



**Request for Proposal (RFP) for
Preliminary Engineering Services for Main St. Improvements from
Hwy.111 to Memphis Ave. in Niland; Federal Aid Project No. CML
5958(119); County Project No. 6601**

Requested by:

John A. Gay, PE
Director of Public Works

Prepared By:

Jose Castaneda, MBA
Administrative Analyst III

Deadline for Submissions: March 17, 2021 at 4:00 P.M

Imperial County
Department of Public Works
155 S. 11th Street
El Centro, CA 92243
RFP Issued on February 24, 2021

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 Request for Proposal (RFP) Preliminary Engineering Services for Main St.
Improvements from Hwy. 111 to Memphis Ave. in Niland; Federal Project No. CML-5958(119);
County Project No. 6601
(here forth known as the "Project")**

I. PURPOSE AND BACKGROUND

The County of Imperial Department of Public Works (ICDPW) is requesting proposals from qualified and experienced civil engineering professionals to provide Preliminary Engineering Services for the above referenced federally funded project in Imperial County. The services are anticipated to be full time for the duration of the work, which will be completed by private contract secured through the public bidding process.

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 completed 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 Engineering 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 goals for this project is 12%**

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 was awarded funds from the Federal Highway Administration under the Congestion Mitigation and Air Quality program for the design and construction of Improvements on Main Street from Hwy. 111 to Memphis Ave. The improvements include widening the north side of Main Street to provide for a Class II Bike Lane and permit on street parallel parking, construction of sidewalks, infill paving, curb and gutter.

Main Street from Hwy. 111 to Memphis Avenue in Niland; Federal Aid Project No. CML 5958(119); County Project No. 6601

This project is an effort by the County to provide increased safety and increase pedestrian traffic, and mitigate fugitive dust emissions improving local air quality. The community of Niland is impoverished and requires much needed infrastructure. This project will address 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://publicworks.imperialcounty.org/projects-out-to-bid/> 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	February 24, 2021
Deadline for Written Requests for Clarification	March 9, 2021
Proposals Due	March 17, 2021
Consultant Selection	March 2021
County Awards Contract	May 2021
Notice to Proceed	May 2021
Completion of Improvement Plans and Specification for project	December 2021

III. SCOPE OF WORK

The successful firm will provide the engineering, land surveying, and permitting for the development of plans, specifications, and engineer's cost estimates. The plans and specifications shall be compliant with Resurfacing, Rehabilitation, and Restoration (3R) standards and will comply with current Caltrans Standard Specifications and Plans (2015) to be incorporated into County boilerplate specification provisions and latest Manual on Uniform Traffic Control Devices (MUTCD). These services will be needed during the course of the work from date of award of the project through completion. Consultant shall provide a dedicated full time person or persons as needed to provide Engineering Services for this specific project which is funded with local and federal funds. The Engineer in charge of the project shall be a California licensed Civil Engineer.

The successful firm will schedule and conduct a kick off meeting for the project, coordinating with the County. The firm will prepare an agenda to be reviewed and approved by the County. The meeting will address County expectations, consultant information requirements, project approach, and project timeline at minimum.

Conduct project field review including a survey of current site conditions, a summary of project obstacles including right of way issues, utility relocation issues, and existing facilities, The field review must include digital photographs. The field review will also consider other roadway deficiencies (e.g., drainage issues, markers, striping deficiencies, etc) in their audit process.

Complete necessary topographical surveying work for the project.

Consultant will assist to prepare Encroachment Permit Application submittals with Caltrans for any applicable work within SR 111 Right Of Way.

The County will notify Consultant to prepare final documents and deliverables based on the initial consultant recommendations and project budget. This includes final strategy report, final PS&E, bidding documents, construction project engineer's estimate, an independent estimate for Resident Engineer and Construction Inspection Services, independent estimate for Material Testing Services both Quality Control and Quality Assurance. The originals and copies shall be provided as identified in the RFP.

The successful consultant will develop three separate Independent Cost Estimates to be used for the Request for Proposals for Construction Engineering Services (Resident Engineer and Construction Inspection Services, Acceptance Testing, and Independent Assurance Testing). Firms developing independent estimates for professional services to be used to secure A&E contracts will not be able to submit proposals for Resident Engineer and Construction Inspection Services, Acceptance Testing, nor Independent Assurance Testing.

Throughout the project, Consultant will maintain orderly project files. Upon project completion, two (2) sets of project notebooks, including all project records, shall be forwarded to the County, compiled in a three (3) ring binder, prominently labeled on the face and spine with the title:

Preliminary Engineering for Main St. Improvements from Hwy.111 to Memphis Ave. in Niland;
Federal Aid Project No. CML 5958(119); County Project No. 6601

Binder 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.

Items to be included in the final report are as follows (consultant is responsible for the development of each of these):

Draft strategy report

Final Strategy report (with County concurrence).

Complete set of construction improvement plans

Complete set of specifications.

Survey report.

Demolition plan.

Traffic control plan.

Erosion control plan.

Storm water pollution prevention plan.

Bidding support documentation including RFI.
Construction support including RFI.
Final pdf copy of any and all documents created for this task.
Two bound copies of the final report.

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.
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 in Civil Engineering/Traffic Engineering Services. 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 1) will not be submitted with the proposal. The County will first score and rank the submitted proposals and will contact the 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.

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 (when requested). 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 March 17, 2021 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

Preliminary Engineering Services for Main St. Improvements from
Hwy. 111 to Memphis Ave. in Niland; Federal Aid Project No. CML
5958(119); County Project No. 6601

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 design 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

1 **AGREEMENT FOR SERVICES**

2 «Consultant_Business_Name»

3 THIS AGREEMENT FOR SERVICES (“Agreement”), made and entered into effective the
4 _____ day of _____, 2020, by and between the County of Imperial, a political subdivision of the
5 State of California, by and through its Department of Public Works (“COUNTY”) and
6 «Consultant_Business_Name», a «Consultant_Business_Type» licensed to do business within the state of
7 California (“CONSULTANT”) (individually, “Party;” collectively, “Parties”) shall be as follows:

8 **RECITALS**

9 **WHEREAS**, COUNTY desires to retain a qualified individual, firm or business entity to provide
10 «Contract_Services» for «Project_Name»; County Project No. «Project_Number» (“Project”); and

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

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

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

18 **1. INCORPORATION OF RECITALS.**

19 The Parties certify that, to the best of their knowledge, the above recitals are true and correct. The
20 above recitals are hereby adopted and incorporated within this Agreement.

21 **2. DEFINITIONS.**

22 **2.1.** “Request for Proposal” or “RFP” shall mean that document that describes the Project and
23 project requirements to prospective bidders entitled, “«Name_of_RFP»,” dated
24 «Date_of_RFP». The Request for Proposal is attached hereto as **Exhibit “A”** and
25 incorporated herein by this reference.

26 **2.2.** “Proposal” shall mean CONSULTANT’s document entitled, “«Name_of_Proposal»,” dated
27 «Date_of_Proposal» and submitted to COUNTY’s Department of Public Works. The
28 Proposal is attached hereto as **Exhibit “B”** and incorporated herein this by reference.

1 **3. CONTRACT COORDINATION.**

2 **3.1.** The Director of Public Works or his/her designee shall be the representative of COUNTY
3 for all purposes under this Agreement. The Director of Public Works or his/her designee
4 is hereby designated as the Contract Manager for COUNTY. He/she shall supervise the
5 progress and execution of this Agreement.

6 **3.2.** CONSULTANT shall assign a single Contract Manager to have overall responsibility for
7 the progress and execution of this Agreement. Should circumstances or conditions
8 subsequent to the execution of this Agreement require a substitute Contract Manager for any
9 reason, the Contract Manager designee shall be subject to the prior written acceptance and
10 approval of COUNTY's Contract Manager.

11 **4. DESCRIPTION OF WORK.**

12 CONSULTANT shall provide all materials and labor to perform this Agreement consistent with the
13 RFP and the Proposal, as set forth in **Exhibits "A" and "B."** In the event of a conflict amongst this
14 Agreement, the RFP, and the Proposal, the RFP shall take precedence over the Proposal and this Agreement
15 shall take precedence over both.

16 **5. WORK TO BE PERFORMED BY CONSULTANT.**

17 **5.1.** CONSULTANT shall comply with all terms, conditions and requirements of the Proposal
18 and this Agreement.

19 **5.2.** CONSULTANT shall perform such other tasks as necessary and proper for the full
20 performance of the obligations assumed by CONSULTANT hereunder; including but not
21 limited to any additional work or change orders agreed upon pursuant to written
22 authorization as described in Paragraph 6.3, and as contemplated under Sections 13, 14, and
23 28. Proposed additional work or change order requests, when applicable, will be attached
24 and incorporated herein under **Exhibit "B"** (as "B-1," "B-2," etc.).

25 **5.3.** CONSULTANT shall:

26 **5.3.1.** Procure all permits and licenses, pay all charges and fees, and give all notices that
27 may be necessary and incidental to the due and lawful prosecution of the services
28 to be performed by CONSULTANT under this agreement;

1 **5.3.2.** Keep itself fully informed of all existing and proposed federal, state and local laws,
2 ordinances, regulations, orders and decrees which may affect those engaged or
3 employed under this Agreement;

4 **5.3.3.** At all times observe and comply with, and cause all of its employees to observe and
5 comply with all of said laws, ordinances, regulations, orders and decrees mentioned
6 above; and

7 **5.3.4.** Immediately report to COUNTY's Contract Manager in writing any discrepancy
8 or inconsistency it discovers in said laws, ordinances, regulations, orders and
9 decrees mentioned above in relation to any plans, drawings, specifications or
10 provisions of this Agreement.

11 **6. REPRESENTATIONS BY CONSULTANT.**

12 **6.1.** CONSULTANT understands and agrees that COUNTY has limited knowledge in the
13 multiple areas specified in the Proposal. CONSULTANT has represented itself to be an
14 expert in these fields and understands that COUNTY is relying upon such representation.

15 **6.2.** CONSULTANT represents and warrants that it is a lawful entity possessing all required
16 licenses and authorities to do business in the State of California and perform all aspects
17 of this Agreement.

18 **6.3.** CONSULTANT shall not commence any work under this Agreement or provide any
19 other services, or materials, in connection therewith until CONSULTANT has received
20 written authorization from COUNTY's Contract manager to do so.

21 **6.4.** CONSULTANT represents and warrants that the people executing this Agreement on behalf
22 of CONSULTANT have the authority of CONSULTANT to sign this Agreement and bind
23 CONSULTANT to the performance of all duties and obligations assumed by
24 CONSULTANT herein.

25 **6.5.** CONSULTANT represents and warrants that any employee, contractor and/or agent who
26 will be performing any of the duties and obligations of CONSULTANT herein possess all
27 required licenses and authorities, as well as the experience and training, to perform such
28 tasks.

1 **6.6.** CONSULTANT represents and warrants that the allegations contained in the Proposal are
2 true and correct.

3 **6.7.** CONSULTANT understands and agrees not to discuss this Agreement or work performed
4 pursuant to this Agreement with anyone not a party to this Agreement without the prior
5 permission of COUNTY. CONSULTANT further agrees to immediately advise
6 COUNTY of any contacts or inquiries made by anyone not a party to this Agreement with
7 respect to work performed pursuant to this Agreement.

8 **6.8.** Prior to accepting any work under this Agreement, CONSULTANT shall perform a due
9 diligence review of its files and advise COUNTY of any conflict or potential conflict
10 CONSULTANT may have with respect to the work requested.

11 **6.9.** CONSULTANT understands and agrees that in the course of performance of this
12 Agreement CONSULTANT may be provided with information or data considered by the
13 owner or the COUNTY to be confidential. COUNTY shall clearly identify such
14 information and/or data as confidential. CONSULTANT shall take all necessary steps
15 necessary to maintain such confidentiality including but not limited to restricting the
16 dissemination of all material received to those required to have such data in order for
17 CONSULTANT to perform under this Agreement.

18 **6.10.** CONSULTANT represents that the personnel dedicated to this project as identified in
19 CONSULTANT's Proposal, will be the people to perform the tasks identified therein.
20 CONSULTANT will not substitute other personnel or engage any contractors to work on
21 any tasks identified herein without prior written notice to COUNTY.

22 **6.11.** CONSULTANT understands that COUNTY considers the representations made herein
23 to be material and would not enter into this Agreement with CONSULTANT if such
24 representations were not made.

25 **7. TERM OF AGREEMENT.**

26 This Agreement shall commence on the date first written above and shall remain in effect until
27 the services provided as outlined in Section 4, ("DESCRIPTION OF WORK"), have been completed,
28 unless otherwise terminated as provided for in this Agreement.

1 **8. COMPENSATION.**

2 **8.1.** The total compensation payable under this Agreement shall not exceed
3 «Cost_of_Original_Contract», unless otherwise previously agreed to in writing by
4 COUNTY.

5 **8.2.** The fee for any additional services required by COUNTY will be computed either on a
6 negotiated lump sum basis or upon actual hours and expenses incurred by
7 CONSULTANT and based on CONSULTANT's current standard rates as set forth in the
8 Proposal. Additional services or costs will not be paid without a prior written agreement
9 between the Parties.

10 **8.3.** Except as provided under Paragraphs 8.1 and 8.2, COUNTY shall not be responsible to
11 pay CONSULTANT any compensation, out of pocket expenses, fees, reimbursement of
12 expenses or other remuneration.

13 **9. PAYMENT.**

14 **9.1.** CONSULTANT shall bill COUNTY on a time and material basis as set forth in **Exhibit**
15 **“B.”** COUNTY shall pay CONSULTANT for completed and approved services upon
16 presentation of its itemized billing.

17 **9.2.** COUNTY shall have the right to retain five percent (5%) of the total of amount of each
18 invoice, not to exceed five percent (5%) of the total compensation amount of the completed
19 project. “Completion of the Project” is when the work to be performed has been completed
20 in accordance with this Agreement, as determined by COUNTY, and all subcontractors, if
21 any, have been paid in full by CONSULTANT. Upon completion of the Project
22 CONSULTANT shall bill COUNTY the retention for payment by COUNTY.

23 **10. METHOD OF PAYMENT.**

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

1 the claim is submitted.

2 **11. TIME FOR COMPLETION OF THE WORK.**

3 The Parties agree that time is of the essence in the performance of this Agreement. Program
4 scheduling shall be as described in Exhibits unless revisions are approved by both COUNTY's Contract
5 Manager and CONSULTANT's Contract Manager. Time extensions may be allowed for delays caused
6 by COUNTY, other governmental agencies or factors not directly brought about by the negligence or
7 lack of due care on the part of CONSULTANT.

8 **12. MAINTENANCE AND ACCESS OF BOOKS AND RECORDS.**

9 **12.1.** CONSULTANT shall maintain books, records, documents, reports and other materials
10 developed under this Agreement as follows:

11 **12.2.** CONSULTANT shall maintain all ledgers, books of accounts, invoices, vouchers,
12 canceled checks, and other records relating to CONSULTANT's charges for services or
13 expenditures and disbursements charged to COUNTY for a minimum period of three (3)
14 years, or for any longer period required by law, from the date of final payment to
15 CONSULTANT pursuant to this Agreement.

16 **12.3.** CONSULTANT shall maintain all reports, documents, and records, which demonstrate
17 performance under this Agreement for a minimum period of five (5) years, or for any
18 longer period required by law, from the date of termination or completion of this
19 Agreement.

20 **12.4.** Any records or documents required to be maintained by CONSULTANT pursuant to this
21 Agreement shall be made available to COUNTY for inspection or audit at any time during
22 CONSULTANT's regular business hours provided that COUNTY provides
23 CONSULTANT with seven (7) days advanced written or e-mail notice. Copies of such
24 documents shall, at no cost to COUNTY, be provided to COUNTY for inspection at
25 CONSULTANT's address indicated for receipt of notices under this Agreement.

26 **13. SUSPENSION OF AGREEMENT.**

27 COUNTY's Contract Manager shall have the authority to suspend this Agreement, in whole or
28 in part, for such period as deemed necessary due to unfavorable conditions or to the failure on the part

1 of CONSULTANT to perform any provision of this Agreement. CONSULTANT will be paid the
2 compensation due and payable to the date of suspension.

3 **14. TERMINATION.**

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

12 **15. INSPECTION.**

13 CONSULTANT shall furnish COUNTY with every reasonable opportunity for COUNTY to
14 ascertain that the services of CONSULTANT are being performed in accordance with the requirements
15 and intentions of this Agreement. All work done and materials furnished, if any, shall be subject to
16 COUNTY's Contract Manager's inspection and approval. The inspection of such work shall not relieve
17 CONSULTANT of any of its obligations to fulfill its Agreement as prescribed.

18 **16. OWNERSHIP OF MATERIALS.**

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

24 **17. INTEREST OF CONSULTANT.**

25 **17.1.** CONSULTANT covenants that it presently has no interest, and shall not acquire any
26 interest, direct or indirect, financial or otherwise, which would conflict in any manner or
27 degree with the performance of the services hereunder.

28 **17.2.** CONSULTANT covenants that, in the performance of this Agreement, no sub-contractor

1 or person having such an interest shall be employed.

2 **17.3.** CONSULTANT certifies that no one who has or will have any financial interest under
3 this Agreement is an officer or employee of COUNTY.

4 **18. INDEMNIFICATION.**

5 **18.1.** CONSULTANT agrees to the fullest extent permitted by law, in accordance with the
6 limits required by California Civil Code § 2782.8, to indemnify, defend, protect and hold
7 COUNTY and its representatives, officers, directors, designees, employees, successors
8 and assigns harmless from any and all claims, expenses, liabilities, losses, causes of
9 actions, demands, losses, penalties, attorneys' fees and costs, in law or equity, of every
10 kind and nature whatsoever that arise out of, pertain to, or relate to CONSULTANT's
11 negligence, recklessness, or willful misconduct under this Agreement ("Claims"),
12 whether or not arising from the passive negligence of COUNTY, but does not include
13 Claims that are the result of the negligence, recklessness, or willful misconduct of
14 COUNTY.

15 **18.2.** In accordance with the limits required by California Civil Code § 2782.8, if applicable,
16 CONSULTANT agrees to defend with counsel acceptable to COUNTY, indemnify and
17 hold COUNTY harmless from all Claims, including but not limited to:

18 **18.2.1.** Personal injury, including but not limited to bodily injury, emotional injury,
19 sickness or disease or death to persons including but not limited to COUNTY's
20 representatives, officers, directors, designees, employees, agents, successors and
21 assigns, subcontractors and other third parties and/or damage to property of
22 anyone (including loss of use thereof) arising out of, pertaining to, or relating to
23 CONSULTANT's negligent or reckless performance of, or willful misconduct
24 surrounding, any of the terms contained in this Agreement, or anyone directly or
25 indirectly employed by CONSULTANT or anyone for whose acts
26 CONSULTANT may be liable;

27 **18.2.2.** Liability arising from injuries to CONSULTANT and/or any of
28 CONSULTANT's employees or agents arising out of, pertaining to, or relating to

1 CONSULTANT's negligent or reckless performance of, or willful misconduct
2 surrounding, any of the terms contained in this Agreement, or anyone directly or
3 indirectly employed by CONSULTANT or anyone for whose acts
4 CONSULTANT may be liable;

5 **18.2.3.** Penalties imposed upon account of the violation of any law, order, citation, rule,
6 regulation, standard, ordinance or statute caused by the negligent or reckless
7 action or inaction, or willful misconduct of CONSULTANT or anyone directly or
8 indirectly employed by CONSULTANT or anyone for whose acts
9 CONSULTANT may be liable, including but not limited to:

10 (a) Any loss of funding, penalties, fees, or other costs resulting from
11 CONSULTANT's failure to adhere to Disadvantaged Business Enterprise
12 requirements and/or goals, as determined by COUNTY or such other
13 lawful entity in charge of monitoring Disadvantaged Business Enterprise
14 compliance;

15 (a) Any loss of funding, penalties, fees, or other costs resulting from
16 CONSULTANT's failure to adhere to prevailing wage requirements, as
17 determined by COUNTY, the California Department of Industrial
18 Relations, or such other lawful entity in charge of monitoring prevailing
19 wage compliance;

20 **18.2.4.** Infringement of any patent rights which may be brought against COUNTY arising
21 out of CONSULTANT's work;

22 **18.2.5.** Any violation or infraction by CONSULTANT of any law, order, citation, rule,
23 regulation, standard, ordinance or statute in any way relating to the occupational
24 health or safety of employees; and

25 **18.2.6.** Any breach by CONSULTANT of the terms, requirements or covenants of this
26 Agreement.

27 **18.3.** These indemnification provisions shall extend to Claims occurring after this Agreement
28 is terminated, as well as while it is in force.

1 **19. INDEPENDENT CONTRACTOR.**

2 In all situations and circumstances arising out of the terms and conditions of this Agreement,
3 CONSULTANT is an independent contractor, and as an independent contractor, the following shall
4 apply:

5 **19.1.** CONSULTANT is not an employee or agent of COUNTY and is only responsible for the
6 requirements and results specified by this Agreement or any other agreement.

7 **19.2.** CONSULTANT shall be responsible to COUNTY only for the requirements and results
8 specified by this Agreement and except as specifically provided in this Agreement, shall
9 not be subject to COUNTY's control with respect to the physical actions or activities of
10 CONSULTANT in fulfillment of the requirements of this Agreement.

11 **19.3.** CONSULTANT is not, and shall not be, entitled to receive from, or through, COUNTY,
12 and COUNTY shall not provide, or be obligated to provide, CONSULTANT with
13 Workers' Compensation coverage or any other type of employment or worker insurance
14 or benefit coverage required or provided by any Federal, State or local law or regulation
15 for, or normally afforded to, an employee of COUNTY.

16 **19.4.** CONSULTANT shall not be entitled to have COUNTY withhold or pay, and COUNTY
17 shall not withhold or pay, on behalf of CONSULTANT, any tax or money relating to the
18 Social Security Old Age Pension Program, Social Security Disability Program, or any
19 other type of pension, annuity, or disability program required or provided by any federal,
20 State or local law or regulation.

21 **19.5.** CONSULTANT shall not be entitled to participate in, nor receive any benefit from, or
22 make any claim against any COUNTY fringe program, including, but not limited to,
23 COUNTY's pension plan, medical and health care plan, dental plan, life insurance plan,
24 or any other type of benefit program, plan, or coverage designated for, provided to, or
25 offered to COUNTY's employees.

26 **19.6.** COUNTY shall not withhold or pay, on behalf of CONSULTANT, any Federal, State, or
27 local tax, including, but not limited to, any personal income tax, owed by
28 CONSULTANT.

1 **19.7.** CONSULTANT is, and at all times during the term of this Agreement, shall represent
2 and conduct itself as an independent contractor, not as an employee of COUNTY.

3 **19.8.** CONSULTANT shall not have the authority, express or implied, to act on behalf of, bind
4 or obligate COUNTY in any way without the written consent of COUNTY.

5 **20. INSURANCE.**

6 **20.1.** CONSULTANT hereby agrees at its own cost and expense to procure and maintain,
7 during the entire term of this Agreement and any extended term therefore, insurance in a
8 sum acceptable to COUNTY and adequate to cover potential liabilities arising in
9 connection with the performance of this Agreement and in any event not less than the
10 minimum limit set forth in the “Minimum Insurance Amounts” attachment to RFP
11 (**Exhibit “A”**) which are incorporated as if set forth fully herein.

12 **20.2. Special Insurance Requirements.** All insurance required shall:

13 **20.2.1.** Be procured from California admitted insurers (licensed to do business in
14 California) with a current rating by Best’s Key Rating Guide, acceptable to
15 COUNTY. A rating of at least A-VII shall be acceptable to COUNTY; lesser
16 ratings must be approved in writing by COUNTY.

17 **20.2.2.** Be primary coverage as respects COUNTY and any insurance or self-insurance
18 maintained by COUNTY shall be in excess of CONSULTANT’s insurance
19 coverage and shall not contribute to it.

20 **20.2.3.** Name The Imperial County Department of Public Works and the County of
21 Imperial and their officers, employees, and volunteers as additional insured on all
22 policies, except Workers’ Compensation insurance and Errors & Omissions
23 insurance, and provide that COUNTY may recover for any loss suffered by
24 COUNTY due to CONSULTANT’s negligence.

25 **20.2.4.** State that it is primary insurance and regards COUNTY as an additional insured
26 and contains a cross-liability or severability of interest clause.

27 **20.2.5.** Not be canceled, non-renewed or reduced in scope of coverage until after thirty
28 (30) days written notice has been given to COUNTY. CONSULTANT may not

1 terminate such coverage until it provides COUNTY with proof that equal or better
2 insurance has been secured and is in place. Cancellation or change without prior
3 written consent of COUNTY shall, at the option of COUNTY, be grounds for
4 termination of this Agreement.

5 **20.2.6.** If this Agreement remains in effect more than one (1) year from the date of its
6 original execution, COUNTY may, at its sole discretion, require an increase to
7 liability insurance to the level then customary in similar COUNTY Agreements
8 by giving sixty (60) days notice to CONSULTANT.

9 **20.3. Additional Insurance Requirements.**

10 **20.3.1.** COUNTY is to be notified immediately of all insurance claims. COUNTY is also
11 to be notified if any aggregate insurance limit is exceeded.

12 **20.3.2.** The comprehensive or commercial general liability shall contain a provision of
13 endorsements stating that such insurance:

- 14 (a) Includes contractual liability;
- 15 (b) Does not contain any exclusions as to loss or damage to property caused
16 by explosion or resulting from collapse of buildings or structures or
17 damage to property underground, commonly referred to by insurers as the
18 “XCU Hazards;”
- 19 (c) Does not contain a “pro rata” provision which looks to limit the insurer’s
20 liability to the total proportion that its policy limits bear to the total
21 coverage available to the insured;
- 22 (d) Does not contain an “excess only” clause which require the exhaustion of
23 other insurance prior to providing coverage;
- 24 (e) Does not contain an “escape clause” which extinguishes the insurer’s
25 liability if the loss is covered by other insurance;
- 26 (f) Includes COUNTY as an additional insured.
- 27 (g) States that it is primary insurance and regards COUNTY as an additional
28 insured and contains a cross-liability or severability of interest clause.

1 **20.4. Deposit of Insurance Policy.** Promptly on issuance, reissuance, or renewal of any
2 insurance policy required by this Agreement, CONSULTANT shall, if requested by
3 COUNTY, provide COUNTY satisfactory evidence that insurance policy premiums have
4 been paid together with a duplicate copy of the policy or a certificate evidencing the
5 policy and executed by the insurance company issuing the policy or its authorized agent.

6 **20.5. Certificates of Insurance.** CONSULTANT agrees to provide COUNTY with the following
7 insurance documents on or before the effective date of this Agreement:

8 **20.5.1.** Complete copies of certificates of insurance for all required coverages including
9 additional insured endorsements shall be attached hereto as **Exhibit “C”** and
10 incorporated herein.

11 **20.5.2.** The documents enumerated in this Paragraph shall be sent to the following:

12 County of Imperial
13 Risk Management Department
14 Re: County Project No. «Project_Number»
15 940 Main Street, Suite 101
16 El Centro, CA 92243

17 County of Imperial
18 Department of Public Works
19 Re: County Project No. «Project_Number»
20 155 South 11th Street
21 El Centro, CA 92243

22 **20.6. Additional Insurance.** Nothing in this, or any other provision of this Agreement, shall be
23 construed to preclude CONSULTANT from obtaining and maintaining any additional
24 insurance policies in addition to those required pursuant to this Agreement.

25 **21. PREVAILING WAGE.**

26 **21.1.** CONSULTANT acknowledges that any work that qualifies as a “public work” within the
27 meaning of California Labor Code section 1720 shall cause CONSULTANT, and its sub-
28 consultants, to comply with the provisions of California Labor Code sections 1775 et seq.

21.2. When applicable, copies of the prevailing rate of per diem wages shall be on file at
COUNTY’s Department of Public Works and/or Clerk of the Board of Supervisors, and

1 available to any interested party upon request. CONSULTANT shall post copies of the
2 prevailing wage rate of per diem wages at the Project site.

3 **21.3.** CONSULTANT hereby acknowledges and stipulates to the following:

4 **21.3.1.** CONSULTANT has reviewed and agrees to comply with the provisions of Labor
5 Code section 1776 regarding retention and inspection of payroll records and
6 noncompliance penalties; and

7 **21.3.2.** CONSULTANT has reviewed and agrees to comply with the provisions of Labor
8 Code section 1777.5 regarding employment of registered apprentices; and

9 **21.3.3.** CONSULTANT has reviewed and agrees to comply with the provisions of Labor
10 Code section 1810 regarding the legal day's work; and

11 **21.3.4.** CONSULTANT has reviewed and agrees to comply with the provisions of Labor
12 Code section 1813 regarding forfeiture for violations of the maximum hours per
13 day and per week provisions contained in the same chapter.

14 **21.3.5.** CONSULTANT has reviewed and agrees to comply with any applicable
15 provisions for those Projects subject to Department of Industrial Relations (DIR)
16 Monitoring and Enforcement of prevailing wages. COUNTY hereby notifies
17 CONSULTANT that CONSULTANT is responsible for complying with the
18 requirements of Senate Bill 854 (SB854) regarding certified payroll record
19 reporting. Further information concerning the requirements of SB854 is available
20 on the DIR website located at: <http://www.dir.ca.gov/Public-Works/PublicWorksEnforcement.html>.

21
22 **22. WORKERS' COMPENSATION CERTIFICATION.**

23 **22.1.** Prior to the commencement of work, CONSULTANT shall sign and file with COUNTY
24 the following certification: "I am aware of the provisions of California Labor Code
25 §§3700 et seq. which require every employer to be insured against liability for workers'
26 compensation or to undertake self-insurance in accordance with the provisions of that
27 code, and I will comply with such provisions before commencing the performance of the
28 work of this contract."

1 **22.2.** This certification is included in this Agreement and signature of the Agreement shall
2 constitute signing and filing of the certificate.

3 **22.3.** CONSULTANT understands and agrees that any and all employees, regardless of hire
4 date, shall be covered by Workers' Compensation pursuant to statutory requirements
5 prior to beginning work on the Project.

6 **22.4.** If CONSULTANT has no employees, initial here: _____

7 **23. ASSIGNMENT.**

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

11 **24. NON-DISCRIMINATION.**

12 **24.1.** During the performance of this Agreement, CONSULTANT and its subcontractors shall
13 not unlawfully discriminate, harass or allow harassment against any employee or
14 applicant for employment because of sex, race, color, ancestry, religious creed, national
15 origin, physical disability (including HIV and AIDS), mental disability, medical
16 condition (cancer), age (over forty (40)), marital status and denial of family care leave.
17 CONSULTANT and its subcontractors shall insure that the evaluation and treatment of
18 their employees and applicants for employment are free from such discrimination and
19 harassment.

20 **24.2.** CONSULTANT and its subcontractors shall not discriminate on the basis of race, color,
21 national origin, or sex in the performance of this Agreement. CONSULTANT shall carry
22 out applicable requirements of 49 CFR 26 in the award and administration of DOT-
23 assisted contracts. Failure by CONSULTANT to carry out these requirements is a
24 material breach of this Agreement, which may result in the termination of this Agreement,
25 or such other remedy as COUNTY deems appropriate.

26 **24.3.** CONSULTANT and its subcontractors shall comply with the provisions of the Fair
27 Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable
28 regulations promulgated thereunder (California Code of Regulations, Title 2, §7285 et

1 seq.).

2 **24.4.** The applicable regulations of the Fair Employment and Housing Commission
3 implementing Government Code §12990 (a-f), set forth in Chapter 5 of Division 4 of
4 Title 2 of the California Code of Regulations, are incorporated into this Agreement by
5 reference and made a part hereof as if set forth in full.

6 **24.5.** The applicable regulations of §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794 (a))
7 are incorporated into this Agreement by reference and made a part hereof as if set forth
8 in full.

9 **24.6.** CONSULTANT and its subconsultants shall give written notice of their obligations under
10 this clause to labor organizations with which they have a collective bargaining or other
11 agreement.

12 **24.7.** CONSULTANT shall include the nondiscrimination and compliance provisions of this
13 clause in all subcontracts to perform work under this Agreement.

14 **25. DISADVANTAGED BUSINESS ENTITY COMPLIANCE.**

15 **25.1.** When applicable, CONSULTANT represents and warrants that it has fully read the
16 applicable Disadvantaged Business Enterprise (“DBE”) requirements pertaining to this
17 Project and has fully and accurately completed any and all required DBE forms.

18 **25.2.** CONSULTANT represents and warrants that it will comply with all applicable DBE
19 requirements for this Project.

20 **25.3.** CONSULTANT shall comply with any applicable DBE provisions attached hereto as
21 **Exhibit “D”** and incorporated by this reference as though fully set forth herein.

22 **25.4.** If any state or federal funds are withheld from COUNTY or not reimbursed to COUNTY
23 due to CONSULTANT’s failure to either comply with the DBE requirements set forth in
24 the RFP and this Agreement, or to meet the mandatory DBE goals as determined by
25 COUNTY, Caltrans, the Federal Highway Administration, and/or any other state or
26 federal agency contributing funds to the Project, then CONSULTANT shall fully
27 reimburse COUNTY the amount of funding lost. COUNTY reserves the right to deduct
28 any such loss in funding from the amount of compensation due to CONSULTANT under

1 this Agreement.

2 **25.5.** In addition to the above, CONSULTANT's failure to comply with DBE
3 requirements/goals shall subject it to such sanctions as are permitted by law, which may
4 include, but shall not be limited to the following:

5 **25.5.1.** Termination of this Agreement;

6 **25.5.2.** Withholding monthly progress payments;

7 **25.5.3.** Compensatory, special, incidental, liquidated and other damages; and/or

8 **25.5.4.** Designation of CONSULTANT as "nonresponsible," and disqualification from
9 bidding on future public works projects advertised by COUNTY.

10 **26. NOTICES AND REPORTS.**

11 **26.1.** Any notice and reports under this Agreement shall be in writing and may be given by
12 personal delivery or by mailing by certified mail, addressed as follows:

13 **COUNTY**

14 Director of Public Works

15 Re: County Project No. «Project_Number»
16 «Project_Number»

17 155 South 11th Street
18 El Centro, CA 92243

19 County of Imperial
20 Clerk of the Board of Supervisors

21 Re: PW County Project No. «Project_Number»
22 940 W. Main Street, Suite 209
23 El Centro, CA 92243

24 **CONSULTANT**

25 «Consultant_Business_Name»

26 Re: Imperial County Project No.

27 «Consultant_Street_Address»

28 «Consultant_City_State»

21 **26.2.** Notice shall be deemed to have been delivered only upon receipt by the Party, seventy-
22 two (72) hours after deposit in the United States mail or twenty-four (24) hours after
23 deposit with an overnight carrier.

24 **26.3.** The addressees and addresses for purposes of this Section may be changed to any other
25 addressee and address by giving written notice of such change. Unless and until written
26 notice of change of addressee and/or address is delivered in the manner provided in this
27 Section, the addressee and address set forth in this Agreement shall continue in effect for
28 all purposes hereunder.

1 **27. ENTIRE AGREEMENT.**

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

5 **28. MODIFICATION.**

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

8 **29. CAPTIONS.**

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

11 **30. PARTIAL INVALIDITY.**

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

15 **31. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.**

16 **31.1.** As used in this Agreement and whenever required by the context thereof, each number,
17 both singular and plural, shall include all numbers, and each gender shall include a
18 gender.

19 **31.2.** CONSULTANT as used in this Agreement or in any other document referred to in or
20 made a part of this Agreement shall likewise include the singular and the plural, a
21 corporation, a partnership, individual, firm or person acting in any fiduciary capacity as
22 executor, administrator, trustee or in any other representative capacity or any other entity.

23 **31.3.** All covenants herein contained on the part of CONSULTANT shall be joint and several
24 if more than one person, firm or entity executes the Agreement.

25 **32. WAIVER.**

26 No waiver of any breach or of any of the covenants or conditions of this Agreement shall be
27 construed to be a waiver of any other breach or to be a consent to any further or succeeding breach of
28 the same or any other covenant or condition.

1 **33. CHOICE OF LAW.**

2 This Agreement shall be governed by the laws of the State of California. This Agreement is
3 made and entered into in Imperial County, California. Any action brought by either Party with respect
4 to this Agreement shall be brought in a court of competent jurisdiction within said County.

5 **34. AUTHORITY.**

6 **34.1.** Each individual executing this Agreement on behalf of CONSULTANT represents and
7 warrants that:

8 **34.1.1.** He/She is duly authorized to execute and deliver this Agreement on behalf of
9 CONSULTANT;

10 **34.1.2.** Such execution and delivery is in accordance with the terms of the Articles of
11 Incorporation or Partnership, any by-laws or Resolutions of CONSULTANT and;

12 **34.1.3.** This Agreement is binding upon CONSULTANT accordance with its terms.

13 **34.2.** CONSULTANT shall deliver to COUNTY evidence acceptable to COUNTY of the
14 foregoing within thirty (30) days of execution of this Agreement.

15 **35. COUNTERPARTS.**

16 This Agreement (as well as any amendments hereto) may be executed in any number of
17 counterparts, each of which when executed shall be an original, and all of which together shall constitute
18 one and the same Agreement. No counterparts shall be effective until all Parties have executed a
19 counterpart hereof.

20 **36. REVIEW OF AGREEMENT TERMS.**

21 **36.1.** Each Party has had the opportunity to receive independent legal advice from its attorneys
22 with respect to the advisability of making the representations, warranties, covenants and
23 agreements provided for herein, and with respect to the advisability of executing this
24 Agreement.

25 **36.2.** Each Party represents and warrants to and covenants with the other Party that:

26 **36.2.1.** This Agreement in its reduction to final written form is a result of extensive good
27 faith negotiations between the Parties and/or their respective legal counsel; and

28 **36.2.2.** The Parties and/or their legal counsel have carefully reviewed and examined this

1 Agreement for execution by said Parties.

2 **36.3.** Any statute or rule of construction that ambiguities are to be resolved against the drafting
3 party shall not be employed in the interpretation of this Agreement.

4 **37. NON-APPROPRIATION.**

5 **37.1.** All obligations of COUNTY are subject to appropriation of resources by various federal,
6 State, and local agencies, including but not limited to the U.S. Department of
7 Transportation (“DOT”) and the California Department of Transportation (“Caltrans”).

8 **37.2.** This Agreement is valid and enforceable only if sufficient funds are made available to
9 COUNTY for the purposes of this Project. In addition, this Agreement is subject to any
10 additional restrictions, limitations, conditions, or any statute enacted by Congress, State
11 Legislature, or COUNTY, and any regulations prescribed therefrom, that may affect the
12 provisions, terms, or funding of this Agreement.

13 **37.3.** If sufficient funds for the Project are not appropriated, this Agreement may be amended
14 or terminated in order to reflect said reduction in funding.

15 **38. APPENDIX E OF THE TITLE VI ASSURANCES.**

16 During the performance of this contract, the CONSULANT, for itself, its assignees, and
17 successors in interest agrees to comply with the following nondiscrimination statutes and
18 authorities; including but not limited to:

19 **38.1.** Pertinent Nondiscrimination Authorities:

20 (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq, 78 stat. 252),
21 (prohibits discrimination on the basis of race, color, national origin); and 49 CFR
22 Part 21.

23 (b) The Uniform Relocation Assistance and Real Property Acquisition Policies Act
24 of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or
25 whose property has been acquired because of Federal or Federal-Aid programs
26 and projects);

27 (c) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits
28 discrimination on the basis of sex);

- 1 (d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as
2 amended, (prohibits discrimination on the basis of disability); and 49 CFR Part
3 27;
- 4 (e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.),
5 (prohibits discrimination on the basis of age);
- 6 (f) Airport and Airway Improvement Act of 1982, 949 U.S.C. § 4 71, Section 4
7 7123), as amended, (prohibits discrimination based on race, creed, color, national
8 origin, or sex);
- 9 (g) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope,
10 coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age
11 Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by
12 expanding the definition of the terms “programs or activities” to include all the
13 programs or activities of the Federal-aid recipients, subrecipients and contractors,
14 whether such programs or activities are Federally funded or not);
- 15 (h) Titles II and III of the Americans with Disabilities Act, which prohibit
16 discrimination on the basis of disability in the operation of public entities, public
17 and private transportation systems, places of public accommodation, and certain
18 testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of
19 Transportation regulations at 49 C.F.R. parts 37 and 38;
- 20 (i) The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. §
21 47123) (prohibits discrimination on the basis of race, color, national origin, and
22 sex);
- 23 (j) Executive Order 12898, Federal Actions to Address Environmental Justice in
24 Minority Populations and Low-Income Populations, which ensures discrimination
25 against minority populations by discouraging programs, policies, and activities
26 with disproportionately high and adverse human health or environmental effects
27 on minority and low-income populations;
- 28 (k) Executive Order 13166, Improving Access to Services for persons with Limited

1 English Proficiency, and resulting agency guidance, national origin
2 discrimination includes discrimination because of limited English proficiency
3 (LEP). To ensure compliance with Title VI, you must take reasonable steps to
4 ensure that LEP persons have meaningful access to your programs (70 Fed. Reg.
5 at 74087 to 74100);

- 6 (l) Title IX of the Education Amendment of 1972, as amended, which prohibits you
7 from discriminating because of sex in education programs or activities (20 U.S.C.
8 1681 et seq).

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

11
12 **County of Imperial**

12 **«Consultant_Business_Name»**

13
14 By: _____
15 Michael W. Kelly, Chairman
16 Imperial County Board of Supervisors

14 By: _____
15 «Consultant_Name_for_Signature»

17 **ATTEST:**

18
19 _____
20 Blanca Acosta, Clerk of the Board,
21 County of Imperial, State of California

22 **APPROVED AS TO FORM:**

23 Adam G. Crook,
24 County Counsel

25
26 By: _____
27 «CC_Attorney»,
28 «CC_Attorney_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

Niland CMAQ Project

6601 - MAIN STREET IMPROVEMENTS FROM SR 111 TO MEMPHIS AVENUE. IN THE COMMUNITY OF NILAND

Legend

-  6601 Niland CMAQ - Main Street From Highway 111 to Memphis Avenue
-  Grace Smith Elementary School
-  Main St
-  Niland
-  Niland Fire District

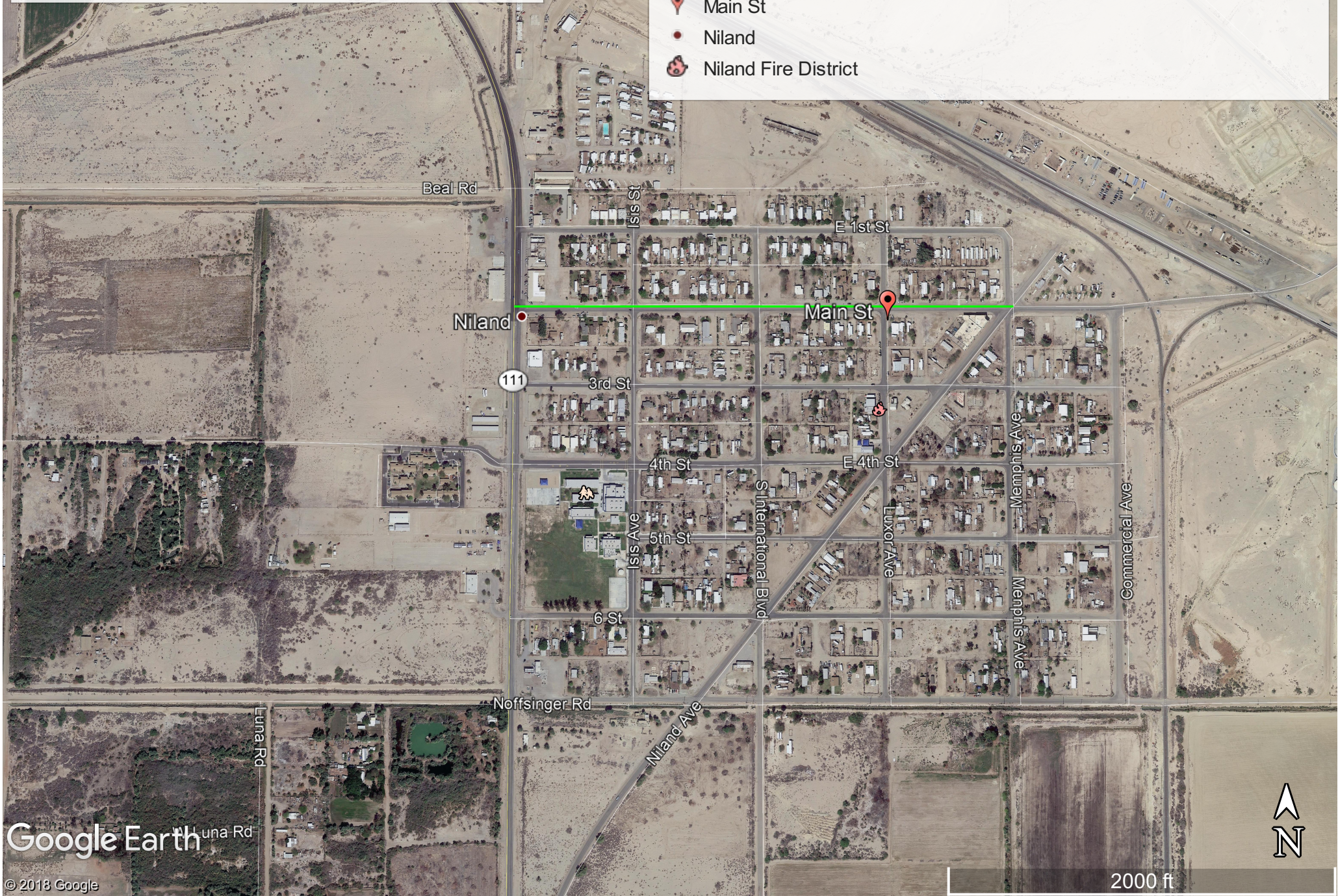


Exhibit D

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.

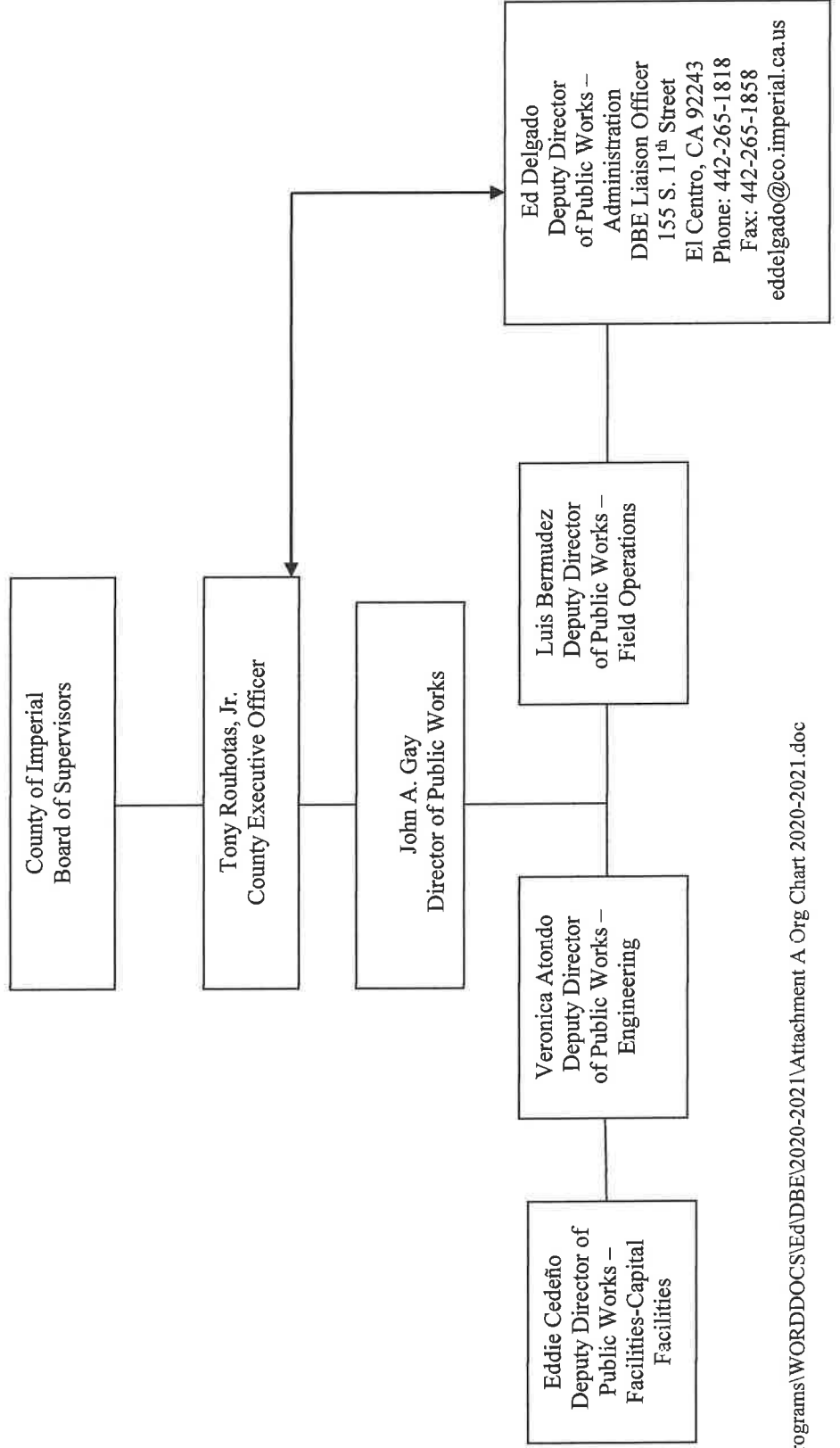
- Method 1:** No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior 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: _____

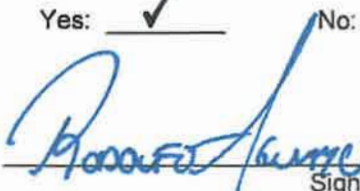
DSA website: <https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Accessibility-Plan-Review>

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

(Federally funded projects only)

The Agency has established a DBE goal for this Contract of _____

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 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 [meeting](#) the contract goal; therefore, all DBE participation shall be collected and reported.

Exhibit 10-O2 *Consultant Contract DBE Information* must be included in [best qualified consultant’s executed consultant contract](#). 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 Civil Rights [website](#)
 - 1. Click on the link 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>

