

CLERK DEPARTMENT
AGR 13.180
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RESO _____

**TOWN OF LOS GATOS
AGREEMENT FOR EMPLOYMENT
TOWN ATTORNEY**

This Agreement is made and entered into this 2nd day of December, 2013, by and between the Town of Los Gatos, a California municipal corporation, hereinafter referred to as "Town" and Robert Schultz, hereinafter referred to as "Attorney."

RECITALS

- A. Town desires to employ Attorney as Town Attorney to fulfill the duties set forth in Section 2.30.505 of the Town Code of Los Gatos.
- B. Attorney has the education and experience for the position and desires to accept the appointment as Town Attorney of the Town of Los Gatos under the terms set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and respective and mutual covenants herein, Town and Attorney agree as follows:

- 1. Appointment. Town appoints Attorney and Attorney agrees to serve as Town Attorney. Attorney agrees to devote himself full time to the performance of the duties of Town Attorney, unless otherwise authorized in writing by the Town Council.
- 2. Duties. Attorney shall perform the functions and duties of the Town Attorney as specified under the laws of the State of California, the Los Gatos Municipal Code, and the ordinances and resolutions of Town, and perform such other duties and functions as the Town Council may assign from time to time. Legal services shall include, but not be limited to, the preparation and review of ordinances, resolutions, agreements, and contracts; legal research; attendance at Town Council meetings and other meetings upon request; rendering of legal opinions to the Town Council and Town Manager; representation of the Town, members of the Town Council and other Town officers and employees in claims and litigation filed by or against the Town, except those that the Town Attorney or Town Council determine should be handled by outside counsel; and such other legal services as may be directed by Town Council or Town Manager. Consistent with other demands of the office, Attorney will use his best efforts to handle general municipal and land use litigation himself to reduce costs of outside counsel.
- 3. Term. This Agreement shall commence on December 12, 2013 and extend indefinitely until terminated as provided hereinafter.

4. Compensation. Attorney shall receive the following compensation:

(a) Base Salary. Town shall pay Attorney the annual base salary of one hundred eighty-five thousand dollars (\$185,000.00) (“Base Salary”), in installments at the same time as other employees of Town are paid.

(b) Performance Review. The Town Council shall evaluate Attorney’s performance annually and upon completion of its annual review, if Town Council determines that Attorney’s performance is fully satisfactory (i.e. has met the performance expectations), Town Council shall increase Attorney’s compensation in an amount at least consistent with compensation increases granted to other Town management employees. Attorney understands and agrees that he has no entitlement to an increase in compensation. The Town Council may adjust the base salary or provide a one-time lump sum payment, or a combination of both at the sole discretion of Council.

(c) Furlough. Attorney will be subject to time off without pay for Town approved furlough days.

(d) Holiday Closures. Attorney will be subject to take days off without pay during holiday closures, but may use leave balances to avoid loss of compensation during the Town approved closures.

(e) Auto Allowance. Attorney shall receive a monthly auto allowance of three hundred fifty dollars (\$350.00).

(f) Leave and Benefits. Except as otherwise set forth in this Agreement, in addition to the benefits specified herein, Attorney shall receive any and all employee benefits otherwise accorded Town’s executive management employees, including without limitation paid retirement benefits consistent with Town policy through the Public Employees Retirement System and health benefits, and as those benefits may be changed from time to time.

(1) Vacation. As of the Attorney’s commencement of employment, Attorney shall be credited with 14 days of vacation leave, and shall thereafter be entitled to accrue and use vacation leave at the same rate as set forth in the Town’s vacation policy for management employees.

(2) Sick Leave. As of the Attorney’s commencement of employment, Attorney shall be credited with twelve (12) days of sick leave, and shall thereafter be entitled to accrue and use sick leave at the same rate as set forth in the Town’s sick leave policy for management employees.

(3) Administrative Leave. Attorney shall be entitled to forty (40) hours of administrative leave per year and, shall be entitled to use administrative leave in the same manner permitted pursuant to Town policy.

(4) Personal Leave. Attorney shall be entitled to personal leave in the amount up to forty (40) hours per year as determined by Town Council and, shall be entitled to use personal leave in the same manner permitted pursuant to Town policy.

(5) Health Insurance. Town shall contribute to Attorney's health insurance costs at the same rate as set forth in the Town's health insurance policy for management employees.

(g) Relocation Assistance. Attorney shall be reimbursed up to \$10,000 for relocation costs only after his immediate family members have relocated to the Bay Area. Any reimbursement shall be subject to repayment in full by Attorney to Town if he resigns prior to July 1, 2015. No housing allowance shall be provided.

(h) Retirement. Attorney shall participate in the Town's retirement plan through CALPERS and shall be enrolled as "Classic" status under PERS at the 2% at 60 rate and 36 months final compensation formula. Attorney shall be responsible for the employee contribution share at the same rate pursuant to Town policy for management employees. Attorney shall also be entitled to participate in the Town's Retiree Medical Program as made available to other management employees.

(i) Job Related Expenses. Town shall reimburse Attorney for costs of membership in the State Bar of California and for the reasonable costs of mandatory continuing legal education sponsored by the League of California Cities including transportation, food, lodging, tuition, and printed materials. Within budget limitations, the Town shall reimburse Attorney for costs of additional professional education and membership and attendance at meetings of professional groups such as the State Bar of California, Santa Clara County Bar Association, the League of California Cities (Attorney's Department), the Bay Area City Attorney's Association, and Santa Clara County City Attorney's Association or other relevant municipal law training. Attorney shall be reimbursed for any other costs or expenses reasonably related to the performance of his duties, subject to obtaining prior approval from the Town Manager and the Mayor.

5. Termination and Severance.

(a) Termination. This Agreement may be terminated in the following manner:

- (1) By attorney providing Town sixty (60) days written notice;
- (2) By majority vote of the Town Council; or
- (3) At any time by other method agreed upon by both parties in writing.

(b) Severance. In the event of termination by a majority of the Town Council for reasons other than Attorney's commission of a crime of moral turpitude or a violation of statute or law constituting misconduct in office or disbarment from the practice of law, Town Council will provide Attorney thirty (30) days written notice and Attorney shall be paid six (6) months of compensation as severance. Compensation for the purpose of calculating severance shall be attorney's based compensation as may be adjusted from time to time. Attorney shall be paid for

accrued vacation leave, holidays, and other benefits accrued at the time of the cessation of his duties, as part of any termination or retirement.

(c) Termination for Cause. In the event Attorney is terminated because of his conviction of any illegal act involving a felony, personal gain, or moral turpitude, Town shall have no obligation to pay the severance as set forth in this Agreement. In the event that Attorney is under investigation for any of the foregoing reasons, Town may withhold all or part of such severance pay until it is determined if charges will be filed, and if charges are filed, until final judgment is rendered.

Notwithstanding Paragraph 4 above, Town shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provisions of Paragraph 4 and 5 if Attorney is terminated as a result of a conviction of a crime involving an abuse of his office or position. Any paid leave salary offered by Town to Attorney pending an investigation shall be fully reimbursed by Attorney if he is convicted of a crime involving an abuse of his 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 including 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 1 of the California Penal Code.

6. Indemnification. Town agrees to defend, hold harmless and indemnify Attorney 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 Attorney's duties. Town, at its discretion, is not required to indemnify Attorney for any illegal or criminal acts committed by Attorney.

7. Other Terms and Conditions.

(a) Amendment. From time to time by mutual agreement, the Town Council and Attorney may amend this Agreement or fix other terms and conditions of Attorney's employment, either by written addendum attached hereto or by resolution, provided that such amendments are not inconsistent with the provisions of this Agreement, the Town Code, or any other law.

(b) Application of General Rules. As to any matter not expressly covered in this Agreement, Attorney shall be subject to the same rules and policies as any other management employee.

8. Notices.

(a) Notices pursuant to this Agreement shall be given by deposit in the custody of the United Postal Services, postage prepaid, addressed as follows:

Mayor and Town Council
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

Robert Schultz
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

(b) Notices also may be personally served in the same manner as applicable to civil litigation practice.

(c) Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission by the United State Postal Service.

(d) Either party hereto may change their respective address of record by providing written notice thereof in accordance with this Section.

9. General Provisions.

(a) The text herein shall constitute the entire Agreement between the parties.

(b) No provisions of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing by the Town and the Attorney. No waiver of either party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement shall be deemed a waiver of other provisions or conditions hereof.

(c) This Agreement contains the entire agreement and understanding between the parties and contains all of the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, or agreements. Attorney acknowledges that he has not relied on any promises, statement, representations, or warranties except as set forth expressly in this Agreement.


(d) This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, executors, administrators, successors and assigns of the parties, provided; however, that Attorney may not assign his obligations hereunder.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of California, and venue for any action concerning this Agreement shall be limited to the Superior Court for the County of Santa Clara.

(f) If any provision, or any portion thereof, contained in this Agreement is held 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.

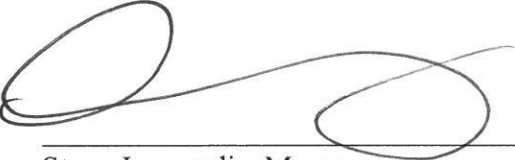
(g) Unless provided for otherwise by this Agreement, all provisions of the Town Code which are applicable to the Town Attorney shall remain in full force and effect.

ATTORNEY:



Robert Schultz

TOWN OF LOS GATOS:



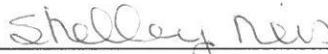
Steve Leonardis, Mayor

Approved As To Form:



Judith Propp, Town Attorney

ATTEST:



Clerk Administrator



AGREEMENT / AMENDMENT ROUTING COVER SHEET

Initiating Department: TA Contact Name/Phone: Judith x 688

Agreement Title: Agreement for Employment Town Attorney

Term of Agreement: From _____ To _____

Date Approved By Council: 12/02/2013 Item or Resolution #: 2

Vendor Name: _____ Vendor #: _____

Vendor Email: _____ Vendor Phone: _____

Vendor Contact: _____

Business License #: N/A Expiration Date: _____

Insurance (IHH) #: N/A Expiration Date: _____

Insurance waiver requested (a completed Release of Liability is attached)

Please Select One:

This is a standard agreement form that has not been altered.

Alterations have been made to the following paragraph(s)/section(s): Custom

Amount of Agreement: _____ Program and Account #: _____

Routing	Action(s)	Date Completed	Signature
1. Clerk Administrator	1. Assign Agreement # <u>13-180</u> 2. Check Insurance	<u>12/9/13</u>	<u>Shelley News</u>
2. Finance	1. Confirm Funds Budgeted <u>N/A</u> 2. Verify Purchasing Policy Compliance <u>12/10</u> 3. Check Payment Terms	<u>12/11/13</u>	<u>JM</u>
3. Town Attorney	1. Approve Insurance Waiver 2. Sign Agreement	<u>12/9/2013</u>	<u>[Signature]</u>
4. Town Manager	1. Sign Agreement	<u>N/A</u>	<u>Signed By Mayor on 12/3/2013</u>
5. Clerk Administrator	1. Scan and file agreement 2. Notify Department (Department sends agreement to vendor)	<u>12/11/13</u>	<u>Shelley News</u>

Agreement Narrative:

If your agreement has gone before the Town Council for approval, please reference that fact and include a very brief description of the purpose of the agreement. If your agreement has not gone to the Town Council for approval, included a discussion of the purpose of the agreement, how the Town's purchasing procedures were followed, and any special instructions.

**Please insert
your narrative
here:**

Attachments:

- Agreement Signed by Vendor. Identify number of duplicate originals: 1
- Exhibits to Agreement (Please list) _____
- Copy of insurance certificates or Release of Liability
- Originals of Bonds issued for contract
- First page of Town Council Report