

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is dated for identification this 16th day of March 2021 and is made by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and M-Group, ("Consultant"), whose address is 51 East Campbell Avenue, Campbell, CA 95009. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 Town desires to engage Consultant to provide services for preparation of by right findings and objective standards for the review of housing development applications as provided in the Town of Los Gatos SB 2 Planning Grant Program application.
- 1.2 Consultant represents and affirms that they are qualified and 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 the services as described in the Scope of Services attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect from the date of execution through February 28, 2022.
- 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 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

ATTACHMENT 1

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, or under contract with, 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 the \$88,185** inclusive of all costs. Payment shall be made against tasks at costs as set forth in Exhibit B (Fee Schedule). Consultant shall be compensated for services in addition to those described in Exhibit A only if Consultant and Town execute a written amendment to this Agreement describing the additional services to be performed and the compensation to be paid for such services.
- 2.7 Flexibility. The distribution of hours between staff categories and tasks in Exhibit B (Fee Schedule) is an estimate. While the total costs shall not exceed amount in Section 2.6 above, the distribution of hours/costs may vary depending on actual execution.
- 2.8 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.

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

planning@losgatosca.gov

- 2.9 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.

- 2.10 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.
- 2.11 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.
- 2.12 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.
- 2.13 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: 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 insuring 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 one million dollars (\$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 officers, officials, employees, and volunteers 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; and premises owned or used by the Consultant. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
- ii. The 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 the Town, its officers, officials, employees or volunteers 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 officers, officials, employees or volunteers.

- 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. Consultant shall 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. Consultant shall save, keep, hold harmless, and indemnify and defend the Town its officers, agent, 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 the Consultant, or any of the Consultant's officers, employees, or 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. 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:

To Town:

Joel Paulson
Community Development Director
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
Fax: (408) 354-7593
Phone: (408) 354-6879
E-mail: jpaulson@losgatosca.gov
planning@losgatosca.gov

To Consultant:

Geoff I. Bradley
M-Group
51 E. Campbell Ave. #1247
Campbell, CA 95009
Phone: (408) 340-5642
E-mail: gbradley@m-group.us

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 Exhibits A and B, 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

Consultant:

Laurel R. Prevetti, Town Manager
Town of Los Gatos

Geoff Bradley
M-Group

Department Approval:

Approved as to Form:

Joel Paulson
Community Development Director

Robert W. Schultz
Town Attorney

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PROJECT APPROACH

The Town of Los Gatos seeks a qualified consulting firm to develop objective development standards and by right findings for Town staff to utilize in the development review process. The project entails the identification and preparation of necessary amendments to the Town Code. The amendments will take the form of objective standards and by right findings that facilitate the review of qualifying housing development applications.

BACKGROUND

The Town's RFQ identifies a series of Town documents and policies that provide direct influence on the development of the standards and findings. These include:

- **The North 40 Specific Plan.** The Specific Plan includes development standards and design guidelines for residential development, including specific directives or guidance for setbacks, private open space, and building form.
- **Affordable Housing Overlay Zone (AHOZ).** The AHOZ section of the zoning ordinance, which contains development standards, incentives, and directives for the development review process.
- **Housing Element.** The current Housing Element contains an action item directing for amendments to the Town Code to facilitate approval of affordable housing projects consistent with criteria contained in the North 40 Specific Plan and the AHOZ.

- **General Plan Update.** The Town is in the process of preparing General Plan 2040 and the draft Land Use and Community Design Elements will be key resources for understanding the town's community character values and design and development aspirations.

These plans and policies together with a project initiation meeting with Town staff will provide the genesis of the planning process to develop the objective development standards.

M-GROUP SERVICES

The M-Group team will draw on its strengths to provide the town with a range of services that will be necessary to prepare, review, and adopt the objective standards with community members and decision makers. The services that M-Group will deliver can generally be distributed across a set of functions or "task types," as follows:

Coordination with Town staff

Starting with the preparation of a scope of work, budget, and project schedule, through initial meetings with staff to initiate the project, the M-Group project manager will be the primary point of contact to maintain communications with Town staff throughout the project. This will encompass the public meetings process, the development and review of policy materials, and the review and adoption of amendments to the Town Code.

Background and Analysis

A key service the M-Group team will provide includes research into background components of the planning process such as a range of existing Town plans and documents including but not limited to those identified in the RFQ. Background and analysis will also include a tour of the town with specific attention on multi-family zoning districts, recent housing developments, and the immediate vicinities of key areas, such as the North 40 Specific Plan Area.

Policy Development

With a firm background of the town's needs and development conditions, a key service the M-Group team will provide is the development of the objective standards, code amendments, and by right findings. This will include administrative and public-facing draft versions, documents for public meetings, and staff reports and presentations for an adoption process.

Community Engagement

As detailed in the Public Meetings section, below, a key service in the process to prepare and adopt objective standards and other necessary Code amendments will be a series of public meetings to engage the Los Gatos community in the process. M-Group has a variety of tools to enhance the engagement process for both in-person and virtual meetings both at the small-group committee scale and larger community-wide workshops.

Review and Revisions

Following the development of standards, findings and Code amendments, M-Group planners and designers can incorporate the input of community members, staff, and decision makers in any necessary revisions to the project deliverables. This will include returning to committees with revised documents as well as preparing materials and draft amendments at the adoption process, and making any necessary recommendations for implementation of the Code amendments.

CONCEPTUAL WORK PLAN

We envision that a detailed scope of work can be prepared in consultation with Town staff to prepare objective development standards and by right findings. We have developed a conceptual work plan that conducts the process in four phases. Interwoven through the four phases would be a robust community engagement process and series of meetings, which are described in greater detail in the following section.

The four phases of our Conceptual Work Plan span from project initiation with Town staff through to adoption hearings with the Town Council, as described here:

Background and Investigation

During this initial phase of the project, M-Group will initiate a scope of work and develop a fundamental understanding of the goals for the objective standards and by right findings. Tasks in this phase would include:

- **Project Initiation.** Working with Town staff to finalize a scope of work and set the parameters for the project.
- **Background Information and Town Context.** Through a review of existing documents and tours of the existing context, M-Group would develop a baseline understanding.
- **Design and Development Issues.** M-Group would prepare a preliminary understanding of development issues to be addressed through the process, for review with committees or Town bodies identified in coordination with Town staff.

- **Committee Engagement.** M-Group will meet with identified committee members for review and discussion of development issues and potential issues to be addressed by the objective standards.
- **Preliminary Objective Standards.** By the end of the first phase, M-Group would prepare the first draft of potential standards.

Objective Standards Development

In this phase of the project, M-Group would provide Town staff, committee members, and other members of the community with initial draft standards to address development priorities identified in Phase I.

- **Objective Standards Documentation.** Draft language that demonstrates potential objective solutions to design and development issues in keeping with identified development and design guideline goals.
- **Committee Engagement.** M-Group would provide committee members with the draft material as a follow up to Phase I meetings and discussion.
- **Stakeholder Engagement.** M-Group would hold additional meetings with potential stakeholders identified with Town staff, such as multi-family developers, housing advocates, and neighborhood groups.
- **Meeting with Town Staff.** M-Group would finalize this task by meeting with Town staff to solidify the work product developed and discussed during this phase and identify the parameters for refinement of the objective standards in the next phase.

Review and Revisions

During the Review and Revisions Phase of the project, M-Group will work with appropriate committees and Town staff to refine the objective standards in advance of final review and preparation for the adoption process in Phase IV.

- **Administrative Draft Documents.** M-Group would prepare an administrative draft of the standards and other parts of the identified Code amendments.
- **Committee Engagement.** M-Group would work with Town staff and a final committee meeting to refine the administrative draft documents.
- **Revised Documents.** M-Group would prepare the Code amendment documents in advance of the review and adoption process in the final phase.

Presentation and Adoption

The final phase of the project would be focused on the review and adoption process with Town decision makers.

- **Planning Commission Meeting.** M-Group would prepare the staff report and presentation to the Planning Commission in advance of the Commission's meeting to review and recommend the Code amendments.
- **Town Council Hearing.** M-Group would prepare the staff report and presentation to the Town Council together with a memorandum of any edits or augments recommended by the Planning Commission. M-Group would attend the hearing to present the proposed Code amendments.

Key Issues

In advance of preparing a detailed scope of work, budget, project schedule and community engagement plan, it will be useful to consider a few issues that may prove important to community members, particularly regarding the new standards or the planning process.

- **Recent Housing Legislation.** There have been state laws introduced during recent legislative sessions that have the potential to cause anxiety for community members concerned about retaining control over development and community character. The best way to address these concerns is to provide the community with information. Public meetings of any scale should educate attendees and provide a concise and comprehensive overview and context for recent housing laws and their goals and impacts.
- **Concern for Community Character.** Many community members will have concerns about traffic, design quality, density, and other issues related to new residential development and increased development activity. This can be addressed by providing community members with information and design solutions that spring from agreed upon design guidelines, community character assumptions, and existing regulations in the Town Code that support a common vision.
- **Environmental Review.** Should there be a need for any environmental review related to the revisions to the Town Code, M-Group believes it may be best to fold the code amendments into the CEQA analysis for the General Plan Update. If this is not possible for any reason and CEQA review becomes necessary, M-Group is able to develop the necessary scope of work in coordination with Town staff.
- **Appropriate Town Scale.** As with the issue of community character, massing and scale are issues that often come up in the context of new and unknown amounts of potential development. By pointing to existing Town policies, such as the AHOZ and the North 40 Specific Plan, as well as recent community consensus in the development of the draft Land Use and Community Design Elements of the General Plan Update, objective standards can be developed for issues such as massing, setbacks, landscaping, and site planning.

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TOWN OF LOS GATOS PGP Consulting Services		M-GROUP						
Phase Number / Task Description	Geoff Bradley Principal-in-Charge	Tom Ford Project Manager	Sung Kwon Housing + CEQA Advisor	Asher Kohn Associate Planner	Erin Tou Associate Planner	Kristina Paulauskaite Associate Urban Designer	M-Group Hours	Task Subtotal
Hourly Billing Rate	\$220	\$165	\$165	\$125	\$125	\$125		
PHASE 1: BACKGROUND AND INVESTIGATION								
1.1 Project Initiation	2	3	2	4			11	
1.2 Background Information and Preliminary Issues	2	40	16	80		8	146	
1.3 Committee Meeting		6	4	10			20	
1.4 Public Workshop	6	12	6	28	8		60	
Task 1 Subtotal:	10	61	28	122	8	8	237	\$34,135
PHASE 2: OBJECTIVE STANDARDS DEVELOPMENT								
2.1 Preliminary Objectives Standards Development	2	40	8	60		20	130	
2.2 Committee Meeting		6		10			16	
2.3 Stakeholder Group		3	2	8			13	
2.4 Meeting with Town Staff		4	4	8		8	24	
Task 3 Subtotal:	2	53	14	86	0	28	183	\$25,745
PHASE 3: REVIEW AND REVISIONS								
3.1 Administrative Draft Preparation	2	20	4	40		16	82	
3.2 Committee Meeting		6		10			16	
3.3 Revised Administrative Draft for Staff Review	2	8	2	20		8	40	
Task 4 Subtotal:	4	34	6	70	0	24	138	\$19,230
PHASE 4: PRESENTATION AND ADOPTION								
4.1 Planning Commission Meeting	3	5		10			18	
4.2 Town Council Hearing	2	6		10			18	
4.3 Final Documentation		4		20		4	28	
Task 5 Subtotal:	5	15	0	40	0	4	64	\$9,075
Total Project								\$88,185

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