

## FIRST AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES

This FIRST AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES is dated for identification this 20th day of February 2024 and amends that certain AGREEMENT FOR CONSULTANT SERVICES FOR THE HIGHWAY 17 BICYCLE AND PEDESTRIAN OVERCROSSING PROJECT #19-818-0803, dated May 20, 2021, made by and between the Town of Los Gatos, ("Town,") and BKF Engineers Inc. ("CONSULTANT") identified as a California corporation and whose address is 1730 N. First Street, Suite 600, San Jose, CA 95112.

### RECITALS

- A. Town and CONSULTANT entered into an agreement for Consultant Services on May 20, 2021 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Exhibit A to this Amendment.
- B. Town desires to amend the Agreement to add to the scope of work to include grant writing services for construction phase grant applications for the Highway 17 Bicycle/Pedestrian Overcrossing Project.

### AMENDMENT

- 1. ARTICLE II STATEMENT OF WORK is amended to ADD the following text:

Consultant shall provide services as described in that certain Proposal dated January 17, 2024, which is hereby incorporated by reference and attached hereto as Exhibit B.
- 2. ARTICLE V ALLOWABLE COSTS AND PAYMENTS, PART E. is amended to read as follows:

The total amount payable by LOCAL AGENCY for PHASE I shall not exceed \$3,048,735. The original not-to-exceed amount of the agreement of \$3,000,000 was increased by \$48,735 as compensation for the First Amendment.
- 3. All other terms and conditions of the Agreement remain in full force and effect.

Exhibit A Agreement for Consulting Services for the Highway 17 Bicycle and Pedestrian Overcrossing Project #19-818-0803 dated May 20, 2021

Exhibit B Proposal by BKF for Grant Writing Services for ATP and SS4A Grant Applications dated January 17, 2024

IN WITNESS WHEREOF, the Town and CONSULTANT have executed this Amendment.

Town of Los Gatos, by:

CONSULTANT, by:

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Laurel Prevetti  
Town Manager

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Jaggi Bhandal, Vice President, BKF

Department Approval:

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Nicolle Burnham  
Director of Parks and Public Works

Approved as to Form:

Attest:

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Gabrielle Whelan  
Town Attorney

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Wendy Wood, CMC  
Town Clerk

# EXHIBIT A

## AGREEMENT FOR CONSULTANT SERVICES

### HIGHWAY 17 BICYCLE AND PEDESTRIAN OVERCROSSING PROJECT # 19-818-0803

#### ARTICLE I - INTRODUCTION

- A. This AGREEMENT is made and entered into on May 20, 2021 by and between the TOWN OF LOS GATOS, a California municipal corporation, hereinafter referred to as, LOCAL AGENCY and **BKF Engineers**, hereinafter referred to as, CONSULTANT, whose address is **1730 N. First Street, Suite 600, San Jose, CA 95112**. The CONSULTANT is incorporated in the State of California.

The Project Manager for the "CONSULTANT" will be **Natalina V. Bernardi, PE, LEED AP, Principal and Vice President**.

The Contract Administrator for LOCAL AGENCY will be WooJae Kim, Town Engineer.

This Agreement is made with reference to the following facts.

The LOCAL AGENCY desires to engage CONSULTANT to provide professional engineering services for the Highway 17 Bicycle and Pedestrian Overcrossing Project.

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

The CONSULTANT represents and warrants to LOCAL AGENCY that it possesses the distinct 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. CONSULTANT acknowledges LOCAL AGENCY has relied upon these warranties 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 II entitled Statement of Work and the approved CONSULTANT's Cost Proposal dated **05-06-21**. The approved CONSULTANT's Scope of Service (Exhibit A) and Cost Proposal (Exhibit B) is attached hereto and incorporated by reference. If there is any conflict between the approved Scope of Services or Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- C. CONSULTANT agrees, to the fullest extent permitted by law, to save, keep, indemnify and hold harmless and defend the LOCAL AGENCY, its officers, agents, employees and volunteers from all damages, claims, demands, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act, errors, or omissions of the CONSULTANT, or any of the CONSULTANT'S officers, employees, or agents or any

sub-consultant. CONSULTANT will reimburse LOCAL AGENCY for any expenditure, including reasonable attorney fees, incurred by LOCAL AGENCY in defending against claims ultimately determined to be due to negligent acts, errors, or omissions of CONSULTANT.

- D. CONSULTANT and the agents and employees of CONSULTANT, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of LOCAL AGENCY. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to LOCAL AGENCY employee(s). With prior written consent, the CONSULTANT may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. CONSULTANT shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by CONSULTANT or is based on allegations of CONSULTANT'S negligent performance or wrongdoing.
- E. LOCAL AGENCY is not required to make any deductions or withholding from the compensation payable to CONSULTANT under the provisions of this 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 LOCAL AGENCY 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 LOCAL AGENCY 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 contract shall be valid, unless made in writing and signed by the parties hereto; 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 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 – Consultant's Cost Proposal" which are hereby

incorporated by reference and attached. In the performance of the Scope of Services for this contract, the responsible CONSULTANT professional engineer shall sign all plans, specifications and estimates and engineering data furnished under the AGREEMENT, including registration number.

### **ARTICLE III 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 Contract Administrator, as needed, to discuss progress on the AGREEMENT.
- C. This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the LOCAL AGENCY, State, and/or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the CONSULTANTS fee.

### **ARTICLE IV PERFORMANCE PERIOD**

- A. This contract shall go into effect on May 20, 2021 contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The contract shall end at the earlier of final Project construction or on 12/31/26 unless extended by contract amendment.
- B. CONSULTANT is advised that any recommendation for contract award is not binding on LOCAL AGENCY until the contract is fully executed and approved by LOCAL AGENCY.

### **ARTICLE V ALLOWABLE COSTS AND PAYMENTS**

#### **TASK 1 -**

- A. The method of payment for PHASE I of 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 necessary to provide the services described in Article II 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 the 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 contract has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. 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 30 days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than 30 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each phase and on each task 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 of this contract. The final invoice must be submitted within 60-calendar days after completion of CONSULTANT's work, unless a later date is approved by the LOCAL AGENCY. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

Town of Los Gatos Parks and Public Works Department  
ATTN: WooJae Kim, Town Engineer  
Highway 17 Bicycle and Pedestrian Overcrossing Project  
41 Miles Avenue  
Los Gatos, CA 95030

- E. The total amount payable by LOCAL AGENCY for PHASE I shall not exceed \$3,000,000 (Three million dollars).

**PHASE II – PHASE II work shall not be awarded at this time. Future Phase II services, if requested, shall be incorporated to this agreement by contract amendment for approval by LOCAL AGENCY and the CONSULTANT. The following articles shall apply to a future Phase II contract amendment.**

- A. The method of payment for Phase II shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to CONSULTANT for the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.
- B. The specified rate to be paid for vehicle expense for CONSULTANT's field personnel, if any, shall be per approved Cost Proposal. The rates for fully equipped vehicle(s) shall be as specified in Article II Statement of Work, if applicable. The specified rate to be paid for equipment shall be, as listed in the approved Cost Proposal, if applicable.
- C. The method of payment for Phase II of this AGREEMENT, except those items to be paid for on a specified rate basis, will be based on cost per unit of work. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment-rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for, by contract amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY approved overhead rate set forth in the approved Cost Proposal. In the event, LOCAL AGENCY determines that changed work from that specified in the approved Cost Proposal and AGREEMENT is required; the actual costs reimbursable by LOCAL AGENCY may be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "J," shall not be exceeded unless authorized by AGREEMENT amendment.
- D. In addition to the allowable costs, LOCAL AGENCY will pay CONSULTANT a fixed fee of \$(0) The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the scope of work and such adjustment is made by AGREEMENT amendment.
- E. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

- F. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- G. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the 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.
- H. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this AGREEMENT.
- I. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by LOCAL AGENCY's Contract Administrator 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 and 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 including any equipment purchased under the provisions of Article XI Equipment Purchase of this contract. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

Town of Los Gatos Parks and Public Works Department  
ATTN: Woo Jae Kim/Town Engineer  
Highway 17 Bicycle and Pedestrian Overcrossing Project  
41 Miles Avenue  
Los Gatos, CA 95030

- J. The total amount payable by LOCAL AGENCY for Phase II shall be as specified by a future contract amendment.
- K. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by LOCAL AGENCY's Contract Administrator.
- L. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

#### **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, drawing and data estimates performed to that date, whether complete or not.
- B. LOCAL AGENCY may temporarily suspend the 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. If the duration of the temporary suspension exceeds 180 calendar days, this AGREEMENT may be terminated by



CONSULTANT provided that CONSULTANT gives not less than thirty (30) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate.

- 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.
- E. LOCAL AGENCY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, LOCAL AGENCY may proceed with the work in any manner deemed proper by LOCAL AGENCY. If LOCAL AGENCY terminates this contract with CONSULTANT, LOCAL AGENCY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to LOCAL AGENCY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.

#### **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. 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 CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 or 48 CFR Part 31, are subject to repayment by 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 CRF Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

#### **ARTICLE VIII RETENTION OF RECORDS/AUDIT**

For the purpose of determining compliance with Government 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 materials available at their respective offices at all reasonable times during the AGREEMENT period and for five (5) years from the date of final payment under the AGREEMENT. LOCAL AGENCY, Caltrans Auditor, FHWA, VTA, 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 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 Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer 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.
- 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, state, 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 contract and disallowance of prior reimbursed costs.
- E. CONSULTANT Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Caltrans' 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 a Caltrans' 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 and 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 and fifty percent (150%) and two hundred percent (200%) - the provisional rate will be eighty five percent (85%) of the proposed rate.
  - c. If the proposed rate is greater than two hundred percent (200%) - the provisional 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 LOCAL AGENCY and any subconsultant(s), and no subcontract shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to LOCAL AGENCY for the acts and omissions of its subconsultant(s) 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 CONSULTANT. The CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from 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 LOCAL AGENCY's Contract Administrator, 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 CONSULTANT by LOCAL AGENCY..
- E. Any substitution of subconsultant(s) must be approved in writing by LOCAL AGENCY's Contract Administrator in advance of assigning work to a subconsultant(s).
- 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 designates the method below to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant.

Method 3: The LOCAL AGENCY shall 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. CONSULTANT or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the LOCAL AGENCY. 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**

- A. Prior authorization in writing, by LOCAL AGENCY's Contract Administrator 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) prior authorization by LOCAL AGENCY's Contract Administrator; 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 \$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.
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.
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 Sub-consultant.
  - c. Upon becoming aware of the Sub-consultant'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**



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 the AGREEMENT without liability; to pay only for the value of the work actually performed; or to deduct from the 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**

- A. 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 CONSULTANT to any person for influencing or attempting to influence an officer or employee of any 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 of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative 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 federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; 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 Section 1352, Title 31, U.S. Code. 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. 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 sub recipients 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.
- 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**

- A. CONSULTANT, subrecipient (LOCAL AGENCY), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, The LOCAL AGENCY shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is CONSULTANT's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found [here](#).

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies CONSULTANT purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49CFR26.55 defines "manufacturer" and "regular dealer."

This AGREEMENT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTS who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California's statewide overall DBE goal.

- B. The goal for DBE participation for this AGREEMENT is **12%**. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Exhibit 10-O2: Consultant Contract DBE Commitment attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Good

Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

D. Contract Assurance Under 49 CFR 26.13(b):

CONSULTANT, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying CONSULTANT from future proposing as non-responsible

E. Termination and Substitution of DBE Subconsultants

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONSULTANT or DBE subconsultant obtains the LOCAL AGENCY's written consent. CONSULTANT shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the LOCAL AGENCY. Unless the LOCAL AGENCY's consent is provided, the CONSULTANT shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form, included in the Bid.

The LOCAL AGENCY authorizes a request to use other forces or sources of materials if CONSULTANT shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the Project.
2. The LOCAL AGENCY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the LOCAL AGENCY's bond requirements.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the Project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The LOCAL AGENCY determines other documented good cause.

CONSULTANT shall notify the original DBE of the intent to use other forces or material sources and provide the reasons and provide the DBE with 5 days to respond to the notice and advise CONSULTANT and the LOCAL AGENCY of the reasons why the use of other forces or sources of materials should not occur.

CONSULTANT's request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from CONSULTANT to the DBE regarding the request.
3. Notices from the DBEs to CONSULTANT regarding the request.

If a listed DBE is terminated or substituted, CONSULTANT must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

F. Commitment and Utilization

The LOCAL AGENCY's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The LOCAL AGENCY shall request CONSULTANT to:

1. Notify the LOCAL AGENCY's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
  - Name and business address of each 1st-tier subconsultant
  - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
  - Date of payment and total amount paid to each business (see Exhibit 9-F *Monthly Disadvantaged Business Enterprise Payment*)

If CONSULTANT is a DBE CONSULTANT, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify CONSULTANT in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify CONSULTANT in writing of the certification date. CONSULTANT shall submit the notifications to the LOCAL AGENCY. On work completion, CONSULTANT shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to the LOCAL AGENCY within 30 days of contract acceptance.

Upon work completion, CONSULTANT shall complete Exhibit 17-F Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the LOCAL AGENCY within 90 days of contract acceptance. The LOCAL AGENCY will withhold \$10,000 until the form is submitted. The LOCAL AGENCY will release the withhold upon submission of the completed form.

In the LOCAL AGENCY's reports of DBE participation to Caltrans, the LOCAL AGENCY must display both commitments and attainments.

- G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining

quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.

- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or Project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within thirty (30) calendar days.
- L. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10<sup>th</sup> of the following month, the prime contractor/consultant shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to the Agency.
- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

#### **ARTICLE XIX INSURANCE**

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance in compliance with the following:

##### **Minimum Scope of Insurance:**

- i. Consultant agrees to have and maintain, for the duration of the contract, General Comprehensive Liability insurance policies insuring him/her and his/her firm to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.

- ii. Consultant agrees to have and maintain, for the duration of the contract, bodily injury liability insurance herein provided for, which shall be in effect at all times during the term of this AGREEMENT.
- iii. Consultant agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iv. Consultant shall provide to the LOCAL AGENCY all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by the LOCAL AGENCY before work commences. 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.
- v. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$1,000,000 which is sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this agreement.

General Liability:

- i. The LOCAL AGENCY, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of Consultant, premises owned or used by the Consultant. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
- ii. The Consultant's insurance coverage shall be primary insurance as respects the LOCAL AGENCY, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the LOCAL AGENCY, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the LOCAL AGENCY, its officers, officials, employees or volunteers.
- iv. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the 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.

In the event said insurance coverage expires at any time or times during the term of this

AGREEMENT, CONSULTANT agrees to provide 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.

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.

- B. CONSULTANT agrees that the insurance herein provided for, shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, CONSULTANT agrees to provide at least thirty (30) 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 contract, 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 contract upon occurrence of such event.

#### **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, 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 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 contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

**ARTICLE XXII 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 Contract Administrator and 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 deliverables necessary to complete the plans, specifications and estimate, 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.
- 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.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.
- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices,

work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper

#### **ARTICLE XXVI OWNERSHIP OF DATA**

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, 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 City 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 City.
- 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 City for another Project or Project location shall be at City's sole risk.
- 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.
- E. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than LOCAL AGENCY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

#### **ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

In accordance with Public Contract Code Section 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 contract 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:

CONSULTANT: Natalina V. Bernardi, PE  
(NAME)  
ATTN: Jaggi Bhandal  
(Project Manager)  
  
1730 N. First Street, Suite 600  
  
San Jose, CA 95112  
(ADDRESS)

LOCAL AGENCY: Parks and Public Works Department  
ATTN: WooJae Kim, Town Engineer, Contract Administrator  
41 Miles Avenue  
Los Gatos, CA 95030

#### **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.

#### **ATTACHMENTS:**

EXHIBIT A – SCOPE OF SERVICES  
EXHIBIT B – CONSULTANT’S COST PROPOSAL  
EXHIBIT 10-O2 - Consultant Contract DBE Information

#### ARTICLE XXXIV SIGNATURES

Recommended by Department Head:

DocuSigned by:

*Matt Morley*

5/13/2021

Matt Morley, Parks and Public Works Director

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

**TOWN OF LOS GATOS** by:

DocuSigned by:

*Laurel Prevetti*

5/20/2021

Laurel Prevetti, Town Manager

**CONSULTANT** by:

DocuSigned by:

*Natalina V. Bernardi*

5/12/2021

Signature

Natalina V. Bernardi, Principal / Vice President

Printed Name and Title

**Approved as to Form:**

DocuSigned by:

*Robert W. Schultz*

5/18/2021

Robert Schultz, Town Attorney

**Attest:**

DocuSigned by:

*Shelley Neis*

5/20/2021

Shelley Neis, CMC, Town Clerk

**EXHIBIT A - PROJECT SCOPE OF SERVICES**

May 6, 2021

**PROJECT SCOPE OF SERVICES****PHASE I - ENGINEERING DESIGN SERVICES AND ENVIRONMENTAL CLEARANCES:**

The BKF Team will provide all design services, including but not limited to: Project management; preliminary engineering; environmental studies and clearances; utility coordination and right-of-way; permits and coordination with other agencies; surveys and mapping; geotechnical investigations and reports; structural and final design and development of all contract documents; bid support and obtaining the authorization to proceed to construction from Caltrans for the Highway 17 Bicycle and Pedestrian Overcrossing Project as more specifically described as follows. Where appropriate professional engineer shall sign all plans, specifications and estimates and engineering data furnished under the scope of services, including registration number.

- **Task A.1 Project Management** - The BKF Team will provide the necessary Project coordination, administration, management and interfacing with the Town, Caltrans, and other internal/external stakeholders to achieve Project objective. The BKF Team will proactively provide direction to the Town regarding the Project tasks necessary to deliver the federally funded Project consistent with Caltrans permitting requirements and federal reimbursement requirements. The BKF Team will be responsible for Project management activities throughout the life of the contract. The scope of these activities includes, but is not limited to,
  - provide, distribute, and maintain contact information for all Project team members
  - coordinate and schedule meetings/conference calls as needed
  - prepare and distribute meeting minutes
  - itemize, track, and pursue all Project action items to completion
  - develop and maintain the Project schedule, report on Project progress
  - manage Subconsultant activities to remain on schedule,
  - supervise, coordinate, and monitor design for conformance with all current applicable design standards from the Town, AASHTO, Caltrans Design Standards and Specifications, California Building Code, and any affected utilities
  - supervise, coordinate, and monitor the design for conformance with permit requirements from Caltrans, VTA, and utility companies
  - conduct field reviews as needed
  - prepare and track Town's submissions to Caltrans
  - provide internal quality control checks and document quality control actions conducted for the Project
  - conduct cross-checking to avoid potential conflicts between various subconsultant's work
  - develop Project filing and record keeping system for Project files for a period of 5 years
  - develop a list of Project stakeholders for coordination during Project design
  - assist the Town with grant funding pursuits for project construction. BKF understands that the Town will lead these funding pursuit efforts, but will provide minimal support (project information, exhibits, etc).

*Deliverables: Meeting minutes, schedule, progress reports, action item logs, tracking spreadsheets, Caltrans submissions and other items resulting from the BKF Team's Project management duties*

- **Task A.2 Data Collection and Review** - The BKF Team will obtain and collect data as needed to develop general Project design concepts and related activities needed to establish the parameters for final design, such as, existing topography/geometrics, grading and drainage considerations, geotechnical/retaining wall considerations, structural engineering and proposed bridge structure, ADA considerations, extent of required demolition activities, construction phasing/staging, environmental and future maintenance considerations. The scope of these activities includes, but is not limited to, (items to be provided by the Town or items on the Town's Project webpage are as indicated below).
  - Complete an extensive site review/existing conditions assessment of the Project area
  - Collect and review existing background information regarding the Project including:
    - Town's adopted Bicycle and Pedestrian Master Plan and Update (see Attachment 3)
    - Highway 17 Bicycle and Pedestrian Overcrossing Feasibility Analysis (see Attachment 3)



# EXHIBIT A - PROJECT SCOPE OF SERVICES

May 6, 2021

- Funding Agreement between the Town of Los Gatos and Santa Clara Valley Transportation Agency for the Bicycle and Pedestrian Overcrossing Over Highway 17 (see Attachment 3)
- Caltrans Local Procedures Manual
- Plans for existing utilities in Project area
- Development plans for adjacent properties – (Town to provide)
- Proposed developments in the Project vicinity (Town to provide) and potential Project impacts
- Street improvement plans, including signalized intersections (Town to provide)
- Aerial photos and any available mapping, including digitized topography
- Survey control data
- ROW information, including Caltrans right of way documents, existing easements, etc.
- Existing as-built information from the Town, Caltrans, property owners, local agencies, utility companies, and other organizations
- Existing Blossom Hill Road Highway 17 Overcrossing bridge structure plans and geotechnical information
- Geologic and soil literature in the Project vicinity
- Design standards and codes applicable to the Project
- Town's Standard Specifications and Details for Construction, 2010 Caltrans Standard Specifications and Standard Plans, and applicable portions of the MUTCD and California MUTCD, and other controlling design standards as appropriate
- Americans with Disabilities Act (ADA) requirements
- Connect Los Gatos webpage and Highway 17 Bicycle and Pedestrian Overcrossing Project page
- Minutes from Project related community meetings
- Based on existing conditions and Project objectives, determine required permits and permit requirements necessary for successful completion of Project and review permit applications and requirements
- Based on the data collected and site evaluations, review the preliminary layout as presented in the feasibility study, verify assumptions, and confirm consistency with the Project's objectives and budget.
- Based on information collected, prepare a summary or diagram of existing conditions highlighting any special/potential conditions that may affect the final design (opportunities and constraints diagram)

*Deliverables: Video of existing site conditions, listing of all potentially required permits, opportunities and constraints diagram*

- **Task A.3 Surveys and Base Mapping** - The BKF Team will be responsible for data collection, and all mapping and surveying necessary to complete a comprehensive base map and other plans as indicated below. The scope of a comprehensive base map and survey includes setting Project benchmarks and establishing control for Project layout and construction, aerial photogrammetry, design level topographic surveys, identification of all public right-of-way, adjacent parcels, property lines, easements, and existing utility locations. The extent of the topographical surveying and mapping shall extend a minimum of 10' or more beyond the existing Blossom Hill Road right of way to show adequate conforms to existing conditions and proper future drainage. Existing conditions mapping shall include appropriate data collected in Task A.2.
- The BKF Team shall conduct a detailed field survey to review and record existing conditions in the Project area and shall identify any unusual or special conditions that may affect the design or construction of the Project. The field survey for the Project area shall include at a minimum, the location of all existing above and below grade facilities, including but not limited to, roadways, signing/stripping, medians, traffic signals and appurtenances, fire hydrants, street lights, retaining walls, sidewalks, curbs, gutters, ramps, SR 17 overcrossing structure including the embankments and structural components, fences, gates, utilities, flood control facilities, waterways, outfalls, trees



# EXHIBIT A - PROJECT SCOPE OF SERVICES

May 6, 2021

- greater than 6" DBH, and any existing irrigation facilities.
- The BKF Team shall review data and survey information collected with proposed Project layout and shall complete physical verification of utility locations in areas of potential conflict. The BKF Team shall obtain all permits and approvals necessary to complete the potholing operations. Results of potholing shall be included on the Utilities Base Map.
- Based on the survey and data collected, the BKF Team shall prepare one or more existing conditions base maps, at a scale of 1"=20' for use in the Project design and community meetings, including
  - Existing Conditions Base Map
  - Existing Utilities Base Map
  - Existing Tree Plan - the BKF Team shall prepare a separate plan showing the location and number of existing trees over 6" DBH, including size, species, and location.
  - Right of Way Map – showing location of all property lines and easements within or immediately adjacent to the Project area.

*Deliverables: Survey data sheets, base map(s) and plans in AutoCAD format– including Existing Conditions Base Map, Existing Utilities Base Map, Tree Locations and Right of Way Map*

- **Task A.4 Stakeholder Coordination and Project Permits** - The BKF Team shall identify all Project stakeholders and shall take actions necessary to coordinate Project design with the Town and Project stakeholders. Meetings with the stakeholders, including the Town, Town Council and Commissions, community members, Caltrans, VTA, any affected utilities, and any affected private properties will be included in this scope of work and shall include preparing and providing supporting documents, reports, and exhibits. The BKF Team shall determine the need for permits to allow for the ultimate construction of the Project, including a Caltrans encroachment permit, and any other permits deemed necessary for construction access and staging areas and shall prepare required applications, documents, and reports to allow the Town to obtain the Project permits in a timely manner. Design of the Project is to remain within the existing public and Caltrans right of way, however, the BKF Team will identify any conform or other activities that may need to temporarily take place on private property, and will coordinate with adjacent property owners to obtain clearances for such activities. The BKF Team shall coordinate permits necessary for geotechnical drilling operations and USA clearances.

**Caltrans Coordination:** The BKF Team will take the lead and coordinate with Caltrans and the Town to prepare a Project Initiation Document (PID), Project Study Report-Project Development Study (PSR-PSD), Project Approval & Environmental Document (PA&ED), and final PS&E including all reports and documentation required by Caltrans in order to obtain a Caltrans encroachment permit for the Project. To start the coordination process, BKF will assist the Town in obtaining a Cooperative Agreement with Caltrans to start the PID phase. The PID shall comply with the Caltrans standard PSR-PDS requirements and will include the overall site plan and typical conceptual cross-sections for the alternatives identified in the feasibility study. The BKF Team will assist the Town in the development of the necessary Cooperative Agreements with Caltrans for the PID, PA/ED, and PS&E phases. The BKF Team will schedule and hold meetings as needed with Caltrans and shall also schedule and hold regular Project team coordination meetings with Caltrans and shall prepare the meeting agendas, minutes, and action items. It will be the BKF Team's responsibility to prepare, implement and monitor a realistic schedule of the activities necessary, to lead the Town through the PID, PA/ED, and PS&E phases of the Project. BKF will also assist the Town in the execution of a Maintenance Agreement for the proposed project improvements and supporting exhibits necessary to complete the agreement.

*Deliverables: Approved PID, PA/ED, and PS&E; Project team meeting agendas, minutes, action item lists, Caltrans encroachment permit for Project construction.*

**Selection of Preferred Bridge Type:** The feasibility study has identified three feasible types of bridge structures for consideration. The BKF Team understands that the Town





# EXHIBIT A - PROJECT SCOPE OF SERVICES

May 6, 2021

plans to only move forward with the concrete and steel truss bridge options identified in the feasibility study. BKF will develop each concept further and shall assist the Town in the presentation of these two alternatives to the community, the Town's Complete Streets and Transportation Commission and the Town Council. The BKF Team will lead the Town's effort to develop a consensus regarding the final bridge type for advancing into the final design process. This process is to take place concurrently with the development of the Project Initiation Document (PID), and shall result in the Town Council's selection of the final bridge type prior to the completion of the PID phase. The following tasks are anticipated for the selection of the preferred bridge structure:

- Prepare a Principal Span Structure Selection Matrix including structure type, anticipated costs, key opportunities and constraints for each bridge type
- Define embankments (if any), retaining walls/sound walls (if any), supports, main span and approach structure geometrics
- Geometric alignment and clearances, including bridge and approaches with a focus on geometric plans through Caltrans right of way. The geometric design for the bridge and approaches through Caltrans right of way will be developed based on project objectives, the constraints and the Town's and Caltrans design standards. Adequate detail will be provided so that assessments and evaluations can be made and discussed.
- Refine each alternative to show impacts to adjacent properties and relationship to adjacent property lines
- Provide diagrams and plans showing the movement of bicycle and pedestrians across the structures and through the adjacent intersections and across bridge structure
- Develop additional perspectives for each bridge structure showing:
  - Viewer friendly plans showing proposed alignment, profiles, and cross-sections of each bridge alternative
  - Visual simulation/view of each bridge structure from both south and northbound SR 17
  - Visual simulation/view of each bridge from the user's perspective both east and west bound directions
  - Potential additional architectural features or opportunities for each bridge type including pedestrian and bicycle railings, lighting concepts, and potential incorporation of public art features.
  - Landscape and urban design concepts
  - Refine basic cost estimate for each bridge type
- Assist the Town in a community workshop(s) to review bridge types and determine community preference
- Assist the Town in presentations to the Parks and Recreation Commission, the Complete Streets and Transportation Commission, and Town Council to determine the final bridge type.

In advance of the 35% phase, the BKF Team will develop Bridge APS submittal for the Town's and Caltrans review and approval. The team will perform necessary modeling and analysis to support member sizing. The Bridge APS shall be performed in accordance with Caltrans Bridge Memo to Designers 1-8. The APS shall consist of one structure plan sheet showing general structure layout details and estimated cost, preliminary geotechnical memorandum, APS checklists, design memorandum, and itemized cost estimates. There will be no APS sheets developed for the retaining structures unless these walls are very unusual in characteristic and type.

*Deliverables: Opportunities and constraints diagrams, visual simulations, plans, profiles, cross-section, meeting presentations, cost estimates, APS.*

**Community Engagement:** With assistance from the BKF Team, Town staff will implement and lead the Project's Community Engagement Plan. The BKF Team shall develop and implement a robust community engagement process, attend and provide support to Town staff in public outreach efforts, and facilitate community meetings to obtain input on the proposed design. The BKF Team will develop all necessary meeting materials including graphics, presentations slides, handouts, drawings, graphic boards, etc. for each meeting, as



# EXHIBIT A - PROJECT SCOPE OF SERVICES

May 6, 2021

appropriate. BKF will conduct a "pre-meeting planning session" with the Town via teleconference before each meeting to review materials. The BKF Team will provide minutes for all meetings. A minimum of eighteen (18) public outreach activities are anticipated per the RFP. The following public activities are preliminary proposed into three broad phases: 1) Technical Translation Phase to build and test educational materials, 2) Stakeholder Engagement Phase to interact directly with specific key groups such as adjacent homeowners, nearby schools, and other specific organizations, to address their key concerns and 3) General Public Phase to engage the broader public to ensure understanding of the project, the community preferences, and forthcoming design and construction schedule. The following list includes public meetings and other engagement activities anticipated during and after the Structural Design and Aesthetic Evaluation Study. Specific community engagement activities required of the BKF Team are anticipated to include the following:

- Stakeholder Engagement Materials: The BKF Team will provide supporting documents and exhibits for the Town's use in stakeholder notifications.
- Stakeholder and Contact Database: The BKF Team shall collaborate with Town staff to build onto any existing contact list to include key individuals, organizations, and agencies to engage.
- Community Engagement Strategy: Working with Town staff, the BKF Team shall define key outreach activities, their sequence, and their likely schedule.
- Project Informational Materials: The BKF Team shall develop materials to help educate the community about the project and potentially promote input activities, typically including a Project Fact Sheet, FAQ sheet, and flyer template, or other information that can be posted to the Town's website.
- Stakeholder Interviews: The BKF Team shall interview specific individuals and community champions representing key stakeholder groups or constituencies early in the process to identify concerns and early design preferences or parameters.
- Stakeholder Group Meetings: The BKF Team shall coordinate and present at stakeholder meetings. Among the possibilities include advisory group meetings, neighborhood group meetings, the chamber of commerce, school PTA meetings, service clubs (Kiwanis, Rotary, Lions, etc.), or employee groups.
- Community Meeting and Workshops: The BKF Team and Town shall develop a list of key Project milestones for community input and workshops. The Town shall arrange venues – if health guidelines allow – for workshops and shall notify stakeholders of meetings and workshops, however the BKF Team will be prepared to facilitate the community discussion/workshops and Commission/Council presentations and shall provide supporting documentation and visual aids. Workshops and meetings will be conducted as virtual events if shelter in place protocols remain. Visual aids shall include renderings and visual simulations of major Project elements. All Project materials shall include the appropriate Measure B logo and acknowledgements. The BKF Team will provide meeting summaries and follow up on outstanding comments or issues. It is anticipated that the community meetings, workshops, and presentations will be required at the following Project milestones:
  - Preferred Bridge Type Selection – Two (2) community workshops, plus four (4) Council or other Commission presentations
  - Community/Commission Design Reviews– minimum of two (2) each at PID, PA/ED, 35% design, 65% design, and 95% design
  - Town Council presentation at 35% and at 100% complete PS&E
- On-line Engagement: the BKF Team shall provide periodic progress updates for the Town to post on the Project web-page.
- Online Preference Setting Activity: To reach the broader Los Gatos community beyond those attending in-person, an online activity, potentially a graphics – or map-based survey is proposed to help garner community input and ideas, and to help hone in on a design alternative.
- Town Council Meetings: The BKF Team shall attend and assist in presentations in up to a total of two (2) Town Council meetings. These meetings shall be planned at the Town's staff's discretion.

*Deliverables: Workshops and presentations (18 total), agendas, visual aids/visual simulations, renderings, meeting summaries, follow-up as needed,*



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**VTA Coordination:** the BKF Team assumes the Town will facilitate all coordination efforts with the VTA for this Project, however, BKF will provide support as outlined below:

- Include insurance coverage and endorsements as required by VTA funding agreement. The Project must include Measure B branding/logo in work released to the public and in project construction/specifications.
- The BKF Team shall allow VTA a minimum of thirty (30) calendar days to review and provide comments and shall include such review time in the master Project schedule. VTA's comments must be considered in the final design phase of the Project. The BKF Team shall provide back-up information as necessary for any VTA comment that will not be incorporated into the final design documents. BKF assumes that the Town will lead/facilitate reviews with the VTA.
- Submit to the Town all records including invoices, miscellaneous invoices, and force account charges as substantiation for invoices submitted to VTA for reimbursement hereunder.
- Maintain financial records, books, documents, papers, accounting records, and other evidence pertaining to costs related to the Project for five (5) years. The BKF Team shall make such records available to VTA and the Town upon written request for review and audit purposes. Financial audits may be performed at VTA's sole discretion.

*Deliverables: Written responses to VTA review comments.*

**Utility Coordination** – The complete effort for utility coordination is to include accurately identifying and mapping of existing utilities, identifying and defining any relocations or modifications required by the Project, and documenting utilities in accordance with Caltrans policies, and coordinating any future utility requirements for the Project.

- Coordinate with all utility companies early in Project to identify and confirm any potential conflicts with the Project.
- Submit proposed plans to utility companies as necessary for review in accordance with utility requirements.
- Complete potholing to verify location of utilities in potential conflict areas.
- Coordinate any necessary utility relocations, including and temporary relocation of the utility facilities, as needed, for bridge installation or other construction considerations.
- Coordinate with PG&E and the SJWC for future power and water service points needed for the Project.
- Develop and maintain a list of utility contacts and relocation tracking database for the Project design and construction activities.
- Prepare Utility A, B, and C letters.
- Conduct utility coordination meetings, prepare agendas, minutes, and track action items.
- Prepare utility conflict maps clearly delineating existing and proposed utilities in current and final locations.
- Provide support to the Town for the utility relocation process, determining liability for the costs associated with necessary relocations.
- Prepare necessary Utility Agreements.
- Incorporate relocation activities into Project schedule.
- Certify that all utility conflicts are addressed and other actions necessary to obtain the Utility Certification as part of the ROW Certification.

*Deliverables: A, B, C, letters and utility certifications, agreements, permits, clearances as required to obtain the Caltrans encroachment permit and for construction of the Project, meeting minutes, utility contact list.*

- **Task A.5 Environmental Studies and Documentation – CEQA and NEPA**

The BKF Team will complete all required environmental reviews and obtain all environmental clearances to allow the Project to move forward into construction. All environmental documents and reports, studies and public noticing shall be conducted according to the



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provisions of the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA).

For CEQA clearance, David J. Powers & Associates, Inc. (DJP&A) will prepare an Initial Study pursuant to the requirements of CEQA and the Town of Los Gatos. This scope assumes the Initial Study will not be circulated for public review; instead, upon completion of the Initial Study, the Town will determine the project is categorically or statutorily exempt from the provisions of CEQA. In addition, with the recent passing of Senate Bill 288, Public Resources Code Section 21080.20 now exempts bicycle and pedestrian facility projects. Therefore, DJP&A believes the project would be statutorily exempt under CEQA. For the purposes of this proposal, the BKF Team assumes the Town will be designated as the CEQA lead agency.

NEPA clearance will be required due to the future federal funding for construction of the Project. The BKF Team will work with Caltrans (the lead for the NEPA process) and the Town, and complete all technical memorandums and studies as identified by Caltrans through the Preliminary Environmental Studies (PES) and Field Review process. For the purpose of this proposal, the BKF Team assumes the appropriate filing for NEPA will be a Categorical Exclusion under NEPA (23 CFR 771.117; (c) (3): Construction of bicycle and pedestrian lanes, paths, and facilities.

Based on the DJP&A's recent experience working on Caltrans Local Assistance Projects in the greater Bay Area, DJP&A believes Caltrans will require preparation of the following technical memos for the bicycle and pedestrian overcrossing. The actual studies to be completed will be determined by Caltrans upon completion of the PES and field review meeting:

- Traffic Technical Memo
- Air Quality PM2.5 Exemption
- Water Quality Technical Memo
- Natural Environmental Study (Minimal Impact)
- Archaeological Survey Report
- Equipment Staging Technical Memo
- Initial Site Assessment
- Visual Impact Assessment (Moderate Impact)

DJP&A will prepare the air quality, traffic, equipment staging, and water quality memos based on information provided by the Town and BKF.

The Natural Environmental Study (Minimal Impact), Archaeological Survey Report and Historic Property Survey Report, and Visual Impact Assessment (Moderate Impact) will be prepared by H.T. Harvey & Associates, Archaeological Historic Consultants, and Earthview Sciences, respectively, under contract to DJP&A.

The Natural Environmental Study (Minimal Impact) will characterize the existing conditions, and determine the potential project impacts to sensitive biological resources. A wetland delineation is not included in this scope.

The Archeological Survey Report will include a summary of records search results and Native American consultations. The Historic Property Survey Report (HPSR) will report the findings of any documented historic resources located within the project limits and a summary of the findings of the Archeological Survey Report, which will be included as an attachment to the HPSR.

The Visual Impact Assessment will evaluate up to three views, based on photosimulations to be prepared under separate contract and provided to DJP&A. Earthview Sciences will participate in consultation with Caltrans and Town staff for viewpoint selection.

The Phase I Initial Site Assessment will be prepared by Parikh for the proposed project. ASTM recommends a 1.0-mile radius for the data search. Environmental Data Research Inc. (EDR Inc.) report study will be ordered using an approximate center of the project. The ISA



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study will be prepared to identify potential hazardous waste sites and evaluate environmental factors that may have impacted the soil groundwater quality within the project limits. The study will include data collection and documents research including historical land use based on study of aerial photographs and other relevant documents. No field exploration and/or testing are included in this phase of the work.

The studies and memos will be prepared based on Caltrans' Standard Environmental Reference (SER) and submitted to the Town and BKF for review. DJP&A will revise the memos once and submit them back to the Town for submittal to Caltrans. Based upon review comments by Caltrans, DJP&A and its subconsultants (H.T. Harvey & Associates, Archaeological Historic Consultants, and Earthview Sciences), with concurrence from the Town, will revise the memos once for resubmittal to Caltrans. Once the memos are deemed complete by Caltrans, Caltrans will issue the NEPA Categorical Exclusion for use by the Town in obtaining federal funding.

Note the technical memos and reports will also be used to support the CEQA Categorical Exemption.

For the purpose of this proposal, the BKF Team assumes the following:

- The Project will not include work outside of existing Town or Caltrans right-of-way.
- The NEPA and CEQA process will be limited to the evaluation of one build alternative.
- The Project description will not change.
- The Project will not impact threatened or endangered plant or animal species, or habitat utilized by such species.
- No private property will be affected by the Project.
- The Project will use Tier 4 construction equipment and construction air quality analysis will be qualitative.
- All construction staging will occur on paved surfaces within Town right-of-way.
- BKF will provide information on tree location and diameter.
- BKF will provide information on construction staging, duration, equipment use, etc.
- Completion of an Extended Phase I (i.e., subsurface archaeological testing) will not be required.

**Regulatory Agency Permits** – The BKF Team assumes the project will not need regulatory agency permits from the San Francisco Regional Water Quality Control Board or California Department of Fish and Wildlife because there are no wetlands or riparian habitat within or immediately adjacent to the project alignment.

*Deliverables to include: Initial Study, Notice of Exemption, Preliminary Environmental Studies form, traffic technical memo, air quality PM2.5 exemption confirmation, water quality technical memo, Natural Environmental Study (Minimal Impact), Archaeological Survey Report, Equipment Staging Technical Memo, Initial Site Assessment Visual Impact Assessment (Moderate Impact).*

- **Task A.6 Geotechnical Investigations and Reports** - The BKF Team will conduct geotechnical investigations as necessary to ensure that all geotechnical data within the Project area that may affect the final design and construction of the Project are identified and addressed per the Caltrans encroachment permit requirements and in the final design of the Project. The specific project elements that will require geotechnical studies are listed below:
  - New bridge POC structure, Caltrans Review
  - Retaining Walls, embankments, slopes and trail pavement (Non-Caltrans ROW)

The following proposed geotechnical studies are planned to be performed during PA/ED Phase:

- **Preliminary Foundation Report (PFR):** Preliminary Foundation Report will be prepared for the POC over Highway 17. The PFR will be prepared in accordance with Caltrans guidelines and will include discussions on potential





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geotechnical/geologic impacts and mitigations on a broad basis including but not limited to slope stability, geology, seismic impacts, erosion, groundwater conditions, etc. for the proposed bridge structure. Certain design assumptions are made as to the type of foundations, approximate pile length. Generally, the geotechnical issues relevant to the proposed project are presented in a qualitative manner with no specific design recommendations. Subsequently, during the PS&E phase a more detailed Foundation Report will be prepared for the bridge.

- **Preliminary Geotechnical Design Report (PGDR):** The project proposes to include retaining walls and slope cuts, embankments and pavement for the trail work. However, this work is outside of the Caltrans ROW. To simplify the process, Parikh will prepare a combined report that covers these elements as a PGDR.

A Preliminary Geotechnical Design Report is proposed for the roadway pavement, retaining walls, slopes and other civil design features. The review will be based on readily available data including as-built Log of Test Borings from the previous geotechnical reports and other Agency records. The potential geotechnical/geologic impacts and mitigations will be discussed on a broad basis including but not limited to slope stability, geology, seismic impacts, erosion, groundwater conditions, etc. for the proposed project. Wall foundation types will be based on Caltrans standard design guidelines. Generally, the geotechnical issues relevant to the proposed project are presented in a qualitative manner with no specific design recommendations.

Overall scope of work during PS&E Phase will include preparation of a Geotechnical Design Report for the roadway work, slopes, retaining walls and embankments. A separate foundation report will be prepared for the overcrossing of Highway 17. The proposed retaining walls are not located within the Caltrans right-of-way; therefore, separate foundation reports are NOT proposed for each of these walls.

The following proposed geotechnical studies are planned to be performed during PS&E Phase:

- **Foundation Report and Log of Test Borings (Bridge):** Parikh will prepare foundation report and log of test borings for the POC structure. Existing borings and CPT data from the Caltrans database will be used as a reference. Additional borings will be required for the new structure. Following is a task breakdown for the proposed work.
  - Research and Data Collection: Review of readily available geologic and soil literature in the vicinity of the site including review of any as-builts drawings and existing LOTB.
  - Permits/USA Clearances: Comply with the Caltrans Permit requirements. Encroachment permits will be processed with Caltrans for field investigations within Caltrans R/W. The BKF Team assumes encroachments within the Town will follow is streamlined process with fees waived.
  - Field locate the borings and call for USA clearance.
  - Field Exploration: Due to limited access, steep terrain and need for deeper exploration portable rigs are not feasible. There are three potential locations identified for the bridge project. One median boring will be included in this program that will require potentially night work and lane closures. This will be dictated by the Permit Engineer. The borings are proposed to a depth of 100' or refusal. One exploration per working shift is assumed. These explorations will provide an evaluation of subsurface conditions for the proposed structures. Traffic control is assumed for 1 shift.
  - The boring locations will depend upon the available access and the boring data from previous studies. We anticipate using a truck-mounted rig for majority of the work. Coordination and encroachment/permit to enter is to be provided by the client. Some private access and permits may be required.
  - Classify and continuously log subsurface soil conditions encountered in



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each test boring at the time of drilling. Obtain “relatively undisturbed” and bulk samples of substrata from test borings. The borings will be drilled and capped in accordance with the permit requirements.

- Laboratory Testing: Perform laboratory tests on representative soil samples such as moisture density, consolidation tests, unconfined compression, gradation analyses, corrosion tests and Plasticity Index test, as necessary.
- Soils Analysis/Evaluation: Perform engineering analyses and develop design recommendations for the proposed structure foundation design. The design should follow AASHTO LRFD specifications (8<sup>th</sup> edition, September 2017) with California amendment 2019.
- Prepare Draft Preliminary Foundation Reports (Type Selection) for the bridge structure. Prepare preliminary recommendations for the overcrossing and provide Draft Foundation Report with the LOTB. The foundation design will be based on analyses using Caltrans seismic design and LRFD guidelines.
- Discuss seismic considerations, evaluate the liquefaction potential and comment on the site soil conditions from this standpoint. Information related to Caltrans Seismic design criteria (SDC v 2.0) shall be provided. Information related to the recently revised Seismic design guidelines (2019) and the ARS curves (using Caltrans ARS online tool) will be provided.
- Prepare Foundation Report for the overcrossing structure. LOTB will be prepared using the general plan as a base map.

▪ **Geotechnical Design Report (one report within Town right-of-way):**

PARIKH will prepare a separate Geotechnical Design Report (GDR). The GDR will include retaining walls, slope stability analyses and trail. Detail scope for preparing this report is as follows:

- Research and Data Collection: Review of additional available geologic and soil literature in the vicinity of the site.
- Permits/USA Clearances: Work will comply with the Town’s Permit requirements. Encroachment permits (Town/private) will be provided by the client.
- Boring locations will be located for USA clearance.
- Field Exploration: The boring program will include 4 explorations to 30 feet deep for the proposed walls and the slopes. These are planned with track mounted field equipment. These explorations will provide an evaluation of subsurface conditions for the proposed cut and fill walls and slopes. The boring locations will depend upon the available access and any permit conditions. No traffic control is assumed at this time as most of the work will be off the travel areas.
- Classify and log subsurface soil conditions encountered in each test boring at the time of drilling. Obtain “relatively undisturbed” and bulk samples of substrata from test borings. The borings will be drilled and capped in accordance with the permit requirements. Generally, the borings are required to be backfilled with cement grout.
- Laboratory Testing: Perform laboratory tests on representative soil samples such as moisture density, unconfined compression, gradation analyses, corrosion tests and Plasticity Index test, as necessary.
- Soils Analysis/Evaluation: Perform engineering analyses and develop design recommendations for the proposed retaining walls, slopes, embankments, and pavement design.
- Prepare Draft Geotechnical Design Report: Prepare preliminary recommendations including retaining wall design parameters, possible MSE wall option, slope stability recommendations and pavement section. Draft LOTB will be included in the report.
- Prepare final Geotechnical Design Report: Final GDR will include response to review comments from agency. Final design recommendations will be based on the updated design requirements. Log of Test Borings will be prepared using the general plan as a base map.



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- **Prepare Phase II ISA:** The Phase II ISA will include the following field activities and laboratory analysis:
  - Field Activities will include the following:
    - Advance up to 8 hand-auger borings to 2.5 ft bgs.
    - Collect 3 soil samples per boring (total 24 samples)
  - Analytical Laboratory Analyses (Standard Laboratory Turnaround Time):
    - 18 soil samples for Total Lead
    - 6 soil samples for CAM 17 Metals
    - 8 samples for TPHg
    - 8 samples for TPHd/mo
    - 4 samples for Organochlorine Pesticides
    - 1 sample for Volatile Organic Compounds
    - 1 sample for Semi-Volatile Organic Compounds
    - 1 sample for Polychlorinated Biphenyls
    - 4 samples for Naturally Occurring Asbestos
  - Prepare Site Investigation Report

*Deliverables: Draft and Final Preliminary Geotechnical Design Report (PGDR), Draft and Final Preliminary Foundation Report (PFR), Draft Geotechnical Design Report (Town right-of-way), Draft Foundation Report for POC (Caltrans), Final Geotechnical Design Report (Town right-of-way), Final Foundation Report for POC (Caltrans).*

- **Task A.7 35% PS&E** – The preliminary 35% design is intended to allow the Town, Caltrans, the community, and other stakeholders to review and comment based upon the basic design concepts early in the design process to minimize change in subsequent tasks. Plan development shall be based on the base mapping, data collection, and other determinations that are developed through the Environmental and PID and PA/ED phases. The BKF Team shall prepare the 35% design and submit to stakeholders for review and comment at community, commission, and Council meetings. Stakeholder comments shall be addressed in writing by the BKF Team prior to continuation of the design to the next level.

For scoping purposes, the BKF Team assumes that the basic structural configuration and concept, is limited to the concrete box girder and steel truss options identified in the Feasibility Study will be the preferred bridge type over Highway 17. The preliminary 35% design will include the following:

**Preliminary Transportation Management Plan (TMP):** TJKM will prepare a TMP Data Sheet to include proper cost, scope, and scheduling of the TMP activities at this early stage of development as required by the Caltrans PSR-PDS guidelines.

**Basis of Design Memorandum:** The BKF Team will confirm the applicable Town, Caltrans, other applicable jurisdictional standards and guidelines to be implemented and considered for the design of the pedestrian and bicycle overcrossing. The applicable standards and criteria set for the Project design will be described and culminated in a Design Basis Memorandum.

**Preliminary Plans:** The BKF Team shall refine the initial concept designs and prepare preliminary design plans (35%) for the preferred alternative based on community and Town input showing architectural and civil plans, structure elevations, sections, any artwork, lighting, and fence/railing elements, horizontal control lines, vertical profiles and super-elevations, grading and drainage, structure location and wall limits, utility impacts, and right-of-way/construction easement impacts.

**Preliminary Cost Estimates:** The BKF Team shall prepare preliminary construction cost estimate for the project in accordance with Caltrans guidelines including Caltrans Bridge Memo to Designers 1-8 and Section 11 of the Caltrans Bridge Design Aids. Use Caltrans Cost Estimate form for bridge item.

**Bridge Type Selection Report:** The BKF Team will analyze the structure type selection before extensive structural design work is performed and prepare a Bridge Type Selection





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Report (TSR) in accordance with Caltrans guidelines. The TSR will include a Bridge General Plan, Bridge Site Data Submittal, Foundation Plan, Construction Cost Estimate and Type Selection Memo. This work will be developed using Section 10, "Type Selection," of the Caltrans Bridge Design Aids, and Section 1-29, "Type Selection Review Meeting," of the Caltrans Bridge Memo to Designers. The BKF Team will submit the TSR for Caltrans review, and will present the proposed structure to Caltrans at a Bridge Type Selection Meeting. The BKF Team will conduct one (1) "pre-meeting planning session" teleconference with the Town. The BKF Team will finalize the TSR based on input received in the meeting. The TSR General Plan and Foundation Plan will be incorporated into the 35% Plan Submittal.

35% submittal, at a minimum, is anticipated to include the following:

- **PSR-PDS and Supporting Documents**
  - Purpose and Need
  - Geometric Approval Plans (Typicals and Horizontal and Vertical Alignments)
  - Identify Design Exceptions
  - Preliminary Drainage Report
  - PID Level Storm Water Data Report (SWDR)
  - Preliminary Transportation Management Plan (TMP)
  - Traffic Engineering Performance Assessment (TEPA) – The BKF Team assumes a formal TEPA is not required and minimal efforts to address the Traffic section in the PSR-PDS will suffice since the Project does not propose to alter traffic operations. Although a formal traffic analysis will not be required by Caltrans, BKF assumes a traffic memo to address the anticipated traffic signal modifications at West and East Roberts Road intersections will be required as part of the project scope. This analysis would be limited to Town review only and opening year operations.
  - Preliminary Geotechnical Memo and Preliminary Site Investigation
  - Biological/Cultural Records Searches
  - Preliminary Environmental Assessment Report (PEAR)
  - Construction and Support Cost Estimates
  - PID Draft Narratives/Sections
  - Administrative Draft PSR/PDS
  - Draft PSR/PDS with comments incorporated
  - Final PSR/PDS
- **PR and Supporting Documents** – For scoping purposes, the BKF Team assumes only one (1) alignment alternative and one (1) bridge type will be evaluated in the Project Report and supporting documents, which will include the following:
  - Geometric Approval Plans (Typicals and Horizontal and Vertical Alignments)
  - Design Exception Report
  - Utility Policy Exception
  - Preliminary Drainage Report
  - Storm Water Data Report (SWDR)
  - Transportation Management Plan (TMP)
  - Traffic Operations Analysis Report (TOAR) - The BKF Team assumes a formal TOAR is not required and minimal efforts to address the Traffic section in the PR will suffice since the Project does not propose to alter traffic operations. Although a formal traffic analysis will not be required by Caltrans, BKF assumes a traffic memo to address the anticipated traffic signal modifications at West and East Roberts Road intersections will be required as part of the project scope. This analysis would be limited to Town review only and opening year operations.
  - Right of Way Data Sheet (R/W Data Sheet)
  - Structures Advance Planning Study (APS)
  - Cost Estimate
  - Risk Management Plan
  - PR Draft Narrative/Sections
  - Administrative Draft Project Report
  - Updated/Finalized Supporting Documents
  - Draft Project Report with comments incorporated



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- Final Draft Project Report
- **35% PS&E** – The 35% PS&E submittal will be limited to the development of the Geometric Approval Drawings to obtain Caltrans Design approval of the Project's alignment design and features, including nonstandard design features.
  - Horizontal and vertical alignment plans
  - Typical trail cross sections
  - Preliminary bridge plans (structural and architectural), typical cross sections, and details
  - Preliminary and Final Type Selection Reports
  - Preliminary retaining wall plans, details, and cross sections
  - Tree removal/Tree Protection plan
  - Independent quality control check including a review of the 35% plans and specifications for accuracy and conformance to applicable design standards and codes, constructability, and potential for value engineering/cost savings measures.
- **Task A.8 Final Design** – Based on the 35% PS&E documents and resolved comments, and following Caltrans approval of the PA/ED, the BKF Team will prepare the PS&E for the 65%, 95% and Final 100% submittals. PS&E shall be submitted to the Town of Los Gatos - Parks and Public Works Department at 65%, 95% and 100% complete. At each submittal stage, the items listed in Task A.7 shall be completed to the appropriate level of design. At each state, 3 hard copy sets of D-size (24"x36") plans and 3 hard copy sets of B-size (11"x17") plans shall be submitted along with electronic copies prepared in PDF format. At each stage 3 hard copies of the Specifications, Special Provisions, and Cost Estimates shall be provided along with electronic copies in MS Word/Excel. After each submittal, the BKF Team will allow appropriate time frames for identified stakeholders to review the submittal and return comments. All comments provided shall be addressed in writing prior to beginning work on the following submittal.

Based on the work from the previous 35% PS&E, and upon review and approval of the same by the Town, the BKF Team shall prepare and submit 65% design plans and updated cost estimates. The BKF Team will prepare the necessary design plan sheets for the 65% PS&E submittal, which includes the following:

- Title Sheet, Vicinity Map, and Key Map
- Typical Sections
- Layout Plans
- Profiles/Superelevations
- Grading Plans
- Demolition Plans
- Drainage Plans and Profiles
- Stormwater Management Plans and Details
- Temporary Water Pollution Control Plans and Details
- Utility Plans, Profiles, and Details – BKF assumes water line design work will not be required as part of this scope. BKF recognizes the San Jose Water Company (SJWC) has expressed a desire to relocate their line onto the new bridge and will coordinate with SJWC to accommodate this line on the new structure, however, all design details to include this on the structure and any specific reinforcement/attachment details will be completed by SJWC.
- Construction Details
- Stage Construction Plans
- Traffic Handling Plans
- Pavement Delineation Plans
- Signing Plans
- Electrical Plans and Details
- Traffic Signal Plans and Conductor Schedules – modifications are assumed at the Roberts Road West and East intersections. BKF assumes the Town can provide existing as-built drawings for these existing traffic signals.



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- Tree Removal/Protection Plans
- Planting and Irrigation Plans

Anticipated structural design drawings include but are not limited to:

- General Plan
- Structure Plan
- Deck Contours
- Foundation Plan
- Abutment Layout and Details
- Retaining Wall Layout and Details
- Bent Layout and Details
- Typical Sections
- Girder Layout and Details
- Approach Ramp Details
- Log of Test Borings
- Project specifications, special provisions and estimates

The Structural PS&E packages will be prepared in accordance with Caltrans processes/procedures. The structural design calculations will be performed in accordance with the most current California bridge practices and the following bridge design codes and manuals:

- Caltrans Standard Plans and Specifications
- Caltrans Bridge Design and Detailing Manuals
- American Association of State Highway and Transportation Officials Load and Resistance Factor Design (AASHTO LRFD) Bridge Design Specifications
- California Amendments to the AASHTO LRFD Bridge Design Specifications
- AASHTO LRFD Guide Specifications for the Design of Pedestrian Bridges
- Caltrans Seismic Design Criteria (SDC)

The proposed design will be coordinated with anticipated projects (i.e. Senior Housing Center northeast of existing Blossom Hill Overcrossing, SJWC Water line upgrade, Public Art Program, etc) located within the Project site limits, assuming their schedule progresses on a similar timeline as the proposed project design.

BKF assumes the Town of Los Gatos will Advertise, Award, and Administer (AAA) the construction of the proposed structure. As a result, BKF will not prepare additional Caltrans documents (Quantity Sheets, Survey files, RE files, etc.) that are typically required by Caltrans when Caltrans AAA's a construction contract.

BKF's subconsultant, TJKM, will prepare a TMP report to support construction activities proposed in the PS&E phase. The TMP is a method for minimizing activity-related traffic delay and accidents by the effective application of traditional traffic handling practices and an innovative combination of public and motorist information, demand management, incident management, system management, construction strategies, alternate route, and other strategies. During the final design phase, TJKM will propose lane closures on both Highway 17 and Blossom Hill Road, if needed, to support the construction of the bike and pedestrian overcrossing structure. The TMP report will be started at 65% PS&E and will be updated accordingly during 95% PS&E, and 100% PS&E. The BKF Team assumes no substantial impacts will be created with a full closure on Highway 17 and no detour will be needed during construction in the scope of work given the scope of work assumes the construction of a cast-in-place concrete structure with falsework, or steel truss structure. As a result, an approval or formal presentation with the Caltrans District Lane Closure Review Committee (DLCRC) will not be required and design approval can occur solely with the Caltrans TMP group during design approval.

**Project Specifications and Special Provisions:** The BKF Team shall prepare technical specifications and special provisions for all bid items including bid alternates. Documents shall be developed in accordance with federal, state and local requirements in all subsequent final design tasks. General conditions shall follow the Town and Caltrans requirements. The BKF Team shall prepare special provisions based on Caltrans Standard



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Special Provisions, Caltrans Standard Specifications, and Town construction contract standards. Special provisions shall follow the 2018 format of the Caltrans Standard Specifications and Standard Special provisions (SSP's)

**Cost Estimate:** The BKF Team shall prepare an engineer's estimate of probable construction cost for 65% design using both Caltrans and the Team's professional experience. Estimate shall include construction costs that reflect current market conditions, the bid items, utility relocation costs (if any), environmental mitigation costs, and contingencies.

65% submittal shall include all plan sheets developed to a minimum 65% complete stage and shall have been reviewed by the BKF Team for quality control, and coordination and consistency between plan sheets. Specifications and Special Provisions at the 65% level shall include a complete table of contents with all special provisions necessary for the construction of the Project identified. The construction cost estimate shall be prepared and shall include an appropriate estimating contingency.

It is the BKF Team's understanding that the 65% structural submittal package that consists of structural plans and specifications, and structural calculations will be reviewed by a Structural Engineer registered in the State of California and hired by the Town outside of this proposal.

BKF Team's Independent Structures Check of PS&E: As required by the Caltrans Office of Specially Funded Projects (OSFP), an independent check of the bridge design and drawings will be performed. The independent check will include independent structural calculations and independent quantities calculations and will be performed by an engineer who was not involved in the design of the bridge. The independent check will be performed concurrently with the Caltrans review of the 65% PS&E.

The BKF Team shall ensure all activities necessary to comply with regulations of the State Water Resources Control Board, including the requirements for the National Pollutant Discharge Elimination System permitting process, preparation of Project Registration Documents (PRDs) by a licensed qualified stormwater pollution prevention plan (SWPPP) developer (QSD), submittal of information to the Stormwater Multi Application Permit Tracking System (SMARTS), preparing landscape plans in accordance with Model Water Efficient Landscape Ordinance (MWELo), obtaining the WDID Project number, processing any other applicable documents, studies, waivers, and payment of all fees is addressed by the BKF Team and/or included in the construction Project specifications for completion during construction.

Once the Town receives the final 65% PS&E submittal, the BKF Team shall schedule a meeting with the Town and PDT members to review the revisions on the final 65% PS&E submittal package. Following this review session, the BKF Team shall prepare the 95% PS&E submittal. All comments from the 65% PS&E submittal review shall have been addressed.

95% submittal shall be the fully developed set of contract documents including all plans sheets, Specifications and Special Provisions, details, and other contract documents necessary for the construction of the Project. The construction cost estimate shall be finalized and shall include a 10% estimating contingency. The BKF Team will have conducted an internal quality control review of the plans, Specifications, Special Provisions, and construction cost estimate prior to submitting the 95% complete set and shall ensure that the contract documents are well coordinated, and information is consistent between all documents.

Following submission and review of the 95% submittal, The BKF Team will prepare and provide the Town with the final contract documents 100% for use in the construction bid process. All contract documents (plans, Specifications, Special Provisions, and estimates) are to be signed by the appropriately licensed professional engineer in responsible charge of the design.



# EXHIBIT A - PROJECT SCOPE OF SERVICES

May 6, 2021

Once the Town receives the final 95% PS&E submittal, the BKF Team shall schedule a meeting with the Town and PDT members to review the revisions on the final 95% PS&E package. Following this review session, the Team shall prepare the 100% PS&E package.

The BKF Team shall also ensure that all design calculations, deliverables, and other works are independently verified to ensure accuracy. All exhibits, plans, and reports should be checked, corrected, and backed checked for accuracy and completeness prior to submitting documents to the Town and other agencies for review.

The PS&E must be approved prior to submission to Caltrans District Local Assistance. The BKF Team shall assist the Town in obtaining Caltrans approval of the Project PS&E for compliance with all applicable federal and state regulations and procedures. A preliminary "PS&E Checklist" form, included as Exhibit 12-D in Chapter 12 (Plans, Specifications & Estimate) of Caltrans' Local Assistance Procedures Manual, which summarizes the items requiring local agency compliance and identifies critical federal requirements shall be prepared by the BKF Team. With prior approval and consent from the Town, the BKF Team shall prepare the final Project PS&E Checklist, PS&E approval letter (Exhibit 12-C, LAPM Chapter 12), and preliminary estimate to be submitted to the Caltrans District Local Assistance Engineer (DLAE) along with a completed E-76 - "Request for Authorization" to proceed with construction.

The BKF Team shall provide an electronic copy of the final contract documents, a signed and stamped mylar copy of the final approved plans, and a hard copy of the final signed, approved, and stamped Specifications, Special Provisions, and construction cost estimate. The electronic copy of the plans shall be provided as both AutoCAD files and PDF files, and the electronic copy of the specifications and estimate shall be provided in both Microsoft Word/Excel format and PDF format. Town of Los Gatos - Parks and Public Works Department will be responsible for making copies of contract documents and will distribute to plan rooms and contractors in advance of the bid phase.

*Deliverables: Plans, Specifications, Special Provisions, and estimates for Town review at 35%, 65%, 95% design stages; final contract documents, SWPPP, WDID Project number*

**Right of Way, Utility and ADA Certifications** – BKF assumes that temporary and permanent right of way will not be required for the Project. The BKF Team shall verify and prepare the appropriate Right of Way, Utility, and ADA certifications to advance the Project to the construction phase using procedures outlined in the Caltrans Local Assistance Procedures Manual. All property lines are to be shown on the design and construction documents.

*Deliverables: Utility Clearance, Right of Way and ADA Certifications*

- **Task A.9 Construction Phase Authorization** – The BKF Team shall assist the Town in the preparation of the Request for Authorization to advance Project to Construction using procedures outlined in the Caltrans Local Assistance Procedures Manual and shall complete any items necessary to obtain authorization for the Town to proceed with construction.

*Deliverables: Caltrans Encroachment Permit, Authorization from Caltrans to proceed with construction (E-76)*

## PHASE II – CONSTRUCTION SUPPORT SERVICES (FUTURE SCOPE OF SERVICES):

As part of Phase II, the BKF Team will provide design support services to the Town during construction of the Project as noted below. The scope of work outlined below assumes the Town will advertise, award, and administer (AAA) construction of the project.

- **Task B.1 Project Management**  
The BKF Team will provide all the necessary Project coordination, administration, management and interfacing with the Town, Caltrans, and other internal/external stakeholders to achieve Project objective. The BKF Team shall proactively provide direction





**EXHIBIT A - PROJECT SCOPE OF SERVICES****May 6, 2021**

to the Town regarding the Project tasks necessary to deliver the federally funded Project consistent with Caltrans permitting requirements and federal reimbursement requirements. The BKF Team will be responsible for Project management activities throughout the life of the contract. The scope of these activities includes, but is not limited to,

- provide, distribute, and maintain contact information for all Project team members
- coordinate and schedule meetings/conference calls as needed
- prepare and distribute meeting minutes
- itemize, track, and pursue all Project action items to completion
- develop and maintain the Project schedule, report on Project progress
- supervise, coordinate, and monitor the construction for conformance with permit requirements from Caltrans, VTA, and utility companies
- conduct field reviews as needed,
- prepare all submissions for the Town's submittal to Caltrans
- provide internal quality control checks and document quality control actions conducted for the Project
- conduct cross-checking to avoid potential conflicts between various subconsultant's work
- develop Project filing and record keeping system for Project files for a period of 5 years
- develop a list of Project stakeholders for coordination during Project design
- provide the Town with required documents required for compliance with the Measure B funding Agreement between the Town and VTA, Including but not limited to progress reports, reimbursement forms, etc.)
- provide monthly Project updates for posting on the Project page of the Town's website

*Deliverables: Meeting minutes, schedule, progress reports, action item logs, tracking spreadsheets, Caltrans submissions and other items resulting from the BKF Team's Project management duties*

- **Task B.2 Bid Support Services** –The BKF Team shall respond in writing to questions that arise during the bid phase and shall prepare addendums, if necessary, which will be distributed by the Town of Los Gatos - Parks and Public Works Department. Each addendum shall also address cost implications to the Project construction cost estimate. The BKF Team shall prepare written responses to questions received and addenda in a format that can be easily posted to the Town's website. Following completion of bid stage, The BKF Team shall incorporate any addenda into the final contract documents and shall prepare the final "Conformed Contract Documents". The BKF Team shall provide an electronic copy of the final Conformed Contract Documents, a signed and stamped mylar copy of the final conformed plans, and a hard copy of the final signed, approved, and stamped conformed Specifications, Special Provisions, and cost estimate. The electronic copy of the plans shall be provided as both AutoCAD files and PDF files, and the electronic copy of the specifications and estimate shall be provided in both Microsoft Word/Excel format and PDF format.
- **Task B.3 Construction Support Services** – The BKF Team shall be prepared to provide the following construction support services:
  - Review of submittals and shop drawings for compliance with Contract Documents
  - Review and response to Requests for Information, Requests for Change Orders, Quotes from Contractor
  - Review of Contract Change Orders
  - Review and tracking of results from materials testing for conformation to Contract Documents
  - Field review and geotechnical monitoring during bridge installation
  - Structural review and field monitoring during bridge installation
  - Prepare design modifications if necessary due to unforeseen conditions

**Assumptions:**

1. The BKF Team assumes a formal Traffic Engineering Performance Assessment (TEPA) will not be needed for PSR/PDS phase.
2. It is assumed that a formal Traffic Operation Report (TOAR) will not be needed for



**EXHIBIT A - PROJECT SCOPE OF SERVICES****May 6, 2021**

PA/ED phase. In the event that lane modifications are needed to accommodate the new pathway where roadway widths are constrained, the BKF Team will analyze intersection delay/level of service for two intersections of Blossom Hill Road/Roberts Road West/Vasona Park Road and Blossom Hill Road/Roberts Road East in the Town of Los Gatos with and without project (up to one build alternative) for existing conditions. Travel demand forecasting and future analysis are NOT included in this scope and fee under this task. If a more comprehensive TOAR is required, additional work will be required warranting a fee amendment.

3. PS&E Submittals will be provided at 35%, 65%, 95%, and 100% completion levels. Agency reviews are limited to one round of comments consolidated to one set of redline plan, specification and estimate redline comments per agency. BKF understands minor comments may be received outside of these formal reviews and will do its best to incorporate comments into the noted completion levels when reasonable. Substantial comments not received within reasonable timeframes will be evaluated on a case-by-case basis with the Town as they may require additional efforts not identified within this proposal. Project Reports will be limited to one draft and one final version of each report.
4. For planning and budgeting purposes the 35% and Final design scope of services have been estimated assuming the basic structural configuration and concept outlined in the conceptual Study for a concrete and structural steel truss bridge option. These design scope will be reviewed with the Town at the completion of Task A.6 to ensure that all required design services are adequately addressed.
5. The Construction Support Services scope will be reviewed with the Town at the completion of Final Design to ensure that all required services are adequately addressed.
6. Formal Caltrans Value Engineering services will not be required since the project is projected to be less than the \$40 million per bridge project threshold.
7. The Town will assign a Resident Engineer (RE) to the project that will be responsible for day to day oversight of the Town's Contractor and all inspections required by the Project Documents. It is assumed that the Town RE will have all of the necessary experience, expertise and authority to manage the day to day oversight of the project, coordinate with outside agencies (such as Caltrans, County, Utilities, etc.) and to perform all necessary inspections and shop drawing reviews not otherwise identified as being performed by the Design Team.
8. In addition to the quality assurance and control measures required as part of this scope, BKF Team recommends that the Town retain their RE prior to completion of the 95% PS&E submittal and that the Town RE perform a constructability, bidability, and cost verification of the 95% plans, specifications, and estimates.
9. Structural construction support work is limited to major items of work only as outlined herein. Minor and construction management and administration elements will be reviewed by the Town RE.
10. All correspondence, shop drawing submittals and RFIs for Design Team review will be routed and coordinated through the RE to BKF and then BCA.
11. As outlined in the Caltrans Standard Specification requirements, shop drawing reviews are provided for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The BKF Team review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the BKF Team, of construction means, methods, techniques, sequences or procedures. The BKF Team's review of a specific item shall not indicate approval of an assembly of which the item is a component. The contract documents prepared by BKF will clearly identify the Contractor's responsibilities in these areas.
12. Record Drawings will be prepared from one consolidated master mark-up set of Town RE red line comments provided to the BKF Team by the Town RE. Record Drawings will be prepared per project drafting standards in AutoCad format and it is assumed that Caltrans will not require transition of Record Drawings into Microstation format.
13. Construction staking, construction inspection, and post-construction survey of the



**EXHIBIT A - PROJECT SCOPE OF SERVICES****May 6, 2021**

proposed improvements are excluded from this proposal.

14. Phase I shall be completed within a reasonable timeframe. Following the notice to proceed, the assumed timeframe for completing Phase I scope as outlined within the proposal is approximately 40 months (Preliminary Engineering/Environmental Approval – 24 months; Final Design – 12 months; Construction Phase Authorization – 4 months). Key milestones and their approximate durations are further outlined below:
- a. Task 5 Environmental Studies and Documentation – 16 months
  - b. Task 7 Preliminary Design - 35% PS&E Submittal – 24 months
    - i. PSR-PDS – 10 months
    - ii. PR – 14 months
  - c. Task 8 Final Design – 12 months
    - i. 65% PS&E – 6 months
    - ii. 95% PS&E – 4 months
    - iii. 100% PS&E – 2 months
  - d. Task 9 Construction Phase Authorization – 4 months





**EXHIBIT B - COST PROPOSAL**

Highway 17 Bicycle and Pedestrian Overcrossing Project

BKF Engineers, 5/6/2021

<b>Phase I - Engineering Design Services and Environmental Approval</b>	<b>TOTAL NOT TO EXCEED</b>
Task A.1 Project Management and Administration	\$ 176,115
Task A.2 Data Collection and Review	\$ 57,281
Task A.3 Surveying and Base Mapping	\$ 119,790
Task A.4 Stakeholder Coordination and Project Permits	\$ 453,756
Task A.5 Environmental Studies and Documentation - CEQA and NEPA	\$ 138,883
Task A.6 Geotechnical Engineering	\$ 202,215
Task A.7 Preliminary Design - 35% PS&E Submittal	\$ 655,460
Task A.8 Final Design	\$ 1,146,561
Task A.9 Construction Phase Authorization	\$ 49,939
<b>Total Not To Exceed</b>	<b>\$ 3,000,000</b>
<b>Phase II - Construction Support - (FUTURE SCOPE OF SERVICES)</b>	
Task B.1 Project Management and Administration	\$ 192,013
Task B.2 Bidding Phase	\$ 37,545
Task B.3 Additional Reports and Services	\$ 482,426
<b>Total</b>	<b>\$ 711,984</b>

**Phase I Assumptions:**

1. Town will be the CEQA Lead Agency.
2. Scope does not identify any community or public hearing meetings for environmental process.
3. No ABC Mapping Process will be required.
4. Utility Potholing budget identified is an allowance; potholing fees exceeding this balance will be reimbursed by the Town.
5. Permit Application and Filing Fees will be borne by the Town.
6. Town will hire a firm to perform the structural independent check.
7. PG&E and CPUC Encroachment Processing is not required.
8. All proposed project improvements are located within the public right of way.
9. Town will provide Title Reports if required.
10. Town will administer the construction contract; Caltrans will not RTL the project and thus DOE review not required.
11. A three year project schedule has been assumed for the Preliminary Engineering, Environmental Approval and Final Design Phase.
12. Design effort is based on a concrete or steel structure within the Caltrans right of way.
13. 401/404 Regulatory Permits are not required.
14. Only one round of comment response will be received from each agency at each milestone submittal. BKF understands minor comments may be received outside of these formal reviews and will do its best to incorporate comments into the noted design completion levels when reasonable. Substantial comments not received within reasonable timeframes will be evaluated on a case-by-case basis with the Town as they may require additional efforts not identified within this scope of services.
15. There will only be one iteration on the 100% PS&E package, which will serve as the Final PS&E package

**Phase II Assumptions:**

1. Construction Support Services are provided for reference only. Future construction support services will be negotiated following completion of design and are not a part of the current contract scope of services..
2. The estimated effort for Design Services During Construction is an estimated allowance only and will depend on final design of the bridge and project improvements.
3. Construction Inspection services are excluded. BKF assumes the Town will hire a Resident Engineer to administer construction and inspection.
4. Contractor will provide red lined mark-ups for as-built record drawings
5. A one and half year construction schedule has been assumed for Construction.

## Local Assistance Procedures Manual

Exhibit 10-02  
Consultant Proposal DBE Commitment

Reset Form

## EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: Town of Los Gatos 2. Contract DBE Goal: 12%  
 3. Highway 17 Bicycle and Pedestrian Overcrossing Project  
 4. Project Location: Town of Los Gatos  
 5. Consultant's Name: BKF Engineers 6. Prime Certified DBE: No 7. Total Contract Award Amount: \$3,000,000  
 8. Total Dollar Amount for ALL Subconsultants: \$1,340,016 9. Total Number of ALL Subconsultants: 8 Tier 1 Subs (+1 ODC Subs)

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE \$
Environmental Engineering- CEQA/NEPA	VTA #38205	Akoni Danielsen - <u>David J. Powers &amp; Associates, Inc.</u> , 1871 The Alameda, Ste 200, CA 95126	\$97,227.73
Geotechnical Engineering Services	20259	Gary Parkh - <u>Parikh Consultants Inc.</u> , 1497 N Milpitas Blvd., Milpitas, CA 95035	\$198,986.89
Traffic Engineering	40772	Nayan Amin - <u>TJKM Transportation Consultants</u> , 2055 Gateway Pl #400, Sann Jose, CA 95110	\$62,926.53
Traffic Control	38321	Kellie Avila - <u>Avila Traffic Safety</u> , 8365 El Camino Real, Atascadero, CA 93422	\$4,000.00
Local Agency to Complete this Section		11. TOTAL CLAIMED DBE PARTICIPATION	\$363,141.15
17. Local Agency Contract Number: <u>19-818-0863</u> 18. Federal-Aid Project Number: 19. Proposed Contract Execution Date: <u>April 16, 2021</u> 20. Consultant's Ranking after Evaluation: <u>#1</u> Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. <i>McCombs</i>		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. 12. Preparer's Signature 13. Date: 01/14/2021 14. Preparer's Name 15. Phone: 408-467-1932 16. Preparer's Title <u>Natalina Bernardi</u> <u>408-467-1932</u> <u>Principal and Vice President</u>	

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654- 3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

## EXHIBIT B



January 17, 2024

Sean Rose, Special Projects Manager  
Town of Los Gatos, Parks & Public Works Department  
41 Miles Avenue, Los Gatos CA 95030  
*Transmitted Via Email: [SRose@losgatosca.gov](mailto:SRose@losgatosca.gov)*

**Subject: Proposal for Grant Writing Services for SS4A and ATP Grant Applications for the - Highway 17 Bicycle and Pedestrian Overcrossing (BPOC) Project\_(Project)**

Dear Sean:

BKF Engineers is excited to submit this proposal to provide grant writing services for of the Town of Los Gatos' (Client, Town) applications to the Department of Transportation's (DOT) Safe Streets for All (SS4A) program, and Caltrans' Active Transportation Program (ATP). Our Grants and Funding Services Team (Team) has extensive experience in preparing successful federal and state grant applications and looks forward to working with the Town to develop compelling grant applications that effectively highlight the Project's many benefits and positions them for success. The Team recently submitted an SS4A application and is proud to have secured \$17.5 million for a Bikeway and Streetscape Improvement Project.

These services will involve utilizing our experience and training to produce well-written grant proposals according to the conditions outlined in **Exhibit A - Terms** and costs listed herein and in **Exhibit B - Fees**. BKF will diligently gather information and craft the proposals in accordance with the goals and objectives provided by Client, as well as the guidelines and requirements of the funding agencies (DOT and Caltrans).

If requested, BKF will provide Grant Reporting and/or Grant Compliance services once this grant has been submitted and/or approved for funding. These additional services are not included in this proposal and will be the subject of a separate agreement.

## **PROJECT UNDERSTANDING**

BKF understands that Client is asking BKF's Grants Team to develop, write and submit the next cycle of the SS4A and ATP grant applications. The Highway 17 Bicycle and Pedestrian Overcrossing Project (BPOC) aims to enhance safety and connectivity for pedestrians and bicyclists in Los Gatos. This involves constructing a new bridge over Highway 17, thus uniting the East and West parts of the town. The project is pivotal in providing a safe route to school, promoting sustainable transportation, and ensuring public safety. Despite its critical role, the project currently faces a funding shortfall for construction, making the pursuit of grant opportunities essential.

## **SCOPE OF SERVICES**

**Task 1: Grant Writing** – BKF will provide comprehensive grant writing services to Client, encompassing all necessary activities to develop well-structured and compelling grant proposals for both the SS4A and the ATP applications. These grant writing services include, but are not limited to providing, the following subtasks:

- **Action Plan:** The preparation of an Action Plan is a critical part of our grant application process. The Action Plan will serve as a roadmap, outlining all tasks, responsibilities, and deliverables for each grant. This will ensure that both parties have a clear understanding of their roles and expectations, facilitating a smooth and efficient grant application process.

- **Narrative/Deliverables Content:** This includes preparing grant application narratives and assisting Client in compiling and organizing all required deliverables, attachments, supporting documents, letters of support, board resolutions and other requested attachments.
- **Project Maps:** GIS team will prepare the project maps to reflect conditions and plans.
- **Engineering Support:** BKF's engineers will provide additional engineering support for both applications. This can include performing traffic safety data analysis and collision assessments to demonstrate safety needs; and developing project plans, exhibits, schedules, updated cost data, and other technical documents required for the applications.
- **Additional Improvements:** In our review for additional improvements, we will meticulously evaluate every section of the application, cross-referencing with the latest guidelines and requirements. This ensures that the application not only meets the minimum requirements but also stands out in areas like innovation, sustainability, and community impact.
- **Analyzing the SS4A and ATP grants:** Review guidelines requirements, scoring and evaluation criteria to ensure compliance and maximize the proposal's competitiveness.
- **Collaborating with Client:** to gather relevant project details, goals, outcomes, and supporting documentation for all deliverables required for the grant application.
- **Letter of Support:** BKF assumes the Town will coordinate with supporting public agencies (Caltrans, VTA, MTC, etc.) to obtain Letters of Support to include with the grant applications. BKF will prepare an LOS template for Client to send to the relevant stakeholders.
- **Reviewing and Revising:** Revising the draft proposal based on Client's feedback and incorporating any necessary revisions to enhance its quality and effectiveness. BKF will provide up to three iterations of each narrative as requested, including a final, polished draft for submission.
- **Budget and Financial Analysis:** Assisting Client in developing a comprehensive budget that accurately reflects the project's financial needs and aligns with grant guidelines. While BKF will assist Client in developing the budget and related items, Client is ultimately responsible for providing accurate and complete supporting data, and approving final budget for submission.
- **Packaging:** Providing guidance and recommendations on packaging the grant proposal for submission, including submission procedures, deadlines, and any additional requirements specified by the funding agency. Packaging the grant proposal for timely submission to the funding agency on behalf of Client after Client approves final narrative, budget and deliverables.
- **PROFESSIONAL SERVICES FEE**

BKF will conduct the Task outlined herein, billed as a Lump Sum, not to exceed as follows:

Task	Description	Fee
1	~SS4A Grant Writing and Proposal Development	\$21,215
	~Engineering Technical Support for applications: Timeline, Milestones, Maps, Budget, Feasibility, etc.	\$2,500
	~ATP Grant Writing and Proposal Development	\$22,520
	~Engineering Technical Support for applications: Timeline, Milestones, Maps, Budget, Feasibility, etc.	\$2,500
<b>Total Fee</b>		<b>\$48,735</b>



Thank you for the opportunity to present this proposal and Letter Agreement. We look forward to assisting in the funding development of this project. Please contact me at 323.309.9728 if you have any questions. Otherwise, please sign below to authorize us to proceed.

Sincerely,

**BKF Engineers**



Doug Fleming  
Director of Funding Strategies

Authorized to proceed per the terms described herein:

---

Print Name

---

Signature

---

Title

---

Date



## Exhibit A – Terms

### TERMS:

**Grant Writing** – Once the notice-to-proceed is given, BKF will create an Action Plan (Plan) for each grant application, outlining tasks, deliverables, expectations, and both internal and external due dates. Our Action Plan promotes effective collaboration and timely submissions. The Plan will detail expectations of both parties, as required to develop and submit a complete application package prior to the grant deadline. Client acknowledges and agrees to provide BKF with accurate and timely information, relevant project details, and any additional materials necessary for the completion of the grant proposal. Client shall also review and provide feedback on draft versions of the proposal in a timely manner. BKF's ability to prepare a complete application package outlined in the Plan will depend on deliverables needed from Client within the timeframes agreed upon. Client's failure to provide the requested materials by the agreed dates in the Action Plan may hinder BKF's ability to submit the completed application package by the final due date.

**Additional Terms** – BKF's services are limited to those expressly set forth in this letter. It is understood that BKF will have no other obligations or responsibilities except as provided herein, or as otherwise agreed to in writing. For any additional services, such as grant reporting or grant compliance, BKF will provide a written addendum outlining the revised scope along with any necessary adjustments to the retainer. Additional services will not be performed until formally authorized in writing (e.g. signed agreement, e-mail recognition) by Client.

In providing services under this agreement, BKF shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. In executing these Tasks, BKF will operate as independently as requested, while also maintaining close communication with staff to ensure seamless coordination throughout the proposal development process. While BKF is committed to delivering a high-quality grant proposal, it is important to acknowledge that the success of the grant application and the awarding of funds are dependent on many factors beyond the control of a grant writer or firm. BKF cannot guarantee the ultimate success or outcome of the grant application process, including the approval or funding of the grant.

This agreement may be terminated by either party at any time for any reason with 7 days written notice. If client elects to terminate this agreement before our services are complete, BKF will issue a final invoice proportional to the services which were provided up to the date which services were terminated and client agrees to pay said invoice within 30 days of receipt. This Agreement shall be governed by and construed in accordance with the laws of California. Any disputes arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of California.



## **Exhibit B – Fees**

### **FEES AND PAYMENT:**

**Grant Writing** – BKF’s grant writing services are subject to the referenced fee structure. The fees cover the comprehensive grant writing services specified in Task 1 of this Agreement. For each grant, BKF has formulated a not-to-exceed cost estimate that outlines the steps required to complete the grant application and produce and submit a complete grant proposal package. Each grant application preparation and submittal will be billed on a lump sum/flat fee basis. Payment will be invoiced upon submission of the final grant package to the funding agency and due within 30 days upon receipt. Any additional services outside of this Task will be billed on an hourly basis and subject to a separate agreement.

