



Request for Proposal (RFP)

Material Testing Services (Acceptance Testing and Independent Assurance Program Verification) for:

**Rio Vista St. from Holt Ave. to Heil Ave. (South Side) Improvements
in Seeley – Imperial County;
Federal Aid Project No. CML-5958 (106); County Project No. 6365**

Requested by:

John A. Gay, PE
Director of Public Works

Prepared By:

Jose Castaneda, MBA
Administrative Analyst III

Deadline for Submissions: August 26, 2020, 4:00 P.M

Imperial County
Department of Public Works
155 S. 11th Street
El Centro, CA 92243
RFP Issued on August 3, 2020

PROPOSALS MUST BE SUBMITTED ON THE SPECIFIED DATE AND TIME. THE COUNTY WILL NOT CONSIDER PROPOSALS RECEIVED AFTER THE DUE DATE. AN AMENDMENT IS CONSIDERED A NEW PROPOSAL AND WILL NOT BE ACCEPTED AFTER THE SPECIFIED DATE AND TIME.

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EXHIBITS

A – Sample Proposal Evaluation Form

B – Sample Consultant Agreement and Insurance Requirements*
****No changes shall be made to consultant agreement.***

C – Location Map

D – Bidder/Proposer Disadvantaged Business Enterprise (DBE) Program Requirements

- Exhibit 9-B: Local Agency DBE Annual Submittal Form
- Exhibit 10-I: Notice to Proposers Disadvantages Business Enterprise Information

For all Federally Funded Projects the following additional items shall also be considered part of the contract:

E – Listing of Required Federal Forms and phases when they are due

SPECIAL NOTICE

Notification of Contractor Registration Requirements (where required)

Pursuant to the requirements of California Labor Code section 1771.1, all contractors and subcontractors that wish to engage in public work through a public works contract must be registered with the Department of Industrial Relations (DIR).

Beginning March 1, 2015, no contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with DIR.

Beginning April 1, 2015, no contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the DIR, pursuant to Labor Code section 1725.5

All contractors, including subcontractors, listed in the proposal must be registered with the DIR at the time proposals are due, and must submit proof of registration with the proposal. Any proposals received listing unregistered contractors and/or subcontractors will be deemed non-responsive.

Application and renewal are completed online with a non-refundable fee of \$300. Read the Public Works Reforms (SB 854) Fact Sheet for requirements. Instructions for completing the form and additional information can be found on the DIR website.

This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR).

SOURCES OF INFORMATION

INFORMATION	WEBSITE
Department of Industrial Relations (Public Works)	http://www.dir.ca.gov/Public-Works/PublicWorks.html
SB 854 Fact Sheet	http://www.dir.ca.gov/Public-Works/PublicWorksSB854.html
Senate Bill 854 Compliance	http://www.dir.ca.gov/Public-Works/SB854.html
Public Works Contractor (PWC) Registration	https://efiling.dir.ca.gov/PWCR/
Classifications and Minimum Labor Rates	http://www.dir.ca.gov/OPRL/Pwd/

Request for Proposal (RFP) Material Testing Services (Acceptance Testing and Independent Assurance Program Verification) for: Rio Vista St. from Holt Ave. to Heil Ave. (South Side) Improvements in Seeley – Imperial County; Federal Aid Project No. CML-5958 (106); County Project No. 6365 Imperial County (here forth known as the “Project”)

August 3, 2020

I. PURPOSE AND BACKGROUND

The County of Imperial Department of Public Works (ICDPW) is requesting proposals from qualified and experienced material testing firms to provide Acceptance Testing and Independent Assurance testing services for the above referenced federally funded project in Imperial County. The services are anticipated to be full time for the duration of the construction work, which will be completed by private contract secured through the public bidding process. Two firms will be selected from this request for proposal; top ranked firm for Acceptance Testing and the second ranked firm for Independent Assurance (based on ranking and responsiveness). Interested firms must submit separate cost proposals for each service (when requested).

The purpose of the Request for Proposals (RFP) is to provide the Department of Public Works with the assurance that this County-administered project is constructed in substantial compliance with the plans and specifications and that all local, state, and federal provisions (where applicable) which may be required due to the specific funding requirements are adhered to. An important objective is to maintain a level of high quality Material Testing Services through appropriate documentation and workflow methodology in the most cost-effective manner possible.

Qualified entities are invited to submit written proposals for consideration in accordance with this request. These services will be conducted under a contract with the County of Imperial, hereinafter referred to as "County" and the consultant entity, hereinafter referred to as "Consultant". The contract will be regulated according to the provisions of all federal, state and local laws and ordinances that are applicable. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775.

Disadvantaged Business Enterprises (DBE), Minority Business Enterprise (MBE), Women Business Enterprise (WBE) and Veteran Owned Businesses (VOB) are encouraged to participate. The DBE goal for this project is as follows.

1. Acceptance Testing Services for 6365 – DBE Goal of 34%
2. Independent Assurance Testing Services for 6365 – DBE Goal of 34%

Services that are partially funded with Federal funds are subject to Part 26, Title 49, Code of Federal Regulations entitled “Participation by Disadvantaged Business Enterprises (DBE) in the Department of Transportation Financial Assistance program.” Caltrans DBE program information can be found here: http://www.dot.ca.gov/hq/LocalPrograms/DBE_CRLC.html

Imperial County Public Works proposes to construct street improvements including sidewalk, diveways, curb, gutter, bicycle lane, and infill paving along the South side of Rio Vista St. from Holt Ave. to Heil Ave. in the Township of Seeley. The project boundary makes up a portion of the main

access path for Seeley Elementary School and District Office. This project is an effort by the County to provide increased safety for students of the school, increase pedestrian traffic, and mitigate fugitive dust emissions improving local air quality. The community of Seeley is impoverished and requires much needed infrastructure. This project is for a portion of an over-all area plan on improving drainage and mitigation of safety concerns including pedestrians, vector control, and environmental health (dust mitigation).

II. PROJECT POSTING AND SCHEDULING

This RFP is being distributed over the internet and is posted at the County of Imperial Department of Public Works website at the following address: <https://www.co.imperial.ca.us/publicwork/index.asp?fileinc=rfq&newsnumber=0> under "Projects out to Bid." Consultants wishing to propose in response to this RFP must obtain this document from our website. The County will maintain a list of RFP holders based on self identification by interested firms. If you are interested in being added to the RFP holder list, please contact the project manager listed in section VIII. CLOSING ITEMS. The County will make every effort to provide individual notification of amendments or addendums to this RFP to known self-identified firms, but it will be the responsibility of each interested firm in checking the "Projects Out To Bid" webpage for any updates as the Web page will be the official media for dissemination of Addenda.

The County will therefore post any addendums to the RFP on the above mentioned website. All consultants shall refer to the website to verify all addendums that have been issued and that they have acknowledged all such addendums and included signed copies of all in their proposal.

Proposed Schedule of Events

Issue Request for Proposals	August 3, 2020
Deadline for Written Requests for Clarification	August 17, 2020
Proposals Due	August 26, 2020
Consultant Selection	September 2020
County Awards Contract	October 2020
Notice to Proceed	October 2020

III. SCOPE OF WORK

The scope of work is to provide the necessary geotechnical engineering and materials testing services to the County Public Works Department in accordance with all provisions within this RFP. All work shall be performed under the direction of a Geotechnical Engineer licensed by the State of California.

Consultant will assist the County with geotechnical and materials testing tasks including but not

limited to:

1. Testing and sampling of soil, aggregate, PCC concrete, asphalt concrete, and nondestructive materials testing.
2. Geotechnical testing, testing of materials, materials specification recommendations, review and approval of grindings gradation, other related testing for the project.
3. Licensed Geotechnical Engineer of record for all proposed work or other related testing as required for the road improvement identified on the project plans/ specifications.
4. All testing shall be done in accordance to the County of Imperial approved Quality Assurance Program (QAP). The QAP can be found on the County's web page.
5. Consultant shall possess all applicable certifications for personnel and laboratories, with all certifications valid and up to date.
6. Remediation in the event of unforeseen soil, water seepage, hazardous material, or geologic problems encountered during construction.
7. Understanding of and extensive experience with federal, state and local guidelines, procedures, and certifications for laboratory and personnel assigned to the project.
8. Laboratory facilities of Consultant shall have and maintain current Caltrans accreditation throughout duration of the contract. Verification of minimum required qualification for these accreditations is required to be submitted with the proposal.
9. Any sub-consultants providing professional services to Consultant shall be held to the same licensing, accreditation, and certification standards as Consultant.
10. No subcontractors shall be utilized without prior authorization by the County.
11. Review and approval of proposed design mix for PCC concrete and asphalt concrete respectively.

Acceptance Testing proposal should also include a monitoring schedule derived from the County's Quality Assurance Program (QAP) and the Quality Control testing schedule. The County's approved QAP can be found:

<https://publicworks.imperialcounty.org/forms-and-guidelines/>

Consultant will attend and participate in the preconstruction meeting with the County and review project goals, scope, work flow methodology, responsibilities of both Consultant and County, and will introduce key staff. During the course of the project all communications and coordination will be with the Resident Engineer assigned to the project, who is the primary point of contact for the County.

Throughout the course of the project, Consultant will maintain orderly project files. All tracings, plans, specifications and maps prepared or obtained under the terms of the agreement with County shall be delivered to and become property of the County; and basic survey notes and sketches, charts, computations and other data prepared or obtained under such agreement shall be made available upon request to the County without restriction or limitation on their use. At the conclusion of the project, Consultant shall submit to the County a project completion file which contains the required information, test results, forms, certifications, communications, and other information pertaining to the project. The report will be clearly labeled with the Project title.

Document will serve as a record of the project. Additionally, a copy of the record of the project is to be provided in Portable Document Format (PDF) on one (1) USB thumb drive. The required project file and all pertinent documents will need to be submitted before the final payment and retention will be released.

The geotechnical testing and material sampling firm shall conduct and perform all work and documentation to comply and be in accordance with the provisions of Chapter 15, "Advertise and Award Project", Chapter 16, "Administer Construction Contracts", and Chapter 17, "Project Completion", of Caltrans' latest Local Assistance Procedures Manual (LAPM), latest edition of Caltrans' Construction Manual, and latest edition of Caltrans' Standard Plans and Specifications.

The County of Imperial Disadvantaged Business Enterprise (DBE) Program affirms the utilization and participation of qualified disadvantaged business firms in its contracting and procurement activities. The County encourages general and prime contractors to afford competitive subcontracting opportunities to disadvantaged firms, where possible, in their contracting and procurement activities with the County of Imperial.

Services that are partially funded with Federal funds are subject to Part 26, Title 49, Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises (DBE) in the Department of Transportation Financial Assistance program."

Firms submitting a proposal shall be fully informed of the requirements of the regulations and the County's Disadvantaged Business Enterprise (DBE) program developed pursuant to the regulations. The County of Imperial's DBE goal for this project is as follows:

1. Acceptance Testing Services for 6365 – DBE Goal of 34%
2. Independent Assurance Testing Services for 6365 – DBE Goal of 34%

Construction Work Detail: The construction work shall be diligently prosecuted to completion before the expiration of forty-five (45) working days. The Engineers Estimate for the construction portion of the project is \$223,721.00.

Bidding Documents (Notice to Contractors) and Plans and Specifications for the construction work referred to for this project are available on the Public Works website at:
<https://publicworks.imperialcounty.org/projects-out-to-bid/>

IV. AUDITS AND INVESTIGATIONS

All consultants, including prime and sub consultants, on a proposed contract with a dollar value greater than \$150K are subject to an Indirect Cost Rate (ICR) financial review by Independent Office of Audits and Investigations (IOAI). The financial documents required are detailed in Exhibit 10-A, A&E Consultant Financial Document Review Request Letter and Exhibit 10-A Checklist. IOAI will review the ICR financial documents to either accept or adjust the indirect cost rate prior to contract execution using a risk-based approach as dictated by factors that include but are not limited to:

- History of satisfactory performance and professional reputation of consultant;
- Prior FAR compliant history and audit frequency;
- Experience of consultant with FAHP contracts;
- General responsiveness and responsibility;
- The approximate contract volume and dollar amount of all A&E contracts awarded to the consultant by Caltrans or a local agency in California within the last three calendar years;
- The number of states in which the consultant does business;

- The type and complexity of the consultant's accounting system;
- The relevant professional experience of any CPA performing audits of the Consultant's indirect cost rate;
- Assessment of consultant's internal control. Responses to internal control questionnaire, see AASHTO Audit Guide, Appendix B;
- For ICRs that have been adjusted by IOAI, the consultant must provide a revised cost proposal that reflects the adjusted ICR.

V. RESPONSIBILITIES OF THE COUNTY

1. This RFP is being conducted in accordance with the "One Step RFP" as per Chapter 10, "Consultant Selection", of the Caltrans Local Assistance Procedures Manual.
2. The County will direct the development of the project, provide management oversight, and conduct administrative arrangements only.
3. The County will pay an agreed upon amount normally within 30 days after receipt of an invoice. County will retain 5% of each invoice until completion of project. Completion of project is when a Notice of Completion is recorded by the County Clerk/Recorder for the construction acceptance by the County.
4. The County will not provide dedicated workspace facilities, but upon request will provide a conference room for meetings with the Department and the Contractor.
5. The County reserves the right to perform any portion of the scope of work by County personnel or other consultants should the County determine it would be in the best interest of the County to do so.

VI. PROPOSAL CONTENT AND INFORMATION

Proposals should be typed, organized and concise, yet comprehensive.

General Requirements

1. Provide a cover letter.
2. State the interpretation of the work to be performed. State a positive commitment to perform the work in the required manner and time frame; include a basic summary; and demonstrate an understanding of the project. Provide a statement that the offer is valid for at least a ninety (90) day period.
3. Provide the name(s) of the primary and/or alternate individuals authorized to respond to this RFP. Include titles, addresses, e-mail, and phone numbers.
4. The Consultant is representing itself as a qualified professional. Therefore, it is acceptable to submit recommendations and comments for consideration on format, process, schedule, and additional content of projects. The County will consider comments and recommendations; however is not required to select any of the

recommendations or comments.

5. Expensive bindings, colored displays, promotional materials, etc., are neither necessary nor desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.
6. If any subcontractors are utilized, the lead Consultant must submit a description of the firm, the portion of work to be done, and cost of each subcontractor. All subcontracts exceeding \$25,000 in cost shall contain all required provisions of the prime contract.
7. Provide information about the Consultant's use of Disadvantaged Business Enterprises (DBEs). Consultant must give consideration to DBE firms as specified in 23 CFR 177.5(b), 49 CFR Part 26, and in Exhibit 10-1, Notice to Bidders/Proposer Disadvantaged Business Enterprise information, elsewhere in this RFP. The provisions of 49 CFR, Part 26 require that a local agency receiving federal-aid funds comply with the Disadvantaged Business Enterprise (DBE) program, and that DBE firms have the opportunity to participate in the projects (see Chapter 9, "Civil Rights and Disadvantaged Business Enterprises", of the LAPM including any updates). Such steps include the considering of DBE firms by the proposing consultants. When feasible, organize the project schedule and task requirements to encourage participation in the contract by DBE firms. Local agencies should be fully aware of all of the subcontracting opportunities in their consultant contracts.

The consultant shall ensure that certified DBE firms have the opportunity to participate in the performance of the contract and will be able to demonstrate a good faith effort (good faith effort documentation must be included with proposal).

Table of Contents

Include a table of contents with identification of each section and page number.

Summary of Qualifications and Experience

1. State whether the firm is local, regional, national or international.
2. Identify the owner(s) of the firm and legal status (sole proprietor, corporation, etc.)
3. Give the location of the office from which work is anticipated to be done and the number of employees of the company.
4. Identify the qualifications and resumes of all individuals who will be associated with this service. Include professional registrations and affiliations.
5. Summarize specific experiences and qualification for similar and related projects, both federally funded and locally funded. Describe the services previously performed such as studies, reports, etc. List at least three (3) references with telephone

numbers and email contact addresses (if available).

Analysis of Effort/Methodology

1. Describe the approach for how the work will be performed. The proposal shall indicate any specific techniques or methodology to be utilized.
2. The proposal shall include a sample project timeline with specific tasks envisioned for this project, including staffing.
3. Indicate what participation, data and products will be requested from the County.
4. Indicate deliverables to be provided and when.

Cost and Fees

Cost Proposals (Caltrans LAPM Exhibit 10H Example 3) will not be submitted with the proposal. The County will first rank and score the submitted proposals and will contact the two top ranked firm for submittal of the cost proposal. Cost proposals shall take into account the following:

1. Develop costs and fees for the services requested. Submit a not to exceed fee proposal based on anticipated fully burdened hourly rates.
2. When preparing cost and fees consider the scope of work involving project kick off and review of available documentation, material submittals, project documentation and prepare a lump sum fixed fee breakdown based on anticipated staff and hours. -Costs should be organized for full time hourly rates. Such hourly rates should be fully burdened or loaded, including full compensation for all overhead and profit. Billing rates shall include provision for normal office costs, including but not limited to office rental, utilities, insurance, cell phone or radio, equipment, normal supplies and materials, in-house reproduction services, and local travel costs. As much as possible, a fixed fee lump sum breakdown by phase of the construction based on billable hours is desirable for preconstruction and post construction.
3. Breakdown shall include preconstruction services and construction services (Request for information/clarification). No subcontractors shall be utilized without prior authorization by the County and modification to submitted DBE subcontractor's list or goal is discouraged and may lead to project funding issues.
4. Firm may submit their own format of the cost proposal, However, Exhibit 10-H Example 1 LAPM must be submitted as part of the proposal. Executable copies of Exhibit 10-H Example 1 and all other updated LAPM forms can be found here: <https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>
5. If using sub consultants, the prime consultant must submit an exhibit 10-H for each sub consultant (which only reflects the cost of the sub consultant work). Those costs must be reflected in the cost proposal of the prime consultant. For more information, please consult the Caltrans Local Assistance Procedures Manual Chapter 10 "Consultant Selection."

Insurance Requirements

Prior to execution of the agreement with the County, the successful firm must provide evidence of insurance coverages as noted in the sample contract and insurance requirements exhibit. The successful firm will be required to maintain the required coverages, at its sole cost and expense, throughout the entire term and any subsequent modification terms of the contract.

Insurance requirements noted in sample contract and insurance exhibit are based on projected county estimates. Insurance requirements may be adjusted once the final cost and fees proposal is reviewed.

VII. EVALUATION OF PROPOSALS

Sample evaluation criteria for proposals are attached for your information as Exhibit A.

The County will utilize a one-step selection process as noted in Caltrans Local Assistance Procedures Manual (LAPM) Chapter 10 – Consultant Selection Process.

Proposals will be reviewed by an evaluation committee. The evaluation committee's assessment and recommendations shall be forwarded to the Director of Public Works for review. The County reserves the right to negotiate the price with the highest ranked proposer and if agreement on the terms is not possible, the County may opt to go with the next highest ranked proposer (LAPM Chapter 10).

The Director shall provide a report of the committee's evaluation and recommendations, along with his recommendation, for the selection of a firm to the Board of Supervisors for final review and approval to enter into negotiations for an agreement. All firms submitting a proposal will be notified of final rankings.

Please take note that the County reserves the right to reject any and all proposals submitted and/or request additional information for clarification.

Consultants are to submit one (1) original, three (3) copies, and one (1) electronic copy in Portable Document Format (PDF) on a USB Thumb Drive of the proposal to the appropriate submission place on the specified date and time. Proposal must be clearly marked with the Project title.

Proposals are to be delivered in a sealed envelope, no later than 4:00 P.M. on August 26, 2020 addressed as follows:

John A. Gay, P.E.
Director of Public Works
County of Imperial Department of Public Works
Attn: Lorena Alvarez, Engineering Technician (Jose Castaneda, Analyst III)
155 S. 11th Street
El Centro, California 92243

VIII. CLOSING ITEMS

A pre-proposal conference will not be scheduled for this project.

Clarification desired by a respondent relating to definition or interpretation shall be requested in writing with sufficient time to allow for a response and prior to the RFP due date. Oral explanation or instructions shall not be considered binding on behalf of the County. Any modifications to this solicitation will be issued by the County as a written addendum.

The County will not consider proposals received after the specified date and time. An amendment is considered a new proposal and will not be accepted after the specified date and time. Any contract resulting from this RFP will be financed with funds available to the County from local County and/or Federal Aid or other grant funds.

This RFP does not commit the County of Imperial to award a contract or pay any costs associated with the preparation of a proposal. The County reserves the right to cancel, in part or in its entirety, this solicitation should this be in the best interest of the County.

Questions concerning this RFP are to be directed to Jose Castaneda, Administrative Analyst III, with the Imperial County Department of Public Works via electronic mail to josecastaneda@co.imperial.ca.us

Exhibit A



PROPOSAL EVALUATION FORM

Request for Proposal (RFP) Material Testing Services (Acceptance Testing and Independent Assurance Program Verification) for: Rio Vista St. from Holt Ave. to Heil Ave. (South Side) Improvements in Seeley – Imperial County; Federal Aid Project No. CML-5958 (106); County Project No. 6365

DATE: _____

EVALUATOR: _____

RESPONDENT: _____

RATING POINTS:

- 5 = excellent
- 4 = good
- 3 = above average
- 2 = average
- 1 = below average
- 0 = unsatisfactory

CRITERIA	WEIGHT FACTOR	X	RATING	=	WEIGHTED RATING
A. Technical Approach	0.35				
• Responsiveness & understanding of work to be done, (i.e. scope of work)	(0.20)		_____		_____
• Specific experience with similar Geotechnical and material testing services	(0.15)		_____		_____
B. Project Management	0.30				
• Capacity to perform the scope of work and the ability to conclude in a timely manner	(0.20)		_____		_____
• Quality of staff based on recent experience	(0.10)		_____		_____
C. References	(0.05)		_____		_____
D. Familiarity and/or specific experience with local, state and federal project procedures using LAPM for local agency advertised projects.	(0.25)		_____		_____
E. Overall quality of proposal, including qualifications and thoroughness.	(0.05)		_____		_____
			Subtotal Score		_____
F. Previous Experience and Performance working with County of Imperial Department of Public Works					_____
			Total Score		_____ (0 to -5)

Note: Positive previous experience and no previous experience will constitute a score of zero (0). Negative experience points will be deducted from the overall score.

Comments:

Exhibit B

SAMPLE

AGREEMENT FOR SERVICES

THIS AGREEMENT FOR SERVICES (“Agreement”), made and entered into effective the _____ day of _____, 2014, by and between the **COUNTY OF IMPERIAL**, a political subdivision of the State of California, by and through its Department of Public Works (“COUNTY”) and [business name], [business type] (“CONSULTANT”) (individually, “Party;” collectively, “Parties”).

WITNESSETH

WHEREAS, COUNTY desires to retain a qualified individual, firm or business entity to provide professional services for [specify services], (“the Project”); and

WHEREAS, CONSULTANT represents that it is qualified and experienced to perform the services; and

WHEREAS, COUNTY desires to engage CONSULTANT to provide services by reason of its qualifications and experience for performing such services, and CONSULTANT has offered to provide the required services for the Project on the terms and in the manner set forth herein.

NOW, THEREFORE, in consideration of their mutual covenants, COUNTY and CONSULTANT have and hereby agree to the following:

1. DEFINITIONS.

1.1. “Request for Proposal” or “RFP” shall mean that document that describes the Project and project requirements to prospective bidders entitled [name of RFP], dated [date of RFP]. The Request for Proposal [and other documents if any] are attached hereto as **Exhibit “A”** and incorporated herein by this reference.

1.2. “Proposal” shall mean CONSULTANT’s document entitled [name of Proposal], dated [date of Proposal] and submitted to COUNTY’s Department of Public Works. The Proposal is attached hereto as **Exhibit “B”** and incorporated herein by reference.

2. CONTRACT COORDINATION.

2.1. The Director of Public Works or his/her designee shall be the representative of COUNTY for all purposes under this Agreement. The Director of Public Works or his/her designee is hereby designated as the Contract Manager for COUNTY. He/she shall supervise the progress and execution of this Agreement.

1 **2.2.** CONSULTANT shall assign a single Contract Manager to have overall responsibility for
2 the progress and execution of this Agreement. Should circumstances or conditions subsequent to the
3 execution of this Agreement require a substitute Contract Manager for any reason, the Contract Manager
4 designee shall be subject to the prior written acceptance and approval of COUNTY’s Contract Manager.

5 **3. DESCRIPTION OF WORK.**

6 CONSULTANT shall provide all materials and labor to perform this Agreement consistent with
7 the RFP and the Proposal, as set forth in **Exhibits “A” and “B.”** In the event of a conflict amongst this
8 Agreement, the RFP, and the Proposal, the RFP shall take precedence over the Proposal and this
9 Agreement shall take precedence over both.

10 **4. WORK TO BE PERFORMED BY CONSULTANT.**

11 **4.1.** CONSULTANT shall comply with all terms, conditions and requirements of the Proposal
12 and this Agreement.

13 **4.2.** CONSULTANT shall perform such other tasks as necessary and proper for the full
14 performance of the obligations assumed by CONSULTANT hereunder.

15 **4.3.** CONSULTANT shall:

16 **4.3.1.** Procure all permits and licenses, pay all charges and fees, and give all notices
17 that may be necessary and incidental to the due and lawful prosecution of the services to be performed
18 by CONSULTANT under this agreement;

19 **4.3.2.** Keep itself fully informed of all existing and proposed federal, state and local laws,
20 ordinances, regulations, orders and decrees which may affect those engaged or employed under this
21 Agreement;

22 **4.3.3.** At all times observe and comply with, and cause all of its employees to observe
23 and comply with all of said laws, ordinances, regulations, orders and decrees mentioned above; and

24 **4.3.4.** Immediately report to COUNTY’s Contract Manager in writing any discrepancy
25 or inconsistency it discovers in said laws, ordinances, regulations, orders and decrees mentioned above
26 in relation to any plans, drawings, specifications or provisions of this Agreement.

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1 **5. REPRESENTATIONS BY CONSULTANT.**

2 **5.1.** CONSULTANT understands and agrees that COUNTY has limited knowledge in the
3 multiple areas specified in the Proposal. CONSULTANT has represented itself to be an expert in these
4 fields and understands that COUNTY is relying upon such representation.

5 **5.2.** CONSULTANT represents and warrants that it is a lawful entity possessing all required
6 licenses and authorities to do business in the State of California and perform all aspects of this
7 Agreement.

8 **5.3.** CONSULTANT shall not commence any work under this Agreement or provide any
9 other services, or materials, in connection therewith until CONSULTANT has received written
10 authorization from COUNTY's Contract manager to do so.

11 **5.4.** CONSULTANT represents and warrants that the people executing this Agreement on
12 behalf of CONSULTANT have the authority of CONSULTANT to sign this Agreement and bind
13 CONSULTANT to the performance of all duties and obligations assumed by CONSULTANT herein.

14 **5.5.** CONSULTANT represents and warrants that any employee, contractor and/or agent who
15 will be performing any of the duties and obligations of CONSULTANT herein possess all required
16 licenses and authorities, as well as the experience and training, to perform such tasks.

17 **5.6.** CONSULTANT represents and warrants that the allegations contained in the Proposal are
18 true and correct.

19 **5.7.** CONSULTANT understands that COUNTY considers the representations made herein
20 to be material and would not enter into this Agreement with CONSULTANT if such representations
21 were not made.

22 **5.8.** CONSULTANT understands and agrees not to discuss this Agreement or work
23 performed pursuant to this Agreement with anyone not a party to this Agreement without the prior
24 permission of COUNTY. CONSULTANT further agrees to immediately advise COUNTY of any
25 contacts or inquiries made by anyone not a party to this Agreement with respect to work performed
26 pursuant to this Agreement.

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1 **5.9.** Prior to accepting any work under this Agreement, CONSULTANT shall perform a due
2 diligence review of its files and advise COUNTY of any conflict or potential conflict CONSULTANT
3 may have with respect to the work requested.

4 **5.10.** CONSULTANT understands and agrees that in the course of performance of this
5 Agreement CONSULTANT may be provided with information or data considered by the owner or the
6 COUNTY to be confidential. COUNTY shall clearly identify such information and/or data as
7 confidential. CONSULTANT shall take all necessary steps necessary to maintain such confidentiality
8 including but not limited to restricting the dissemination of all material received to those required to
9 have such data in order for CONSULTANT to perform under this Agreement.

10 **5.11.** CONSULTANT represents that the personnel dedicated to this project as identified in
11 CONSULTANT's Proposal, will be the people to perform the tasks identified therein. CONSULTANT
12 will not substitute other personnel or engage any contractors to work on any tasks identified herein
13 without prior written notice to COUNTY.

14 **6. TERM OF AGREEMENT.**

15 This Agreement shall commence on the date first written above and shall remain in effect until
16 the services provided as outlined in paragraph 3, ("DESCRIPTION OF WORK"), have been
17 completed, unless otherwise terminated as provided for in this Agreement.

18 **7. COMPENSATION.**

19 **7.1.** The total compensation payable under this Agreement shall not exceed [dollar amount]
20 [(numerical amount)] unless otherwise previously agreed to in writing by COUNTY.

21 **7.2.** The fee for any additional services required by COUNTY will be computed either on a
22 negotiated lump sum basis or upon actual hours and expenses incurred by CONSULTANT [and based
23 on CONSULTANT's current standard rates as set forth in []]. Additional services or costs will not be
24 paid without a prior written agreement between the Parties.

25 **7.3.** Except as provided under paragraph 7.1 and 7.2, COUNTY shall not be responsible to
26 pay CONSULTANT any compensation, out of pocket expenses, fees, reimbursement of expenses or
27 other remuneration.

28 ///

1 **8. PAYMENT.**

2 **8.1.** CONSULTANT shall bill COUNTY on a time and material basis as set forth in **Exhibit**
3 **“[.]”** COUNTY shall pay CONSULTANT for completed and approved services upon presentation of its
4 itemized billing.

5 **8.2.** COUNTY shall retain five percent (5%) of the total of amount of each invoice, not to
6 exceed five percent (5%) of the total compensation amount of the completed project. “Completion of the
7 Project” is when the work to be performed has been completed in accordance with this Agreement, as
8 determined by COUNTY, and all subcontractors, if any, have been paid in full by CONSULTANT. Upon
9 completion of the Project CONSULTANT shall bill COUNTY the retention for payment by COUNTY.

10 **9. METHOD OF PAYMENT.**

11 CONSULTANT shall at any time prior to the fifteenth (15th) day of any month, submit to
12 COUNTY a written claim for compensation for services performed. The claim shall be in a format
13 approved by COUNTY. No payment shall be made by COUNTY prior to the claims being approved in
14 writing by COUNTY’s Contract Manager or his/her designee. CONSULTANT may expect to receive
15 payment within a reasonable time thereafter and in any event in the normal course of business within
16 thirty (30) days after the claim is submitted.

17 **10. TIME FOR COMPLETION OF THE WORK.**

18 The Parties agree that time is of the essence in the performance of this Agreement. Program
19 scheduling shall be as described in **Exhibit “[.]”** unless revisions to **Exhibit “[.]”** are approved by both
20 COUNTY’s Contract Manager and CONSULTANT’s Contract Manager. Time extensions may be
21 allowed for delays caused by COUNTY, other governmental agencies or factors not directly brought
22 about by the negligence or lack of due care on the part of CONSULTANT.

23 **11. MAINTENANCE AND ACCESS OF BOOKS AND RECORDS.**

24 CONSULTANT shall maintain books, records, documents, reports and other materials
25 developed under this Agreement as follows:

26 **11.1.** CONSULTANT shall maintain all ledgers, books of accounts, invoices, vouchers,
27 canceled checks, and other records relating to CONSULTANT’s charges for services or expenditures
28

1 and disbursements charged to COUNTY for a minimum period of three (3) years, or for any longer
2 period required by law, from the date of final payment to CONSULTANT pursuant to this Agreement.

3 **11.2.** CONSULTANT shall maintain all reports, documents, and records, which demonstrate
4 performance under this Agreement for a minimum period of five (5) years, or for any longer period
5 required by law, from the date of termination or completion of this Agreement.

6 **11.3.** Any records or documents required to be maintained by CONSULTANT pursuant to
7 this Agreement shall be made available to COUNTY for inspection or audit at any time during
8 CONSULTANT's regular business hours provided that COUNTY provides CONSULTANT with
9 seven (7) days advanced written or e-mail notice. Copies of such documents shall, at no cost to
10 COUNTY, be provided to COUNTY for inspection at CONSULTANT's address indicated for receipt
11 of notices under this Agreement.

12 **12. SUSPENSION OF AGREEMENT.**

13 COUNTY's Contract Manager shall have the authority to suspend this Agreement, in whole or
14 in part, for such period as deemed necessary due to unfavorable conditions or to the failure on the part
15 of CONSULTANT to perform any provision of this Agreement. CONSULTANT will be paid the
16 compensation due and payable to the date of suspension.

17 **13. TERMINATION.**

18 COUNTY retains the right to terminate this Agreement for any reason by notifying
19 CONSULTANT in writing seven (7) days prior to termination and by paying the compensation due
20 and payable to the date of termination; provided, however, if this Agreement is terminated for fault of
21 CONSULTANT, COUNTY shall be obligated to compensate CONSULTANT only for that portion of
22 CONSULTANT's services which are of benefit to COUNTY. Said compensation is to be arrived at by
23 mutual agreement between COUNTY and CONSULTANT; should the parties fail to agree on said
24 compensation, an independent arbitrator shall be appointed and the decision of the arbitrator shall be
25 binding upon the parties.

26 **14. INSPECTION.**

27 CONSULTANT shall furnish COUNTY with every reasonable opportunity for COUNTY to
28 ascertain that the services of CONSULTANT are being performed in accordance with the requirements

1 and intentions of this Agreement. All work done and materials furnished, if any, shall be subject to
2 COUNTY's Contract Manager's inspection and approval. The inspection of such work shall not
3 relieve CONSULTANT of any of its obligations to fulfill its Agreement as prescribed.

4 **15. OWNERSHIP OF MATERIALS.**

5 All original drawings, videotapes, studies, sketches, computations, reports, information, data
6 and other materials given to or prepared or assembled by or in the possession of CONSULTANT
7 pursuant to this Agreement shall become the permanent property of COUNTY and shall be delivered
8 to COUNTY upon demand, whether or not completed, and shall not be made available to any
9 individual or organization without the prior written approval of COUNTY.

10 **16. INTEREST OF CONSULTANT.**

11 **16.1.** CONSULTANT covenants that it presently has no interest, and shall not acquire any
12 interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with
13 the performance of the services hereunder.

14 **16.2.** CONSULTANT covenants that, in the performance of this Agreement, no sub-
15 contractor or person having such an interest shall be employed.

16 **16.3.** CONSULTANT certifies that no one who has or will have any financial interest under
17 this Agreement is an officer or employee of COUNTY.

18 **17. INDEMNIFICATION.**

19 **17.1.** CONSULTANT agrees to the fullest extent permitted by law to indemnify, defend,
20 protect and hold COUNTY and its representatives, officers, directors, designees, employees,
21 successors and assigns harmless from any and all claims, expenses, liabilities, losses, causes of actions,
22 demands, losses, penalties, attorneys' fees and costs, in law or equity, of every kind and nature
23 whatsoever arising out of or in connection with CONSULTANT's negligent acts and omissions or
24 willful misconduct under this Agreement ("Claims"), whether or not arising from the passive
25 negligence of COUNTY, but does not include Claims that are the result of the negligence or willful
26 misconduct of COUNTY.

27 **17.2.** CONSULTANT agrees to defend with counsel acceptable to COUNTY, indemnify and
28 hold COUNTY harmless from all Claims, including but not limited to:

1 **18.1.** CONSULTANT is not an employee or agent of COUNTY and is only responsible for
2 the requirements and results specified by this Agreement or any other agreement.

3 **18.2.** CONSULTANT shall be responsible to COUNTY only for the requirements and results
4 specified by this Agreement and except as specifically provided in this Agreement, shall not be subject
5 to COUNTY's control with respect to the physical actions or activities of CONSULTANT in
6 fulfillment of the requirements of this Agreement.

7 **18.3.** CONSULTANT is not, and shall not be, entitled to receive from, or through, COUNTY,
8 and COUNTY shall not provide, or be obligated to provide, CONSULTANT with Workers'
9 Compensation coverage or any other type of employment or worker insurance or benefit coverage
10 required or provided by any Federal, State or local law or regulation for, or normally afforded to, an
11 employee of COUNTY.

12 **18.4.** CONSULTANT shall not be entitled to have COUNTY withhold or pay, and COUNTY
13 shall not withhold or pay, on behalf of CONSULTANT, any tax or money relating to the Social
14 Security Old Age Pension Program, Social Security Disability Program, or any other type of pension,
15 annuity, or disability program required or provided by any Federal, State or local law or regulation.

16 **18.5.** CONSULTANT shall not be entitled to participate in, nor receive any benefit from, or
17 make any claim against any COUNTY fringe program, including, but not limited to, COUNTY's
18 pension plan, medical and health care plan, dental plan, life insurance plan, or any other type of benefit
19 program, plan, or coverage designated for, provided to, or offered to COUNTY's employees.

20 **18.6.** COUNTY shall not withhold or pay, on behalf of CONSULTANT, any Federal, State,
21 or local tax, including, but not limited to, any personal income tax, owed by CONSULTANT.

22 **18.7.** CONSULTANT is, and at all times during the term of this Agreement, shall represent
23 and conduct itself as an independent contractor, not as an employee of COUNTY.

24 **18.8.** CONSULTANT shall not have the authority, express or implied, to act on behalf of,
25 bind or obligate COUNTY in any way without the written consent of COUNTY.

26 **19. INSURANCE.**

27 **19.1.** CONSULTANT agrees at its own cost and expense to procure and maintain during the
28 entire term of this Agreement, and any extended term, commercial general liability insurance (bodily

injury and property damage), employer’s liability insurance, commercial automobile liability insurance (bodily injury and property damage) and professional liability insurance in a sum acceptable to COUNTY and adequate to cover potential liabilities arising in connection with the performance of this Agreement and in any event not less than the minimum limit set forth as follows:

<u>Insurance</u>	<u>Minimum Limit</u>
Errors & Omissions Coverage (professional liability – malpractice)	[*] million dollars (\$[*]) Per person, per occurrence.
Workers’ Compensation, Coverage A	Statutory
Employer’s Liability, Coverage B	[*] million dollars (\$[*])
Commercial General Liability (Including Contractual Liability)	[*] million dollars (\$[*]) combined single limit to any one person (“CSL”) and [*] million dollars (\$[*]) aggregate for any one accident, including personal injury, death and property damage.
Bodily Injury	
Property Damage	
Commercial Automobile Liability (owned, hired & non-owned vehicles)	[*] million dollars (\$[*]) combined single limit and [*] million dollars (\$[*]) aggregate, including owned, non-owned and hired vehicles.
Bodily Injury	
Property Damage	

19.2. Special Insurance Requirements. All insurance required shall:

19.2.1. Be procured from California admitted insurers (licensed to do business in California) with a current rating by Best’s Key Rating Guide, acceptable to COUNTY. A rating of at least A-VII shall be acceptable to COUNTY; lesser ratings must be approved in writing by COUNTY.

19.2.2. Be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be in excess of CONSULTANT’s insurance coverage and shall not contribute to it.

1 **19.2.3.** Name The Imperial County Department of Public Works and the County of
2 Imperial and their officers, employees, and volunteers as additional insured on all policies, except
3 Workers' Compensation insurance and Errors & Omissions insurance, and provide that COUNTY may
4 recover for any loss suffered by COUNTY due to CONSULTANT's negligence.

5 **19.2.4.** State that it is primary insurance and regards COUNTY as an additional insured
6 and contains a cross-liability or severability of interest clause.

7 **19.2.5.** Not be canceled, non-renewed or reduced in scope of coverage until after thirty
8 (30) days written notice has been given to COUNTY. CONSULTANT may not terminate such
9 coverage until it provides COUNTY with proof that equal or better insurance has been secured and is
10 in place. Cancellation or change without prior written consent of COUNTY shall, at the option of
11 COUNTY, be grounds for termination of this Agreement.

12 **19.2.6.** If this Agreement remains in effect more than one (1) year from the date of its
13 original execution, COUNTY may, at its sole discretion, require an increase to liability insurance to the
14 level then customary in similar COUNTY Agreements by giving sixty (60) days notice to
15 CONSULTANT.

16 **19.3. Additional Insurance Requirements.**

17 **19.3.1.** COUNTY is to be notified immediately of all insurance claims. COUNTY is
18 also to be notified if any aggregate insurance limit is exceeded.

19 **19.3.2.** The comprehensive or commercial general liability shall contain a provision of
20 endorsements stating that such insurance:

- 21 **a.** Includes contractual liability;
- 22 **b.** Does not contain any exclusions as to loss or damage to property caused by
23 explosion or resulting from collapse of buildings or structures or damage to property underground,
24 commonly referred to by insurers as the "XCU Hazards;"
- 25 **c.** Does not contain a "pro rata" provision which looks to limit the insurer's
26 liability to the total proportion that its policy limits bear to the total coverage available to the insured;
- 27

28 ///

1 **d.** Does not contain an “excess only” clause which require the exhaustion of other
2 insurance prior to providing coverage;

3 **e.** Does not contain an “escape clause” which extinguishes the insurer’s liability if
4 the loss is covered by other insurance;

5 **f.** Includes COUNTY as an additional insured.

6 **g.** States that it is primary insurance and regards COUNTY as an additional insured
7 and contains a cross-liability or severability of interest clause.

8 **19.4. Deposit of Insurance Policy.** Promptly on issuance, reissuance, or renewal of any
9 insurance policy required by this Agreement, CONSULTANT shall, if requested by COUNTY,
10 provide COUNTY satisfactory evidence that insurance policy premiums have been paid together with
11 a duplicate copy of the policy or a certificate evidencing the policy and executed by the insurance
12 company issuing the policy or its authorized agent.

13 **19.5. Certificates of Insurance.**

14 CONSULTANT agrees to provide COUNTY with the following insurance documents on or
15 before the effective date of this Agreement:

16 **19.5.1.** Complete copies of certificates of insurance for all required coverages including
17 additional insured endorsements shall be attached hereto as **Exhibit “C”** and incorporated herein.

18 **19.5.2.** The documents enumerated in this Paragraph shall be sent to the following:

19
20 County of Imperial
21 Risk Management Department
22 940 Main Street, Suite 101
23 El Centro, CA 92243

24 County of Imperial
25 Department of Public Works
26 155 South 11th Street
27 El Centro, CA 92243

28 **19.6. Additional Insurance.** Nothing in this, or any other provision of this Agreement, shall
be construed to preclude CONSULTANT from obtaining and maintaining any additional insurance
policies in addition to those required pursuant to this Agreement.

1 **20. PREVAILING WAGE.**

2 **20.1.** CONSULTANT acknowledges that any work that qualifies as a “public work” within
3 the meaning of California Labor Code section 1720 shall cause CONSULTANT, and its sub-
4 consultants, to comply with the provisions of California Labor Code sections 1775 et seq.

5 **20.2.** When applicable, copies of the prevailing rate of per diem wages shall be on file at
6 COUNTY’s Department of Public Works and available to CONSULTANT and any other interested
7 party upon request. CONSULTANT shall post copies of the prevailing wage rate of per diem wages at
8 the Project site.

9 **20.3.** CONSULTANT hereby acknowledges and stipulates to the following:

10 **20.3.1.** CONSULTANT has reviewed and agrees to comply with the provisions of
11 Labor Code section 1776 regarding retention and inspection of payroll records and noncompliance
12 penalties; and

13 **20.3.2.** CONSULTANT has reviewed and agrees to comply with the provisions of
14 Labor Code section 1777.5 regarding employment of registered apprentices; and

15 **20.3.3.** CONSULTANT has reviewed and agrees to comply with the provisions of
16 Labor Code section 1810 regarding the legal day’s work; and

17 **20.3.4.** CONSULTANT has reviewed and agrees to comply with the provisions of
18 Labor Code section 1813 regarding forfeiture for violations of the maximum hours per day and per
19 week provisions contained in the same chapter.

20 **20.3.5** CONSULTANT has reviewed and agrees to comply with any applicable
21 provisions for those Projects subject to Department of Industrial Relations (DIR) Monitoring and
22 Enforcement of prevailing wages. COUNTY hereby notifies CONSULTANT that CONSULTANT is
23 responsible for submitting certified payroll records directly to the State Compliance Monitoring Unit
24 (CMU) The Compliance Monitoring Unit or “CMU” is a new component within the State Division of
25 Labor Standards Enforcement (DLSE) that was created to monitor and enforce prevailing wage
26 requirements on public works projects that receive state bond funding and on other projects that are
27 legally required to use the CMU. The CMU began operations on January 1, 2012, following the
28 recent adoption of AB 436 and approval of revisions to program regulations. By actively monitoring

1 compliance on an ongoing basis while work is being performed, the CMU will play a special role in
2 ensuring that public works construction workers are promptly paid the proper prevailing wage rates
3 and in helping maintain a level playing field for employers who comply with the law.

4 **Effective Date and Applicability:** The laws and regulations that govern the new program are
5 effective January 1, 2012. Only projects for which the public works contract is awarded on or after
6 January 1, 2012 are subject to the CMU requirements. For further information concerning compliance
7 monitoring please visit the website located at: <http://www.dir.ca.gov/dlse/cmu/cmu.html>

8 **21. WORKERS' COMPENSATION CERTIFICATION.**

9 **21.1.** Prior to the commencement of work, CONTRACTOR shall sign and file with
10 COUNTY the following certification: "I am aware of the provisions of California Labor Code §§3700
11 et seq. which require every employer to be insured against liability for workers' compensation or to
12 undertake self-insurance in accordance with the provisions of that code, and I will comply with such
13 provisions before commencing the performance of the work of this contract."

14 **21.2.** This certification is included in this Agreement and signature of the Agreement shall
15 constitute signing and filing of the certificate.

16 **20.3.** CONSULTANT understands and agrees that any and all employees, regardless of hire
17 date, shall be covered by Workers' Compensation pursuant to statutory requirements prior to beginning
18 work on the Project.

19 **20.4.** If CONSULTANT has no employees, initial here: _____.

20 **22. ASSIGNMENT.**

21 Neither this Agreement nor any duties or obligations hereunder shall be assignable by
22 CONSULTANT without the prior written consent of COUNTY. CONSULTANT may employ other
23 specialists to perform services as required with prior approval by COUNTY.

24 **23. NON-DISCRIMINATION.**

25 During the performance of this Agreement, CONSULTANT and its subcontractors shall not
26 unlawfully discriminate, harass or allow harassment against any employee or applicant for
27 employment because of sex, race, color, ancestry, religious creed, national origin, physical disability
28 (including HIV and AIDS), mental disability, medical condition (cancer), age (over forty (40)), marital

1 status and denial of family care leave. CONSULTANT and its subcontractors shall insure that the
2 evaluation and treatment of their employees and applicants for employment are free from such
3 discrimination and harassment. CONSULTANT and its subcontractors shall comply with the
4 provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the
5 applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285 et seq.).
6 The applicable regulations of the Fair Employment and Housing Commission implementing
7 Government Code §12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code
8 of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth
9 in full. The applicable regulations of §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794 (a)) are
10 incorporated into this Agreement by reference and made a part hereof as if set forth in full.
11 CONSULTANT and its subcontractors shall give written notice of their obligations under this clause to
12 labor organizations with which they have a collective bargaining or other agreement. CONSULTANT
13 shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to
14 perform work under this Agreement.

15 ///

16 **24. NOTICES AND REPORTS.**

17 **24.1.** Any notice and reports under this Agreement shall be in writing and may be given by
18 personal delivery or by mailing by certified mail, addressed as follows:

19 **COUNTY**

20 Director of Public Works
21 155 South 11th Street
22 El Centro, CA 92243

CONSULTANT

[name of consultant]
[address of consultant]

23 County of Imperial
24 Clerk of the Board of Supervisors
25 940 W. Main Street, Suite 209
26 El Centro, CA 92243

27 **24.2.** Notice shall be deemed to have been delivered only upon receipt by the Party, seventy-
28 two (72) hours after deposit in the United States mail or twenty-four (24) hours after deposit with an
overnight carrier.

1 **24.3.** The addressees and addresses for purposes of this paragraph may be changed to any
2 other addressee and address by giving written notice of such change. Unless and until written notice of
3 change of addressee and/or address is delivered in the manner provided in this paragraph, the addressee
4 and address set forth in this Agreement shall continue in effect for all purposes hereunder.

5 **25. ENTIRE AGREEMENT.**

6 This Agreement contains the entire Agreement between COUNTY and CONSULTANT
7 relating to the transactions contemplated hereby and supersedes all prior or contemporaneous
8 agreements, understandings, provisions, negotiations, representations, or statements, either written or
9 oral.

10 **26. MODIFICATION.**

11 No modification, waiver, amendment, discharge, or change of this Agreement shall be valid
12 unless the same is in writing and signed by both Parties.

13 **27. CAPTIONS.**

14 Captions in this Agreement are inserted for convenience of reference only and do not define,
15 describe or limit the scope or the intent of this Agreement or any of the terms thereof.

16 ///

17 **28. PARTIAL INVALIDITY.**

18 If any provision in this Agreement is held by a court of competent jurisdiction to be invalid,
19 void, or unenforceable, the remaining provisions will nevertheless continue in full force without being
20 impaired or invalidated in any way.

21 **29. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.**

22 As used in this Agreement and whenever required by the context thereof, each number, both
23 singular and plural, shall include all numbers, and each gender shall include a gender.
24 CONSULTANT as used in this Agreement or in any other document referred to in or made a part of
25 this Agreement shall likewise include the singular and the plural, a corporation, a partnership,
26 individual, firm or person acting in any fiduciary capacity as executor, administrator, trustee or in any
27 other representative capacity or any other entity. All covenants herein contained on the part of
28

1 CONSULTANT shall be joint and several if more than one person, firm or entity executes the
2 Agreement.

3 **30. WAIVER.**

4 No Waiver of any breach or of any of the covenants or conditions of this Agreement shall be
5 construed to be a waiver of any other breach or to be a consent to any further or succeeding breach of
6 the same or any other covenant or condition.

7 **31. CHOICE OF LAW.**

8 This Agreement shall be governed by the laws of the State of California. This Agreement is
9 made and entered into in Imperial County, California. Any action brought by either party with respect
10 to this agreement shall be brought in a court of competent jurisdiction within said County.

11 **32. ATTORNEYS' FEES.**

12 If either party herein brings an action to enforce the terms thereof or declare rights hereunder,
13 the prevailing party in any such action, on trial or appeal, shall be entitled to his reasonable attorneys'
14 fees and actual costs to be paid by the losing party as fixed by the court.

15 **33. AUTHORITY.**

16 **33.1.** Each individual executing this Agreement on behalf of CONSULTANT represents and
17 warrants that:

18 **33.1.1.** He/She is duly authorized to execute and deliver this Agreement on behalf of
19 CONSULTANT;

20 **33.1.2.** Such execution and delivery is in accordance with the terms of the Articles of
21 Incorporation or Partnership, any by-laws or Resolutions of CONSULTANT and;

22 **33.1.3.** This Agreement is binding upon CONSULTANT accordance with its terms.

23 **33.2.** CONSULTANT shall deliver to COUNTY evidence acceptable to COUNTY of the
24 foregoing within thirty (30) days of execution of this Agreement.

25 **34. COUNTERPARTS.**

26 This Agreement (as well as any amendments hereto) may be executed in any number of
27 counterparts, each of which when executed shall be an original, and all of which together shall
28

1 constitute one and the same Agreement. No counterparts shall be effective until all Parties have
2 executed a counterpart hereof.

3 **35. REVIEW OF AGREEMENT TERMS.**

4 **35.1.** Each Party has received independent legal advice from its attorneys with respect to the
5 advisability of making the representations, warranties, covenants and agreements provided for herein,
6 and with respect to the advisability of executing this Agreement.

7 **35.2.** Each Party represents and warrants to and covenants with the other Party that:

8 **35.2.1.** This Agreement in its reduction to final written form is a result of extensive
9 good faith negotiations between the Parties and/or their respective legal counsel;

10 **35.2.2.** The Parties and their legal counsel have carefully reviewed and examined this
11 Agreement for execution by said Parties; and

12 **35.3.** Any statute or rule of construction that ambiguities are to be resolved against the
13 drafting party shall not be employed in the interpretation of this Agreement.

14 **36. NON-APPROPRIATION.**

15 This Agreement is based upon the availability of public funding. In the even that public funds
16 are unavailable and not appropriated for the performance of the services set forth in this Agreement,
17 the Agreement shall be terminated without penalty after written notice to CONSULTANT of the
18 unavailability and/or non-appropriation of funds.

19 **IN WITNESS WHEREOF**, the Parties have executed this Agreement on the day and year first
20 above written.

21
22 COUNTY OF IMPERIAL

CONSULTANT
[CONSULTANT NAME]

23
24
25 By: _____
[chairman name], Chairman
26 Imperial County Board of Supervisors

By: _____
[Designee]

27
28 **ATTEST:**

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Clerk of the Board,
County of Imperial, State of California

APPROVED AS TO FORM:

MICHAEL L. ROOD
County Counsel

By:_____
[ATTORNEY NAME]
[Title]

INSURANCE REQUIREMENTS

Insurance Requirements are set forth by the Imperial County Department of Risk Management. Minimum requirements may vary per project and are subject to additional review after Consultant is selected. The insurance requirements for this project are as follows:

MINIMUM INSURANCE AMOUNTS

Consultant Contract (Agreement for Services) form and content is included.

<u>Insurance</u>	<u>Minimum Limit *</u>
Errors & Omissions/ Professional Liability	\$1 million per occurrence
Workers Compensation, Coverage A	Statutory
Employers Liability, Coverage B	\$1 million
Comprehensive General Liability (Including Contractual Liability):	
Bodily Injury	\$1 million per occurrence \$2 million aggregate
Property Damage	\$1 million per occurrence \$2 million aggregate
Comprehensive Automobile Liability (Owned, hired & non-owned vehicles)	
Bodily Injury	\$1 million per occurrence
Property Damage	\$1 million per occurrence

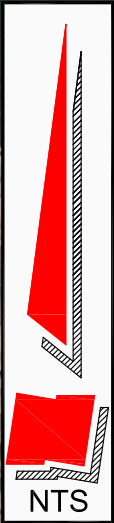
An endorsement covering any explosion, collapse and underground exposures, "XCU", in the Commercial General Liability policy is also required.

Insurance Certificates should name both:

**-Imperial County Department of Public Works
-County of Imperial**

*Minimums subject to additional review after bid open.

Exhibit C



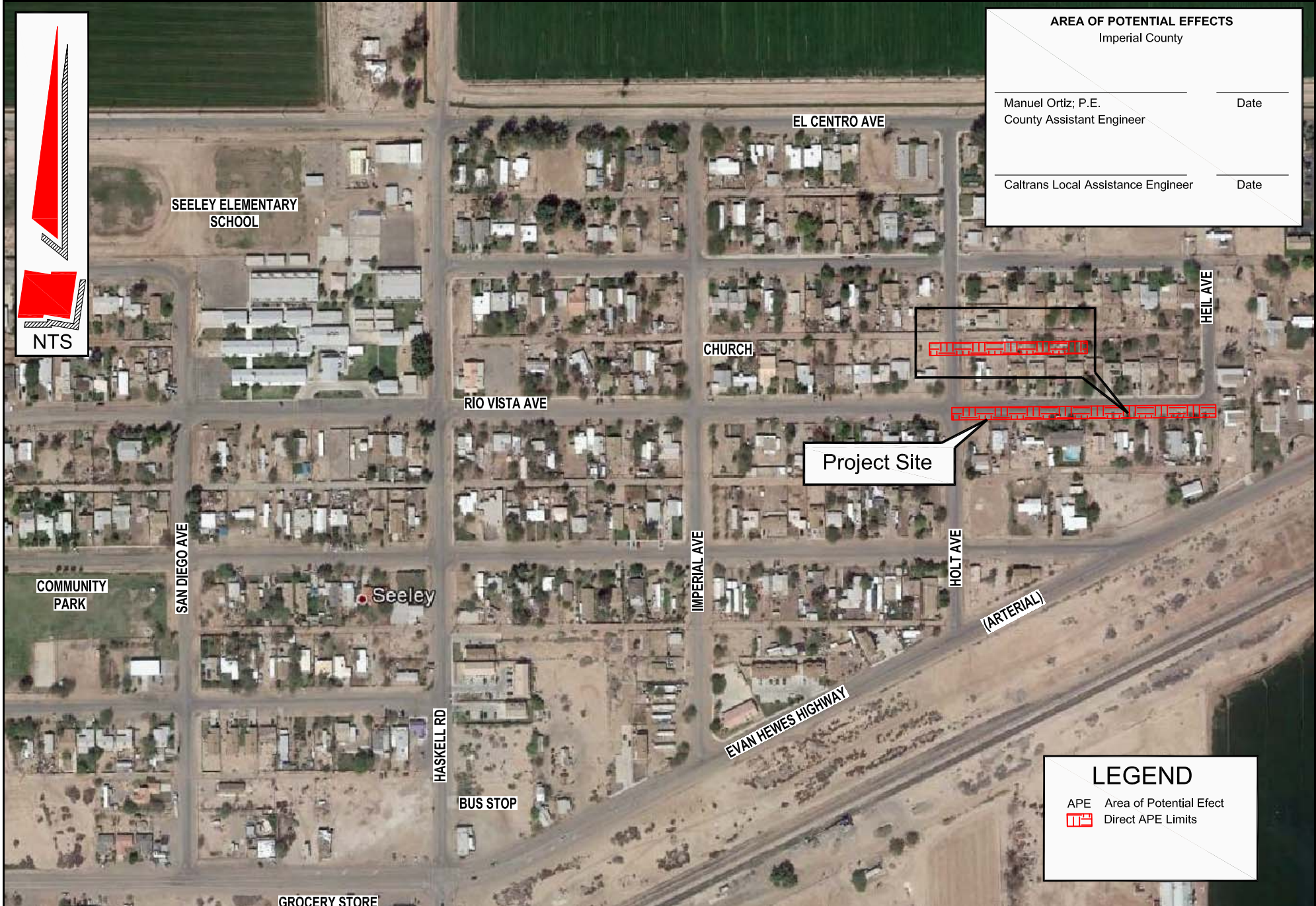
AREA OF POTENTIAL EFFECTS
Imperial County

Manuel Ortiz; P.E.
County Assistant Engineer

Date

Caltrans Local Assistance Engineer

Date



Project Site

LEGEND

- APE Area of Potential Effect
- Direct APE Limits



**IMPERIAL COUNTY
PUBLIC WORKS DEPARTMENT
EL CENTRO, CALIFORNIA**

**SEELEY SIDEWALK IMPROVEMENTS - PHASE II
FROM HOLT AVE TO HEIL AVE
IN THE COMMUNITY OF SEELEY IN IMPERIAL COUNTY
COUNTY PROJECT No. 6365
AREA OF POTENTIAL EFFECTS**

DRAWN:
O.B.M.

DRAWING No.:
L-1018-C

DATE:
06/07/17

Exhibit D

EXHIBIT 9-B LOCAL AGENCY DBE ANNUAL SUBMITTAL FORM

TO: CALTRANS DISTRICT 11
District Local Assistance Engineer

The information for Exhibit 9-B presented herein is in accordance with Title 49 of the Code of Federal Regulations (CFR), Part 26, and the State of California Department of Transportation (Caltrans) Disadvantaged Business Enterprise (DBE) Program Plan.

The City/County/Region of Imperial submits our annual 9-B information for the Federal Fiscal Year 2020/2021, beginning on October 1 and ending on September 30.

Disadvantaged Business Enterprise Liaison Officer (DBELO)

Please See Attachment A

Planned Race-Neutral Measures

Please See Attachment B

Prompt Pay

Federal regulation 49 CFR 26.29 requires one of three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

Please See Attachment C

Prompt Pay Enforcement Mechanism

49 CFR 26.29(d) requires providing appropriate means to enforce prompt payment. These means may include appropriate penalties for failure to comply with the terms and conditions of the contract. The means may also provide that any delay or postponement of payment among the parties may take place only for good cause with the local agency's prior written approval.

Please See Attachment C

[Handwritten Signature]
(Signature)

05.20.20
(Date)

Tony Rouhotas, Jr., County Executive Officer
(Print Name and Title)
ADMINISTERING AGENCY
(Authorized Governing Body Representative)

442-265-1001
(Phone Number)

(Signature of Caltrans District Local Assistance Engineer)
for Bing Luu Benjamin Guerrero Jr.

(Date)
5/21/2020

Distribution: (1) Original - DLAE
(2) Signed copy by the DLAE - Local Agency

(Attachment)**Prompt Payment of Withheld Funds to Subcontractors**

Federal regulation (49 CFR 26.29) requires one of the following three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

Please check the box of the method chosen by the local agency to ensure prompt and full payment of any retainage.

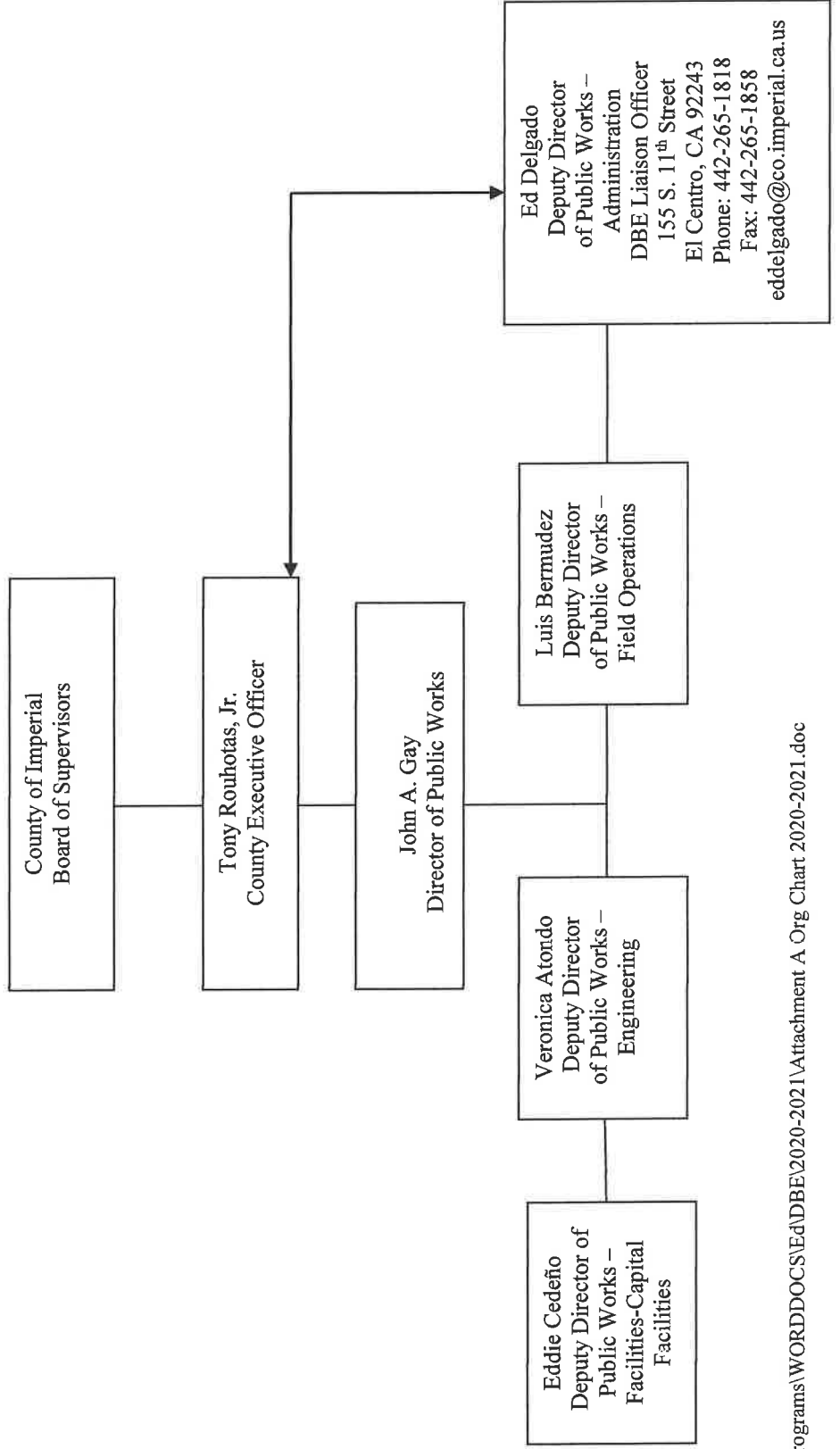
- Method 1:** No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- Method 2:** No retainage will be held by the agency from progress payments due to the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- Method 3:** The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within seven (7) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

ATTACHMENT A
Organizational Chart

Attachment A

**COUNTY OF IMPERIAL
DEPARTMENT OF PUBLIC WORKS
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
FEDERAL FISCAL YEAR 2020/2021**

ORGANIZATIONAL CHART



ATTACHMENT B

Race Neutral Details

Attachment B

RECIPIENT must meet the maximum feasible portion of its AADPL by using race neutral means of facilitating DBE participation. Race neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

Race neutral means include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e. g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communication programs on contracting procedures and specific contract opportunities (e. g., ensuring the inclusion of DBEs and other small businesses on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contacts of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of types of work, handle increasingly significant projects; and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of your DBE directory through print and electronic means to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media.

ATTACHMENT C

Prompt Progress Payment to Subcontractors

Attachment C

PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS

A prime contractor or subcontractor shall pay to any subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless a longer period is agreed to in writing. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions and other remedies of that Section, up to and including a penalty, payable to the subcontractor, of 2 percent of the amount due per month, for every month that payment is not made as required under that subdivision. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days of receipt of each payment may take place only for good cause and with the agency's prior written approval. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

EXHIBIT 9-C

Local Agency ADA Annual Certification Form

**EXHIBIT 9-C LOCAL AGENCY AMERICANS WITH DISABILITIES ACT (ADA)
ANNUAL CERTIFICATION FORM**

Local Agency ADA Annual Certification Form
49 CFR 27: Nondiscrimination on the Basis of Disability in
Programs or Activities
Receiving Federal Financial Assistance

Local Agency: County of Imperial

State Fiscal Year (July 1-June 30): 07/01/20 to 06/30/21

I. Name of ADA / 504 Liaison Officer: Rodolfo Aguayo, Director of Human Resources & RM
Telephone Number: 442-265-1148
E-mail Address: rodolfoaguayo@co.imperial.ca.us

NOTE: Section 504 applies to federally funded programs and ADA applies to state and local government funded programs (Title II). An ADA Officer is only required if the agency has 50 or more employees.*

II. ADA Grievance / Complaint Procedure Adopted?

Yes: No:

If yes, date of adoption: 03/03/15

If no, planned date of adoption: _____

NOTE: An ADA Officer is only required if the agency has 50 or more employees.*

III. Self-evaluation completed?

Yes: No:

If yes, date of completion: 04/30/03

If no, planned date of completion: _____

NOTE: All public entities receiving federal funds are required to complete a self-evaluation. Agencies are required to review and make modifications as needed to the self-evaluation to ensure there is non-discrimination on the basis of disability. Local agencies shall implement a system for periodically reviewing and updating self-evaluations and, if applicable, transition plans. As a best practice, it is recommended to review the self-evaluation every three years prior to submitting or adopting the four-year Transportation Improvement Program.

* The Section 8.1000 in Title II, Technical Assistance Manual states, "How does a public entity determine whether it has 50 or more employees? Determining the number of employees will be based on a governmentwide total of employees, rather than by counting the number of employees of a subunit, department, or division of the local government. Part-time employees are included in the determination."

IV. Transition Plan completed?

Yes: _____ No: ✓

If yes, date of completion: In Progress

If no, planned date of completion: _____

NOTE: In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity with 50 or more employees are required to develop a transition plan.* The transition plan is the action plan developed from the results of the self-evaluation. As a best practice, it is recommended to update the transition plan every three to five years after completion of the recommended self-evaluation and to update the schedule of ADA compliant changes that will be accomplished.

V. Have the policies, procedures, and criteria for implementing ADA compliance improvements in maintenance and capital improvement programs been reviewed and have the required revisions been made?

Yes: ✓ No: _____

VI. Does the agency have procedures to obtain approval from the Division of State Architect (DSA) for design packages consistent with State law?

Yes: ✓ No: _____

DSA website: <https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Accessibility-Plan-Review>

Reminder: State of California Government Code Sections 4450- 4454 requires DSA to review and approve the plans and specifications to all buildings, structures, sidewalks, curbs and related facilities constructed in the state, using state, county or municipal funds, or the funds of any political subdivision of the state. These facilities shall be accessible to and usable by persons with disabilities. Please reference Section 9.3 of the Local Assistance Procedures Manual for submittal of design packages to DSA.

The DSA has limited their review to "Safe Routes to School" projects. For ATP Projects, the California Transportation Commission considers Safe Routes to School projects as those "that directly increase safety and convenience for public school students to walk and/or bike to school. Safe Routes to Schools infrastructure projects must be located within two miles of a public school or within the vicinity of a public-school bus stop and the students must be the intended beneficiaries of the project."

VII. Are agency's Standard Plans reviewed and updated on an ongoing basis for full ADA and California Accessibility compliance?

Yes: ✓ No: _____



Signature
(ADA Liaison Officer)

Date: May 1, 2020

Distribution: (1) Original - DLAE

EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

The Agency has established a DBE goal for this Contract of 34 %

OR

The Agency has not established a goal for this Contract. However, proposers are encouraged to obtain DBE participation for this contract.

1. TERMS AS USED IN THIS DOCUMENT

- The term “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Code of Federal Regulations (CFR), Part 26.5.
- The term “Agreement” also means “Contract.”
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Contracts financed in whole or in part with federal funds (See 49 CFR 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The Consultant must ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on the contract, Exhibit 10-O1 *Consultant Proposal DBE Commitment* must be included in the Request for Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards the contract goal; therefore, all DBE participation shall be collected and reported.

Exhibit 10-O2 *Consultant Contract DBE Information* must be included with the Request for Proposal. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the proposer’s responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department’s DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).

- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
 - 1. The proposer is a DBE and will meet the goal by performing work with its own forces.
 - 2. The proposer will meet the goal through work performed by DBE subconsultants, suppliers or trucking companies.
 - 3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The proposer shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the bid/cost proposal list of subconsultants.
- G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Contract toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Office of Business and Economic Opportunity Web site at: <http://www.dot.ca.gov/hq/bep/>.
 - 1. Click on the link in the left menu titled *Disadvantaged Business Enterprise*;
 - 2. Click on Search for a DBE Firm link;
 - 3. Click on *Access to the DBE Query Form* located on the first line in the center of the page.

Searches can be performed by one or more criteria. Follow instructions on the screen.

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the

purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

EXHIBIT 10-J STANDARD CONTRACT PROVISIONS FOR SUBCONSULTANT/DBE PARTICIPATION**1. Subconsultants**

- A. Nothing contained in this Contract or otherwise, shall create any contractual relation between the Agency and any subconsultants, and no subcontract shall relieve the Consultant of his/her responsibilities and obligations hereunder. The Consultant agrees to be as fully responsible to the Agency for the acts and omissions of its subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Consultant. The Consultant's obligation to pay its subconsultants is an independent obligation from the Agency's obligation to make payments to the Consultant.
- B. Any subcontract in excess of \$25,000, entered into as a result of this Contract, shall contain all the provisions stipulated in this Contract to be applicable to subconsultants.
- C. Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to the Consultant by the Agency.
- D. Any substitution of subconsultants must be approved in writing by the Agency's Contract Administrator in advance of assigning work to a substitute subconsultant.

2. Disadvantaged Business Enterprise (DBE) Participation

- A. This Contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Proposers who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. If the contract has a DBE goal, the Consultant must meet the goal by committing DBE participation or document a good faith effort to meet the goal. If a DBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met. A DBE is a firm meeting the definition of a DBE as specified in 49 CFR.
- C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. 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 local agency deems appropriate.
- D. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- E. A DBE may be terminated only with prior written approval from the local agency and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting local agency consent for the termination, the prime consultant must meet the procedural requirements specified in 49 CFR 26.53(f).

3. Performance of DBE Consultant and other DBE Subconsultants/Suppliers

- A. A DBE performs a commercially useful function 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 commercially useful function, 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 commercially useful function, 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.
- B. A DBE does not perform a commercially useful function 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. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- C. If a DBE does not perform or exercise responsibility for at least 30 percent 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 commercially useful function.

4. Prompt Payment of Funds Withheld to Subconsultants

- A. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
(Local agency to include either B, C, or D below; delete the other two.)
- B. No retainage will be withheld by the Agency from progress payments due the prime Consultant. Retainage by the prime Consultant or subconsultants is prohibited, and no retainage will be held by the prime Consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime Consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime Consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime Consultants and subconsultants.
- C. No retainage will be held by the Agency from progress payments due the prime Consultant. Any retainage held by the prime Consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime Consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

- D. The Agency shall hold retainage from the prime consultant and shall make prompt and regular incremental acceptances of portions, as determined by the Agency, of the contract work, and pay retainage to the prime consultant based on these acceptances. The prime consultant, or subconsultant, shall return all monies withheld in retention from a subconsultant within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime Consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

5. DBE Records

- A. The 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 prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- B. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants," CEM-2402F (Exhibit 17-F, Chapter 17, of the LAPM), certified correct by the Consultant or the Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 25 percent of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.

6. DBE Certification and Decertification Status

If a DBE subconsultant is decertified during the life of the Contract, the decertified subconsultant shall notify the 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 the Consultant in writing with the date of certification. Any changes should be reported to the Agency's Contract Administrator within 30 days.

Exhibit E

Listing of Required Forms and Phases When They Are Due

Forms Due with Bid Submission

1. RFP Intake Form (County)
2. LAPM Exhibit 15-H (Caltrans/Federal)
3. LAPM Exhibit 10-O1 (Caltrans/Federal)
4. LAPM Exhibit 10-Q (Caltrans/Federal)

Forms Due When Requested (from successful bidding firm)

1. LAPM Exhibit 10-H (Caltrans/Federal)
2. LAPM Exhibit 10-O2 (Caltrans/Federal)

Required at time of project completion

1. LAPM Exhibit 17-F (Caltrans/Federal)
2. LAPM Exhibit 17-O (Caltrans/Federal)

Required Certification for Agreements with a Value Greater than \$150,000.00 (Before Contract Execution).

1. LAPM Exhibit 10-A (Caltrans/Federal)
2. LAPM Exhibit 10-K (Caltrans/Federal)

All Required Caltrans/Federal Forms can be found on the Caltrans Local Assistance Procedures Manual website here:

<https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>