

AGREEMENT FOR CONSULTANT SERVICES
For Local Assistance Federal-aid Projects

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ARTICLE I INTRODUCTION

This AGREEMENT is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the "CONSULTANT" is as follows:

Fehr and Peers

Incorporated in the State of California

The Project Manager for the "CONSULTANT" will be Ying Smith

The name of the "LOCAL AGENCY" is as follows:

Town of Los Gatos

- A. This AGREEMENT is made with reference to the following facts.

The LOCAL AGENCY desires to engage CONSULTANT to provide services to prepare a Local Roadway Safety Plan.

The CONSULTANT represents and affirms that it is willing to perform the desired work pursuant to this AGREEMENT.

The CONSULTANT represents to LOCAL AGENCY that it possesses the professional skills, qualifications, experience, and resources necessary and has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for CONSULTANT to practice its profession and to timely perform the services described in this AGREEMENT. The services performed by VENDOR will be in a manner consistent with that level of care and skill ordinarily exercised by other professional consulting firms providing similar services under similar circumstances at the time, and in the general vicinity where, the services are performed. CONSULTANT acknowledges LOCAL AGENCY has relied upon these representations to retain the CONSULTANT.

CONSULTANT shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws.

CONSULTANT shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.

- B. The work to be performed under this AGREEMENT is described in Article III Statement of Work, with the detailed Scope of Work in Exhibit A and the approved CONSULTANT's Cost Proposal dated January 5, 2021. The approved CONSULTANT's Cost Proposal is attached hereto Exhibit B and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- C. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless LOCAL AGENCY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of

any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of LOCAL AGENCY, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.

- D. CONSULTANT in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of City.
- E. LOCAL AGENCY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished.
- F. Any third-party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds LOCAL AGENCY harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.
- G. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the LOCAL AGENCY. However, claims for money due or which become due to CONSULTANT from City under this AGREEMENT 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 LOCAL AGENCY.
- H. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- I. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- J. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II CONSULTANT'S REPORTS OR MEETINGS

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the LOCAL AGENCY's Contract Administrator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Project Manager and other staff, as needed, to discuss progress on the AGREEMENT.

ARTICLE III STATEMENT OF WORK

CONSULTANT agrees to perform the services as outlined in "Exhibit A - Scope of Services" within the time frames specified therein, and "Exhibit B - Final Cost Proposal" which are hereby incorporated by reference and attached.

ARTICLE IV PERFORMANCE PERIOD

- A. This AGREEMENT shall go into effect on January 20, 2021 contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end on December 31, 2022, unless extended by AGREEMENT amendment.
- B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed and approved by LOCAL AGENCY.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

- A. The method of payment for this AGREEMENT will be based on lump sum. The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article III Statement of Work. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between CONSULTANT and LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by AGREEMENT amendment and approved by LOCAL AGENCY.
- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article VI Termination.
- C. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY.

No payment will be made prior to approval of any work, or for any work performed prior to approval of this AGREEMENT.

- D. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice must be submitted within sixty (60) calendar days after completion of CONSULTANT's work unless a later date is approved by the LOCAL AGENCY. Invoices shall be submitted to LOCAL AGENCY at the following address:

Town of Los Gatos
Attn: Accounts Payable
Via email: AP@losgatosca.gov

- E. The total amount payable by LOCAL AGENCY shall not exceed \$80,000.

ARTICLE VI TERMINATION

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.
- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by LOCAL AGENCY by virtue of any breach of this AGREEMENT by CONSULTANT, and LOCAL AGENCY may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due LOCAL AGENCY from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

ARTICLE VIII RETENTION OF RECORD/AUDITS

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

ARTICLE IX AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Finance Director.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Finance Director of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.

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- D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, LOCAL AGENCY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
- b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.

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- c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
 2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
 3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
 4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X SUBCONTRACTING

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the LOCAL AGENCY's obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the LOCAL AGENCY, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.

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- E. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY in advance of assigning work to a substitute Subconsultant.

F. Prompt Progress Payment

CONSULTANT or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONSULTANT or subconsultant to a subconsultant, CONSULTANT or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

G. Prompt Payment of Withheld Funds to Subconsultants

The LOCAL AGENCY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The LOCAL AGENCY shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant.

Method 1: No retainage will be held by the LOCAL AGENCY from progress payments due to CONSULTANT. CONSULTANTS and subconsultants are prohibited from holding retainage from subconsultants. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subcontract performance, or noncompliance by a subconsultant.

ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

- A. Prior authorization in writing by LOCAL AGENCY shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by LOCAL AGENCY, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
 - 1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
 - 2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

ARTICLE XII STATE PREVAILING WAGE RATES

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to

all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.

D. Payroll Records

1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- a. The information contained in the payroll record is true and correct.
- b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.

2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:

- a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
- b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
- c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.

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3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
 4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
 5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.
- F. Penalty
1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the LOCAL AGENCY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
 2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.

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3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
 4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
 - a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
 - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
 - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
 5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
 6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day

and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XIII CONFLICT OF INTEREST

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project which will follow.
- B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise LOCAL AGENCY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.
- C. The CONSULTANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An

affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING

(Include this article in all AGREEMENTs where federal funding will exceed \$150,000. If less than \$150,000 in federal funds will be expended on the AGREEMENT; delete this article and re-number the subsequent articles.)

- A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:
1. No State, Federal, or LOCAL AGENCY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.
 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

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- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.
- I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the LOCAL AGENCY components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 3. Does not have a proposed debarment pending; and
 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

This article is not applicable to this State-funded contract.

ARTICLE XIX INSURANCE

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for VENDOR with a combined single limit (CSL) of not less than one million dollars (\$1,000,000) per occurrence.
- B. The Certificate of Insurance will provide:
 - 1. That the insurer will not cancel the insured's coverage without thirty (30) calendar days prior written notice to LOCAL AGENCY.
 - 2. That LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this AGREEMENT are concerned.
 - 3. That LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.
- C. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this AGREEMENT. In the event said insurance coverage expires at any time or times during the term of this AGREEMENT, VENDOR agrees to provide at least thirty (30) calendar days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the AGREEMENT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this AGREEMENT upon occurrence of such event.
- D. 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 LOCAL AGENCY. Current certification of such insurance shall be kept on file at all times during the term of this AGREEMENT with the Town Clerk.
- E. Workers' Compensation. In addition to these policies, CONSULTANT shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the LOCAL AGENCY 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.

ARTICLE XX FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only if sufficient funds are made available to LOCAL AGENCY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State

Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.

- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI CHANGE IN TERMS

- A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY's Contract Administrator.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by LOCAL AGENCY's Contract Administrator.

ARTICLE XXII CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII DISPUTES

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Parks and Public Works Director, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) calendar days after completion of all work under the AGREEMENT, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

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- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

ARTICLE XXIV INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

ARTICLE XXV SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

ARTICLE XXVI OWNERSHIP OF DATA

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of Town, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to Town, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to Town which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by Town.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be 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 City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by Town for another project or project location shall be at Town's sole risk.

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- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
 - E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.
- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

ARTICLE XXVIII CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXX EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

ARTICLE XXXI PROMPT PAYMENT FROM THE LOCAL AGENCY TO CONSULTANT

The LOCAL AGENCY shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the LOCAL AGENCY fails to pay promptly, the LOCAL AGENCY shall pay interest to the contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the LOCAL AGENCY shall act in accordance with both of the following:

- (1) Each payment request shall be reviewed by the LOCAL AGENCY as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to CONSULTANT as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

ARTICLE XXXII NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

Town of Los Gatos
Attn: Town Clerk
110 E. Main Street
Los Gatos, CA 95030

VENDOR:
Fehr and Peers
160 W. Santa Clara Street, Ste. 675
San Jose, CA 95113

ARTICLE XXXIII CONTRACT

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

ARTICLE XXXIV SIGNATURES

WHEREOF, THE LOCAL AGENCY AND CONSULTANT HAVE EXECUTED THIS AGREEMENT.

Town of Los Gatos by:

DocuSigned by:
Laurel Prevetti 4/5/2021
853FEFA2F8B947D
Laurel Prevetti, Town Manager

Fehr and Peers

DocuSigned by:
Meghan Mitman 3/17/2021
76FF50417DEF434
(Name of Signer) Meghan Mitman

Recommended by:

3/17/2021
Matt Morley, Director of Parks and Public
Works

Approved as to Form:

DocuSigned by:
Robert W. Schultz 4/2/2021
2FE0938555B744C
Robert Schultz, Town Attorney

Attest:

DocuSigned by:
Shelley Neis 4/5/2021
69B061-65B1F-34F-6
Shelley Neis, MMC, CPMC, Town Clerk

Scope of Work

Work Plan

Fehr & Peers proposes the following Scope of Work to deliver the Los Gatos LRSP.

Task 1. Visioning, Project Initiation & Management

TASK 1.1 PROJECT KICK-OFF MEETING

Fehr & Peers will convene and facilitate a kick-off meeting with Town staff to:

- Review and confirm the goals, scope, schedule and budget for the project
- Define the roles and responsibilities of consultant team members
- Define administration and project management expectations (communication protocol, regular meetings with Town project manager, monthly progress reporting, project completion schedule, invoicing)
- Request key data for base mapping and safety analysis

The kick-off meeting will also ensure that key team members emerge with a shared understanding of expectations and study objectives. Fehr & Peers will prepare a draft agenda for the meeting and a meeting summary with follow-up items from the meeting.

TASK 1.2 PROJECT MANAGEMENT & COORDINATION

Fehr & Peers will work with the Town's project manager to set a schedule for regular project coordination meetings. We recommend twice-monthly check-in coordination calls, or virtual meetings, to foster frequent communication on project needs and ensure the project scope, schedule, and budget are effectively managed. Additionally, given our geographical proximity to Town of Los Gatos Departments, Fehr & Peers can provide flexibility to conduct check-in meetings in-person (if the shelter-in-place situation due to Covid-19 allows) with the Town's project manager up to once per month and coordinate with Town Staff on the potential need for additional in-person meetings and working sessions throughout the project.

Close coordination throughout the project's duration will enable us to address critical project issues that may arise and better manage the budget and schedule. We will prepare summaries for all meetings and propose maintaining a shared document (e.g., Sharepoint, OneDrive, Google Docs) for ongoing coordination meeting notes that can be easily referenced by all parties.

Throughout the project, Fehr & Peers will produce and maintain a project schedule confirming meetings, project deliverables, and review deadlines. Monthly progress reports will be provided with each invoice outlining tasks accomplished and deliverables provided in the monthly billing cycle. Invoices will be submitted in the format approved by the Town.

TASK 1.3 VISION STATEMENT

It is our understanding that Town staff will take the lead in establishing a vision statement in collaboration with its identified safety partners and direction from the Town Council. Given Fehr & Peers' knowledge and experiences in conducting various safety and LRSP plans, we will provide support in finalizing the vision statement for the LRSP by participating in a one-hour working session led by town staff and we will provide written comments on a draft

prepared by the town staff. If the town has previously engaged in vision discussions with its safety partners, the working session could be scheduled in concert with the kick-off meeting.

TASK 1 DELIVERABLES

- Kick-off Meeting
- Final Scope of Work
- Meeting minutes for the bi-weekly phone calls/virtual meetings
- Monthly invoices and progress report
- Working session to discuss draft vision statement
- Written comments on draft vision statement

Task 2. Safety Data Analysis

TASK 2.1 BACKGROUND DOCUMENTS

Fehr & Peers will complete a review and summary of the existing Town-approved planning documents and efforts involving safety and active transportation to strengthen our overall understanding of transportation conditions in the Town. This includes:

- Los Gatos 2020 General Plan
- Traffic Around School Study 2016
- 2018 Student Transportation Survey
- Connect Los Gatos Community Engagement Plan
- 2020 Community Survey
- 2020 Bicycle and Pedestrian Master Plan Update

Fehr & Peers will coordinate with the Town to identify other background information which may be beneficial to improving the team's understanding for the development of the LRSP. We have designated 16 hours of staff time to assist in the review of additional documents, conduct interviews with project partners such as the Police Department, and/or assist the Town with walk audits or intercept surveys. Background document review will be summarized as part of the Existing Conditions Summary in Task 2.4.

TASK 2.2 DATA COLLECTION & BASE MAPPING

COLLISION DATABASE & DATA INVENTORY

Fehr & Peers will compile collision data for all modes, including vehicles, pedestrians and bicycles, for Town facilities for the most recent five years available (2015-2019). We will develop a collision database in GIS format, with each collision record geo-located. Our primary sources for collision data will be the Transportation Injury Mapping System (TIMS) and the Statewide Integrated Traffic Records System (SWITRS).

To enable a more proactive and systemic safety assessment, we have learned the value of supplementing collision data with contextual variables to enrich the collision analysis, and better understand collision patterns. Contextual variables contain information on the environments surrounding the collision locations, including:

- Demographic data (e.g., population, employment, age, race, gender, etc.)
- Land use data (e.g., locations of schools, parks, senior center, etc.)
- Roadway characteristics data (e.g., number of lanes, speeds, volumes, traffic controls, bicycle facilities, sidewalks, street lighting, etc.)

As feasible, we will collect these contextual variables from the background documents and existing GIS sources at the Town as well as US Census data to ensure a comprehensive mapping of the existing conditions. As Fehr & Peers

is regularly involved in conducting GIS analysis for safety and active transportation projects throughout the county, we will leverage already available data to complete this effort efficiently. We will use OpenStreetMap and data available from the Town to establish existing infrastructure and facilities.

We will engage EcopiaTech, a data provider that uses computer vision algorithms to identify and geocode real-world infrastructure features based on remote sensing imagery.

TASK 2.3 SAFETY ANALYSIS

Fehr & Peers will use the collision database consisting of TIMS and SWITRS data described in Task 2.2 to identify the number and locations of collisions and identify locations with the highest levels of fatal and serious injury (KSI) collisions for vehicles, pedestrians, and bicyclists. We will also complete a network screening to identify the most critical safety risks on roadways within the town. The proposed analysis methodology reflects a systemic approach to safety searching for patterns in historical crash activity that will highlight other areas of high risk that may not have yet experienced many crashes.

COLLISION ANALYSIS & RISK FACTOR IDENTIFICATION

Consistent with guidance provided in the California Local Roadway Safety Manual (LRSM), Fehr & Peers will use the collision database to analyze crash trends in the town, with an emphasis on severe and fatal collisions.

Upon an arrangement with Town staff, Fehr & Peers will conduct a joint interview with SR2S and the Los Gatos Police Department (LG PD) to discuss safety issues and concerns, including most recent collision data that are not included in SWITRS. A collision data report from LG PD will be provided as cross reference. Qualitative information and collision data outside of the 2015-2019 SWITRS data range will be included as reference for selection of priority areas and identification of countermeasures.

Our collision analysis uses geoprocessing tools we have developed in-house to support systemic collision analysis and systemic matrix development, based on industry best practice documented by FHWA and in NCHRP research. Using these tools, we will identify key trends and priority locations through the following analysis methodologies:

- Identify top hot-spot collision locations, including those for severe injury and fatal collisions (intersections and segments)
- Identify top collision types and associated locations
- Identify high-risk characteristics (contributing factors)

We will define up to 10 collision profiles that describe the primary factors that lead to vehicle, bicycle, and pedestrian collisions and that best reflect the fundamental safety challenges for the Town. The collision profiles not only tell a story of why collisions occur, they also identify the primary risk factors that lead to collisions. This approach allows us to determine what types of projects and countermeasures would likely be most effective at a given location during project identification and development.

We will compile summary charts and maps to convey these trends and where they occur. If desired by the Town, Fehr & Peers can make this information available via the online collision data dashboard that was developed for this proposal.

CANDIDATE COUNTERMEASURE IDENTIFICATION

Fehr & Peers will compile a preliminary set of suggested countermeasures to address the risk factors identified in the collision profiles. We will complete this task quickly and efficiently utilizing countermeasure toolboxes from numerous other safety LRSP, Vision Zero, and systemic safety planning projects (including those in Sunnyvale) as a starting point. We will coordinate with the Town to tailor the ultimate countermeasure toolbox for the Town of Los Gatos.

EXISTING CONDITIONS SLIDE DECK

We will summarize key findings of the background document review, data collection, and safety analysis in a PowerPoint slide deck. A Draft Existing Slide Deck will be presented to Town staff revised based upon comments provided. The Final Existing Slide Deck will be shared with the Town and will be suitable for use in engagement activities and stakeholder presentations. Additionally, findings and key graphics will ultimately be incorporated in the Draft Local Roadway Safety Plan in Task 4.1.

TASK 2 DELIVERABLES

- Draft Existing Conditions Slide Deck, inclusive of work products developed in Tasks 2.1 through 2.3, for Town Review
- Final Existing Conditions Slide Deck for inclusion in Draft LRSP

Task 3. Selection of Emphasis Areas

TASK 3.1 SYSTEMIC EVALUATION

The collision profiles developed in Task 2.3 not only tell a story of why collisions occur, but they also identify the primary risk factors that lead to collisions. Fehr & Peers will review the contextual characteristics identified through the risk factor identification in Task 2.3 to identify locations with similar characteristics which may not have experienced collisions. This approach allows us to identify locations where collisions could be expected to occur based on the presence of risk factors despite a lack of collision history. Our analysis would use historic collision patterns to isolate locations that may not have experienced a high rate of fatal and severe injury collisions to date, but that are likely to in the future because they possess the characteristics of a high collision location. This would allow the Town to proactively address unobserved, anticipated safety trouble spots.

We will identify up to 10 locations in Los Gatos which possess contextual characteristics consistent with systemic typologies. A subset of these locations may be incorporated into the set of Priority Emphasis Areas identified in Task 3.2 to supplement the locations that react to observed, historic safety issues.

TASK 3.2 PRIORITY EMPHASIS AREA SELECTION

Fehr & Peers will collaborate with Town staff to identify up to five (5) Priority Emphasis Areas to advance to project development with countermeasure matching.

The Priority Emphasis Areas will be based on the results of the collision analysis, collision profile, and systemic evaluation tasks. These locations may include a combination of hot spot locations, key collision corridors, and locations identified as having greater potential for future collisions through the systemic evaluation.

We will submit a graphical/map depiction of the preliminary Priority Emphasis Areas as well as a draft PowerPoint slide deck describing their characteristics and relative prioritization for review by the Town and other stakeholders. We will discuss the underlying considerations for prioritization during a virtual meeting with Town staff.

Based upon one consolidated round of feedback, we will finalize the five Priority Emphasis Areas and submit a revised final slide deck to the Town documenting the Priority Emphasis Areas and proposed relative prioritization.

TASK 3.3 PRIORITY PROJECT DEVELOPMENT

A location description, goal, and crash-reduction strategies will be developed for each Priority Emphasis Area.

Fehr & Peers will pair the countermeasures with the priority locations identified in an Excel matrix. We will solicit input from Town staff in the draft pairing. The pairing will then lead to a fully developed project list for the top priority project locations. This will include countermeasures that respond to the systemic and collision history

aspects of that location. The priority project development will not include the preparation of site-specific concept design plans or grant funding applications.

It is anticipated that community feedback will be sought on the Priority Emphasis Area goals and strategies prior to their finalization. Effort for community engagement pertaining to existing conditions is included in Task 5.

TASK 3 DELIVERABLES

- List of top Priority Emphasis Areas, revised based on one round of consolidated comments
- Graphical/map depiction of the preliminary Priority Emphasis Areas with PowerPoint slide deck describing their characteristics and relative prioritization, revised based on one round of consolidated comments
- Excel spreadsheet matrix pairing priority locations with potential countermeasures, revised based on one round of consolidated comments

Task 4. Report Documentation

TASK 4.1 DRAFT LOCAL ROADWAY SAFETY PLAN

Fehr & Peers will prepare a Draft Local Roadway Safety Plan that incorporates the work completed during Tasks 1 through 3. An Administrative Draft LRSP document will be created in Microsoft Word to facilitate preliminary content review by Town staff.

After receiving a consolidated set of comments from the Town, we will reformat the Administrative Draft and associated project graphics into a visually appealing and public facing document using InDesign. The resulting Draft LRSP will highlight all analyses, findings, and engagement efforts developed during the life of the project.

TASK 4.2 FINAL LOCAL ROADWAY SAFETY PLAN

Fehr & Peers will receive one round of consolidated comments from the Town encompassing applicable feedback from Town staff and other stakeholders invited to review the Draft LRSP at the Town's discretion. It is assumed the comments on the Draft LRSP will be minor in nature with no additional technical analysis/content required.

After resolving comments from the Town, we will reformat the Draft and associated project graphics into a visually appealing and public facing document using InDesign. If needed, a response to comments will be provided to document how each comment was ultimately addressed or incorporated. The Final LRSP report will include maps and graphics to complement the report narrative and make it accessible to non-technical readers. Fehr & Peers will submit three printed hard copies and one digital PDF copy of the Final LRSP to the Town for its use.

TASK 4 DELIVERABLES

- Administrative Draft LRSP document for Town review
- Draft LRSP document for Town review
- Final LRSP document

Task 5. Stakeholder Engagement Support

TASK 5.1 STAKEHOLDER ENGAGEMENT

Town staff will lead two virtual stakeholder engagement meetings such as community meetings, commission meetings, and/or council meetings. Fehr & Peers will attend up to two meetings as requested by Town staff, according to the community engagement plan. Additionally, we have designated 16 hours of staff time to prepare or comment upon Town-prepared meeting materials including presentations and questions and answers, and/or website content.

TASK 5.2 FIELD AUDIT

Fehr & Peers will lead a one-day field audit with Town staff and selected commission members. The field audit is anticipated to occur once Priority Emphasis Areas have been selected and will provide an opportunity for participants to observe real-world conditions and challenges as well as discuss potential countermeasures and improvements. Fehr & Peers prepare and submit meeting minutes summarizing the discussions occurring during the field audit. A total of 32 hours of staff time have been designated to prepare for, deliver, and document the field audit.

TASK 5 DELIVERABLES

- Attendance at two virtual public meetings such as community meetings, commission meetings, and/or council meetings
- Delivery and documentation of a one-day field audit
- Up to 16 hours of staff support to prepare or comment upon materials for stakeholder engagement

Additional Services

Additional Task 6: Living Previews

As an additional service, Fehr & Peers can work with the Town to install temporary pop-up or “living” previews of a proposed improvement project at locations determined in collaboration with the Town. Treatments which make ideal candidates for living previews include bicycle facilities, curb extensions, and road “right-sizing” projects. These living previews allow residents to observe, interact, and comment on the proposed improvement projects. Fehr & Peers staff would be present on site to collect real-time intercept survey feedback from participants in the living preview during anticipated times of high participation.

An important aspect of the event will be explaining the various improvements and the purpose of the installation. Fehr & Peers would team with the Town and Caltrans, if required, to identify and obtain appropriate permits, design and implement temporary traffic control plans, provide event publicity, and identify supplies available to the Town (e.g., cones, sandwich board signs, etc.) for implementation. A detailed scope and fee for this optional task would be identified at the time of its request.

ADDITIONAL TASK 6 DELIVERABLES

- Traffic control plans and a list of needed supplies for implementation of a living preview
- Permit and communications support for Town staff
- On-site attendance to collect intercept survey feedback from participants

Fehr & Peers Fee Proposal for Los Gatos Local Roadway Safety Plan

Tasks	Fehr & Peers (Prime)						Labor Hours	Direct Labor Costs	Labor Overhead	Fee	Direct Costs	Total Costs
	Steve Davis, Project Manager	Meghan Mitman, Principal	Senior Engineer/Planner	Engineer/Planner	Technician/GIS Analyst	Project Coordinator						
	\$69.23	\$96.15	\$48.56	\$43.51	\$41.11	\$36.06			175.67%	10%		
Task 1 - Visioning, Project Initiation & Management												
1.1 Project Kick-off Meeting	2	2		3		2	9	\$533.41	\$937.04	\$147.05		\$1,617.50
1.2 Project Management and Coordination	8	1				12	21	\$1,082.71	\$1,902.00	\$298.47		\$3,283.18
1.3 Vision Statement	2	2	1	4		2	11	\$625.48	\$1,098.78	\$172.43		\$1,896.69
											Task 1 Subtotal	\$6,797.36
Task 2 - Safety Data Analysis												
2.1 Background Documents Review	2		4	30	4	5	45	\$1,982.74	\$3,483.08	\$546.58		\$6,012.40
2.2 Data Collection and Base Mapping	2	1		8	12	3	26	\$1,184.19	\$2,080.27	\$326.45		\$3,590.90
EcopiaTech Data Collection							0	\$0.00	\$0.00	\$0.00	\$8,000.00	\$8,000.00
2.3 Safety Analysis	8	2	2	48	28	12	100	\$4,515.54	\$7,932.45	\$1,244.80		\$13,692.79
											Task 2 Subtotal	\$31,296.09
Task 3 - Selection of Emphasis Areas												
3.1 Systemic Evaluation	4	1		8	16	4	33	\$1,523.15	\$2,675.72	\$419.89		\$4,618.75
3.2 Priority Emphasis Areas Selection	6	2	2	12	16	5	43	\$2,064.98	\$3,627.55	\$569.25		\$6,261.78
3.3 Strategy Identification	8	2	1	20	12	6	49	\$2,374.58	\$4,171.42	\$654.60		\$7,200.61
											Task 3 Subtotal	\$18,081.14
Task 4 - Report Documentation												
4.1 Draft Local Roadway Safety Plan	8	2		24	20	7	61	\$2,865.00	\$5,032.95	\$789.79		\$8,687.74
4.2 Final Local Roadway Safety Plan	4	1		10	12	4	31	\$1,445.73	\$2,539.71	\$398.54	\$150.00	\$4,533.99
											Task 4 Subtotal	\$13,221.73
Task 5 - Stakeholder Engagement Support												
5.1 Stakeholder Engagement	6	2		12	12	4	36	\$1,767.36	\$3,104.72	\$487.21	\$200.00	\$5,559.29
5.2 Field Audit	8	2		10	6	6	32	\$1,644.26	\$2,888.47	\$453.27	\$58.38	\$5,044.38
											Task 5 Subtotal	\$10,603.67
Total for all Tasks	68	20	10	189	138	72	497	\$23,609.13	\$41,474.16	\$6,508.33	\$8,408.38	\$80,000.00

Notes:

Actual billing rate at the time of service may vary depending on the final staffing plan at the time the project starts; the overall fee will not be exceeded.

Rates and staff are subject to change at any time, without notice, and within the total budget shown

Schedule for Los Gatos Local Roadway Safety Plan

Task	January 2021	February 2021	March 2021	April 2021	May 2021	June 2021	July 2021	August 2021	September 2021	October 2021	November 2021	December 2021
Task 1 - Visioning, Project Initiation & Management	1	2	3	4	5	6	7	8	9	10	11	12
1.1 Project Kick-off Meeting												
1.2 Project Management and Coordination												
1.3 Vision Statement												
Task 2 - Safety Data Analysis												
2.1 Background Documents												
2.2 Data Collection and Base Mapping												
2.3 Safety Analysis												
Task 3 - Selection of Emphasis Areas												
3.1 Systemic Evaluation												
3.2 Priority Emphasis Area Selection												
3.3 Priority Project Development												
Task 4 - Report Documentation												
4.1 Draft Local Roadway Safety Plan												
4.2 Final Local Roadway Safety Plan												
Task 5 - Stakeholder Engagement Support												
5.1 Stakeholder Engagement												
5.2 Field Audit												



Active Task



Key Deliverable



Engagement Activity

EXHIBIT 10-H1 COST PROPOSAL Page 1 of 3**ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS**

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

☒ Prime Consultant☐ Subconsultant☐ 2nd Tier SubconsultantConsultant Fehr & PeersProject No. LRSP-5067(023)Contract No. N/ADate 1/5/2021**DIRECT LABOR**

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Project Manager*	Steve Davis	68	\$69.23	\$4,707.64
Principal-in-Charge*	Meghan Mitman	20	\$96.15	\$1,923.00
Senior Engineer/Planner		10	\$48.56	\$485.60
Engineer/Planner		189	\$43.51	\$8,223.39
Technician/Analyst		138	\$41.11	\$5,673.18
Project Coordinator		72	\$36.06	\$2,596.32

LABOR COSTS

a) Subtotal Direct Labor Costs

\$23,609.13

b) Anticipated Salary Increases (see page 2 for sample)

\$0.00

c) **TOTAL DIRECT LABOR COSTS [(a) + (b)]**

\$23,609.13

INDIRECT COSTSd) Fringe Benefits (Rate: 71.73%)

Total Fringe Benefits [(c) x (d)]

\$16,934.83

f) Overhead (Rate: 55.41%)

g) Overhead [(c) x (f)]

\$13,081.82

h) General and Administrative (Rate: 48.53%)

i) Gen & Admin [(c) x (h)]

\$11,457.51

j) **TOTAL INDIRECT COSTS [(e) + (g) + (i)]**

\$41,474.16

FIXED FEEk) **TOTAL FIXED FEE [(c) + (j)] x fixed fee**10%

\$6,508.33

l) CONSULTANT'S OTHER DIRECT COSTS (ODC) - ITEMIZE (Add additional pages if necessary)

Description of Item	Quantity	Unit(s)	Unit Cost	Total
EcopiaTech Data Collection	1	1	\$8,000.00	\$8,000.00
Production/Supplies for Community Engagement		1	\$258.38	\$258.38
Printing/Production		1	\$150.00	\$150.00
Mileage				\$0.00
				\$0.00

l) **TOTAL OTHER DIRECT COSTS**

\$8,408.38

m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)

Subconsultant 1:

Subconsultant 2:

Subconsultant 3:

Subconsultant 4:

m) **TOTAL SUBCONSULTANTS' COSTS**

\$0.00

n) **TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l)+(m)]**

\$8,408.38

TOTAL COST [(c) + (j) + (k) + (n)]

\$80,000.00

NOTES:

- Key personnel **must** be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
- The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
- Anticipated salary increases calculation (page 2) must accompany.

EXHIBIT 10-H1 COST PROPOSAL Page 2 of 3**ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS**

(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total)

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal		Avg Hourly Rate	5 Year Contract Duration
\$23,609.13	497	=	\$47.50	Year 1 Avg Hourly Rate

2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$47.50	+	3%	=	\$48.93	Year 2 Avg Hourly Rate
Year 2	\$48.93	+	3%	=	\$50.40	Year 3 Avg Hourly Rate
Year 3	\$50.40	+	3%	=	\$51.91	Year 4 Avg Hourly Rate
Year 4	\$51.91	+	3%	=	\$53.47	Year 5 Avg Hourly Rate

3. Calculate estimated hours per year (Multiply estimate % each year by total hours)

	Estimated % Completed Each Year		Total Hours per Cost Proposal		Total Hours per Year	
Year 1	100.00%	*	497.0	=	497.0	Estimated Hours Year 1
Year 2	0.00%	*	497.0	=	0.0	Estimated Hours Year 2
Year 3	0.00%	*	497.0	=	0.0	Estimated Hours Year 3
Year 4	0.00%	*	497.0	=	0.0	Estimated Hours Year 4
Year 5	0.00%	*	497.0	=	0.0	Estimated Hours Year 5
Total	100%		Total	=	497.0	

4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)		Cost per Year	
Year 1	\$47.50	*	497	=	\$23,609.13	Estimated Hours Year 1
Year 2	\$48.93	*	0	=	\$0.00	Estimated Hours Year 2
Year 3	\$50.40	*	0	=	\$0.00	Estimated Hours Year 3
Year 4	\$51.91	*	0	=	\$0.00	Estimated Hours Year 4
Year 5	\$53.47	*	0	=	\$0.00	Estimated Hours Year 5
Total Direct Labor Cost with Escalation				=	\$23,609.13	
Direct Labor Subtotal before Escalation				=	\$23,609.13	
Estimated total of Direct Labor Salary Increase				=	\$0.00	Transfer to Page 1

NOTES:

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable.
(i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

EXHIBIT 10-H1 COST PROPOSAL Page 3 of 3**Certification of Direct Costs:**

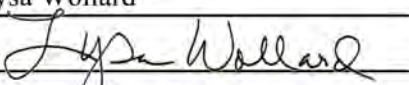
I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904](#) - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

Prime Consultant or Subconsultant Certifying:

Name:	<u>Lysa Wollard</u>	Title *:	<u>Chief Financial Officer</u>
Signature:		Date of Certification (mm/dd/yyyy):	<u>1/5/2021</u>
Email:	<u>l.wollard@fehrandpeers.com</u>	Phone Number:	<u>(408) 278-1700 160</u>
Address:	<u>W. Santa Clara Street, Suite 675, San Jose, CA 95113</u>		

*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Project management, Safety Data Analysis, Systemic Evaluation and Prioritization, Community Engagement, Draft & Final Local Roadway Safety Plan

EXHIBIT 10-K CONSULTANT ANNUAL CERTIFICATION OF INDIRECT COSTS AND FINANCIAL MANAGEMENT SYSTEM

(Note: If a Safe Harbor Indirect Cost Rate is approved, this form is not required.)

Consultant's Full Legal Name: Fehr & Peers

Important: Consultant means the individual or consultant providing engineering and design related services as a party of a contract with a recipient or sub-recipient of Federal assistance. Therefore, the Indirect Cost Rate(s) shall not be combined with its parent company or subsidiaries.

Indirect Cost Rate:

Combined Rate 175.67 % OR

Home Office Rate n/a % and Field Office Rate (if applicable) n/a %

Facilities Capital Cost of Money n/a % (if applicable)

Fiscal period * 12/29/2018-12/27/2019

* Fiscal period is annual one year applicable accounting period that the Indirect Cost Rate was developed (not the contract period). The Indirect Cost Rate is based on the consultant's one-year applicable accounting period for which financial statements are regularly prepared by the consultant.

I have reviewed the proposal to establish an Indirect Cost Rate(s) for the **fiscal period** as specified above and have determined to the best of my knowledge and belief that:

- All costs included in the cost proposal to establish the indirect cost rate(s) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) 48, Code of Federal Regulations (CFR), Chapter 1, Part 31 (48 CFR Part 31);
- The cost proposal does not include any costs which are expressly unallowable under the cost principles of 48 CFR Part 31;
- The accounting treatment and billing of prevailing wage delta costs are consistent with our prevailing wage policy as either direct labor, indirect costs, or other direct costs on all federally-funded A&E Consultant Contracts.
- All known material transactions or events that have occurred subsequent to year-end affecting the consultant's ownership, organization, and indirect cost rates have been disclosed as of the date of this certification.

I am providing the required and applicable documents as instructed on Exhibit 10-A.

Financial Management System:

Our labor charging, job costing, and accounting systems meet the standards for financial reporting, accounting records, and internal control adequate to demonstrate that costs claimed have been incurred, appropriately accounted for, are allocable to the contract, and comply with the federal requirements as set forth in [Title 23 United States Code \(U.S.C.\) Section 112\(b\)\(2\); 48 CFR Part 31.201-2\(d\); 23 CFR, Chapter 1, Part 172.11\(a\)\(2\)](#); and all applicable state and federal rules and regulations.

Our financial management system has the following attributes:

- Account numbers identifying allowable direct, indirect, and unallowable cost accounts;
- Ability to accumulate and segregate allowable direct, indirect, and unallowable costs into separate cost

accounts;

- Ability to accumulate and segregate allowable direct costs by project, contract and type of cost;
- Internal controls to maintain integrity of financial management system;
- Ability to account and record costs consistently and to ensure costs billed are in compliance with FAR;
- Ability to ensure and demonstrate costs billed reconcile to general ledgers and job costing system; and
- Ability to ensure costs are in compliance with contract terms and federal and state requirement

Cost Reimbursements on Contracts:

I also understand that failure to comply with 48 CFR Part 16.301-3 or knowingly charge unallowable costs to Federal-Aid Highway Program (FAHP) contracts may result in possible penalties and sanctions as provided by the following:

- Sanctions and Penalties - [23 CFR Part 172.11\(c\)\(4\)](#)
- False Claims Act - [Title 31 U.S.C. Sections 3729-3733](#)
- Statements or entries generally - [Title 18 U.S.C. Section 1001](#)
- Major Fraud Act - [Title 18 U.S.C. Section 1031](#)

All A&E Contract Information:

- Total participation amount \$ 87,000,000 on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is 31.
- Years of consultant's experience with 48 CFR Part 31 is 36.
- Audit history of the consultant's current and prior years (if applicable)

☐ Cognizant ICR Audit	☐ Local Gov't ICR Audit	☐ Caltrans ICR Audit
☒ CPA ICR Audit	☐ Federal Gov't ICR Audit	

I, the undersigned, certify all of the above to the best of my knowledge and belief and that I have reviewed the Indirect Cost Rate Schedule to determine that any costs which are expressly unallowable under the Federal cost principles have been removed and comply with [Title 23 U.S.C. Section 112\(b\)\(2\)](#), [48 CFR Part 31](#), [23 CFR Part 172](#), and all applicable state and federal rules and regulations. I also certify that I understand that all documentation of compliance must be retained by the consultant. I hereby acknowledge that costs that are noncompliant with the federal and state requirements are not eligible for reimbursement and must be returned to Caltrans.

Name**: Marion Donnelly

Title**: Chief Financial Officer

Signature: Marion Donnelly Digitally signed by Marion Donnelly
Date: 2020.06.16 16:46:33 -0700

Date of Certification (mm/dd/yyyy): 06/16/2020

Email**: m.donnelly@fehrandpeers.com

Phone Number**: 925-977-3214

**An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President, a Chief Financial Officer, or equivalent, who has authority to represent the financial information used to establish the indirect cost rate.

Note: Both prime and subconsultants as parties of a contract must complete their own Exhibit 10-K forms. Caltrans will not process local agency's invoices until a complete Exhibit 10-K form is accepted and approved by Caltrans Audits and Investigations.

Distribution: 1) Original - Local Agency Project File
2) Copy - Consultant
3) Copy - Caltrans Audits and Investigations

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. Report Type: ☐ a. initial ☐ b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity ☐ Prime ☐ Subawardee Tier _____, if known Congressional District _____, if known	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District _____, if known	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable _____	
8. Federal Action Number, if known:	9. Award Amount, if known:	
10. Name and Address of Lobbying Entity (If individual, last name, first name, MI) (attach Continuation Sheet(s) if necessary)	11. Individuals Performing Services (including address if different from No. 10) (last name, first name, MI) (attach Continuation Sheet(s) if necessary)	
12. Amount of Payment (check all that apply) \$ _____ ☐ actual ☐ planned	13. Type of Payment (check all that apply) ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other, specify _____	
14. Form of Payment (check all that apply): ☒ a. cash ☐ b. in-kind; specify: nature _____ Value _____		
15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12: (attach Continuation Sheet(s) if necessary)		
16. Continuation Sheet(s) attached: Yes ☐ No ☐		
17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		
Signature: _____ Print Name: <u>Brandy Foust</u> Title: <u>Senior Associate Operations Manager</u> Telephone No.: <u>(916) 329-7332</u> Date: <u>04/29/2020</u>		Authorized for Local Reproduction Standard Form - LLL

Standard Form LLL, Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to: subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
11. Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
12. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
13. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Check all boxes that apply. If other, specify nature.
15. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
16. Check whether or not a continuation sheet(s) is attached.
17. The certifying official shall sign and date the form, and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04