance and long-term disability insurance benefits offered to Department Directors.

**I. Workers Compensation.** TOWN agrees to provide workers' compensation insurance as provided to all TOWN employees in accordance with all applicable provisions of State law.

**J. Holiday Leave.** MANAGER shall be entitled to observe all legal holidays recognized by the Town on the days that they are observed by the Town and such holidays shall be compensated.

**K. Birth or Adoption of a Child Leave.** In the event of the birth or adoption of a child, MANAGER shall be entitled to leave of absence with pay for a period of ten (10) consecutive days. Such leave shall be commenced within 14 days after the date of such birth or adoption.

**L. Bereavement Leave.** If any member of MANAGERS's immediate family dies, MANAGER shall be entitled to a period of five (5) work days of paid bereavement leave with pay. Such leave shall be taken within seven (7) days after the death of the family member or within seven (7) days of the date of the funeral or memorial service for the deceased. Immediate family shall include a spouse, child, step-child, parent, step-parent, sibling, parent-in-law, grandparent, spouse's grandparent or grandchild.

**M. Specified Position.** The TOWN recognizes that the MANAGER serves as a specified position, a volunteer firefighter, reserve peace officer, or emergency rescue position, and will comply with California Labor Code Section 230.3 and 230.4. These sections require employers to allow the specified employee to take time off to perform emergency duty or to take leave for an aggregate amount of up to 14 days per calendar year to engage in fire, law enforcement, or emergency rescue training. Accordingly, the TOWN will not abridge or discriminate against the MANAGER for taking time off to perform these activities.

## **SECTION 5. TECHNOLOGY:**

**A. Technology.** TOWN agrees to budget, within the budget amount approved by the TOWN, a technology budget to assist MANAGER 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 MANAGER necessary for their continuation and full participation in such national, regional, state and local associations and organizations as are necessary and desirable for their continued professional participation, certifications, growth, and advancement and for the good of TOWN in accordance with approved budgetary limitations. Dues and subscriptions shall include such that allow the MANAGER to retain certifications relevant or beneficial to the TOWN.

**B. Professional Development.** TOWN agrees that attendance at ICMA, League of California Cities, California City Management Foundation, and other professional development activities is both beneficial and expected. TOWN hereby agrees to pay the travel, lodging, and subsistence expenses of MANAGER for professional and official travel, lodging, meetings, and occasions, and for short courses, institutes and seminars necessary or beneficial to continue the professional development of MANAGER, retain certifications, 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 MANAGER and hereby agrees to reimburse such expenses upon presentation of a receipt and submittal of the appropriate confining purchase requisition to the Mayor and Town Finance Department, in accordance with approved budgetary limitations and subject to any policies and guidelines the Town Council may impose.

**SECTION 7. TERM; TERMINATION:**

**A. Commencement, Effective Date, and Term of Agreement.** The Effective Date of this Agreement is the date it is signed by the TOWN provided it has first been signed by MANAGER, or the date it is signed by MANAGER provided it has first been signed by the TOWN. This Agreement shall commence upon execution by the parties and become effective immediately and extend indefinitely until terminated as provided hereinafter. The MANAGER's first day shall be \_\_\_\_\_, 2024.

**B. At-Will Employment.** MANAGER's employment with the Town is "at-will" and MANAGER serves at the pleasure of the Town Council, pursuant to Section 2.30.260 of the Municipal Code. As such, a majority of the Town Council may terminate MANAGER's employment at any time, with or without cause, with or without advance notice, subject only to the hearing requirements set forth in Municipal Code sections 2.30.285, as amended by the Town Council on August 18, 2015, and to provisions of Section 7.H.

**C. Termination Without Cause.** In the event that TOWN terminates MANAGER'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 MANAGER a cash severance payment. The severance payment shall be equal to

fifteen (15) months of the MANAGER's current base salary calculated on the rate of pay at the time of termination. The fifteen (15) month severance payment is unique to this Agreement and reflects the fact that MANAGER's previous employer granted this benefit. In addition, the TOWN will provide any benefits that are lawfully required to be continued pursuant to COBRA and other statutes. Following separation, MANAGER retains the right to participate in Town health and related benefit programs, should such programs be instituted during the term of this Agreement, at MANAGER's own and sole expense pursuant to the terms of COBRA. MANAGER 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 MANAGER.

**D. Termination With Cause.** The TOWN may terminate MANAGER's employment hereunder at any time for cause subject to the provisions of Los Gatos Municipal Code Section 2.30.285 by a vote of three of the five Town Councilmembers at a publicly agendized meeting in accordance with Government Code §§ 54950 *et seq.* ("Brown Act"). For purposes of this Agreement, the term "cause" shall be defined to include, any misconduct materially related to performance of official duties as provided below. In the event of termination for cause, the Town Council shall, if desired by MANAGER, afford MANAGER a public name-clearing hearing before the Town Council. Request for a name clearing hearing shall be made to the Town Clerk within fifteen (15) days of MANAGERS's receipt of notice of termination. No lump sum cash payment or other severance pay shall be due MANAGER upon any termination for cause. For purposes of this Agreement, "cause" shall mean any of the following:

1. For the following when substantiated by either competent, independent investigation, or court of competent jurisdiction in the case of criminal acts, and in which the MANAGER was given appropriate opportunity to review and refute in person any evidence or testimony used to support findings following completion of an investigation report, the Town Council may terminate this Agreement for cause (or may discipline) by providing the MANAGER with five (5) business days' written notice of termination for cause and the facts and grounds constituting such cause.

a. Conviction for Felony. Conviction of a felony by a court of competent jurisdiction.

b. Conviction of Illegal Acts. Conviction for criminal acts related to TOWN business or other acts constituting moral turpitude which result in incompatibility to serve as MANAGER (excepting traffic or moving violations) by a court of competent jurisdiction.

c. Loss of Mental Capacity. Loss of mental capacity for more than six (6) consecutive months as determined by a court of competent jurisdiction. Written notice of termination must be provided to both the MANAGER and any identified power of attorney or guardian. Nothing in this section shall abridge the MANAGER's remedies as permitted by law if such loss of mental capacity was caused by TOWN employment.

d. Unauthorized Leave of Absence. Absence without justification or



authority for more than five (5) business days without providing reasonable justification of absence.

e. Refusal of Oath. Refusal to take or subscribe to any oath or affirmation which is required by law.

2. For the following when substantiated by competent, independent investigation and in which the MANAGER was given appropriate opportunity to review and refute in person any evidence or testimony used to support findings following completion of an investigation report, the Town Council may terminate this Agreement for cause (or may discipline) by providing the MANAGER with fifteen (15) business days' written notice of termination for cause and the facts and grounds constituting such cause.

a. Neglect of Duty or Insubordination. Persistent, habitual, or willful neglect to perform their obligated duty on a material Town matter after the Town Council has clearly established or directed the duty obligation and conveyed such obligation in a clear manner as the Town Council body either in writing or in open or closed session.

b. Financial mismanagement. Management that involves deliberative mishandling in a manner that can be characterized as grossly negligent or incompetent and that will materially reflect negatively upon the financial standing of the Town.

c. Material dishonesty. Willfully providing the Town Council with materially dishonest and knowingly false information impacting their ability to execute their duty.

d. Discrimination and Harassment. Willful and substantiated violation of Federal, State or Town discrimination and harassment laws concerning race, religious creed, color, national origin, ancestry, physical handicap, marital status, sexual orientation, sex or age concerning either members of the general public or Town's employee(s) while acting in the course and scope of employment, while on Town premises or time, and/or while acting without the prior approval or direction of the Town Council.

e. Retaliation. Willful and unlawful retaliation substantiated against any Town officer or employee or member of the general public who in good faith reports, discloses, divulges or otherwise brings to the attention of any appropriate authority any facts or information relative to actual or suspected violations of any law occurring on the job or related directly thereto.

f. Conflict of Interest. Willful and material violation of any conflict of interest or incompatibility of office laws as provided under California State law.

For any reason at any time and without prior investigation, the Town Council may, in its discretion, place MANAGER on paid administrative leave. However, the Town Council will consider and weigh reasonable alternatives to paid administrative leave

with the potential reputational impact of placing the MANAGER on paid administrative leave before taking any action.

**E. Voluntary Resignation.** MANAGER may voluntarily resign their position with TOWN before expiration of the term of this Agreement by giving TOWN sixty (60) days prior written notice. No severance pay shall be due MANAGER upon any voluntary resignation.

**F. Termination Based on Disability or Death.** In the event MANAGER is permanently disabled, as determined by MANAGER's duly licensed physician, or is otherwise unable to perform their 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 Removal.** Pursuant to Los Gatos Municipal Code Section 2.30.290, notwithstanding anything to the contrary herein, TOWN may not remove MANAGER from office during or within any period of thirty (30) days following any general municipal election held in the Town at which election a member of the Town Council is elected. Further in order to provide the MANAGER the opportunity to build rapport with a new Town Council, the TOWN may not remove MANAGER from office during or within any period of ninety (90) days from when an election is certified which includes a new Town Councilmember or a successful recall of one or more Town Councilmembers.

**H. 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 MANAGER is terminated in the event MANAGER is convicted of a crime involving an abuse of their office or position. Any paid leave salary offered by TOWN to MANAGER pending an investigation shall be fully reimbursed by MANAGER if MANAGER is convicted of a crime involving an abuse of their 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 MANAGER against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out an alleged act or omission occurring in the performance of MANAGER's duties. For the purpose of indemnification and defense of legal actions, MANAGER shall be considered an employee of the TOWN and entitled to the same rights and subject to the same obligations as are provided for all other employees of the TOWN

as set forth in Sections 825 through 825.6 and Sections 995 through 996.6 of the California Government Code. In the event of a potential or actual conflict of interest between the TOWN and MANAGER, MANAGER may request, and the TOWN shall not unreasonably refuse to provide, independent legal counsel at the TOWN's expense to defend MANAGER in any action, suit, or proceeding in which TOWN has a duty to defend MANAGER. Town Council may cap the hourly rate for any independent counsel to the Manager at a rate normal and customary as a standard hourly litigation rate for the defense incurred. If the TOWN agrees to MANAGER's request, the choice of such legal counsel shall be made by TOWN in consultation with MANAGER. The defense provided by TOWN for MANAGER shall continue until a final conclusion of the claim, action, suit or proceeding, including any appeals brought by any party. TOWN, at its direction, is not required to indemnify MANAGER for any illegal or criminal acts for which a court of competent jurisdiction has determined, without possibility of appeal, was committed by MANAGER.

**C. Compliance with Government Code Sections 53243, 53243.1, and 53243.2.** In accordance with Government Code Sections 53243, 53243.1, and 53243.2:

1. In the event the Town Manager is placed on paid leave pending an investigation, the Town Manager shall reimburse such pay to Town if he is subsequently convicted of a crime involving the abuse of his office or position.
2. In the event Town pays for the Town Manager's legal criminal defense, he shall fully reimburse such funds to the Town if he is subsequently convicted of a crime involving the abuse of his office or position.
3. If this contract is terminated, any cash settlement related to the termination that the Town Manager may receive from Town must be fully reimbursed to Town if he is subsequently convicted of a crime involving an abuse of his office or position.

For purposes of this section, "abuse of office or position" shall be as defined in Government Code Section 53243.4.

**D. Bonding Requirements.** TOWN shall bear full cost of the Fidelity Bond or other bonds required of MANAGER under any law or ordinance.

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

**F. Amendment.** This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing, which amendment shall require approval by the affirmative vote of three (3) members of the Town Council.

**G. Heirs and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the heirs at law and executors of the MANAGER.

**H. Effect of Waiver.** The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

**I. 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.

**J. Partial Invalidity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

**K. Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be personally served or shall be sufficiently given when served upon the other party as sent by United States Postal Service, postage prepaid and addressed as follows:

To TOWN:

Town of Los Gatos  
Attn: Mayor  
110 E. Main Street  
Los Gatos, CA 95030

To MANAGER:

[ON FILE WITH HUMAN  
RESOURCES]

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

**L. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, in full force and effect as of the date of execution.

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

TOWN OF LOS GATOS

\_\_\_\_\_  
Mary Badame, Mayor

MANAGER

\_\_\_\_\_  
Chris Constantin

ATTEST:

\_\_\_\_\_  
Wendy Wood, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gabrielle Whelan, Town Attorney