



MEETING DATE: 09/02/08
ITEM NO. 1

COUNCIL AGENDA REPORT

DATE: August 26, 2008

TO: MAYOR AND TOWN COUNCIL

FROM: GREG LARSON, TOWN MANAGER *P. Jacobo for*

SUBJECT: ADOPT A RESOLUTION AUTHORIZING THE TOWN MANAGER TO ENTER INTO AGREEMENTS WITH GEIER & GEIER CONSULTING AND STRELOW CONSULTING TO SERVE AS ENVIRONMENTAL CONSULTANTS TO THE TOWN.

RECOMMENDATION:

Adopt a resolution authorizing the Town Manager to enter into an agreement with Geier & Geier Consulting and Strelow Consulting to serve as environmental consultants to the Town.

BACKGROUND:

On June 12, 2008, the Town distributed a Request for Proposal (RFP) for environmental consultants to seven firms that have a proven record of providing highly qualified environmental services to local agencies. Three proposals were received and the candidates were all interviewed by representatives of the Town. The review panel concluded that the current environmental consultant, Geier & Geier Consulting, and a second firm, Strelow Consulting, were best qualified to meet the needs of the Town.

DISCUSSION:

Environmental consultants serve in a similar capacity to the Town geotechnical, arborist and architectural consultants. When environmental review is required for a project, the following steps are taken:

- Negative Declaration (ND) fee and Initial Study (IS) deposit paid by applicant
- Purchase Order obtained from Finance

Bud N. Lortz
PREPARED BY: Bud N. Lortz, Director of Community Development

Reviewed by: ☒ Assistant Town Manager *OK* Town Attorney ☐ Clerk *sc* Finance
☒ Community Development

Revised: 8/26/08 10:09 AM

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MAYOR AND TOWN COUNCIL

SUBJECT: APPROVAL OF ENVIRONMENTAL CONSULTANT CONTRACTS

September 2, 2008

- Authorization to Proceed provided to consultant upon approval by the Director of Community Development
- Project planner meets with consultant to present project and provide plans, supporting documentation and technical reports
- Consultant interacts with Town staff as needed to clarify codes, policies, applicable development standards and/or guidelines and project issues (applicant interface is done by Planning and Engineering staff)
- Consultant provides administrative draft IS and ND
- Two week review period by Town staff and any other reviewing agencies (e.g. Santa Clara County Fire Department or Santa Clara Valley Water District)
- Following receipt of review comments, final IS and ND provided to Town for distribution for public review
- Consultant bills Town for work

Typical tasks that the environmental consultant may be called on to provide include the following:

- Scoping meetings with staff for any referred projects that are not exempt from CEQA
- Field visits and documentation of existing site conditions
- Interaction with Town staff as needed to clarify or discuss project issues
- Preparation of Initial Studies and Negative Declarations
- Preparation of Mitigation Monitoring Programs when required
- Attendance at public hearings as required
- Preparation of follow-up clarification letters or documentation for any Initial Studies or Negative Declarations on an as needed basis
- Preparation of Environmental Impact Reports

Qualifications:

Geier & Geier Consulting (GGC) has been providing environmental services for 30 years and has served as a consultant to the Town for the past 10 years. In that capacity GGC has prepared over 150 Initial Studies and Mitigated Negative Declarations for a variety of development applications. GGC has also prepared Environmental Impact Reports for the Town, inclusive of the Shannon Valley Ranch, Sobrato/Netflix and Shady Lane Planned Developments. The firm's areas of expertise include environmental assessment and documentation, project planning and fiscal analysis.

Strelow Consulting has 27 years of experience in environmental analysis and has provided a wide variety of environmental projects for a diverse range of projects. Principal Stephanie Strelow has worked as a contract planner and environmental consultant to various jurisdictions in Santa Cruz, Monterey and Santa Clara Counties. Ms. Strelow has prepared over 250 technical, environmental and planning reports, including CEQA documents, EIRs mitigation monitoring programs and EIR certification findings. References were highly complimentary of Ms. Strelow's work and stated that she is an excellent consultant who is reliable, responsive and easy to work with, and that she has a strong background in CEQA issues.

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General Plan Compliance

The following General Plan policies and implementing strategies support the use of environmental consultants:

- L.P.8.5 Allow development only if it is environmentally suitable to such use.
- L.I.8.15 Environmental Impact Reports: Staff should err on the side of requiring an Environmental Impact Report to ensure adequate consideration of environmental concerns associated with projects.
- C.P.2.3 Consider the single and cumulative impacts on water drainage (runoff) and contamination (water quality) in the environmental review process of development in all areas but particularly in or adjacent to hillsides, riparian lands or important undeveloped watershed areas.
- N.I.1.6 Noise analysis: The Town as part of the Environmental Review process, shall require an acoustical analysis of projects and all input related to noise levels shall use the adopted standard of measurement.

ENVIRONMENTAL REVIEW:

Environmental review is not required as this is not a project as defined by the California Environmental Quality Act.

FISCAL IMPACT:

Environmental assessment is a cost recovery process. Applicants pay a fee to the Town and are responsible for consultant time and materials to prepare environmental documents. The current fee for a Negative Declaration is \$1,713 and the Initial Study deposit is \$3,500.

CONCLUSION:

Staff recommends that the Council adopt the resolution (Attachment 1) authorizing the Town Manager to enter into an agreement with Geier & Geier Consulting and Strelow Consulting to serve as environmental consultants to the Town.

Attachments:

1. Resolution with contracts attached

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MAYOR AND TOWN COUNCIL

SUBJECT: APPROVAL OF ENVIRONMENTAL CONSULTANT CONTRACTS

September 2, 2008

Distribution:

Geier & Geier Consulting, P. O. Box 5054, Berkeley, CA 94705-5054

Strelow Consulting, P. O. Box 2896, Santa Cruz, CA 95063-2896

BNL:SD

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RESOLUTION 2008 -

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH
GEIER & GEIER CONSULTING AND STRELOW CONSULTING
FOR ENVIRONMENTAL ASSESSMENT SERVICES TO THE TOWN**

RESOLVED, that the Town of Los Gatos Town Council has determined that there is an on-going need for environmental consulting services; and

RESOLVED, that the General Plan includes policies and implementing strategies supporting this action; and

RESOLVED, that the Town of Los Gatos sent Requests for Proposals to seven Bay Area environmental consulting firms; and

RESOLVED, that the Town received three proposals for environmental consulting services; and

RESOLVED, that the most qualified consultants based on the proposals and interviews conducted by Town staff and a review of work examples are Geier & Geier Consulting (GGC) and Strelow Consulting; and

RESOLVED, that project managers Valerie Geier of GGC and Stephanie Strelow of Strelow Consulting have applicable experience with peer review, working with small communities, and are able to provide needed environmental review services to the Town; and

RESOLVED, by the Town Council that the TOWN OF LOS GATOS enter into an agreement for services as an environmental consultant.

FURTHER RESOLVED, by the Town Council that the Town Manager is authorized and directed to execute the agreements, attached hereto as Exhibits 1 and 2, for services as environmental consultant on behalf of the TOWN OF LOS GATOS.

PASSED AND ADOPTED at a regular meeting of the Town Council held on the 2nd day of September, 2008, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

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AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is entered into this _____ day of _____, 2008, by and between the Town of Los Gatos, State of California, herein called the "Town", and, Geier and Geier engaged in providing environmental review services herein called the "Consultant".

RECITALS

- A. To streamline the environmental review process and improve efficiency the Town, since 1998, has retained an environmental consultant to conduct environmental assessments and prepare environmental documents for Town projects.
- B. The Town desires to engage Geier and Geier Consulting, Inc. to provide consulting services in conjunction with this streamlining because of firms 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 services as detailed below:
 - a. Attend a minimum of one preliminary scoping meeting with staff and additional meetings with staff if necessary.
 - b. Visit the project site, document existing site conditions, identify issues and determine whether additional technical studies are needed.
 - c. Recommend whether an Initial Study or EIR should be prepared.
 - d. Prepare a scope of work with cost estimate (if amount will exceed initial fee) and schedule.
 - e. Consult with other Town departments and outside agencies as needed.
 - f. Prepare Initial Study and Negative Declaration and Notice of Intent to Adopt or Negative Declaration. Provide 5 copies of the draft and 25 copies of the final draft. The consultant shall also provide electronic copies of the final document in the approved work process software at the time the final draft copies are delivered to the Town.
 - g. Prepare Mitigation Monitoring Programs, when required.
 - h. Attend a minimum of one Planning Commission and one Town Council meeting as needed. Additional meetings will be authorized by the Community Development Director on an "as needed basis", and the Town will be charged only for time and materials. Funds to pay for additional meetings shall be provided by the applicant to the Town prior to the meetings.
 - i. Prepare follow-up clarification letters to respond to public review comments and provide documentation for any Initial Study or Negative Declarations as needed at no additional

cost to the Town.

- j. If an EIR is recommended as a result of the Initial Study or if significant evidence is clearly evident that an EIR is warranted, the Community Development Director has the discretion to choose one the following three options: 1) Ask the consultant for an estimate to prepare the EIR based on a scope of work developed by the Community Development Department; 2) Ask the Alternate Environmental consultant for an estimate to prepare a scope of work developed by the Community Development Department; or 3) Prepare a Request for Proposal for the EIR and solicit proposals from other consultants and enter into a contract for its preparation. The requirements and scope of work for each EIR shall be developed by the Planning Department on a case-by-case basis and shall be incorporated into the contract for the EIR.
2. Time of Performance. The services of the Consultant are fixed for a five year period that will commence upon the execution of the contract and the Town. At the end of this period, should the Town not renew the contract, the contract shall automatically expire. The individual time of performance schedule for each project referred to the Consultant is required to be preformed as outlined in the scope of work section of this contract.
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 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. 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 the 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.
6. Compensation. Prior to the Town authorizing the preparation of an Initial Study, the Community Development Director will send the consultant an "Authorization to Proceed" letter. The consultant shall sign the authorization and return it to the Town. Upon receipt of this letter, the Town of Los Gatos shall compensate the firm on the following basis:

- a. A maximum of \$3,500 per project (which may be re-evaluated and modified at the beginning of the new fiscal year upon written authorization of the Community Development Director) for the preparation of an Initial Study, Negative Declaration, and/or Mitigation Monitoring Plan. This shall include attendance at the meetings noted above, the specified number of draft, final and electronic file copies, and follow up clarification letters or documentation regarding the preparation of these documents.
- b. Costs incurred by the consultant for additional tasks beyond the scope of work of the original Initial Study or Negative Declaration that are not specifically required to clarify information within the documents or clarify issues relating to the preparation of the environmental assessment shall be authorized by the Town prior to the preparation of the analysis or supplementary documents.
- c. Cost for the preparation for an EIR shall be determined by a scope of work developed by the Community Development Director on a project specific basis. The full cost of preparing the EIR shall be borne by the project applicant.

7. Billing. Billing 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 reference the Town's purchase order number and be addressed as follows:

Invoices:

Town of Los Gatos
Attn: Accounts Payable
P.O. Box 655
Los Gatos, CA 95030

Statements:

Town of Los Gatos
Attn: Finance Department
P.O. Box 655
Los Gatos, CA 95030

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 the Town at the Consultant's offices during business hours upon written request of the Town.
9. Project Manager. The Project Managers for the Consultant for the work under this Agreement shall be Valier Chew Geier, Principal or Fritz Geier, Principal.
10. 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.
11. 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:	To Consultant:
Bud Lortz, AICP Community Development Director Town of Los Gatos Community Development Department P.O. Box 949 Los Gatos, CA 95031	Valerie Chew Geier P.O. Box 5054 Berekeley, CA 94705-5054

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

12. 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.

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.

13. Conflict of Interest. Consultant understands that its' professional responsibilities is 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.

14. 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.

15. Insurance.

A. 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 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.
- 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.

B. 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 Consultant, 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 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.

C. 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 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.

D. 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.

16. 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 to the extent caused by a willful or negligent act or omissions of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant.
17. 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.
18. 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.
19. 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 thirty (30) days written notice of termination. In the event of termination, the Consultant shall deliver to the Town all plans, files, documents, 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 paragraph 6 hereto, 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.
20. 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.
21. 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.
22. Entire Agreement. This Agreement 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.

Consultant, by:

Valerie Chew Geier, Principal Geier and Geier

Date: _____

Town of Los Gatos by:

Greg Larson, Town Manager

Date: _____

Department Approval by:

Bud N. Lortz Director of Community
Development

Date: _____

Approved as to Form by:

Orry P. Korb, Town Attorney

Date: _____

ATTEST:

Town of Los Gatos, Los Gatos, California, by

Jackie Rose, Clerk Administrator

Date: _____

N:\DEV\AGREEMENTS\CONSULTANT SERVICE AGREEMENT.GEIER AND GEIER 8-08.DOC

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is entered into this _____ day of _____, 2008, by and between the Town of Los Gatos, State of California, herein called the "Town", and, Strelow Consulting engaged in providing environmental review services herein called the "Consultant".

RECITALS

- A. To streamline the environmental review process and improve efficiency the Town, since 1998, has retained an environmental consultant to conduct environmental assessments and prepare environmental documents for Town projects.
- B. The Town desires to engage Strelow Consulting, Inc. to provide consulting services in conjunction with this streamlining because of firms 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 services as detailed below:
 - a. Attend a minimum of one preliminary scoping meeting with staff and additional meetings with staff if necessary.
 - b. Visit the project site, document existing site conditions, identify issues and determine whether additional technical studies are needed.
 - c. Recommend whether an Initial Study or EIR should be prepared.
 - d. Prepare a scope of work with cost estimate (if amount will exceed initial fee) and schedule.
 - e. Consult with other Town departments and outside agencies as needed.
 - f. Prepare Initial Study and Negative Declaration and Notice of Intent to Adopt or Negative Declaration. Provide 5 copies of the draft and 25 copies of the final draft. The consultant shall also provide electronic copies of the final document in the approved work process software at the time the final draft copies are delivered to the Town.
 - g. Prepare Mitigation Monitoring Programs, when required.
 - h. Attend a minimum of one Planning Commission and one Town Council meeting as needed. Additional meetings will be authorized by the Community Development Director on an "as needed basis", and the Town will be charged only for time and materials. Funds to pay for additional meetings shall be provided by the applicant to the Town prior to the meetings.
 - i. Prepare follow-up clarification letters to respond to public review comments and provide documentation for any Initial Study or Negative Declarations as needed at no additional cost to the Town.

- j. If an EIR is recommended as a result of the Initial Study or if significant evidence is clearly evident that an EIR is warranted, the Community Development Director has the discretion to choose one the following three options: 1) Ask the consultant for an estimate to prepare the EIR based on a scope of work developed by the Community Development Department; 2) Ask the Alternate Environmental consultant for an estimate to prepare a scope of work developed by the Community Development Department; or 3) Prepare a Request for Proposal for the EIR and solicit proposals from other consultants and enter into a contract for its preparation. The requirements and scope of work for each EIR shall be developed by the Planning Department on a case-by-case basis and shall be incorporated into the contract for the EIR.
2. Time of Performance. The services of the Consultant are fixed for a five year period that will commence upon the execution of the contract and the Town. At the end of this period, should the Town not renew the contract, the contract shall automatically expire. The individual time of performance schedule for each project referred to the Consultant is required to be preformed as outlined in the scope of work section of this contract.
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 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. 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 the 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.
6. Compensation. Prior to the Town authorizing the preparation of an Initial Study, the Community Development Director will send the consultant an "Authorization to Proceed" letter. The consultant shall sign the authorization and return it to the Town. Upon receipt of this letter, the Town of Los Gatos shall compensate the firm on the following basis:

- a. A maximum of \$3,500 per project (which may be re-evaluated and modified at the beginning of the new fiscal year upon written authorization of the Community Development Director) for the preparation of an Initial Study, Negative Declaration, and/or Mitigation Monitoring Plan. This shall include attendance at the meetings noted above, the specified number of draft, final and electronic file copies, and follow up clarification letters or documentation regarding the preparation of these documents.
- b. Costs incurred by the consultant for additional tasks beyond the scope of work of the original Initial Study or Negative Declaration that are not specifically required to clarify information within the documents or clarify issues relating to the preparation of the environmental assessment shall be authorized by the Town prior to the preparation of the analysis or supplementary documents.
- c. Cost for the preparation for an EIR shall be determined by a scope of work developed by the Community Development Director on a project specific basis. The full cost of preparing the EIR shall be borne by the project applicant.

7. Billing. Billing 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 reference the Town's purchase order number and be addressed as follows:

Invoices:
 Town of Los Gatos
 Attn: Accounts Payable
 P.O. Box 655
 Los Gatos, CA 95030

Statements:
 Town of Los Gatos
 Attn: Finance Department
 P.O. Box 655
 Los Gatos, CA 95030

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 the Town at the Consultant's offices during business hours upon written request of the Town.
9. Project Manager. The Project Managers for the Consultant for the work under this Agreement shall be Stephanie Strelow, Principal.
10. 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.
11. 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:	To Consultant:
Bud Lortz, AICP Community Development Director Town of Los Gatos Community Development Department P.O. Box 949 Los Gatos, CA 95031	Stephanie Strelow P.O. Box 2896 Santa Cruz, CA 95063-2896

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

12. 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.

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.

13. Conflict of Interest. Consultant understands that its' professional responsibilities is 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.

14. 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.

15. Insurance.

A. 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 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.
- 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.

B. 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 Consultant, 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 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.

- C. 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 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.

D. 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.

16. 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 to the extent caused by a willful or negligent act or omissions of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant.
17. 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.
18. 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.
19. 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 thirty (30) days written notice of termination. In the event of termination, the Consultant shall deliver to the Town all plans, files, documents, 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 paragraph 6 hereto, 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.
20. 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.
21. 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.
22. Entire Agreement. This Agreement 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.

Consultant, by:

Stephanie Strelow, Principal Strelow Consulting

Date: _____

Town of Los Gatos by:

Greg Larson, Town Manager

Date: _____

Department Approval by:

Bud N. Lortz Director of Community
Development

Date: _____

Approved as to Form by:

Orry P. Korb, Town Attorney

Date: _____

ATTEST:

Town of Los Gatos, Los Gatos, California, by

Jackie Rose, Clerk Administrator

Date: _____

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