

DRAFT
PURCHASE AND SERVICE AGREEMENT

THIS AGREEMENT is dated for identification this first day of January, 2020 and is made by and between TOWN OF LOS GATOS, a California municipal corporation, (“Town”) and ECS Imaging, Inc., (“Supplier”). This Agreement is made with reference to the following facts. This contract will remain in effect from January 1, 2020 to December 31, 2024.

I. RECITALS

- 1.1 Town sought sole source approval for ECS Imaging, Inc. for all software maintenance and support for Laserfiche software products. ECS Imaging, Inc. is the top Solution Provider in California for Laserfiche products. ECS Imaging is familiar with all of the Laserfiche customization that spans almost every Town Department.
- 1.2 Supplier represents that it is a qualified and competent supplier of the items to be purchased and maintained under this agreement.
- 1.3 The Town desires to engage Supplier to provide Laserfiche annual maintenance, additional Laserfiche software licenses, software updates, scanners, scanning services, remote support, set-up and troubleshooting of the Laserfiche system, and significant document scanning projects Town-wide.
- 1.4 The Supplier represents and affirms that it is qualified and willing to perform the desired work pursuant to this Agreement.

II. AGREEMENTS

- 2.1 Supplies and Terms. Supplier hereby agrees to deliver to Town at 110 E. Main Street, Los Gatos, CA 95030 the items and materials described in quotes throughout the year. The terms and conditions are as follows:
 - (1) Price. Town shall pay Supplier the amounts defined in Staff approved quotations or purchase orders, which includes sales tax and delivery charges. Payment shall be net 30 days from delivery.
 - (2) Delivery. The delivery of additional software licenses and scanners shall be as needed, no later than two weeks from date of request. Delivery shall be made between 8:00 a.m. and 5:00 p.m. on weekdays that are not Town holidays.
- 2.2 Time of the Essence. Prompt delivery of the items and materials is essential to this Agreement.

- 2.3 Scope of Services. Supplier shall provide services as described in that certain ECS Basic Plus Support Agreement – Terms and Conditions, which is hereby incorporated by reference and attached as “**Exhibit A.**” In addition, supplier shall provide scanning, on-site support, and additional Laserfiche software licenses/equipment defined in staff-approved quotations or purchase orders.
- 2.4 Time of Performance. The services to be performed are as follows: the annual maintenance/support cost for the Laserfiche software products includes all software updates. If required, on-site software support will be billed at the rate of \$175.00 per hour with a two-hour minimum. Document scanning will be performed on an as-needed basis, and be preceded by a Town staff-approved quotation.
- 2.5 Compliance with Laws. The Supplier shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Supplier represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required to Supplier to practice its profession. Supplier shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.6 Sole Responsibility. Supplier shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.7 Information/Report Handling. All documents furnished to Supplier by the Town and all reports and supportive data prepared by the Supplier under this Agreement are the Town’s property and shall be delivered to the Town upon the completion of Supplier’s services or at the Town’s written request. All reports, information, data, and exhibits prepared or assembled by Supplier in connection with the performance of its service pursuant to this Agreement are confidential until released by the Town to the public, and the Supplier shall not make any of these documents or information available to any individual or organization not employed by the Supplier or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Supplier 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 Supplier in connection with other projects shall be solely at Town’s risk, unless Supplier expressly consents to such in writing. Town further agrees that it will not appropriate and methodology or technique of Supplier which is and has been confirmed in writing by Supplier to be a trade secret of Supplier.
- 2.8 Compensation. Compensation for the supplies and materials delivered and for supplier’s professional services is not to exceed \$70,000 annually, inclusive of all costs, for a total amount not to exceed \$350,000. Payment shall be based upon Town approval of each task. See:

- ECS Basic Plus Support Agreement – Terms and Conditions attached as **Exhibit A**.
- Quote for Software, Annual Maintenance and Licensing, and Services attached as **Exhibit B**.
- Document Scanning Services Pricing Quote attached as **Exhibit C** to be defined in individual Town staff approved quotations or purchase orders.

2.9 Billing. Billing shall be by invoice within 30 days of the rendering of the services 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 draft form.

Payment shall be net 30 days. All invoices and statement to the Town shall be addressed as follows:

Town of Los Gatos
 Attn: Accounts Payable
 P.O. Box 655
 Los Gatos, CA 95031-0655

2.10 Availability of Records. Supplier shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Supplier shall make these records available to authorized personnel of the Town at the Supplier's offices during business hours upon written request of the Town.

2.11 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Supplier. 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 Supplier, 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 Supplier 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. Supplier agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Supplier 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 Supplier or is based on allegations of Supplier's negligent performance or wrongdoing.

- 2.13 Conflict of Interest. Supplier understands that its professional responsibilities are solely to the Town. The Supplier has and shall not obtain any holding or interest within the Town of Los Gatos. Supplier 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, Supplier 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. Supplier 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, Supplier discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Supplier shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.14 Equal Employment Opportunity. Supplier warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Supplier 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. Supplier 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. Supplier 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. Supplier shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Supplier agrees that all certificates and

endorsements are to be received and approved by the Town before work commences.

- iv. Supplier 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 Supplier 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 Supplier, products and completed operations of Supplier, and premises owned or used by the Supplier. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
 - ii. The Supplier'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 Supplier'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 Supplier'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 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 Department.
- 3.3 Workers' Compensation. In addition to these policies, Supplier 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, Supplier shall ensure that all subcontractors employed by Supplier provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Indemnification. The Supplier shall save, keep, hold harmless and indemnify and defend the Town and 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 Supplier, or any of the Supplier's officers, employees, or agents or any sub-contractor.

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 Severability. If any term of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in effect.
- 4.3 Warranty. Supplier shall remedy any defects due to faulty materials and/or workmanship and pay for any damages to other work and/or existing facilities resulting therefrom which shall appear within a period of one year from the date of recording of final acceptance.
- 4.4 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.
- 4.5 Termination of Agreement. The Town and the Supplier shall have the right to terminate this Agreement with or without cause by giving not less than 60 days written notice of termination. In the event of termination, the Supplier shall deliver to the Town all supplies and services scheduled to be delivered to Town within that 60-day period.
- 4.6 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Supplier.
- 4.7 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including cost of appeal.
- 4.8 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

ECS Imaging, Inc.
5905 Brockton Avenue
Suite C
Riverside, CA 92506

OR personally delivered to Supplier to such address or such other address as Supplier designates in writing to Town.

- 4.9 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.

4.10 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Supplier. 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 Supplier have executed this Agreement.

Town of Los Gatos by:

ECS Imaging, Inc., by:

Laurel Prevetti, Town Manager

Print Name: _____

Recommended by:

Title: _____

Chris Gjerde, Information Technology Manager

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, CMC, CPMC, Town Clerk