

**CONTRACT FOR PROFESSIONAL  
SERVICES**

TO PERFORM

**CITY ENGINEERING SERVICES**

IN

***THE CITY OF ANGELS  
COUNTY OF CALAVERAS***



## ARTICLE I INTRODUCTION

This Contract is made and entered into by and between the City of Angels, a municipal corporation ("CITY") and Lumos & Associates, Inc. ("CONSULTANT").

### A. RECITALS:

1. CONSULTANT is specially trained, experienced and competent to perform the special services which will be required by this Contract; and
2. CONSULTANT possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Contract on the terms and conditions described herein.
3. CITY desires to retain CONSULTANT to render professional services as set forth in this Contract.

### B. The work to be performed under this Contract is described in Article III entitled Scope of Work and CONSULTANT's cost proposal is attached hereto as Attachment 3 and incorporated by reference. If there is any conflict between the approved Cost Proposal and this contract, the contract shall take precedence.

### C. CONSULTANT shall indemnify and hold harmless CITY, its elected and appointed officials, officers, employees, and volunteers (collectively, "CITY") from losses, costs, liabilities and expenses for any damage, injury or death (collectively, "Liability") arising directly or indirectly from or connected with the services provided under this Contract to the extent that such Liability is caused by the negligence or willful misconduct of CONSULTANT, its officers, employees, agents, contractors, subcontractors, consultants, or any person under its direction or control and shall make good to and reimburse CITY for any expenditures, including reasonable attorneys' fees, the CITY may incur by reason of such matters. CONSULTANT's obligations shall exist regardless of concurrent negligence or willful misconduct on the part of the CITY or any other person; provided, however, that CONSULTANT shall not be required to indemnify CITY for the proportion of Liability a court determines is attributable to the negligence or willful misconduct of the CITY. The CITY acknowledges that this indemnity does not require the Consultant to provide an up-front legal defense to the CITY. This indemnification clause shall survive the termination or expiration of this Contract.

CONSULTANT further agrees to provide, at CONSULTANT expense, reasonable assistance to the CITY in responding to third party claims to the extent such claims implicate the quality of the CONSULTANT's performance under this Contract, which assistance shall include selection, management, and compensation of expert witnesses as necessary to substantiate or defend the quality of the CONSULTANT's performance under this Contract, as well as making CONSULTANT's employees and project work product available as reasonably necessary to assist in the defense of such claims. This shall not preclude the CITY from recovering its reasonable attorneys' fees and defense costs in responding to third party claims to the extent such claims are found to have been caused by the CONSULTANT's negligence or willful misconduct.

### D. CONSULTANT in the performance of this CONTRACT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto.

CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of City.

### E. CITY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the CONTRACT, 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 CITY 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

CITY harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this CONTRACT. Without the written consent of CITY, this contract is not assignable by CONSULTANT either in whole or in part.

- G. Except as expressly authorized herein, CONSULTANT's obligations under this CONTRACT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the CITY. However, claims for money due or which become due to CONSULTANT from City under this CONTRACT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the CITY.
- H. CONSULTANT shall be as fully responsible to the CITY 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 authorized to bind the parties; and no oral understanding or contract not incorporated herein, shall be binding on any of the parties hereto.
- J. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

## **ARTICLE II CONSULTANT'S REPORTS OR MEETINGS**

- A. CONSULTANT shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for CITY's Contract Administrator or Project Coordinator 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 CITY's Contract Administrator, as needed, to discuss progress on the project(s).

## **ARTICLE III STATEMENT OF WORK**

- C. A. CONSULTANT shall furnish, in a professional manner, the services described on Attachment 1 which is attached hereto and incorporated herein by reference. Consultant shall provide said services with the personnel and according to the schedule specified in Attachment 2, subject to the direction of CITY through its staff that it may provide from time to time.

## **ARTICLE IV PERFORMANCE PERIOD**

- A. This contract shall go into effect on **July 2, 2025** contingent upon approval by CITY, and CONSULTANT shall commence work after notification to proceed by CITY's Contract Administrator. The Contract shall end on **June 30, 2030** unless extended by contract amendment.
- B. CONSULTANT is advised that any recommendation for contract award is not binding on CITY until the contract is fully executed and approved by CITY.
- C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this CONTRACT, the terms of the CONTRACT shall be extended by CONTRACT amendment prior to the expiration of the contract to cover the time needed to complete the task order in progress only. The maximum term shall not exceed five (5) years.

## ARTICLE V ALLOWABLE COSTS AND PAYMENTS

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this CONTRACT. CONSULTANT will be reimbursed within thirty (30) days upon receipt by CITY'S Contract Administrator of itemized invoices in duplicate.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.
- C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.
- D. After a project to be performed under this CONTRACT is identified by CITY, CITY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a CITY Project Coordinator. The draft Task Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After contract has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both CITY and CONSULTANT.
- E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the CONTRACT.
- F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of a CONTRACT amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- I. CONSULTANT shall not commence performance of work or services until this CONTRACT has been approved by CITY and notification to proceed has been issued by CITY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this CONTRACT.
- J. A Task Order is of no force or effect until returned to CITY and signed by an authorized representative of CITY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by CITY.
- K. CONSULTANT will be reimbursed within thirty (30) days upon receipt by CITY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable.

Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this CONTRACT number, project title and Task Order number. Credits due CITY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this CONTRACT. Invoices shall be mailed to CITY'S Contract Administrator at the following address:

Pamela Caronongan  
City Administrator  
City of Angels Camp  
P.O. Box 667  
Angels Camp, CA 95222

- L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this CONTRACT.
- M. The total amount payable by CITY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.
- N. If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- O. Task Orders may not be used to amend the language (or the terms) of this CONTRACT nor to exceed the scope of work under this CONTRACT.
- P. The total amount payable by CITY for all Task Orders resulting from this CONTRACT shall not exceed \$5,000,000. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this CONTRACT through Task Orders.

#### **ARTICLE VI TERMINATION**

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

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

- A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.

- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to CITY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- E. 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.

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

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and CITY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the CONTRACT including, but not limited to, the costs of administering the CONTRACT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the CONTRACT period and for three (3) years from the date of final payment under the CONTRACT and records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition. CITY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the CONTRACT 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 contract that is not disposed of by contract, shall be reviewed by CITY'S Chief Financial Director.
- B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by CITY'S Chief Financial Director of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by CITY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this CONTRACT.
- D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, 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 contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by CITY contract manager 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 contract by this reference if directed by CITY at its sole discretion. Refusal by

CONSULTANT 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 contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the CITY 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 CONTRACT terms and cause for termination of the CONTRACT and disallowance of prior reimbursed costs.

1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, CITY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
  - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
  - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
  3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this CONTRACT.
  4. CONSULTANT may submit to CITY 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 CONTRACT has been completed to the satisfaction of CITY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO CITY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this CONTRACT and all other contracts executed between CITY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

## ARTICLE X SUBCONTRACTING

- A. Nothing contained in this CONTRACT or otherwise, shall create any contractual relation between CITY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to CITY 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. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from CITY'S obligation to make payments to the CONSULTANT.
- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by CITY's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- C. Any subcontract entered into as a result of this CONTRACT, shall contain all the provisions stipulated in this entire CONTRACT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the CITY.
- E. Any substitution of Subconsultants must be approved in writing by the CITY Contract Administrator in advance of assigning work to a substitute Subconsultant.
- F. Prompt Progress Payment

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

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

- G. Prompt Payment of Withheld Funds to Subconsultants The CITY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the CITY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The CITY shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant. (Choose either Method 1, Method 2, or Method 3 below and delete the other two.)

**Method 1:** No retainage will be held by the CITY from progress payments due to CONSULTANT. CONSULTANTS and subconsultants are prohibited from holding retainage from subconsultants. Any delay or postponement of payment may take place only for good cause and with the CITY'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.

**Method 2:** No retainage will be held by the CITY from progress payments due to CONSULTANT. Any retainage kept by CONSULTANT or by a subconsultant must be paid in full to the earning subconsultant within 15 days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the CITY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and 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.

**Method 3:** The CITY shall hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the CITY 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 CITY. Any delay or postponement of payment may take place only for good cause and with the CITY'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

## **ARTICLE XI EQUIPMENT PURCHASE**

- A. Prior authorization in writing, by CITY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$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 Cost Proposal and exceeding \$5,000 prior authorization by CITY's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this contract 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, CITY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONSULTANT may either keep the equipment and credit CITY 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 CITY procedures; and credit CITY 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 CITY and CONSULTANT, if it is determined to sell the equipment, the terms and

conditions of such sale must be approved in advance by CITY.

2. Regulation 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

## **ARTICLE XII STATE PREVAILING WAGE RATES**

- A. No CONSULTANT or Subconsultant may be awarded a CONTRACT 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 CONTRACT, 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 CONTRACT 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 CONTRACT 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 CITY construction sites, at CITY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve CITY 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 CITY 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 CITY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to CITY, 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 CITY 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 CITY 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 CITY 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 CITY, 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 CITY 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 CITY 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 CITY 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 CITY 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 CONTRACT.

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:
  - i. The CONTRACT 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.
  - ii. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
  - iii. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
  - iv. 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, CITY 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 CITY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if CITY did not retain sufficient money under the CONTRACT 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 CITY.

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the CITY, twenty-five dollars (\$25) for each worker employed in the execution of the CONTRACT 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 CONTRACT or the subcontract 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 CONTRACT 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 CONTRACT, the CONSULTANT shall disclose any financial, business, or other relationship with CITY that may have an impact upon the outcome of this CONTRACT or any ensuing CITY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this CONTRACT or any ensuing CITY construction project which will follow.
- B. CONSULTANT certifies that it has disclosed to CITY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this CONTRACT. CONSULTANT agrees to advise CITY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this CONTRACT. CONSULTANT further agrees to complete any statements of economic interest if required by either CITY 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 CONTRACT.
- 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 Contract to provide construction inspection for any construction project resulting from this CONTRACT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise

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

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

**ARTICLE XV PROHIBITION OF EXPENDING CITY 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 CITY 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 contract, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative contract.

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 contract; 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 \$10,000 and not more than \$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 subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

#### **ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

- A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- B. During the performance of this Contract, CONSULTANT and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. 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 CITY 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 CONTRACT 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 CITY 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 CITY 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 Contract.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this CONTRACT.
- G. The CONSULTANT, with regard to the work performed under this CONTRACT, 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 CITY 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 CITY. 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 (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by FHWA

#### **ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

- A. CONSULTANT, subrecipient (CITY), 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 CITY 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 at date of proposal opening that the DBE firm is certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes or work code applicable to the type of work the firm will perform on the contract. Additionally, the CONSULTANT is responsible to document the verification record by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbesearch>.

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 CONTRACT 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 contract will assist the CITY in a good faith effort to achieve California's statewide overall DBE goal.

- B. The goal for DBE participation for this CONTRACT is \_\_\_\_\_%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Exhibit 1002: Consultant Contract DBE Commitment attached hereto and incorporated as part of the CONTRACT. 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 CONTRACT goal, or by documenting adequate good faith efforts to meet the CONTRACT 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 CITY'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 CITY. Unless CITY'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 CITY 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 CITY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the CITY'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 CITY 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 CITY 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 CITY's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The CITY shall request CONSULTANT to:

1. Notify the CITY'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 CITY. On work completion, CONSULTANT shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to the CITY 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 CITY within 90 days of contract acceptance. The CITY will withhold \$10,000 until the form is submitted. The CITY will release the withhold upon submission of the completed form.

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

- G. A DBE is only eligible to be counted toward the CONTRACT goal if it performs a commercially useful function (CUF) on the CONTRACT. CUF must be evaluated on a contract by contract basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the CONTRACT 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 CONTRACT, 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 CONTRACT 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, CONTRACT, or project through which funds are passed in order to obtain the appearance of DBE participation.
- I. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its CONTRACT with its own work force, or the DBE subcontracts a greater portion of the work of the CONTRACT 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 CONTRACT, 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 CONTRACT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to CITY'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.
- M. Any subcontract entered into as a result of this CONTRACT shall contain all of the provisions of this section.

## ARTICLE XIX INSURANCE

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish CITY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for CONSULTANT 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. *Workers' Compensation Coverage.* CONSULTANT shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, CONSULTANT shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the CITY at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against CITY, its officers, agents, employees and volunteers for losses arising from work performed by CONSULTANT for CITY.
  - 2. *General Liability Coverage.* CONSULTANT shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Contract or the general aggregate limit shall be at least twice the required occurrence limit.
  - 3. *Automobile Liability Coverage.* CONSULTANT shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the CONSULTANT arising out of or in connection with the work to be performed under this Contract, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.
  - 4. *Professional Liability Coverage.* CONSULTANT shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from CONSULTANT's operations under this Contract whether such operations be by the CONSULTANT or by its employees, subcontractors, or sub-consultants. The amount of this insurance shall not be less than one million dollars (\$2,000,000) on a claims-made annual aggregate basis, or a combined single limit per occurrence basis.
- C. CONSULTANT agrees that the bodily injury liability 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) 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 CONTRACT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of CITY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, CITY may, in addition to any other remedies it may have, terminate this CONTRACT upon occurrence of such event.

- D. *Endorsements.* Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:
1. The CITY, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to liability arising out of work performed by or on behalf of the CONSULTANT, including materials, parts or equipment furnished in connection with such work or operations.
  2. This policy shall be considered primary insurance as respects the CITY, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the CITY, including any self-insured retention the CITY may have, shall be considered excess insurance only and shall not contribute with it.
  3. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
  4. The insurer waives all rights of subrogation against the CITY, its elected or appointed officers, officials, employees or agents.
  5. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its elected or appointed officers, officials, employees, agents or volunteers.
  6. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the CITY.
- E. *Deductibles and Self-Insured Retentions.* Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the CITY's option, CONSULTANT shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
- F. *Certificates of Insurance.* CONSULTANT shall provide certificates of insurance with original endorsements to CITY as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the CITY on or before commencement of performance of this Contract. Current certification of insurance shall be kept on file with the CITY at all times during the term of this Contract.

## **ARTICLE XX FUNDING REQUIREMENTS**

- A. It is mutually understood between the parties that this CONTRACT 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 CONTRACT were executed after that determination was made.
- B. This CONTRACT is valid and enforceable only if sufficient funds are made available to CITY for the purpose of this CONTRACT. In addition, this CONTRACT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or CITY governing board that may affect the provisions, terms, or funding of this CONTRACT in any manner.

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

#### **ARTICLE XXI CHANGE IN TERMS**

- A. This contract may be amended or modified only by mutual written contract 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 CITY'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 contract without prior written approval by CITY's Contract Administrator.

#### **ARTICLE XXII CONTINGENT FEE**

CONSULTANT warrants, by execution of this CONTRACT that no person or selling agency has been employed, or retained, to solicit or secure this CONTRACT upon a contract 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, CITY 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 XXIII DISPUTES**

Prior to either party commencing any legal action under this CONTRACT, 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 contract that is not disposed of by contract shall be decided by CITY's City Administrator, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than 30 days after completion of all work under the contract, CONSULTANT may request review by CITY 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 contract.

#### **ARTICLE XXIV INSPECTION OF WORK**

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

#### **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 CITY Safety Officer and other CITY representatives. CONSULTANT personnel shall wear hard hats and

safety vests at all times while performing on the construction project site.

- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, CITY 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 CONTRACT 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 CONTRACT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to 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 CONTRACT must be approved in writing by City.
- B. Additionally, it is agreed that the Parties intend this to be a CONTRACT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder 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. CITY may permit copyrighting reports or other contract products. If copyrights are permitted; the CONTRACT 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 CITY'S CONSTRUCTION CONTRACTOR**

- A. If claims are filed by CITY'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 CITY'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 CITY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from CITY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this contract.
- C. Services of CONSULTANT's personnel in connection with CITY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract 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 CITY's operations, which are designated confidential by CITY and made available to CONSULTANT in order to carry out this contract, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by CITY relating to the contract, 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 contract or CITY's actions on the same, except to CITY's staff, CONSULTANT's own personnel involved in the performance of this contract, 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 contract without prior review of the contents thereof by CITY, and receipt of CITY'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 CITY, 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 CITY. 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 CITY TO CONSULTANT**

The CITY 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 CITY fails to pay promptly, the CITY 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 CITY shall act in accordance with both of the following:

(1) Each payment request shall be reviewed by the CITY 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 TITLE VI ASSURANCES**

### **APPENDICES A -E of the TITLE VI ASSURANCES**

The U.S. Department of Transportation Order No.1050.2A requires all federal-aid Department of Transportation contracts between an agency and a consultant to contain Appendices A and E of the Title VI Assurances. Include Appendices B, C, and D if applicable as shown below. In addition, the consultant must include the Title VI Assurances Appendices A and E, and if applicable Appendices B, C, and D in all subcontracts to perform work under the contract. The clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a CITY. The clauses set forth in Appendix C and Appendix D of this Assurance shall be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the CITY with other parties:

- a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
- b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

### **APPENDIX A**

During the performance of this Contract, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:

- a. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this contract.
- b. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the CONTRACT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Sub-contracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub- contract, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Contract



- and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.
  - e. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the recipient shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
    - i. withholding of payments to CONSULTANT under the Contract within a reasonable period of time, not to exceed 90 days; and/or
    - ii. cancellation, termination or suspension of the Contract, in whole or in part.
  - f. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-contract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-contract or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

## **APPENDIX B**

### **CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

**NOW THEREFORE**, the U.S. Department of Transportation as authorized by law and upon the condition that the recipient will accept title to the lands and maintain the project constructed thereon in accordance with Title 23 U.S.C., the regulations for the administration of the preceding statute, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

#### **(HABENDUM CLAUSE)**

**TO HAVE AND TO HOLD** said lands and interests therein unto the recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the recipient, its successors and assigns. The recipient, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the

benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the recipient will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the abovementioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\* (\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

## **APPENDIX C**

### **CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the recipient pursuant to the provisions of Assurance 7(a):

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations(as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*

C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## **APPENDIX D**

### **CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/contracts entered into by the recipient pursuant to the provisions of Assurance 7(b):

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above Non-discrimination covenants, the recipient will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

## **APPENDIX E**

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the “CONSULTANT”) agrees to comply with the following nondiscrimination statutes and authorities, including, but not limited to:

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq)

### ARTICLE XXXIII TITLE NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this CONTRACT 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: Lumos & Associates, Inc.  
Aaron Bursatori, Group Manager  
3840 El Dorado Hills Blvd. Suite 301  
Eldorado Hills, CA 95762

CITY: Pamela Caronongan  
City Administrator  
City of Angels Camp  
P.O. Box 667  
Angels Camp, CA 95222

### ARTICLE XXXIV CONTRACT

The two parties to this contract, who are the before named CONSULTANT and the before named CITY, hereby agree that this contract constitutes the entire contract 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 contract as evidenced by the signatures below.

### ARTICLE XXXV SIGNATURES

**CITY of ANGELS:**

*ATTEST:*

By: \_\_\_\_\_  
**Pamela Caronongan**  
**City Administrator**  
Date: \_\_\_\_\_

**Lumos & Associates, Inc.**

  
\_\_\_\_\_

**By:**

**Principal in Charge**

**Date:** 06/18/2025

\_\_\_\_\_  
*Rose Beristianos*  
*City Clerk*

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
*Douglas L. White, City Attorney*