

## **AGREEMENT FOR CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into on this 1<sup>st</sup> day of September 2021, by and between TOWN OF LOS GATOS, a California municipal corporation, (“Town”) and O’Brien Code Consulting, Inc. (OCC), engaged in providing Building Plan Check Consulting Services, herein called (“Consultant”), whose address is P.O. Box 112346, Campbell, CA 95011-2346. This Agreement is made with reference to the following facts.

### **I. RECITALS**

- 1.1 Town desires to engage a Building Plan Check Consultant to provide consulting services to assist in the processing of plan checks because of Consultant’s experience and qualifications to perform the desired work and Town needs to undertake activities to supplement its ability to review building plan checks and enhance customer service, efficiency, and legal requirements.
- 1.2 Consultant represents and affirms that it is qualified and 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 services as described in that certain Proposal to Provide Building Division Plan Check Review Services sent to Town on June 4 2021 which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect from September 1, 2021 to June 30, 2026. Consultant shall perform the services described in this agreement as follows:
  - a. Provide complete Building Permit Plan Check Services, including but not limited to, Initial Plan Check comments on submitted applications, Resubmittal Plan Check comments on revised plans, and written copies of Initial and Resubmittal Plan Check comments.
  - b. As requested by Town, provide copies of work products of all comments, reports, and studies prepared for Town. Consultant shall provide electronic file copies of these documents.
  - c. As requested by Town, provide an updated listing/status report of all Building Permit Plan Checks reviewed for the Town.
  - d. When needed by Town, Plan Check Consultant and Building Official shall attend meetings with Town staff, public officials, community leaders, developers, contractors and the general public. (Maximum of 4 additional meetings per month.)

ATTACHMENT 1

- e. On-site structural and non-structural plan review services consisting of approximately ten hours per week, spread over two separate days, may be required.
  - f. Provide Technical Support at pre-design and pre-construction meetings and at field visits as needed. Provide Technical Support and guidance for field inspection personnel.
  - g. Provide services as needed by the Town per Scope of Services – Exhibit A.
- 2.3 Compliance with Laws. 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 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 Town and all reports and supportive data prepared by Consultant under this Agreement are Town's property and shall be delivered to Town upon the completion of Consultant's services or at 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 Town to the public, and Consultant shall not make any of the these documents or information available to any individual or organization not employed by Consultant or Town without the written consent of Town before such release. Town acknowledges that the reports to be prepared by 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 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 be based upon Town's pre-approval of each task as noted in the Scope of Services Compensation for each task and shall not exceed the amount per task noted in the Consultant's Schedule of Fees attached hereto as part of Exhibit B and incorporated by reference herein. Fees will be reviewed on an annual basis.
- 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 Town shall be addressed as follows:

Invoices:

Town of Los Gatos  
Attn: Accounts Payable  
P.O. Box 949  
Los Gatos, CA 95031

- 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 Town at the Consultant's offices during business hours upon written request of 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 Town.
- 2.10 Independent Contractor. It is understood that 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 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, 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. Consultant has and shall not obtain any holding or interest within Town of Los Gatos. Consultant has no business holdings or agreements with any individual member of Staff or management of 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 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 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 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.

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

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

- i. 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. 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. Consultant shall provide to Town all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by Town before work commences.
- iv. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$1,000,000 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. 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 Consultant; products and completed operations of Consultant, premises owned or used by Consultant. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
- ii. 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 Town, its officers, officials, employees or volunteers shall be excess of 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 Town, its officers, officials, employees or volunteers.
  - iv. 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 Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with 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. Consultant shall save, keep, hold harmless and indemnify and defend 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 Consultant, or any of 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. Town and Consultant shall have the right to terminate this agreement with or without cause by giving not less than fifteen (15) days written notice of termination. In the event of termination, Consultant shall deliver to Town all plans, files, documents, reports, performed to date by 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 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 Town and 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

O'Brien Code Consulting, Inc.  
Attn: Susan O'Brien  
475 Queens Court  
Campbell, CA 95008

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 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.

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

Town of Los Gatos by

Consultant, by:

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

\_\_\_\_\_  
Susan O'Brien, P.E, LEED AP, CASp  
Principal

Recommended by:

\_\_\_\_\_  
Robert Gray, Building Official

Approved as to Form:

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

Attest:

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

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