

**SAMPLE CONTRACT AGREEMENT**  
**LOS GATOS SMART SIGNALS**  
**ATSPMs and/or VBD/BPS**

**I. INTRODUCTION**

This AGREEMENT is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the **TOWN OF LOS GATOS**, a California municipal corporation, hereinafter referred to as **LOCAL AGENCY** and **XX** hereinafter referred to as, **VENDOR**, whose address is **XX**. The **VENDOR** is incorporated in the State of \_\_\_\_\_.

This AGREEMENT is made with reference to the following facts.

The **LOCAL AGENCY** desires to engage **VENDOR** to provide the Automated Traffic Signal Performance Measures (ATSPM) and/or Virtual Bicycle Detection/Bicycle Priority System (VBD/BPS) components of the Los Gatos Smart Signals Project (Project #813-0227 Traffic Signal Modernization).

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

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

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

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

- A. The work to be performed under this AGREEMENT is described in III. Statement of Work and the approved **VENDOR**'s Cost Proposal dated \_\_\_\_, 2020. The approved **VENDOR**'s Scope of Services (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.

- B. VENDOR agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless LOCAL AGENCY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, penalties, costs, losses and expenses, in law or equity, including without limitation, court costs and reasonable attorneys' and expert witness fees, to the extent caused by the negligent acts, errors, or omissions, recklessness or willful misconduct on the part of VENDOR, or any of the VENDOR'S officers, employees, or agents or any sub-contractors. The provisions of this section shall survive termination or suspension of this AGREEMENT.
- C. VENDOR and the agents and employees of VENDOR, in the performance of this AGREEMENT, shall act in an independent capacity and not as officers or employees or agents of LOCAL AGENCY. As an independent contractor it or its employees or agents shall not obtain any rights to retirement benefits or other benefits which accrue to LOCAL AGENCY employee(s).
- D. LOCAL AGENCY is not required to make any deductions or withholdings from the compensation payable to VENDOR under the provisions of this AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of VENDOR's assigned personnel. VENDOR, 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.
- E. Any third party person(s) employed by VENDOR shall be entirely and exclusively under the direction, supervision, and control of VENDOR. VENDOR 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.
- F. The services to be performed under this AGREEMENT are unique and personal to the VENDOR. No portion of these services shall be assigned or subcontracted without the written consent of the LOCAL AGENCY. With prior written consent, the VENDOR 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. VENDOR agrees to reasonably cooperate with LOCAL AGENCY regarding litigation brought regarding the subject of VENDOR's work to be performed under this AGREEMENT. VENDOR shall be compensated for its time, and any costs and expenses at its then current hourly rates of compensation, unless such litigation is brought by VENDOR or is based on allegations of VENDOR'S negligent performance or wrongdoing.
- G. VENDOR shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by VENDOR.
- H. No alteration or variation of the terms of this AGREEMENT 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.
- I. The consideration to be paid to VENDOR as provided herein, shall be in

compensation for all of VENDOR's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

## **II. VENDOR'S REPORTS OR MEETINGS**

VENDOR shall submit progress reports at least once a month. The report should be sufficiently detailed for the LOCAL AGENCY to determine, if VENDOR 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.

VENDOR's Project Manager shall meet with LOCAL AGENCY's staff, as needed, to discuss progress on the AGREEMENT.

## **III. STATEMENT OF WORK**

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

## **IV. TERM AND PERFORMANCE PERIOD**

- A. This AGREEMENT shall go into effect on the date it is signed, and VENDOR shall commence work after notification to proceed by LOCAL AGENCY. The AGREEMENT shall end on \_\_\_\_ (date), unless extended by AGREEMENT amendment.
- B. VENDOR is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed and approved by LOCAL AGENCY.

## **V. ALLOWABLE COSTS AND PAYMENTS**

- A. The method of payment for this AGREEMENT will be based on lump sum. The total lump sum price paid to VENDOR will include compensation for all work and deliverables, including travel and equipment described in Exhibit A. No additional compensation will be paid to VENDOR, 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 VENDOR 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 VENDOR. If VENDOR fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of VI Termination.
- C. VENDOR shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'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. VENDOR will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY of itemized invoices. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which VENDOR is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated Exhibit B and shall reference this AGREEMENT. Final invoice must contain the final cost and all credits due LOCAL AGENCY that include any equipment purchased under the provisions of XI. Equipment Purchase. The final invoice must be submitted within sixty (60) calendar days after completion of VENDOR'S work unless a later date is approved by the LOCAL AGENCY. Invoices shall be submitted to LOCAL AGENCY at the following address:  
  
Town of Los Gatos  
Attn: Accounts Payable  
Via email: [AP@losgatosca.gov](mailto:AP@losgatosca.gov)
- E. The total amount payable by LOCAL AGENCY shall not exceed \$\_\_\_\_\_.

**VI. TERMINATION**

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not. Upon receipt of the notice of termination, VENDOR shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. LOCAL AGENCY shall pay VENDOR its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by VENDOR to affect the termination. Thereafter, VENDOR shall have no further claims against LOCAL AGENCY under this Agreement. All finished and unfinished documents and materials procured for or produced under this Agreement, including all intellectual property rights LOCAL AGENCY

is entitled to under the Agreement, shall become LOCAL AGENCY's property upon the date of the termination.

- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that VENDOR is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, VENDOR shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, VENDOR shall not be relieved of liability to LOCAL AGENCY for damages sustained by City by virtue of any breach of this AGREEMENT by VENDOR, and LOCAL AGENCY may withhold any payments due to VENDOR until such time as the exact amount of damages, if any, due LOCAL AGENCY from VENDOR 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. Except on account of an excusable delay described below, if VENDOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, LOCAL AGENCY may give VENDOR written notice of the default. LOCAL AGENCY's default notice will provide for thirty (30) days to cure the default. Additionally, LOCAL AGENCY's default notice may offer VENDOR an opportunity to provide LOCAL AGENCY with a plan to cure the default, which shall be submitted to LOCAL AGENCY within the time period allowed by LOCAL AGENCY. If the default cannot be cured or if VENDOR fails to cure within the period allowed by LOCAL AGENCY, then LOCAL AGENCY may terminate this Agreement due to VENDOR's breach of this Agreement. In the event LOCAL AGENCY terminates this Agreement as provided in this section, LOCAL AGENCY may procure, upon such terms and in the manner as LOCAL AGENCY may deem appropriate, services similar in scope and level of effort to those so terminated, and VENDOR shall be liable to LOCAL AGENCY for all of its costs. If, after notice of termination of this Agreement under the provisions of this section, it is determined for any reason that VENDOR was not in default under the provisions of this section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to termination for convenience.
- F. VENDOR shall not be liable for delay or failure to perform any obligation under and in accordance with this Agreement, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restriction, government orders, other natural

occurrences, strikes, lockouts, freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events.

## **VII. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

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

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

For the purpose of determining compliance with California Gov. Code § 8546.7, the VENDOR, Sub-contractors, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, , 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 VENDOR's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the VENDOR, Sub-contractors, and the VENDOR's Independent CPA, that are pertinent to the VENDOR's work and services for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

## **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 of LOCAL AGENCY and VENDOR, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than thirty (30) days after issuance of the final audit report, VENDOR may request a review by LOCAL AGENCY'S authorized representative 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

VENDOR from full and timely performance, in accordance with the terms of this AGREEMENT.

- D. VENDOR and Sub-contractors contracts, including cost proposals and ICR, are 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 VENDOR'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 VENDOR and approved by LOCAL AGENCY contract manager to conform to the audit or review recommendations. VENDOR 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 VENDOR to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. VENDOR'S Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by California's Department of Transportation (Caltrans) Audit and Investigation (A&I). Caltrans A&I, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the VENDOR and approved by the LOCAL AGENCY to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the VENDOR 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 A&I review of the ICR audit work papers created by the VENDOR's independent CPA, Caltrans A&I will work with the CPA and/or VENDOR 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 Caltrans A&I identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the VENDOR 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 A&I.  
Accepted rates will be as follows:
    - a. If the proposed rate is less than 150% - the accepted rate reimbursed will be

- 90% of the proposed rate.
- b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be 85% of the proposed rate.
  - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be 75% of the proposed rate.
2. If Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I may require VENDOR to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans A&I will then have up to six (6) months to review the VENDOR's and/or the independent CPA's revisions.
  3. If the VENDOR fails to comply with the provisions of this paragraph E, or if Caltrans A&I 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 provisional ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
  4. VENDOR may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) Caltrans A&I 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) Caltrans A&I has issued its final ICR review letter. The VENDOR 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 VENDOR, either as a prime or Sub-contractor, with the same fiscal period ICR. The ICR period shall extend beyond the one-year period and shall be fixed for the life of the contract.

## **X. SUBCONTRACTING**

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between LOCAL AGENCY and any Sub-contractor(s), and no subcontract shall relieve VENDOR of its responsibilities and obligations hereunder. VENDOR agrees to be as fully responsible to LOCAL AGENCY for the acts and omissions of its Sub-contractor(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 VENDOR. VENDOR's obligation to pay its Sub-contractor(s) is an independent obligation from LOCAL AGENCY'S obligation to make payments to the VENDOR.
- B. VENDOR shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this AGREEMENT shall be subcontracted without written authorization by LOCAL AGENCY, except that, which is expressly identified in the approved Cost Proposal.

- C. All subcontracts entered into as a result of this AGREEMENT shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Sub-contractors unless otherwise noted.
- D. VENDOR shall pay its sub-contractors within fifteen (15) calendar days from receipt of each payment made to VENDOR by LOCAL AGENCY for the work performed by such sub-contractors.
- E. Any substitution of sub-contractor(s) must be approved in writing by LOCAL AGENCY in advance of assigning work to a substituted sub-contractor(s).
- F. Prompt Progress Payment  
VENDOR 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 VENDOR 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 VENDOR or subconsultant to a subconsultant, VENDOR 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

No retainage will be held by the LOCAL AGENCY from progress payments due to VENDOR. VENDORS and subconsultants are prohibited from holding retainage from subconsultants. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating VENDOR 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 VENDOR or subconsultant in the event of a dispute involving late payment or nonpayment by VENDOR, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

## **XI. EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES**

- A. Prior authorization in writing, by LOCAL AGENCY shall be required before VENDOR enters into any unbudgeted purchase order, or subcontract exceeding five thousand

dollars (\$5,000) for supplies, equipment, or VENDOR services. VENDOR shall provide an evaluation of the necessity or desirability of incurring such costs.

**XII. STATE PREVAILING WAGE RATES**

- A. No VENDOR or Sub-contractors 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 VENDOR 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

([http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/DistrictRegion\\_Map\\_Construction\\_7-8-15.pdf](http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/DistrictRegion_Map_Construction_7-8-15.pdf))

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 Internet site at <http://www.dir.ca.gov>.
- D. Payroll Records

- 1. Each VENDOR and Sub-contractor shall keep accurate certified payroll records and supporting documents, when required, 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 VENDOR or Sub-contractor 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 VENDOR under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representative's at all reasonable hours at the principal office of the VENDOR. The VENDOR 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 VENDOR.
  - c. The public shall not be given access to certified payroll records by the VENDOR. The VENDOR is required to forward any requests for certified payrolls to the LOCAL AGENCY by both email and regular mail on the business day following receipt of the request.
3. Each VENDOR 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 VENDOR or Sub-contractor performing the work shall not be marked or obliterated.
  5. The VENDOR 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 VENDOR or Sub-contractors 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 VENDOR or Sub-contractors 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. VENDOR is not subject to a penalty assessment pursuant to this section due to the failure of a Sub-contractor to comply with this section.
- E. When prevailing wage rates apply, the VENDOR is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY.
  - F. Penalty

1. The VENDOR and any of its Sub-contractors shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the VENDOR and any Sub-contractor 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 VENDOR or by its Sub-contractors 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 VENDOR or Sub-contractors in failing to pay the correct rate of prevailing wages, or the previous record of the VENDOR or Sub-contractors in meeting their respective prevailing wage obligations, or the willful failure by the VENDOR or Sub-contractors 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 VENDOR or Sub-contractors had knowledge of the obligations under the Labor Code. The VENDOR 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 VENDOR or Sub-contractors.
4. If a worker employed by a Sub-contractor on a public works project is not paid the general prevailing per diem wages by the Sub-contractors, the prime VENDOR of the project is not liable for the penalties described above unless the prime VENDOR had knowledge of that failure of the Sub-contractors to pay the specified prevailing rate of wages to those workers or unless the prime VENDOR fails to comply with all of the following requirements:
  - a. The AGREEMENT executed between the VENDOR and the Sub-contractors 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 VENDOR shall monitor the payment of the specified general prevailing rate of per diem wages by the Sub-contractors to the employees by periodic review of the certified payroll records of the Sub-contractors.
  - c. Upon becoming aware of the Sub-contractor's failure to pay the specified prevailing rate of wages to the Sub-contractor's workers, the VENDOR shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Sub-contractor for work performed on the public works project.
  - d. Prior to making final payment to the Sub-contractor for work performed on

the public works project, the VENDOR shall obtain an affidavit signed under penalty of perjury from the Sub-contractor that the Sub-contractor had paid the specified general prevailing rate of per diem wages to the Sub-contractor'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 VENDOR on a public works project within fifteen (15) calendar days of receipt of a complaint that a Sub-contractor has failed to pay workers the general prevailing rate of per diem wages.
  6. If LOCAL AGENCY determines that employees of a Sub-contractor 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 VENDOR shall withhold an amount of moneys due the Sub-contractor 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 VENDOR 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 VENDOR or any of its Sub-contractors 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 sub agreement exceeds thirty thousand dollars (\$30,000), the VENDOR and any Sub-contractors 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. VENDORS and Sub-contractors 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, VENDOR and Sub-contractors 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 VENDOR is responsible for all Sub-contractors' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

**XIII. CONFLICT OF INTEREST**

- A. During the term of this AGREEMENT, the VENDOR 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. VENDOR 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. VENDOR 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. VENDOR 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. VENDOR further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.
- C. VENDOR 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 VENDOR hereby certifies that the VENDOR or Sub-contractors and any firm affiliated with the VENDOR or Sub-contractors 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.

**XIV. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

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

**XV. PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING**

- A. VENDOR 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 VENDOR to any person for influencing or attempting to influence an officer or employee of any local, State or Federal agency; a Member of the State Legislature or United States

- Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.
2. If any funds other than Federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this AGREEMENT, the VENDOR 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. VENDOR also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed one hundred thousand dollars (\$100,000) and that all such sub recipients shall certify and disclose accordingly.

**XVI. NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

- A. The VENDOR's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the VENDOR has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, VENDOR 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. VENDOR and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. VENDOR 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. VENDOR 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. VENDOR 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. VENDOR shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The VENDOR, 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 VENDOR 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 VENDOR 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. VENDOR, 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, VENDOR, 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.

## **XVII. DEBARMENT AND SUSPENSION CERTIFICATION**

- A. VENDOR's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that VENDOR 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 to whom exceptions apply, initiating agency, and dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the FHWA.

**XVIII. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

- A. VENDOR, 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. VENDOR shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

VENDOR 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 VENDOR’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 VENDOR 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”. VENDORS 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 \_\_\_\_\_%. Participation by DBE VENDOR 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, VENDOR must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. VENDOR 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 VENDOR 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 VENDOR 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):

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

Failure by the VENDOR 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 VENDOR from future proposing as non-responsible

- E. Termination and Substitution of DBE Subconsultants  
VENDOR shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless VENDOR or DBE subconsultant obtains the LOCAL AGENCY’s written consent. VENDOR 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 VENDOR 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.

The LOCAL AGENCY authorizes a request to use other forces or sources of materials if VENDOR 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.

VENDOR 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 VENDOR and the LOCAL AGENCY of the reasons why the use of other forces or sources of materials should not occur.

VENDOR'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 VENDOR to the DBE regarding the request.
3. Notices from the DBEs to VENDOR regarding the request.

If a listed DBE is terminated or substituted, VENDOR 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 VENDOR 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 VENDOR is a DBE, 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 VENDOR in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify VENDOR in writing of the certification date. VENDOR shall submit the notifications to the LOCAL AGENCY. On work completion, VENDOR 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, VENDOR 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. VENDOR 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 VENDOR'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 VENDOR in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify VENDOR 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 10th 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.

## **XIX. INSURANCE**

- A. Prior to commencement of the work described herein, VENDOR shall furnish LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for VENDOR with a combined single limit (CSL) of not less than one million dollars (\$1,000,000) per occurrence.
- B. The Certificate of Insurance will provide:
  - 1. That the insurer will not cancel the insured's coverage without thirty (30)

- calendar days prior written notice to LOCAL AGENCY.
2. That LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this AGREEMENT are concerned.
  3. That LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.
- C. VENDOR agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this AGREEMENT. In the event said insurance coverage expires at any time or times during the term of this AGREEMENT, VENDOR agrees to provide at least thirty (30) calendar days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the AGREEMENT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event VENDOR fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this AGREEMENT upon occurrence of such event.
- D. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the LOCAL AGENCY. Current certification of such insurance shall be kept on file at all times during the term of this AGREEMENT with the Town Clerk.
- E. Workers' Compensation. In addition to these policies, VENDOR 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, VENDOR shall ensure that all subcontractors employed by VENDOR provide the required Workers' Compensation insurance for their respective employees.

**XX. FUNDING REQUIREMENTS**

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only if sufficient funds are made available to LOCAL AGENCY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.

- D. LOCAL AGENCY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

**XXI. CHANGE IN TERMS**

- A. No modification, waiver, mutual termination, or amendment of this AGREEMENT is effective unless made in writing and signed by the LOCAL AGENCY and the VENDOR.
- B. VENDOR shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY.
- C. There shall be no change in VENDOR'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.

**XXII. CONTINGENT FEE**

VENDOR 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 VENDOR for the purpose of securing business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

**XXIII. DISPUTES**

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after thirty (30) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by AGREEMENT shall be decided by a committee consisting of LOCAL AGENCY's Parks and Public Works Director and/or his/her designee, who may consider written or verbal information submitted by VENDOR.
- B. Not later than thirty (30) calendar days after completion of all work under the AGREEMENT, VENDOR 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 VENDOR from full and timely performance in accordance with the terms of this AGREEMENT.

**XXIV. INSPECTION OF WORK**

VENDOR and any Sub-contractor 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 including review and inspection on a daily basis.

**XXV. SAFETY**

- A. VENDOR shall comply with OSHA regulations applicable to VENDOR regarding necessary safety equipment or procedures. VENDOR shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. VENDOR 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 Division 1, Section 591 of the California Vehicle Code, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. VENDOR shall comply with all applicable requirements set forth in Divisions 11, 12, 13, 14, and 15 of the California Vehicle Code. VENDOR 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 AGREEMENT, shall contain all of the provisions of this Article.

**XXVI. OWNERSHIP OF DATA**

- A. It is mutually agreed that subject to VENDOR's receipt of payment for its services under this AGREEMENT all materials prepared by VENDOR under this AGREEMENT shall become the property of LOCAL AGENCY, and VENDOR shall have no property right therein whatsoever. Immediately upon termination, LOCAL AGENCY shall be entitled to, and VENDOR shall deliver to LOCAL AGENCY, 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 VENDOR in performing this AGREEMENT which is not VENDOR's privileged information, as defined by law, or VENDOR's personnel information, along with all other property belonging exclusively to LOCAL AGENCY which is in VENDOR'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 LOCAL AGENCY.

- 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 VENDOR hereunder to be work made for hire. VENDOR 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 LOCAL AGENCY without restriction or limitation upon its use or dissemination by LOCAL AGENCY.
- C. Nothing herein shall constitute or be construed to be any representation by VENDOR that the work product is suitable in any way for any other project except the one detailed in this AGREEMENT. Any reuse by LOCAL AGENCY for another project or project location shall be at LOCAL AGENCY's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the AGREEMENTs 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.

**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 VENDOR's personnel, and additional information or assistance from VENDOR's personnel is required in order to evaluate or defend against such claims; VENDOR 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. VENDOR'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 VENDOR's personnel services under this AGREEMENT.
- C. Services of VENDOR'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.

**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 VENDOR in order to carry out this AGREEMENT, shall be protected by VENDOR 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 VENDOR to further disclose such information, or disseminate the same on any other occasion.
- C. VENDOR 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, VENDOR's own personnel involved in the performance of this AGREEMENT, at public hearings or in response to questions from a Legislative committee.

VENDOR 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.

**XXIX. NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

In accordance with Public Contract Code Section 10296, VENDOR 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 VENDOR within the immediately preceding two-year period, because of VENDOR's failure to comply with an order of a federal court that orders VENDOR to comply with an order of the National Labor Relations Board.

**XXX. EVALUATION OF VENDOR**

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

**XXXI. PROMPT PAYMENT FROM THE LOCAL AGENCY TO VENDOR**

The LOCAL AGENCY shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from VENDOR 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 VENDOR 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.

**XXXII. NOTIFICATION**

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

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

**VENDOR:**

**XXXIII. CONTRACT**

The two parties to this AGREEMENT, who are the before named VENDOR 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.

**XXXIV. SIGNATURES**

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

**TOWN OF LOS GATOS** by:

Town of Los Gatos by:

(Name of CONSULTANT)

\_\_\_\_\_  
Laurel Prevetti, Town Manager

\_\_\_\_\_  
(Name of Signer)

Recommended by:

\_\_\_\_\_  
Matt Morley, Director of Parks and Public  
Works

Approved as to Form:

\_\_\_\_\_  
Robert Schultz, Town Attorney

Attest:

\_\_\_\_\_  
Shelley Neis, CMC, Town Clerk