

Second Amendment to Consultant Services Agreement with Atchison, Barisone & Condotti, APC

**SECOND AMENDMENT TO CONSULTANT SERVICES AGREEMENT
BETWEEN TOWN OF LOS GATOS AND ATCHISON, BARISONE & CONDOTTI, APC**

THIS SECOND AMENDMENT (“Second Amendment”), effective as of December 10, 2024, (“effective date”) to the AGREEMENT FOR CONSULTANT SERVICES dated December 7, 2022, is made by and between the TOWN OF LOS GATOS (“Town”) and ATCHISON, BARISONE, & CONDOTTI, APC (“Consultant”). Town and Consultant may be referred to individually as a “Party” and collectively, as the “Parties.”

RECITALS

WHEREAS, Town and Consultant have previously entered into that certain Consultant Services Agreement (“Agreement”) dated December 7, 2022, incorporated herein by this reference; and

WHEREAS, on March 1, 2024, Town and Consultant entered into a First Amendment to the Agreement to specify that services would not exceed the cost of \$150,000 during the term of the Agreement, which expires on December 31, 2025, and to amend the conflict of interest clause.

WHEREAS, Town and Consultant agree to enter into this Second Amendment to the Agreement to revise the budget for legal services to add another \$100,000 to the prior budget amount, as specified herein.

AGREEMENT

NOW, THEREFORE, it is agreed between the Parties to incorporate the above Recitals hereto, and the Parties agree to the following:

1. Section 2.6 “Compensation” of the Agreement is hereby amended to replace the last sentence in this section from the First Amendment, with the following:

“Payment for legal services shall not exceed an additional \$100,000 for a total budget of \$250,000 for Consultant’s on-call legal services until December 31, 2025.”

2. Except as amended by this Second Amendment, all other applicable terms and conditions of the original and First Amendment to the Agreement, and annual fee adjustments shall remain in full force and effect. The terms of this Second Amendment shall control if any conflict exists.

3. Each party acknowledges that it has reviewed this Second Amendment and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Second Amendment.

4. The unenforceability, invalidity or illegality of any provision(s) of this Second Amendment shall not render the other provisions unenforceable, invalid or illegal.

5. The Parties may execute this Second Amendment in two or more counterparts, which shall, in the aggregate, be deemed an original but all of which, together, shall constitute one and the same instrument. A scanned, electronic, facsimile or other copy of a party’s signature shall be accepted and valid as an original.

6. The signatories to this Second Amendment warrant and represent that each is authorized to execute this Second Amendment and that their respective signatures serve to legally obligate their respective representatives, agents, successors and assigns to comply with the provisions of this Second Amendment.

IN WITNESS WHEREOF, the Town and the Consultant have executed this Second Amendment effective as of the date first written above.

Approved As To Form:	
Signed by:	
By: <u>Gabrielle Whelan</u>	Date: <u>12/16/2024</u>
<small>EFD6738A5534428...</small>	
Gabrielle Whelan, Town Attorney	

CONSULTANT: ATCHISON, BARISONE & CONDOTTI, APC	
Signed by:	
By: <u>Anthony Condotti</u>	Date: <u>12/12/2024</u>
<small>09F98FEC36914D9...</small>	
Anthony P. Condotti, President	
Signed by:	
By: <u>Barbara H. Choi</u>	Date: <u>12/11/2024</u>
<small>4D749A214F7F427...</small>	
Barbara H. Choi, Treasurer	

TOWN OF LOS GATOS	
Signed by:	
By: <u>Chris Constantin</u>	Date: <u>12/16/2024</u>
<small>3EF03F232F1B428...</small>	
Chris Constantin, Town Manager	

First Amendment to Consultant Services Agreement with Atchison, Barisone & Condotti, APC

FIRST AMENDMENT TO CONSULTANT SERVICES AGREEMENT BETWEEN TOWN OF LOS GATOS AND ATCHISON, BARISONE & CONDOTTI, APC

THIS FIRST AMENDMENT (“First Amendment”), effective as of March 1, 2024, (“effective date”) to the AGREEMENT FOR CONSULTANT SERVICES dated December 7, 2022, is made by and between the TOWN OF LOS GATOS (“Town”) and ATCHISON, BARISONE, & CONDOTTI, APC (“Consultant”). Town and Consultant may be referred to individually as a “Party” and collectively, as the “Parties.”

RECITALS

WHEREAS, Town and Consultant have previously entered into that certain Consultant Services Agreement (“Agreement”) dated December 7, 2022, incorporated herein by this reference; and

[WHEREAS, Town and Consultant agree to enter into this First Amendment to the Agreement, as specified herein.

AGREEMENT

NOW, THEREFORE, it is agreed between the Parties to incorporate the above Recitals hereto, and that the Agreement is hereby amended as follows:

1. Section 2.6 “Compensation” of the Agreement is hereby amended to add at the end of the this section, the following:

“Payment for legal services shall not exceed \$150,000 in total.”

2. Section 2.11 of the Agreement is hereby deleted and replaced by the following:

“2.11 Conflict of Interest. 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 which may create conflicts of interest between Consultant and the Town. Should any such conflict develop, despite efforts to avoid conflicts between Town and any of Consultant’s other clients, then Consultant and its attorneys will immediately notify the Town and appropriate measures will be agreed upon, consistent with Consultant’s attorneys’ professional ethical obligations. The Town acknowledges that in the event of a conflict of interest, the Town will agree to allow Consultant to withdraw from representing the Town in the matter which poses a conflict of interest, such that Consultant may continue its legal representation of Consultant’s other clients, in accordance with applicable code of ethics rules.”

Except as amended by this First Amendment, all other applicable terms and conditions of the original Agreement and annual fee adjustments shall remain in full force and effect. The terms of this First Amendment shall control if any conflict exists.

First Amendment to Consultant Services Agreement with Atchison, Barisone & Condotti, APC

Each party acknowledges that it has reviewed this First Amendment and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this First Amendment.

The unenforceability, invalidity or illegality of any provision(s) of this First Amendment shall not render the other provisions unenforceable, invalid or illegal.

The Parties may execute this First Amendment in two or more counterparts, which shall, in the aggregate, be deemed an original but all of which, together, shall constitute one and the same instrument. A scanned, electronic, facsimile or other copy of a party's signature shall be accepted and valid as an original.

The signatories to this First Amendment warrant and represent that each is authorized to execute this First Amendment and that their respective signatures serve to legally obligate their respective representatives, agents, successors and assigns to comply with the provisions of this First Amendment.

IN WITNESS WHEREOF, the Town and the Consultant have executed this First Amendment effective as of the date first written above.

Approved As To Form:

DocuSigned by:

By: Gabrielle Whelan
EFD6738A5534428...
 Gabrielle Whelan, Town Attorney

Date: 4/15/2024

CONSULTANT: ATCHISON, BARISONE & CONDOTTI, APC

DocuSigned by:

By: Anthony Condotti
69F98FEC36914D9...
 Anthony P. Condotti, President

Date: 4/9/2024

DocuSigned by:

By: Barbara H. Choi
4D749A21AF7E427...
 Barbara H. Choi, Treasurer

Date: 4/9/2024

TOWN OF LOS GATOS

DocuSigned by:

By: Laurel Prevetti
853FEEA2EB39470...
 Laurel Prevetti, Town Manager

Date: 4/15/2024

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on December 7, 2022 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and Atchison, Barisone and Condotti , a Professional Corporation ("Consultant"), whose address is P.O Box 481, Santa Cruz, CA 95061. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desire to engage Consultant to review the Town's existing Independent Police Auditor Function Policy, recommend updates, and provide services to be performed for on-call municipal law services.
- 1.2 The Consultant represents and affirms that it is 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 described as on-call municipal law services. All direction and approval of Consultant's work for Town shall be by the Office of the Town Attorney.
- 2.2 Term and Time of Performance. This Agreement will remain in effect from December 7, 2022 to December 31, 2025. Town also agrees to pay Consultant for services performed by Consultant at the request of the Town prior to the effective date of this Agreement.
- 2.3 Compliance with Laws. The 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 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 the documents or information available to any individual or organization not employed by 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 \$325/hr for shareholders/senior associates, \$300/hr for midlevel associates, \$275/hr for junior associates, \$200/hr for paralegal/law clerk, \$125/hr for admin staff, inclusive of all costs. Payment shall be based upon Town approval of each task.

Legal services shall be charged in increments of 1/10 of an hour (i.e., six-minute units).

On or after January 1 of each year commencing in 2024, Consultant may adjust the rates and fees specified herein in accordance with the change in the San Francisco Bay Area Consumer Price Index for All Urban Consumers (CPI-U) for the prior twelve month period provided, however, that Consultant shall provide Town with no less than thirty (30) days advance written notice prior to the effective date of such adjustment.

In addition to paying legal fees, Town shall reimburse Consultant for all costs and expenses incurred relating to the legal services, including but not limited to fees fixed by law or assessed by public agencies, long distance telephone calls, messenger and other delivery fees, postage, in-office photocopying (noncolor at \$0.25 per page; color at \$.50 per page), scans at \$0.20 per page, fax services at \$1.00 per page, investigation expenses, third-party consultant fees, parking, mileage (IRS rates), and other similar items. Town authorizes Consultant to incur all reasonable costs and to hire any investigators or third-party consultants, reasonably necessary in Consultant's judgment, except that Consultant shall obtain Town's consent before doing so, which will not be unreasonably withheld.

- 2.7 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

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

Invoices:

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

- 2.8 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.
- 2.9 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.
- 2.10 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.
- 2.11 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.

- 2.12 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.
- 2.13 Business License. Consultant agrees to have and maintain, for the duration of the Agreement, a valid, Town issued business license.

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. Consultant agrees to have and maintain, for the duration of the Agreement, 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 Agreement, 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. 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 Agreement, professional liability insurance in amounts not less than \$2,000,000 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, 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. In addition to these policies, Consultant 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, Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Indemnification. The 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:

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

Atchison, Barisone and Condotti APC
Attn: Jennifer Quek
P.O. Box 481
Santa Cruz, CA 95061

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 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 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.
- 4.9 Counterparts. The parties may execute this Agreement in counterparts, which, together, shall constitute one and the same instrument. Electronic, scanned pdf, and facsimile signatures shall be accepted as an original. A copy of this Agreement is valid as the original.

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

DocuSigned by:

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Anthony P. Condotti, President
Atchison, Barisone & Condotti

12/9/2022

Date

DocuSigned by:

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Barbara H. Choi, Treasurer
Atchison, Barisone & Condotti

12/9/2022

Date

Approved:
TOWN OF LOS GATOS

DocuSigned by:

863FEEA2EB30470...

Laurel Prevetti, Town Manager

Approved as to Form:

DocuSigned by:

EFD6738A5534428...

Gabrielle Whelan, Town Attorney

Attest:

DocuSigned by:

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Wendy Wood, CMC, Town Clerk