



MEETING DATE: 9/20/2004

ITEM NO. 4

COUNCIL AGENDA REPORT

DATE: September 14, 2004
TO: MAYOR AND TOWN COUNCIL
FROM: DEBRA J. FIGONE, TOWN MANAGER
SUBJECT: ADOPT RESOLUTION AUTHORIZING THE TOWN MANAGER TO EXECUTE A CONTRACT WITH WILLIAM AVERY & ASSOCIATES, INCORPORATED TO PROVIDE LABOR RELATIONS SERVICES

RECOMMENDATION:

Adopt resolution approving a contract with William Avery & Associates, Incorporated to provide labor relations consulting services, and authorizing the Town Manager to execute the contract.

DISCUSSION:

The Town of Los Gatos is currently in contract negotiations with two bargaining units, the Town Employees Association (TEA) and the Corporation Yard Unit, AFSCME Local 101. The Human Resources Director was serving as the Town's Chief Negotiator; however he resigned effective September 9, 2004 and is working off-site on a limited basis until a new Director is hired.

William Avery & Associates, Incorporated is uniquely qualified to assist the Town due to their extensive experience in labor relations throughout the State; their proximity to and knowledge of the environment in Los Gatos; and their competitive fee schedule. It is recommended that the Town Council approve the attached contract for labor relations consulting services with William Avery & Associates Inc. in an amount not to exceed \$19,350, and authorize the Town Manager to execute the contract.

PREPARED BY: PAMELA S. JACOBS Assistant Town Manager

PSJ:pg
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Reviewed by: Assistant Town Manager, Town Attorney, Clerk, Finance, Community Development
Revised: 9/15/04 9:49 am

PAGE 2

MAYOR AND TOWN COUNCIL

SUBJECT: ADOPT RESOLUTION AUTHORIZING THE TOWN MANAGER TO  
EXECUTE A CONTRACT WITH WILLIAM AVERY & ASSOCIATES,  
INCORPORATED TO PROVIDE LABOR RELATIONS SERVICES

SEPTEMBER 14, 2004

ENVIRONMENTAL ASSESSMENTS:

Is not a project defined under CEQA, and no further action is required.

FISCAL IMPACT:

Funding for the proposed contract services is available in the Adopted 2004-2005 Operating Budget. Budget savings associated with the vacant Human Resources Director position will be used to fund the contract. If additional funding is required, the Town Manager's Contingency fund will be used.

Attachment:

Resolution approving a contract with William Avery & Associates, Incorporated to provide labor relations consulting services, and authorizing the Town Manager to execute the contract (w/Agreement for Labor Relations Consultant Services)

Distribution: William Avery & Associates - 3 ½ N Santa Cruz Avenue, Suite A, Los Gatos 95030

RESOLUTION NO.

RESOLUTION OF THE TOWN OF LOS GATOS  
AUTHORIZING THE TOWN MANAGER TO  
EXECUTE A CONTRACT WITH WILLIAM AVERY & ASSOCIATES, INCORPORATED  
TO PROVIDE LABOR RELATIONS SERVICES

**RESOLVED**, by the Town Council of the Town of Los Gatos, County of Santa Clara, State of California, that the contract with William Avery & Associates Inc. to provide labor relations consulting services is hereby approved and that the Town Manager is authorized to execute the contract (attached) for an amount not to exceed \$19,350.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the \_\_\_\_ day of September, 2004 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYES:

ABSENT:

ABSTAIN:

**SIGNED:**

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:

CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

## **AGREEMENT FOR LABOR RELATIONS CONSULTANT SERVICES**

THIS AGREEMENT is entered into this \_\_\_\_ day of September, 2004, by and between the Town of Los Gatos, State of California, herein called the "Town", and William Avery & Associates, Incorporated, engaged in providing labor relations consulting services, herein called the "Consultant".

### **RECITALS**

- A. The Town is in the process of negotiating contracts with recognized Town employee bargaining units.
- B. The Town desires to engage a professional labor relations expert to provide consulting services in conjunction with the negotiations and other labor relations and personnel functions because of Consultant's experience and qualifications to perform the desired work.
- C. The Consultant represents and affirms that it is qualified and willing to perform the desired work pursuant to this Agreement.

### **AGREEMENTS**

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

- 1. Scope of Services. The Consultant shall provide the labor relations and personnel services requested by the Town, including but not limited to: advise and consulting on grievance handling and processing; negotiations with the Town's bargaining units; mediation and fact finding activities of such units; and other such advice, opinion or assistance requested by the Town through the Town Manager or her designee(s).
- 2. Time of Performance. The services of the Consultant are to commence upon the execution of this Agreement and continue through June 30, 2004.
- 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 represents and warrants to Town that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals 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.

4. Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
5. Information/Report Handling/Town Duties. 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 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 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.

Additionally, Town shall cooperative with Consultant in the performance of this agreement as follows:

- a) Provide all information reasonably accessible to Town which may be helpful to Consultant in the performance of his services;
  - b) Provide a management team member to assist Consultant during negotiations sessions;
  - c) Provide clerical assistance as Consultant may reasonably require when on-site; and
  - d) Provide a suitable location where negotiation sessions may be conducted.
6. Compensation. Compensation for Consultant's professional services shall be \$215.00 per hour and shall cumulatively not exceed \$19,350.00 for labor relations and related services. Consultant shall not charge for clerical time, copies, phone calls, etc. incurred by Consultant at Consultant's office.

Each billing shall be accompanied by a brief report indicating the service provided and hours worked. Payment shall be net thirty (30) days. All invoices and statements to the Town shall reference the Town's purchase order number and be addressed as follows:

Invoices:

Town of Los Gatos  
Attn: Accounts Payable  
P.O. Box 949  
Los Gatos, CA 95030

Statements:

Town of Los Gatos  
Attn: Sandy Ortiz  
P.O. Box 949  
Los Gatos, CA 95030

7. Availability of Records. Consultant shall maintain the records supporting this billing for not less than three (3) 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.
8. Project Manager. The Project Manager for Consultant for the work under this Agreement shall be Ellen Aldridge.
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.
10. Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

To Town:

Debra Figone  
Town Manager  
110 E. Main Street  
Los Gatos, CA 95031

To Consultant:

William H. Avery  
President  
William Avery & Associates  
3 ½ N. Santa Cruz Avenue, Suite A  
Los Gatos, CA 95030

or personally delivered to Consultant to such address or such other address as Consultant designates in writing to Town.

11. 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 Consultant 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.

12. 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.
13. 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.
14. Insurance.
  - A. Minimum Scope of Insurance:
    - (1) Consultant agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him and his 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.
    - (2) Consultant agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him and his staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.

- (3) 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.
- B. All Coverages: Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, canceled, 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.
15. Indemnification. The Consultant shall save, keep and hold harmless 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 sub-consultant.
16. 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.
17. 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 or Municipal Court of the County of Santa Clara.
18. 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 (15) days written notice of termination. In the event of termination, the Consultant shall deliver to the Town all files, documents and 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 pursuant to Section 6 above, 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.
19. 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.
20. 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.

21. Entire Agreement. This Agreement, including Exhibit A attached hereto, 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.

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement as of the date indicated on page one (1).

Town of Los Gatos by:

Consultant by:  
William Avery & Associates

\_\_\_\_\_  
Debra Figone, Town Manager

\_\_\_\_\_  
William H. Avery, President

Recommended by:

  
\_\_\_\_\_  
Pamela S. Jacobs, Assistant Town Manager

Approved as to Form:

\_\_\_\_\_  
Orry P. Korb, Town Attorney

ATTEST:

\_\_\_\_\_  
Marian V. Cosgrove, Town Clerk