Staff Report
June 29, 2018

TO:	Honorable Mayor and Members of the Town Council
FROM:	Sean Rabé, Town Manager
DATE:	June 29, 2018
RE:	Contract Amendment with CSG Consultants for Code Enforcement Services

Recommendation
Staff recommends the Town Council authorize the Town Manager to enter into a contract amendment with CSG Consultants for code enforcement services. The amendment removes the not to exceed contract amount, replacing it with allowable compensation as set each year by the Town Council through the budgetary process.

Issue Statement and Discussion
The Town of Loomis entered into a professional services agreement with CSG in March 2018, for code enforcement services. That original contract was a two-year contract, with a $10,000 cap per fiscal year.

As Council knows, contract Code Enforcement Officer Sean Flanagan has been quite busy this past fiscal year and has been doing a great job responding to code enforcement issues in Town. To accommodate his additional workload, staff increased the code enforcement budget for Fiscal Year 2018-19 to $25,000; however, the contract with CSG still provides for a not to exceed amount of $10,000. Thus, the contract must be amended.

For efficiency's sake, staff has prepared the attached contract amendment that removes the not to exceed language in the contract and replaces it with language that ties the annual compensation to the amount budgeted by Council at the beginning of each fiscal year. This allows Council to determine the level of code enforcement services each year and gives greater control over the services we receive. All other contract terms remain the same, including the contract length (this contract expires March 12, 2020).

Staff is prepared to answer any questions you may have.

CEQA Requirements
There are no CEQA implications associated with the recommended action.

Financial and/or Policy Implications
There are no financial implications associated with the amendment. Council has already budgeted $25,000 this fiscal year for code enforcement services.

Attachments

A. Resolution
B. First Contract Amendment
C. Original Contract

TOWN OF LOOMIS

RESOLUTION NO. 18 - __

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS AMENDING THE MARCH 12, 2018 CONTRACT FOR SERVICES BETWEEN THE TOWN OF LOOMIS AND CSG CONSULTANTS

WHEREAS, the Town and CSG Consultants entered into the March 12, 2018 Contract for Services ("Contract"), to retain CSG for code enforcement services; and

WHEREAS, the Town and CSG now desire to approve a First Contract Amendment to the Contract to modify the compensation terms of the Contract to the amount budgeted each fiscal year by the Town Council.

NOW, THEREFORE, IT IS MUTUALLY AGREED by parties hereto to amend said Contract as follows:

I. Amendment. Section 3.A of the Contract is hereby amended as follows:

A. The Consultant shall be paid monthly for the actual fees, and authorized costs and expenses, but in no event shall total compensation exceed the budgeted amount determined by the Town Council during the budgetary process each fiscal year, without the Town's prior written approval.

II. Remaining Terms Unaffected:

Except as expressly provided herein, nothing in this Amendment No. 1 shall be deemed to waive or modify any of the other provisions of the Contract. In the event of any conflict between this Amendment No. 1 and the Contract, the terms of this Amendment shall control.

PASSED AND ADOPTED by the Town Council of the Town of Loomis this 10th day of July, 2018 by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

_____
Mayor

ATTEST:

_____
Town Clerk

AMENDMENT NO. 1
TO THE CONTRACT FOR SERVICES
BETWEEN THE TOWN OF LOOMIS AND CSG CONSULTANTS
DATED MARCH 12, 2018

This Amendment No. 1 to the Contract for Services between the **Town of Loomis** ("Town") and CSG Consultants ("CSG") which was entered into on March 12, 2018, is made and entered into this 11th day of July, 2018 (the "Effective Date").

RECITALS

WHEREAS, the Town and CSG entered into the March 12, 2018 Contract for Services ("Contract"), to retain CSG for code enforcement services; and

WHEREAS, the Town and CSG now desire to approve a First Contract Amendment to the Contract to modify the compensation terms of the Contract to the amount budgeted each fiscal year by the Town Council.

NOW, THEREFORE, IT IS MUTUALLY AGREED by parties hereto to amend said Contract as follows:

I. Amendment. Section 3.A of the Contract is hereby amended as follows:

A. The Consultant shall be paid monthly for the actual fees, and authorized costs and expenses, but in no event shall total compensation exceed the budgeted amount determined by the Town Council during the budgetary process each fiscal year, without the Town's prior written approval.

II. Remaining Terms Unaffected:

Except as expressly provided herein, nothing in this Amendment No. 1 shall be deemed to waive or modify any of the other provisions of the Contract. In the event of any conflict between this Amendment No. 1 and the Contract, the terms of this Amendment shall control.

IN WITNESS WHEREOF the parties hereto have executed this Amendment No. 1 as of the Effective Date.

Town of Loomis

By:_____
Mayor

CSG Consultants

By:_____

Approved as to form:

By:_____
Jeffrey Mitchell, Town Attorney

Attest:

By: _____
Charleen Strock, Town Clerk

Attachment C

CONTRACT FOR SERVICES

THIS CONTRACT is made on 3/12, 2018, by and between the TOWN OF LOOMIS ("Town"), and CSG Consultants, Inc. ("Consultant").

WITNESSETH:

WHEREAS, the Town desires professional code enforcement services;

WHEREAS, the Consultant has presented a proposal for such services to the Town, dated January 30, 2018, (attached hereto and incorporated herein as **Exhibit "A"**) and is duly licensed, qualified and experienced to perform those services;

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. SCOPE OF SERVICES:

A. Consultant shall do all work, attend all meetings, produce all reports and carry out all activities necessary to completion of the services described in **Exhibit "A."** This Contract and its exhibits shall be known as the "Contract Documents." Terms set forth in any Contract Document shall be deemed to be incorporated in all Contract Documents as if set forth in full therein. In the event of conflict between terms contained in these Contract Documents, the more specific term shall control. If any portion of the Contract Documents shall be in conflict with any other portion, provisions contained in the Contract shall govern over conflicting provisions contained in the exhibits to the Contract.

B. Consultant enters into this Contract as an independent contractor and not as an employee of the Town. The Consultant shall have no power or authority by this Contract to bind the Town in any respect. Nothing in this Contract shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Consultant are employees, agents, contractors or subcontractors of the Consultant and not of the Town. The Town shall not be obligated in any way to pay any wage claims or other claims made against Consultant by any such employees, agents, contractors or subcontractors, or any other person resulting from performance of this Contract.

C. The Consultant agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Contract is based on such independent investigation and research.

2. TERM OF CONTRACT:

A. The term of this Contract shall be 2 (two) years.

B. The services of Consultant are to commence upon execution of this Contract by the Town. Services are to be undertaken only when directed by the Town Manager or his/her designee.

C. The Town Manager or his or her designee may, by written instrument signed by the Parties, extend the duration of this Contract for a period of one (1) year in the manner provided in Section 5, provided that the extension does not require the payment of compensation in excess of the maximum compensation set forth in Section 3, Compensation.

3. COMPENSATION:

A. The Consultant shall be paid monthly for the actual fees, and authorized costs and expenses, but in no event shall total compensation exceed ten thousand dollars ($10,000), per fiscal year, without Town's prior written approval.

B. Said amount shall be paid upon submittal of a monthly billing showing completion of the tasks that month. Consultant shall furnish Town with invoices for all expenses as well as for all materials authorized by this Contract. The invoices shall be submitted with the monthly billings.

C. If the work is halted at the request of the Town, compensation shall be based upon the proportion that the work performed bears to the total work required by this Contract, subject to Section 4.

D. All work performed under this Contract shall be on an on-call basis and must be pre-authorized by the Town. The Town shall not be responsible for payment for unauthorized work.

4. TERMINATION:

A. This Contract may be terminated by either party, provided that the other party is given not less than **30** calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate.

B. The Town may temporarily suspend this Contract, at no additional cost to Town, provided that the Consultant is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If Town gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this Contract.

C. Notwithstanding any provisions of this Contract, Consultant shall not be relieved of liability to the Town for damages sustained by the Town by virtue of any breach of this Contract by Consultant, and the Town may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due the Town from Consultant is determined.

D. In the event of termination, the Consultant shall be compensated as provided for in this Contract, except as provided in Section 4C. Upon termination, the Town shall be entitled to all work, including but not limited to, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date in accordance with Section 7 hereof.

5. AMENDMENTS, CHANGES OR MODIFICATIONS:

Amendments, changes or modifications in the terms of this Contract may be made at any time by mutual written agreement between the parties hereto and shall be signed by the persons authorized to bind the parties hereto.

6. EXTENSIONS OF TIME:

Consultant may, for good cause, request extensions of time to perform the services required hereunder. Such extensions shall be authorized in advance by the Town in writing and shall be incorporated in written amendments to this Contract or the attached Work Program in the manner provided in Section 5.

7. PROPERTY OF TOWN:

A. It is mutually agreed that all materials prepared by the Consultant under this Contract shall become the property of the Town, and the Consultant shall have no property right therein whatsoever. Immediately upon termination, the Town shall be entitled to, and the Consultant shall deliver to the Town, all data, drawings, specifications, reports, estimates, summaries and other such materials as may have been prepared or accumulated to date by the Consultant in performing this Contract which is not Consultant's privileged information, as defined by law, or Consultant's personnel information, along with all other property belonging exclusively to the Town which is in the Consultant's possession.

B. Additionally, it is agreed that the parties intend this to be a contract for services and each considers the products and results of the services to be rendered by Consultant hereunder (the "Work") to be a work made for hire. Consultant acknowledges and agrees that the Work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of the Town.

8. COMPLIANCE WITH ALL LAWS:

A. Consultant shall comply with all applicable laws, ordinances, and codes of federal, State and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this Contract. Without limiting the foregoing, in performing duties under this Contract Consultant shall, at all times, comply with the requirements of Chapter 7.04 of the Loomis Municipal Code.

B. Consultant warrants to the Town that it is licensed by all applicable governmental bodies to perform this Contract and will remain so licensed throughout the progress of the Work, and that it has, and will have, throughout the progress of the Work, the necessary experience, skill and financial resources to enable it to perform this Contract.

9. WARRANTIES AND RESPONSIBILITIES - CONSULTANT:

A. Consultant agrees and represents that it is qualified to properly provide the services set forth in **Exhibit "A"** in a manner which is consistent with the generally accepted standards of Consultant's profession.

B. Consultant agrees and represents that the work performed under this Contract shall be in accordance with applicable federal, State and local law in accordance with Section 17A hereof.

C. Consultant shall designate a project manager who at all times shall represent the Consultant before the Town on all matters relating to this Contract. The project manager shall continue in such capacity unless and until he or she is removed at the request of the Town, is no longer employed by Consultant, or is replaced with the written approval of the Town, which approval shall not be unreasonably withheld.

D. Consultant shall provide corrective services without charge to the Town for services which fail to meet the above professional and legal standards and which are reported to Consultant in writing within sixty (60) days of discovery. Should Consultant fail or refuse to perform promptly its obligations, the Town may render or undertake performance thereof and the Consultant shall be liable for any expenses thereby incurred.

10. SUBCONTRACTING:

None of the services covered by this Contract shall be subcontracted without the prior written consent of the Town, which will not be unreasonably withheld. Consultant shall be as fully responsible to the Town for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, as it is for the negligent acts and omissions of persons directly employed by Consultant.

11. ASSIGNABILITY:

Consultant shall not assign or transfer any interest in this Contract whether by assignment or novation, without the prior written consent of the Town which will not be unreasonably withheld. However, claims for money due or to become due Consultant from the Town under this Contract may be assigned to a financial institution, or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly

to the Town.

12. INTEREST IN CONTRACT:

Consultant covenants that neither it, nor any of its employees, agents, contractors, subcontractors has any interest, nor shall they acquire any interest, direct or indirect, in the subject of the Contract, nor any other interest which would conflict in any manner or degree with the performance of its services hereunder. Consultant shall make all disclosures required by the Town's conflict of interest code in accordance with the category designated by the Town, unless the Town Manager determines in writing that Consultant's duties are more limited in scope than is warranted by the category designated by the Town code and that a narrower disclosure category should apply. Consultant also agrees to make disclosure in compliance with the Town conflict of interest code if, at any time after the execution of this Contract, Town determines and notifies Consultant in writing that Consultant's duties under this Contract warrant greater disclosure by Consultant than was originally contemplated. Consultant shall make disclosures in the time, place and manner set forth in the conflict of interest code and as directed by the Town.

13. MATERIALS CONFIDENTIAL:

All of the materials prepared or assembled by Consultant pursuant to performance of this Contract are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of the Town, except by court order.

14. LIABILITY OF CONSULTANT-NEGLIGENCE:

Consultant shall be responsible for performing the work under this Contract in a manner which is consistent with the generally-accepted standards of the Consultant's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The Town shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Consultant or its employees, agents, contractors or subcontractors.

15. INDEMNITY AND LITIGATION COSTS:

Consultant shall indemnify, defend, and hold harmless the Town, its officers, officials, agents, and employees against all claims, damages, demands, liability, costs, losses and expenses, including without limitation court costs and reasonable attorneys' fees, arising from Consultant's performance under this contract, including but not limited to consultant's negligent acts or negligent failure to act, errors, omissions or willful misconduct except such loss or damage caused by the active negligence, sole negligence, or willful misconduct of the Town. The provisions of this paragraph shall survive termination or suspension of this Contract.

16. CONSULTANT TO PROVIDE INSURANCE:

A. Consultant shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this Contract, the policies of insurance specified in this Section. Such insurance must have the approval of the Town as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best's rating of no less than A VII (an NR rating is acceptable for Worker's Compensation insurance written with the State Compensation Insurance Fund of California).

B. Prior to execution of this Contract and prior to commencement of any work, the Consultant shall furnish the Town with certificates of insurance and copies of endorsements providing evidence of coverage for all policies required by the Contract. The Consultant and its contractors and subcontractors shall, at their expense, maintain in effect at all times during the performance of work under the Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the Town. The maintenance by Consultant and its contractors and subcontractors of the following coverage and limits of insurance is a material element of this Contract. The failure of Consultant or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by the Town as a material breach of this Contract. Approval of the insurance by the Town shall not relieve or decrease any liability of Consultant.

1. Worker's Compensation and Employer's Liability Insurance

a. Worker's Compensation - Insurance to protect the Consultant, its contractors and subcontractors from all claims under Worker's Compensation and Employer's Liability Acts, including Longshoremen's and Harbor Worker's Act ("Acts"), if applicable. Such coverage shall be maintained, in type and amount, in strict compliance with all applicable state and Federal statutes and regulations. The Consultant shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in the Contract Documents.

b. Consultant shall provide a Waiver of Subrogation endorsement in favor of the Town, its officers, officials, employees, agents and volunteers for losses arising from work performed by the Consultant.

2. Commercial General Liability Insurance

a. The insurance shall be provided on form CG0001, or it's equivalent, and shall include coverage for claims for bodily injury or property damage arising out of premises/operations, products/completed operations, contractual liability, and subconsultant's work and personal and advertising injury resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than **$1,000,000.00** per occurrence and **$2,000,000** general and products/completed operations aggregates.

b. The commercial general liability insurance shall also include the following:

i. Endorsement equivalent to CG 2010 1185 naming the Town, its officers, officials, employees, agents, and volunteers as additional insureds. The endorsement shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees or volunteers.

ii. Endorsement stating insurance provided to the Town shall be primary as respects the Town, its officers, officials, employees and any insurance or self insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss, or judgment.

iii. Provision or endorsement stating that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3. Commercial Automobile Insurance

a. The insurance shall include, but shall not be limited to, coverage for claims for bodily injury or property damage for owned, non-owned, and hired automobiles resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than **$1,000,000.00** per accident.

b. The commercial automobile insurance shall include the same endorsements required for the commercial general liability policy (see Section 16.B.2.b).

C. In addition to any other remedy the Town may have, if Consultant fails to maintain the insurance coverage as required in this Section, the Town may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as is required herein, and the Town may deduct the cost of such insurance from any amounts due or which may become due Consultant under this Contract.

D. No policy required by this Contract shall be suspended, cancelled, terminated by either party, or reduced in coverage or in limits unless Consultant has provided thirty (30) days prior written notice by certified mail, return receipt requested, to the Town.

E. Any deductibles or self-insured retentions in excess of $10,000 must be declared to, and approved by, the Town.

F. The requirement as to types, limits, and the Town's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under the Contract.

17. MISCELLANEOUS PROVISIONS:

A. Consultant shall keep itself fully informed of, shall observe and comply with, and shall cause any and all persons, firms or corporations employed by it or under its control to observe and comply with, applicable federal, state, county and municipal laws, ordinances, regulations, orders and decrees which in any manner affect those engaged or employed on the work described by this Contract or the materials used or which in any way affect the conduct of the work.

B. Consultant shall not engage in unlawful employment discrimination. Such unlawful employment discrimination includes, but is not limited to, employment discrimination based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship, or sexual orientation.

C. Consultant shall maintain and make available for inspection by the Town and its auditors accurate records of all of its costs, disbursements and receipts with respect to any work under this Contract. Such inspections may be made during regular office hours at any time until six (6) months after the final payments under this Contract are made to the Consultant.

D. This Contract constitutes the entire agreement between the parties relative to the services specified herein and no modification hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this Contract. There are no understandings, agreements, conditions, representations, warranties or promises, with respect to this Contract, except those contained in or referred to in the writing.

E. All notices that are required to be given by one party to the other under this Contract shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses:

Town: Sean Rabe, Town Manager

Town of Loomis

3665 Taylor Road

Loomis, CA 95650

Consultant: Cyrus Kianpour, President

CSG Consultants, Inc.

550 Pilgrim Drive

Foster City, CA 94404

650-522-2500

F. This Contract shall be interpreted and governed by the laws of the State of California.

G. Any action arising out of this Contract shall be brought and maintained in Placer County California, regardless of where else venue may lie.

H. In any action brought by either party to enforce the terms of this Contract, each party shall be bear responsibility for its attorney's fees and all costs regardless of whether one party is determined to be the prevailing party.

TOWN OF LOOMIS

By: _____

Sean Rabe, Town Manager

Contract for Services

CSG Consultants, Inc.

January 30, 2018

ATTEST:

By: _____

Crickett Strock, Town Clerk

APPROVED AS TO FORM:

By: _____

Jeffrey Mitchell, Town Attorney

CONSULTANT

By: _____

Cyrus Kianpour, President

EXHIBIT A

[Consultant Proposal/Scope of Work]

EXHIBIT __

CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700

[Labor Code § 1861]

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

CONSULTANTS

By: _____

Cyrus Kianpour, President