

AGREEMENT FOR EMERGENCY DESTINATION MARKETING SERVICES BY AND BETWEEN THE TOWN OF LOS GATOS AND THE LOS GATOS CHAMBER OF COMMERCE

THIS AGREEMENT is made and entered into on June 28, 2021, by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and LOS GATOS CHAMBER OF COMMERCE, ("Chamber"), whose address is 10 Station Way, Los Gatos, California. This Agreement is made with reference to the following facts.

I. RECITALS

WHEREAS, TOWN appropriated \$55,000 in funds from the American Rescue Plan Act (ARPA) on May 18, 2021 for the Chamber to carry out the duties outlined in the proposal for Emergency Destination Marketing (Exhibit A) for a period of six months, and;

WHEREAS, TOWN desires to respond to the pandemic or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

WHEREAS, TOWN desires to engage Chamber to provide Emergency Destination Marketing Services to promote and encourage residents and visitors to shop, dine, stay and patronize Los Gatos businesses to support the economic recovery efforts and the impacts of the COVID-19 pandemic, and;

WHEREAS, CHAMBER represents and warrants the truth of all statements contained in Exhibit A and incorporated herein by reference.

- 1.2 The Chamber represents and affirms that it is willing to perform the desired work pursuant to this Agreement, as proposed in Exhibit A.
- 1.3 Chamber 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 Chamber.

II. AGREEMENTS

- 2.1 Scope of Services. Chamber shall provide services as described in that certain Exhibit A, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect from June 30, 2021 to ~~December 31, 2021~~ **December 31, 2022**. Chamber shall perform the services described in this agreement as follows: provide Emergency Destination Marketing Services.
- 2.3 Compliance with Laws. The Chamber shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Chamber represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Chamber to practice its

profession. Chamber 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. Chamber 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 Chamber 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 Chamber in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Chamber shall not make any of these documents or information available to any individual or organization not employed by the Chamber or the Town without the written consent of the Town before such release.
- 2.6 Compensation. Compensation for Consultant's professional services **shall not exceed \$55,000** for Emergency Destination Marketing, inclusive of all costs.
- 2.7 Billing. Billing shall be in one payment, requested by invoice, within thirty (30) days of the execution of this agreement.

Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:

Invoices:

Email to: AP@losgatosca.gov

Or, Mail to: Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

- 2.8 Availability of Records. Chamber 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 Use of Town of Los Gatos Branding and Logo. The Town of Los Gatos will provide branding for the Visit Los Gatos Website including a logo and color palette. This shall be used for the creation of the website. The provided branding is property of the Town of Los Gatos and shall only be used by the Chamber for business of and marketing collateral that is executed as a part of , the Emergency Destination Marketing efforts, consistent with that of the Town's Visitor's Information Center and Visit Los Gatos website/branding. Use of the logo in social media, print, email, or other form that is not directly related to the Visitor's Information Center or Visit Los Gatos website requires explicit written permission by the Town of Los Gatos.

- 2.11 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Chamber. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.12 Independent Contractor. It is understood that the Chamber, 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 Chamber 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. Chamber agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Chamber 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 Chamber or is based on allegations of Chamber's negligent performance or wrongdoing.
- 2.13 Conflict of Interest. Chamber understands that the professional responsibilities of the Town Information Center are solely to the Town. The Chamber has and shall not obtain any holding or interest within the Town of Los Gatos. Chamber 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, Chamber 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. Chamber 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, Chamber discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Chamber shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.14 Use of Funds. The Chamber, including the Visitor Information Center, shall not use any monies received under this agreement for the endorsement, opposition or participation in any political lobbying activity involved in the support or opposition to any candidate for public office, proposed ballot measure or item pending Town Council Action.
- 2.15 Equal Employment Opportunity. Chamber warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Chamber nor its subcontractors 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. Chamber 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. Chamber 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. Chamber 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. Chamber 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 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 Chamber; products and completed operations of Chamber, premises owned or used by the Chamber. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
- ii. The Chamber'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 Chamber'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 Chamber'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, Chamber 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, Chamber shall ensure that all subcontractors employed by Chamber provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Indemnification. The Chamber 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 Chamber, or any of the Chamber'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 Chamber 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 Chamber shall deliver to the Town all plans, files, documents, reports, performed to date by the Chamber. In the event of such termination, Town shall pay Chamber 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 Chamber.
- 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

LOS GATOS CHAMBER OF COMMERCE
Attn: Catherine Somers, Executive Director
10 Station Way
Los Gatos, CA 95030

or personally delivered to Chamber to such address or such other address as Chamber 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 Chamber. 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 Chamber have executed this Agreement.

Recommended by:

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 7/6/2021
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Monica Renn, Economic Vitality Manager

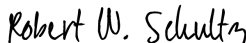
Town of Los Gatos by:

DocuSigned by:
 7/16/2021
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Laurel Prevetti, Town Manager

Los Gatos Chamber of Commerce by:

DocuSigned by:
 7/12/2021
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Catherine Somers, Executive Director

Approved as to Form:

DocuSigned by:
 7/15/2021
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Robert Schultz, Town Attorney

Attest:

DocuSigned by:
 7/19/2021
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Shelley Neis, Town Clerk