

## AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on July 1, 2021 by and between TOWN OF LOS GATOS, a California municipal corporation (“Town”), and TruePoint Solutions (“Consultant”), whose address is 3262 Penryn Road, Suite 100-B, Loomis, CA 95650. This Agreement is made with reference to the following facts.

### I. RECITALS

- 1.1 The Town desires to engage the Consultant to provide DigEplan support services and training for software provided by LCT Software.
- 1.2 The Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 The Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. The Consultant acknowledges that the Town has relied upon these warranties to retain the Consultant.

### II. AGREEMENTS

- 2.1 Scope of Services. The Consultant shall provide services as described in that certain Master Services Agreement sent to the Town on April 14, 2021, which is hereby incorporated by reference and attached as Exhibits A, B, and C.
- 2.2 Term and Time of Performance. This contract will remain in effect from July 1, 2021 to June 30, 2026. Consultant shall perform the services described in the Master Services Agreement along with Exhibits A, B, and C.
- 2.3 Compliance with Laws. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state, and local laws. The Consultant represents and warrants to the Town that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for the Consultant to practice its profession. The 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. The 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 the 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 the Consultant’s services or at the Town’s written request. All reports, information, data, and exhibits prepared or assembled by the 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 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 the Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at the Town's risk, unless the Consultant expressly consents to such use in writing. The Town further agrees that it will not appropriate any methodology or technique of the Consultant which is and has been confirmed in writing by the Consultant to be a trade secret of Consultant.

- 2.6 Compensation. Compensation for the Consultant's professional services **shall not exceed \$89,474.00**, inclusive of all costs. Payment shall be based upon Town approval of each task.
- 2.7 Billing. Billing shall be annually 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: Accounts Payable  
P.O. Box 655  
Los Gatos, CA 95031-0655

- 2.8 Availability of Records. The Consultant shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. The 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. The Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. The 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 the Consultant or is based on allegations of the Consultant's negligent performance or wrongdoing.
- 2.11 Conflict of Interest. The 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. The 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, The 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. The Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in the performance of this Agreement. If after employment of a person, the Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, the Consultant shall promptly notify the Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.

- 2.12 Equal Employment Opportunity. The Consultant warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither the 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 and Housing Act.

### **III. INSURANCE AND INDEMNIFICATION**

#### **3.1 Minimum Scope of Insurance:**

- i. The 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. The Consultant 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. The Consultant shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. The Consultant agrees that all certificates and endorsements are to be received and approved by the Town before work commences.
- iv. The 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 the 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 the 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 in 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, or 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, the 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, the Consultant shall ensure that all subcontractors employed by the 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, and reports performed to date by the Consultant. In the event of such termination, the Town shall pay the 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

TruePoint Solutions  
 Attn: Keith Hobday  
 3262 Penryn Road, Suite 100-B  
 Loomis, CA 95650

or personally delivered to the Consultant to such address or such other address as the Consultant designates in writing to the 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 the 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 the Consultant have executed this Agreement.

Town of Los Gatos by:

Consultant, by:

\_\_\_\_\_  
Laurel Prevetti, Town Manager

\_\_\_\_\_  
Keith Hobday, Partner

Recommended by:

\_\_\_\_\_  
Joel Paulson,  
Community Development Director

Approved as to Form:

\_\_\_\_\_  
Robert Schultz, Town Attorney

Attest:

\_\_\_\_\_  
Shelley Neis, MMC, CPMC  
Town Clerk