

Town of Los Gatos

Statement of Qualifications for Independent Police Auditor Investigation Services

March 10, 2021

Dave Fleishman

847 Monterey Street, Suite 206
San Luis Obispo, California 93401
Telephone: 805.706.0962
Email: dfleishman@rwglaw.com



In Your Community
At Your Side

March 10, 2021

VIA EMAIL: manager@losgatosca.gov

Laurel Prevetti
Town Manager
Town of Los Gatos
Town Manager's Office
110 East Main Street
Los Gatos, California 95030

Re: ***Town of Los Gatos Independent Police Auditor Investigation Services***

Dear Ms. Prevetti:

Richards Watson & Gershon (RWG) is pleased to submit this proposal in response to the Town of Los Gatos' Request for Qualifications for Independent Police Auditor Investigation Services.

Dave Fleishman is proposed to serve as lead counsel and primary contact for the Town. Dave has previously provided investigation services for the Town's police and public works departments. Dave will be supported by Rebecca Green and will provide the Town with high-quality, proactive, and cost-efficient legal services.

Our contact information is as follows:

Richards, Watson & Gershon

847 Monterey Street, Suite 206
San Luis Obispo, California 93401
Main: 805.706.0962
Fax: 800.552.0078

Richards, Watson & Gershon

350 South Grand Avenue, 37th Floor
Los Angeles, California 90071
Main: 213.626.8484
Fax: 213.626.0078

Dave Fleishman

Lead Attorney and Point of Contact
Phone: 805.706.0962
E-mail: dfleishman@rwglaw.com

Kayser O. Sume

Chairman, Board of Directors
Phone: 213.626.8484
E-mail: ksume@rwglaw.com

Contract Exceptions:

We have reviewed the sample agreement and would request the following modifications in a final agreement:

Indemnity: In Section 3.4, we request that “willful or negligent act” be changed to “willfully wrongful or negligent act.” In addition, we would request modifications to clarify that RWG’s obligations only apply to the extent that damages, etc., are caused by RWG’s errors or omissions.

Termination: We request a minor revision to incorporate a mutual right of termination without cause.

Compensation: We would request modification to clarify that the “Not-To-Exceed” provisions are not intended to convert the contract to a “flat-fee” basis for all services under the contract.

Insurance: In Section 3.2 All Coverages, the sample agreement states: “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.”

We request this section be revised to reflect the following:

Our insurance carriers will provide cancellation notice only. Our professional liability carriers will not provide any notice to third parties, as this insurance is designed to protect the Firm. The cancellation notice provided by the Firm’s general liability, auto and workers comp carriers will be delivered via regular US mail. The 30-day notice of cancellation will not be provided in the event of non-payment of premium. Instead, a ten (10) day notice of non-payment of premium will be provided.

We believe that the highly qualified team we are proposing, backed by RWG’s extensive resources, would provide exceptional representation to the Town and we look forward to discussing our proposal with you. If you have any questions or comments, please do not hesitate to contact us.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "Kayser O. Sume".

Kayser O. Sume
Chairman, Board of Directors

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Exhibits/Attachments:

Exhibit A	Attorney Resumes
Exhibit B	Investigative Report
Attachment 1	Conflict of Interest Statement
Attachment 2	Non-Collusion Declaration
Attachment 3	References
Attachment 4	Statement Regarding Insurance Coverage and Worker’s Compensation Insurance Acknowledgement Certificate
Attachment 5	Sample Consultant Services Agreement

Scope of Services and Work Plan

Understanding of Requirements

We have read and understand the requirements in the Request for Proposal and scope of services and we have the legal expertise and skills to provide employment and labor law services to the Town.

RWG has the broad experience necessary to address virtually any legal problem and the depth of personnel to do so quickly, efficiently, and expertly. We are known for resolving difficult issues with creative solutions under the highest standards of professionalism and ethics. We understand that identifying legal issues and constraints is only the first part of the job of representing our clients, because finding effective solutions is the final measure of success.

Technical Capabilities

We have 24-hour access to electronic mail, the Internet, video conferencing, database services, and legal research facilities, as well as word processing and other computer-based automation tools. Using the latest technology, we are able to stay in immediate contact with our clients and with one another to provide economical and timely delivery of legal services.

We have administrative help with word processing and printing, which minimizes the amount of time attorneys spend on clerical matters. We also have the ability to scan seals, logos, and other graphics, so that, with permission, they can be embedded into documents we prepare, eliminating the need for later merges or reprints by the client. We transmit and receive documents to and from clients in a number of ways, including emails with PDF or Word attachments. Clients always should feel free to pick up the telephone, send an email, or request a meeting to ask a question or request written advice. We pride ourselves on fast and efficient communication with our clients.

Work Plan

At the beginning of any engagement, we would be pleased to meet with Town staff to introduce our team, discuss the Town's needs, and secure any relevant background information. Depending on the nature and the volume of work that is anticipated, we will want to discuss the Town's desired communication methods and frequency to keep Town personnel informed of work status. When specific assignments are made and lend themselves to a plan, we can suggest a plan for discussion or Town approval. Discreet inquiries or small projects that are completed quickly will be handled without a work plan to reduce the Town's legal costs.

When it comes to interactions with the Town Manager, Town Attorney, and senior management team, we regard accessibility and responsiveness as two of the most critical factors in the provision of legal services. Our proposed members of the team can be reached by telephone, mobile phone, and email, including when the attorney is out of the office or traveling. It is our practice to be available to clients on a very short notice. Furthermore, we take pride in our ability to completely and accurately respond to assignments and inquiries within whatever reasonable time constraints are imposed and to manage our cases with extensive client communication and input.

Expertise and Experience

Six Decades of Service

Founded in 1954, RWG employs a dedicated team of lawyers who specialize in the representation of public entities of all types. We take an interdisciplinary approach to the challenges faced by California public agencies. Our attorneys deliver practical and solution-oriented advice tailored to the unique needs of our public clients. We have built a reputation as the lawyers of choice for clients seeking reliable, efficient, and effective legal counsel to help achieve their goals.

A Premier Full-Service Firm

RWG is a premier, full-service law firm. While our proposal focuses on the labor and employment services addressed in the RFP, we represent clients in all types of matters, from constitutional law to tort litigation to real estate. The Firm previously has provided legal services for the Town on matters similar to those described in the RFP, as well as on other matters. This breadth of our practice areas provides a solid base for the practical labor and employment advice and representation we provide to clients. Throughout California, public, private, and non-profit entities rely on our Firm because we have assembled a large and diverse group of talented attorneys who are dedicated to providing top-quality legal services with a “client first” attitude and approach.

RWG has expertise in the wide variety of legal issues faced by our clients. We regularly represent our clients in advisory and transactional matters, investigative and administrative proceedings, and in litigation at all levels of the state and federal court systems. Our areas of expertise include:

- Brown Act
- CEQA
- Coastal Act
- Code Enforcement
- Conflicts of Interest
- Constitutional Law
- Elections
- Human Resources
- Labor Negotiations
- Landlord Tenant Law
- Municipal Law
- NPDES
- Police and Fire practices
- Public Finance
- Public Retirement
- Public Works
- Real Estate Law
- Tort Defense
- Transportation Law
- Water Law
- Writs and Appeals

Demonstrated Experience

The Firm's Labor and Employment Law Department represents employers in all aspects of the employment relationship. We offer a full range of labor and employment legal services in human resources administration, employment investigations, legal compliance, employer-employee relations, and employment litigation, including the following:

- Human resources administration, including work involving the application, interpretation, and updating of employee handbooks, compensation and benefits, and policy compliance. We also provide advice and representation in internal investigations and termination. We have conducted training programs covering performance evaluations, workplace investigations, family and medical leave programs, and harassment prevention. Recently our Labor and Employment Department has provided training programs on AB 5, the Brown Act, and Policy and Procedure Writing.
- Compliance with employment laws such as those governing wages and hours (FLSA, California Labor Code), equal employment (Title VII, FEHA, ADA, ADEA), protected leaves of absence (FMLA, CFRA, PDL, Kin Care, Labor Code, military leave), and other employee rights (privacy, whistleblower, Peace Officer Bill of Rights). We also have expertise in matters surrounding the COVID-19 pandemic, including the Families First Coronavirus Response Act, and ADA implications of COVID-19.
- Employee relations including labor negotiations, MOU administration, meet and confer issues, grievances, unfair labor practice charges, and grievance appeals. We work to remain flexible in providing the employee relations services that will best serve the specific client involved.
- Employment litigation, with the overall goal of labor and employment counseling to avoid litigation through a positive personnel program, preventive advice, and legally compliant procedures. When litigation is unavoidable, we have been very successful in defending the decisions of our clients in actions involving labor problems, alleged discrimination and

harassment, and challenges to disciplinary decisions. On behalf of our clients, we also appear in alternative dispute resolution proceedings, such as mediation and arbitration, as well as administrative proceedings before the California Department of Fair Employment and Housing (DFEH), and the U.S. Equal Employment Opportunity Commission (EEOC).

Investigative Reports

Dave has completed the following reports for the Town of Los Gatos. We have not included copies of these reports due to their confidential nature.

1. 2020 Los Gatos Police Department investigation involving allegations of misconduct by two police officers. (Report dated 10/14/2020)
2. 2019 Los Gatos Public Works Department investigation involving allegations of misconduct by a supervisor. (Report dated 9/11/2019)
3. 2016 Los Gatos Police Department investigation involving allegations of misconduct by a police officer. (Report dated 7/15/2016)

We have included a redacted copy of an investigative report completed by Rebecca Green as Exhibit B.

Team

RWG is committed to giving the Town the attention of our talented attorneys, and to delivering timely, high quality, and practical legal services on a cost-efficient basis. We believe that establishing a client service team at the outset of representation is an invaluable tool to ensure that the client's needs and service expectations are continuously met.

The following attorneys will serve as the primary attorneys to provide the legal services for the Town of Los Gatos as requested in the RFP, each of whom has confirmed his or her availability and willingness to provide the services requested.



Dave Fleishman | Lead Attorney and Point of Contact

847 Monterey Street, Suite 206
San Luis Obispo, California 93401-3263
Direct: 805.706.0962
E-mail: dfleishman@rwglaw.com

Dave has practiced extensively in the area of labor and employment law for both public and private employers. His practice has focused on the representation of public agencies in an advisory role as city attorney or general counsel in the areas of civil rights, Fair Labor Standards Act, wrongful termination, employment investigations, as well as in public entity defense litigation, including writs and appeals, public contracting, tort claims, and code enforcement. He has prosecuted a significant number of disciplinary and grievance appeal hearings on behalf of employers. He has served as lead negotiator for collective bargaining negotiations, and he has represented agencies in labor disputes. He also has represented private employers throughout California in wrongful termination, wage and hour, and other employment matters. Dave also has volunteered as a board member and officer for a number of non-profit corporations. He currently serves as the First Vice-President for the City Attorneys Department of the League of California Cities.



Rebecca Green | Senior Counsel

350 South Grand Avenue, 37th Floor
Los Angeles, California 90071
Direct: 213.253.0217
E-mail: rgreen@rwglaw.com

Rebecca is Chair of the Labor and Employment Department. She specializes in advisory matters and litigation, and has been practicing law for 14 years. She represents cities and public entities on labor and employment issues including hiring, compliance with state and federal laws, implementing personnel policies, preventing discrimination and harassment, providing reasonable accommodations, administering discipline and termination, and managing labor relations. Rebecca also assists in drafting employment contracts, separation agreements, and memoranda of understanding; conducts workplace investigations; and provides training to employers to ensure compliance with labor and employment laws.

- A seasoned trial attorney, Rebecca represents clients in labor and employment disputes, including in mediation, arbitration, administrative hearings, and litigation in state and federal court. Rebecca’s experience as a litigator gives her a unique insight into the prevention and negotiation of employment disputes, with an eye toward staving off litigation.
- Rebecca clerked for the Honorable Richard A. Paez on the United States Court of Appeals for the Ninth Circuit, and has been in private practice since then. Rebecca’s appellate-level clerkship has helped her write many winning appellate briefs.

In addition to the summaries above, resumes for the team are included as Exhibit A.

Disclosure of Litigation/Discipline

Neither RWG, nor any attorney while employed at RWG, has ever been disciplined by the California State Bar. Additionally, neither the Firm nor any attorney while employed at RWG has ever been successfully sued for malpractice. We are unaware of any complaints to the State Bar ever being made against any of our attorneys.

Pricing Proposal

Time incurred in providing legal services will be billed in increments of one-tenth of an hour. Our invoices provide detailed explanations of tasks performed, dates of work, and the name of the attorney that performed the work.

Fee Schedule

The proposed hourly billing rates for the core team members are as follows:

Attorney	Rate
Dave Fleishman	\$250
Rebecca Green	\$250

To the extent that the services of other Firm attorneys with specialized expertise are required, such services would be billed at a rate of \$250 per hour for all attorneys and \$155 per hour for paralegals.

Items Billed Separately

Items such as mileage, photocopying, messenger and delivery services, and legal research services will be billed separately at the rates detailed below.

Photocopying. Copies will be billed at five cents per page.

Mileage. RWG bills mileage at the standard rate established by the IRS for calculating the operating expenses of an automobile used for business purposes, which currently is .56 cents per mile.

All other costs, including messenger and delivery services and court reporter or court filing fees, will be charged at the rate of the Firm's actual out-of-pocket expense. The Firm will not charge for word processing and similar clerical tasks.

Adjustments

RWG proposes that commencing on July 1, 2023, and on each July 1 thereafter, the rates charged above automatically shall be increased by a percentage amount equal to the percentage increase in the United States Department of Labor, Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers for the Western Region (or other applicable region as agreed upon by RWG and the Town Council) ("CPI") for the twelve-month period ending on the immediately prior March 31. Should the Western Region CPI cease to be published in its entirety or on a periodic basis ending on March 31, RWG and the Town Council shall negotiate in good faith for a mutually acceptable alternative. Any other adjustments in the rates shall require prior approval of the Town Council.

Exhibit A

Attorney Resumes

Dave FLEISHMAN

Of Counsel

CENTRAL COAST
T 805.439.3515



Dave Fleishman has practiced extensively in the area of public law and in the area of labor and employment law for both public and private employers. His practice has focused on the representation of public agencies in an advisory role as city attorney or general counsel, as well as in public entity defense litigation, including writs and appeals, civil rights, Fair Labor Standards Act, wrongful termination, employment investigations, public contracting, tort claims and code enforcement. He has also represented private employers throughout California in wrongful termination, wage and hour, and other employment matters.

WORK FOR CLIENTS

He currently serves as City Attorney for the City of Pismo Beach and interim City Attorney for the City of Solvang. He formerly served as City Attorney for the cities of Guadalupe, Pacific Grove and Solvang, and deputy city attorney for the City of Atascadero. He also previously served as assistant city attorney for the City of Morro Bay. He was formerly Assistant General Counsel for the Cambria Community Services District and the Los Osos Community Services District. He also previously served as General Counsel for the San Simeon Community Services District. He has served as special counsel for the City of Torrance and City of Seal Beach civil service commissions. He has represented over 40 cities and special districts in California and Nevada in various labor and employment matters.

PROFESSIONAL EXPERIENCE

Prior to returning to Richards, Watson & Gershon, where he began his legal career in 1991, Dave was a partner for nearly 25 years in the law firm of Hanley & Fleishman, LLP, which focused on public agency representation throughout California.

PRACTICE AREAS

Labor & Employment
Municipal & Public Agency
Law

FOCUS AREAS

Personnel & Human Resources
Public Records & E-Documents
Public Works & Public
Contracting

EDUCATION

J.D. *cum laude*, University of
Arizona School of Law
A.B., University of California,
Berkeley

PROFESSIONAL AND COMMUNITY AFFILIATIONS

Chairperson, Legal Advocacy Committee, League of California Cities, 2018-19, Member 2017-18, 2012-14

First Vice-President, City Attorneys Department, League of California Cities, 2020-2021

Member of Ad Hoc Committee - League of California Cities City Attorneys Department Listserv

Moderator – League of California Cities City Attorneys Department Listserv

Legislative Consultant – League of California Cities

EXPERIENCE

PUBLISHED OPINIONS

▶ *George v. City of Morro Bay*, 177 F. 3d. 885 (9th Cir. 1999)

NEWS

Supreme Court Reaffirms "California Rule" for Public Agency Employee Pensions and Upholds PEPRAs Changes
07.31.2020

PRESENTATIONS

Email and E-Records Retention Issues under the Public Records Act
League of California Cities City Attorneys Conference, 05.2013

Dealing With Disruptive Members of the Public
League of California Cities Annual Conference, 10.2002

PUBLICATIONS

Paper Terrorism: The Impact of the "Sovereign Citizen" on Local Government
Public Law Journal, Vol. 27, No. 2, 2004

Featured Lawyer
Wired Lawyers, 11 *Law Office Computing* 2, April/May 2001

Rebecca GREEN

Senior Attorney

LOS ANGELES

T 213.626.8484

E rgreen@rwglaw.com



Rebecca represents cities, special districts, and other public agencies on labor and employment issues including hiring and recruitment, compliance with state and federal labor regulations, drafting and implementing personnel policies, discrimination and harassment prevention, reasonable accommodation and the interactive process, discipline and termination. Rebecca also conducts personnel investigations and provides training to ensure compliance with the rapidly evolving arena of labor and employment law. She represents clients in personnel hearings, including appeals of discipline, and negotiates with employee associations to resolve grievances and form memoranda of understanding under the Meyers-Milias-Brown Act.

A seasoned trial attorney, Rebecca represents clients in employment disputes, including in mediation, arbitration, administrative hearings and litigation. She has successfully litigated collective actions under the Fair Labor Standards Act and individual claims brought under the Fair Employment and Housing Act, as well as a variety of disputes ranging from breach of employment contract to Private Attorney General Act and whistleblower lawsuits.

PROFESSIONAL EXPERIENCE

Rebecca began her legal career as a white collar criminal defense attorney at Kirkland & Ellis in Washington, D.C., where she worked with clients to ensure compliance with federal and international laws. She moved to California to clerk for the Honorable Richard A. Paez on the United States Court of Appeals for the Ninth Circuit. Following her clerkship, Rebecca worked as a civil trial attorney, representing clients in a wide variety of areas and focusing on employment litigation. She also gained significant experience advising clients on employment matters and negotiating employment disputes with the goal of pre-litigation resolution.

PRACTICE AREAS

Labor & Employment

FOCUS AREAS

Discipline & Termination

Discrimination & Harassment

Litigation (Labor & Employment)

EDUCATION

J.D., Harvard Law School

M.A., Harvard University

B.A., cum laude, Swarthmore College

PROFESSIONAL AND COMMUNITY AFFILIATIONS

Member, Leadership Council on Legal Diversity

NEWS

"Beyond Bostock" by Rebecca Green Is Los Angeles Lawyer Magazine's February Cover Story

02.09.2021

Governor Signs Law Impacting COVID-19 Workplace Exposures

09.21.2020

Governor Signs Law Creating "Bona Fide Business-to-Business Contracting" Exemption to AB 5 for Public Agencies

09.08.2020

Department of Labor Addresses "Back to School" Issues Regarding Leave Under the Families First Coronavirus Response Act

08.31.2020

Supreme Court Reaffirms "California Rule" for Public Agency Employee Pensions and Upholds PEPRA Changes

07.31.2020

EEOC Issues Updated Guidance Regarding COVID-19 Response

06.19.2020

Workplace Discrimination Against LGBTQ Employees Is Prohibited by Federal Law

06.17.2020

CalPERS Expands Its COVID-19 Frequently Asked Questions Webpage

05.08.2020

New Regulations Help Define the Families First Coronavirus Response Act (FFCRA)

04.03.2020

Department of Labor Issues New Guidance on the Families First Coronavirus Response Act

03.30.2020

New Regulations Regarding Employment of Retired Annuitants

03.19.2020

California Supreme Court Allows Elimination of “Air Time” Benefit but Avoids Reconsideration of the “California Rule”

03.08.2019

Court of Appeal Takes Practical Approach to Police Discipline Statute of Limitations

07.09.2018

Mandatory Union Agency Fees Violate First Amendment

06.27.2018

PRESENTATIONS

Sexual Harassment Prevention for Elected Local Agency Officials

Institute for Local Government, 08.01.2019

Policy and Procedure Writing

Victorville City Hall, 03.13.2019

Sexual Harassment Prevention for Elected Local Agency Officials

California Contract Cities Association, Indian Wells, 12.11.2018

Workplace Implications of the Me Too and Time’s Up Movements

Municipal Management Association of Southern California, Women’s Leadership Summit, Yorba Linda, California, 05.09.2018