

**SECOND AMENDMENT TO THE AGREEMENT FOR EMPLOYMENT
TOWN ATTORNEY**

This Amendment to Town Agreement AGR13-180 is entered into this 19th day of January, 2016, by and between the Town of Los Gatos, a municipal corporation ("Town") and Robert Schultz ("Employee").

WHEREAS, Town and Robert Schultz executed an Agreement effective December 12, 2013 to provide Town Attorney services to the Town; and

WHEREAS, a First Amendment to the Agreement was executed on December 17, 2015 to amend the employment agreement to award a 2% wage increase to the annual base salary, effective with the Town Attorney's anniversary date of December 12, 2014 and a lump sum performance bonus of \$2,000; and

WHEREAS, in December 2015, the Town Council concluded an evaluation of Robert Schultz's performance and determined that all performance goals and objectives were met or exceeded; and

WHEREAS, on the basis of the annual evaluation, the Town Council desires to amend the employment agreement to award a 5% wage increase to the annual base salary, effective with the Town Attorney's anniversary date of December 12, 2015 and a lump sum performance bonus of \$5,000; and

WHEREAS, in addition, the Town Council and Town Attorney desire to make changes to the Agreement in regard to Exclusive Employment and Professional Development to be consistent with the Town Manager Agreement and to promote transparency and open government.

IT IS THEREFORE AGREED by the parties as follows:

Section 1(a) of the Agreement is added to read as follows:

1 (a). Exclusive Employment. During the term of this Agreement, Attorney shall be in the exclusive employ of TOWN; provided, however, that the term "exclusive employ" shall not prohibit future part-time employment which the Employee may desire to accept with appropriate prior knowledge and approval of the Town Council. "Appropriate prior knowledge and approval of the Town Council" shall mean that Attorney shall give four (4) weeks written notice to the Town Council prior to accepting part-time employment and approval of the Town Council shall be deemed given unless any Town Council member states in writing that they desire a closed session to discuss the part-time employment. Such part-time employment shall not in any way conflict in time or interest with Attorney's responsibilities to TOWN. Town Council shall have uncontrolled discretion in granting part-time outside employment and its determination to grant or deny part-time outside employment shall be final.

Section 4 of the Agreement is amended to add the following:

4. Compensation

(a) Base Salary.

(1) The Town Attorney is awarded a 5% wage increase for an annual base salary of \$198,135.00, effective with the Town Attorney's anniversary date of December 12, 2015.

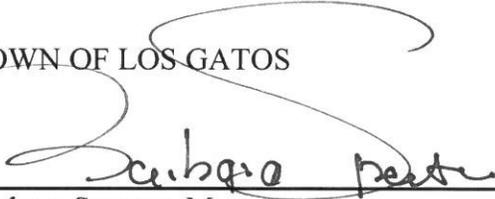
(b) Performance Review.

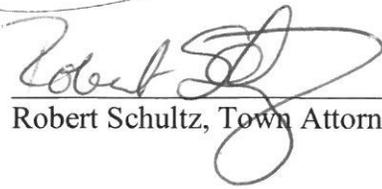
(1) On the basis of an annual performance evaluation covering the second year of employment from December 2014 to December 2015, the Town Attorney is awarded a one-time lump sum payment of \$5,000.

(j) Professional Development. TOWN agrees that attendance at League of California Cities, ABAG, CIPA, and other professional development activities is both beneficial and expected. TOWN hereby agrees to pay the travel, lodging, and subsistence expenses of Attorney for professional and official travel, lodging, meetings, and occasions, and for short courses, institutes and seminars necessary to continue the professional development of Attorney, and to adequately pursue necessary official and other functions for TOWN, in accordance with approved budgetary limitations. Notwithstanding the above, appropriate prior knowledge and approval of the Town Council must be obtained prior to the registering and expenditure of funds for conferences, seminars, forums or other professional development that exceeds the length one (1) day. "Appropriate prior knowledge and approval of the Town Council" shall mean that the Attorney shall give at least four (4) weeks written notice to the Town Council prior to registering for any professional development event that exceeds the length of one (1) day and approval of the Town Council shall be deemed given unless any Town Council member states in writing that they desire a closed session to discuss the matter.

IN WITNESS WHEREOF, the parties have executed this Amendment to the Town Attorney Agreement on the date written above.

TOWN OF LOS GATOS


Barbara Spector, Mayor


Robert Schultz, Town Attorney

ATTEST:


Shelley Neis, Clerk/Administrator for
Town of Los Gatos



MEETING DATE: 01/19/16
ITEM NO: 9

COUNCIL AGENDA REPORT

DATE: JANUARY 10, 2016
TO: MAYOR AND TOWN COUNCIL
FROM: LAUREL PREVETTI, TOWN MANAGER *Laurel Prevetti*
SUBJECT: APPROVE AN AMENDMENT TO THE EMPLOYMENT AGREEMENT BETWEEN THE TOWN OF LOS GATOS AND THE TOWN ATTORNEY FOR A 5% INCREASE TO THE ANNUAL BASE SALARY EFFECTIVE WITH THE TOWN ATTORNEY'S ANNIVERSARY DATE OF DECEMBER 12, 2015 AND A LUMP SUM PERFORMANCE BONUS OF \$5,000.

RECOMMENDATION:

Approve an amendment to the employment agreement between the Town of Los Gatos and the Town Attorney for a 5% wage increase to the annual base salary effective with the Town Attorney's anniversary date of December 12, 2015 and a lump sum performance bonus of \$5,000.

BACKGROUND:

As an appointee of the Town Council, the Town Attorney is employed under an Employment Agreement specifying the terms and conditions of employment. The terms and conditions of employment include items such as base pay, basic and optional benefits, covered expenses, parameters for an annual performance review, and conditions for termination/severability.

DISCUSSION:

The Town Attorney's Employment Agreement is reviewed on an annual basis in conjunction with an annual performance evaluation. The review of the Employment Agreement is conducted to ensure legal compliance and to provide for any adjustments in the terms and conditions of employment.

The original Employment Agreement for the appointment of Town Attorney Robert Schultz was approved by the Town Council effective December 12, 2013. In accordance with the contract terms, the Town Council has completed the evaluation process for the Town Attorney for his second year in the position, from December 2014 to December 2015.

PREPARED BY: VILCIA RODRIGUEZ, *VR*
ADMINISTRATIVE ANALYST

Reviewed by: *AC* Assistant Town Manager *RW* Town Attorney *SC* Finance

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MAYOR AND TOWN COUNCIL

SUBJECT: APPROVE AN AMENDMENT TO THE EMPLOYMENT AGREEMENT
BETWEEN THE TOWN OF LOS GATOS AND THE TOWN ATTORNEY
JANUARY 10, 2016

CONCLUSION:

Based upon the satisfactory completion of the Town Attorney's performance review in closed session, it is recommended that the Town Attorney be awarded a 5% wage increase to the annual base salary on his two-year anniversary date. The wage increase is consistent with adjustments provided to other Town management salaries in October 2015. In addition, the Town Attorney's current salary is well below other Bay Area City Attorneys and it is recommended that the Town Attorney receive a one-time lump sum performance bonus of \$5,000. The dollar amount equivalents for the wage increase based on the current annual salary of \$188,700 is \$9,435.

There are two other contract provisions in the Town Attorney's Employment Agreement that are proposed to be modified to promote transparency and open government.

FISCAL IMPACT:

Funding to support the Town Attorney's Employment Agreement is authorized in the annual budget each fiscal year along with all other Town employee compensation and benefits.

In addition to the lump sum performance bonus and increase in base salary, the Town is required to make pension contributions. For 2015/16, the total fiscal impact for the lump sum bonus and base increase including pension contributions is a total of \$13,174.85, as shown below:

- \$5,000 lump sum performance bonus with pension: $\$5,000 + \$1,271.50 = \$6,271.50$
- 5% increase to base with pension, pro-rated for 7 months: \$6,903.35 (for the period December 2015 through June 2016)

On an ongoing basis, the cost for a full year of the 5% increase to base including the pension rate adjusted for 2016/17 is approximately \$248,521.

The cost will be absorbed in the current fiscal year (FY 2015/16) from other salary savings in the Town's budget. The increased base salary will be included in the base budget for future fiscal years.

The Town Attorney is responsible to make pension contributions of 7% on the lump sum bonus and the base salary, as required by CalPERS. The Town Attorney's pension contributions are paid through payroll deductions.

Attachments:

1. Amendment to the Agreement for Employment – Town Attorney



AGREEMENT / AMENDMENT ROUTING COVER SHEET

Initiating Department: Human Resources Contact Name/Phone: Heather S. x5739 *JS*

Agreement Title: Second Amendment - Employment Agreement Town Attorney

Term of Agreement: From January 19, 2016 To _____

Date Approved By Council: 1/19/2016 *2/1 rec'd* Item or Resolution #: Agenda Item #9

Vendor Name: _____ Vendor #: _____

Vendor Email: _____ Vendor Phone: _____

Vendor Contact: _____

Business License #: n/a Expiration Date: _____

Insurance (IHH) #: n/a Expiration Date: _____

Insurance waiver requested (a completed Release of Liability is attached)

Please Select:

BONDS INCLUDED

of Originals _____

This is a standard agreement form that has not been altered.

Alterations have been made to the following paragraph(s)/section(s): Custom Staff Report attached

Vendor Agreement

Sole Source

Amount of Agreement: _____ Program and Account #: _____

Not enough money in line item will be absorbed within budget

Routing	Action(s)	Date Completed	Signature
1. Clerk	1. Assign Agreement # <u>16-011</u> <i>REC 1/29</i> 2. Attachments included/labeled 3. No automatic renewals without defined termination date 4. Verify Insurance	<u>1/29/16</u>	<i>JS</i>
2. Finance	1. Confirm Funds Budgeted <i>REC 1-29-16</i> 2. Confirm contract amount agrees with Council approval 3. Verify Purchasing Policy Compliance (Bids/Sole Source/Bus Purpose/RFP) 4. Check Payment Terms	<u>1-29-16</u>	<i>MS</i>
3. Attorney	1. Approve Insurance Waiver 2. Sign Agreement	<u>1/29/16</u>	<i>RS</i>
4. Manager <i>2/1</i>	1. Sign Agreement <u>Mayor to Sign</u>		
5. Clerk	1. Scan and file agreement 2. Email department pdf of signed agreement (Department sends agreement to vendor)		

Agreement Narrative:

If your agreement has gone before the Town Council for approval, please reference that fact and include a very brief description of the purpose of the agreement. Identify bids/business purpose for vendor selection/RFP/Sole Source. If hourly rate please identify how cost was determined. If your agreement has not gone to the Town Council for approval, include a discussion of the purpose of the agreement, how the Town's purchasing procedures were followed, and any special instructions.

**Please insert
your narrative
here:**

Please reference attached staff report.

Department Checklist (to be completed by originating department):

- Agreement Signed by Vendor:
- List Exhibits/Attachments with Title(s): Attachment 1 - Staff Report 1-19-2016
- Copy of insurance certificates or Release of Liability
- Originals of bonds issued for contract
- First page of Town Council report
- Scope of work aligns to Council Report and contractor proposal/exhibits
- DIR #: _____
- Date Project Awarded: _____
- Date Staff submitted Project to DIR: _____
- Project # _____