



REQUEST FOR PROPOSALS

ON CALL, AS NEEDED, SURVEYING SERVICES COUNTY PROJECT NO. 6685PWS

Requested by:

John A. Gay, PE
Director of Public Works

Prepared By:

Janette Govea
Administrative Analyst I

Reviewed By:

Ed Delgado, MPA
Deputy Director of Public Works - Administration

Deadline for Submissions: Monday, December 13, 2021 by 4:00 P.M

Imperial County
Department of Public Works
155 S. 11th Street
El Centro, CA 92243

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.

SPECIAL NOTICE No. 1

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.

NOTE: DIR number is to be specified on the cover page of the consultant proposal. Proof of registration for consultant and sub consultant shall also be submitted as an exhibit of the proposal.

Application and renewal are completed online with a non-refundable fee of \$400. 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/

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- A. **PROPOSAL EVALUATION**
- B. **SAMPLE CONSULTANT AGREEMENT AND INSURANCE REQUIREMENTS**
**THE CONSULTING FIRM MUST REVIEW THE ATTACHED SAMPLE AGREEMENT*

I. PURPOSE AND BACKGROUND:

Imperial County Department of Public Works (ICDPW) is requesting proposals from qualified and experienced professionals to provide on-call services. The selected firm(s) will assist the County with various assignments for local, state, or federally funded projects. These services will be on an intermittent basis.

The purpose of the Request for Proposals (RFP) is to provide ICDPW with the ability to obtain assistance quickly during peak workload periods, staffing shortages, and when expedited/fast track support is needed to satisfy the Department's scheduling and needs. The County of Imperial will award multiple on-call contracts to qualifying firms for Surveying Services.

It is the intention of the County to select and contract with more than one (1) Consultant for this service. The term of the as needed, on call agreements shall be for three (3) years, no extensions. Contracts will commence July 1, 2022, each selected firm will have an annual ceiling of \$100,000 to complete any and all services awarded by ICDPW.

Each proposal will be scored in accordance with the Consultant's qualifications and experience. The aforementioned 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 the Davis Bacon Wage Determinations.

Note: The County enforces the American with Disabilities Act (ADA) using local, state and federal guidelines and enforces the strictest of the ADA codes and regulations concerning existing and new facility improvements.

Compensation for the as needed, on call, agreement shall be handled through task orders after consideration of price quotes from consultants and will be financed through project specific sources.

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 1774. All Service Providers and sub-consultant(s) shall pay all workers not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed, pursuant to sections 1770 et seq. of the California Labor Code. Prevailing wage rates are available on the Internet at: <<http://www.dir.ca.gov>>. All Service Providers and sub-consultant(s) shall comply with the registration and qualification requirements pursuant to sections 1725.5 and 1771.1 of the California Labor Code.

The County of Imperial Disadvantaged Business Enterprise (DBE) Program affirms the utilization and participation of qualified disadvantaged business firms in its contracting and procurement activities. The County encourages general and prime contractors to afford competitive subcontracting opportunities to disadvantaged firms, where possible, in their contracting and procurement activities with the County of Imperial. The DBE program is intended to ensure a level playing field and foster equal opportunity in federal-aid contracts.

There is no DBE goal for participation and/or award of this RFP. However, DBE goals will be stipulated for the respective task order(s) should it be a requirement of the project being solicited.

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/> under “Projects out to Bid.” Consultants wishing to propose in response to this RFP must obtain this document from our website. Due to the fact that anyone can download the RFP and the County has no method for tracking the distribution, the County is not able to maintain a list of potential consultants and/or proposers and cannot provide individual notification of amendments or addendums to this RFP.

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 in their proposal.

TABLE 1 – PROCUREMENT TIMELINE (*subject to change*)

EVENT	DATE
Issue Request for Proposal	Monday November 15, 2021
Last Day for Request(s) for Clarification <i>must be submitted in writing</i>	Monday November 29, 2021 by 5:00pm
Proposal Due	Monday December 13, 2021 by 4:00pm
Consultant Selection	December 2021/ January 2022
Agreement for Services	December 2021/ January 2022

III: SCOPE OF WORK

Consultant will provide the necessary as needed, on call, Surveying Services to the ICDPW in accordance with all provisions within this RFP. These services will be on an intermittent, as needed, on call, basis and the consultant will act as an extension of staff. The consultant shall have staff qualified to conduct all necessary survey work, as well as prepare written documents. Prevailing wages shall apply to project services, where applicable.

Scope of Services includes, but is not limited to the following:

- Review maps, plats, legal descriptions and other land surveying documents prepared by the County Surveyor. Some documents may require endorsement as the authority of Acting County Surveyor prior to recordation.
- Review maps, plats, legal descriptions and other land surveying documents submitted to the County Surveyor for review. All activities will be performed under the responsible charge of the County Surveyor and the County Surveyor will provide any endorsements.

On Call, As Needed, Surveying Services; County Project No. 685PWS

- Prepare maps, plats, legal descriptions and other land surveying documents for the benefit of the Imperial County. Some activities may be performed under the responsible charge of the County Surveyor.
- Conduct various field surveying activities as needed for the benefit of the Imperial County. Some activities may be performed under the responsible charge of the County Surveyor.
- Loan of personnel for various field surveying activities. Some activities may be performed under the responsible charge of the County Surveyor.
- Research and due diligence investigations as needed for the benefit of the Imperial County. Some activities may be performed under the responsible charge of the County Surveyor.

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

Firms submitting a proposal shall be fully informed of the requirements of the regulations and the County's Disadvantaged Business Enterprise (DBE) program developed pursuant to the regulations.

IV. ASSIGNMENT OF WORK

The County will assign work to any of the contracted firms as is deemed necessary and appropriate by the County. All work shall be performed under the direction of an appropriate licensed professional a registered with the State of California. No subcontractors shall be utilized without prior authorization by County.

For each project for which services will be requested, the County will issue a Task Order to one or more firms under the on call agreement and request a proposal which must include project understanding and the appropriate lump sum fixed fee rate for the completion of the project. The proposal shall include the proposed methodology/protocols to be used, a breakdown of the hours to be spent per task by staff classification, milestones used to mark the consultant's accomplishments and points of payment authorization and the amount of time needed to perform the work from the time the notice to proceed is received by the consultant.

The consultant will have a prescribed number of working days, indicated in the task order, to submit the requested proposal. Failure to submit the proposal in the prescribed time may constitute grounds for having the proposal rejected and another firm under the on call agreement assigned the task. The County will review the proposal and make the decision of award based on qualifications for the task as well as overall cost.

Time frames for the consultant to complete tasks or achieve task milestones shall be negotiated on a task-by-task basis. Milestones and tasks defined for this contract are used to mark the consultant's accomplishments and as a guide for payment authorization. Any delays in the submitted schedule of work must be pre-authorized by authorized Public Works staff.

At the conclusion of the task, the selected firm shall submit to the County a project completion file which contains the required information, forms, certifications, communications, etc. A digital version of the project file will also need to be submitted on a compact disc (CD) containing all required documentation

in portable document format (PDF) as well as any modifiable document used (.docx files, etc.). The required project file will need to be submitted before the final payment and retention can be released.

V. RESPONSIBILITY OF COUNTY

The County will direct the development of the project, provide management oversight, and conduct administrative arrangements only. Consultant will be responsible for all activities and meetings associated with the project design including meeting minutes and record keeping.

The County will pay an agreed upon amount normally within 30 days after receipt of invoice(s). Invoice(s) shall be submitted with a detailed accounting of staff hours attributed to specific tasks and have a clear notation of the County Project Number.

County will retain 5% of each invoice for professional services, but due to the nature of the work will exempt plan check and review services from the 5% retention. For this work the consultant shall submit one (1) invoice for full payment upon completion of work.

The County will not provide dedicated workplace facilities, but upon request will provide a conference room for meetings with the Department, consultant, contractor, and other appropriate agencies if needed.

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.

The County will provide to the consultant for their use access to any existing reference materials or survey data currently available within County files that are necessary to accomplish the project. The County will provide a boilerplate for contract bid documents, which the consultant shall be required to follow.

VI. PROPOSAL CONTENT AND FORMAT

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

1. General Requirements

- a. Provide a cover letter.
- b. 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 services being requested. Provide a statement that the offer is valid for at least a ninety (90) day period.
- c. Provide the name(s) of the primary and/or alternate individuals authorized to respond to the RFP(s). Include titles, addresses, e-mail if available, and phone number.
- d. The Consultant is representing itself as a qualified professional. Therefore, it is acceptable to submit recommendations and comments for consideration on format, process, schedule, and additional content of projects. The County will consider comments and recommendations; however it is not required to select any of the recommendations or comments.
- e. 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.

- f. 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

2. Table of Contents

- a. Include a table of contents with identification of material by section and page number.

3. Summary of Qualifications and Experience

- a. State whether the firm is local, regional, national or international.
- b. Identify the owner(s) of the firm and legal status (sole proprietor, corporation, etc.)
- c. Give the location of the office from which work is anticipated to be done and the number of employees of the company.
- d. Identify the qualifications and resumes of all individuals who will be associated with this service. Include professional registrations and affiliations.
- e. 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).

4. Analysis of Effort/Methodology

- a. Describe the approach for how the work will be performed to address Scope of Work. The proposal shall indicate any specific techniques or methodology to be utilized to keep costs within budget and schedule under control.
- b. The proposal shall include a sample project timeline with specific tasks envisioned for this project, including staffing.
- c. Indicate what participation, data and products will be requested from the county.
- d. Indicate deliverables to be provided and when.

5. Cost/Fees and Invoicing

All cost / fees proposed must accompany proposal within a separate sealed envelope.

- a. 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. Also, detail what hourly rates for overtime will be used.

- b. Submit itemized hourly fee schedule for additional services beyond the scope of work.
- c. Invoicing will be submitted to the County on a per task completed basis. Milestone payments will be observed and it will be the responsibility of the selected consultant to propose the completed task milestone payment schedule. The schedule submitted will be a recommendation to the County. The County will then evaluate and discuss with the consultant if any modifications are required.

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 eCounty estimates. Insurance requirements may be adjusted once the final cost and fees proposal is reviewed.

VII. PROPOSAL EVALUATION

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

The County will utilize a one-step selection process. The County reserves the right to include an oral interview process component. If an oral interview is considered, selected firms will be notified.

The proposals shall be evaluated by a selection committee, who will determine if proposal objectives are met, and whose evaluation may include interviews of the top five (5) ranked firms submitting qualifying packages. Once the proposals are reviewed and the qualifications considered, recommendations will then be submitted to the County Board of Supervisors for final selection.

The County reserves the right to select any consultant who is determined qualified and may not correlate to an originally ranked consultant. The County reserves the right to reject any and all proposals submitted and/or request additional information for clarification.

VIII. PROPOSAL SUBMITTAL

Per Proposal - One (1) original, two (2) copies, and one (1) electronic copy in Portable Document Format (PDF) on a USB Thumb Drive of the proposal must be received in person or by mail to Imperial County Department of Public Works no later than 4:00pm on Monday December 13, 2021. Proposal must be clearly titled: REQUEST FOR PROPOSAL: On Call, As Needed, Surveying Services.

Proposals are to be delivered in a sealed envelope and addressed to:

Imperial County Department of Public Works
Attn: Janette Govea – Administrative Analyst I
155 S. 11th Street El Centro, California 92243

On Call, As Needed, Surveying Services; County Project No. 685PWS

To prevent the spread of the novel coronavirus, proposals for this Request for Proposals will also be accepted electronically. Proposals shall be submitted no later than Monday, December 13, 2021 at 4:00 p.m. in Portable Document Format (PDF) via email to Janette Govea, Administrative Analyst I, to janettegovea@co.imperial.ca.us with the subject line: **REQUEST FOR PROPOSAL: On Call, As Needed, Surveying Services; County Project No. 6685PWS.**

All cost / fees proposed must accompany proposal within a separate sealed envelope.

Note: Late proposals will not be considered.

IX. CONSULTING AGREEMENT AND INSURANCE REQUIREMENTS

A sample agreement is attached for review as Exhibit B.

Prior to the start of work, the selected consultant will be required to execute an Agreement for Services with the County. The consulting firm must review the attached sample consulting agreement and minimum insurance amounts. No modification requests to material terms of agreement will be made. The agreement shall not be in force until contracting is approved by the Imperial County Board of Supervisors and after written authorization to proceed has been provided.

Prior to submittal, for board approval, of the agreement with the County, the successful firm must provide evidence of insurance coverage 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 eCounty estimates. Insurance amounts may be adjusted once the final cost and fees proposal is reviewed. Any contract resulting from this RFP will be financed with funds available to the County through project specific sources.

X. CLOSING ITEMS

A pre-proposal conference has not been 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.

Prior to award of contract, all proposals will be designated confidential to the extent permitted by the California Public Records Act. After award of the contract, or if not awarded, after rejection of proposals, all responses will be regarded as public records and will be subject to review by the public. Any language purported to render confidential all or portions of the proposals will be regarded as non-effective and will be disregarded. Any modifications to this solicitation will be issued by the County as a written addendum and posted to the Imperial County Department of Public Works website.

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.

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.

XI. QUESTIONS AND CONTACT INFORMATION

Questions concerning this RFP will be responded to collectively, and made available for interested consultants via the ICDPW website <https://publicworks.imperialcounty.org/> under “Projects out to Bid” as an addendum. *All inquiries must be submitted in writing no later than (5:00pm) on Monday November 29, 2021* to the contact person below. **No oral questions will be taken or responded to except for administrative clarifications.**

Contact: Janette Govea - Administrative Analyst I
 janettegovea@co.imperial.ca.us (for proposal questions)
 442-265-1818 (for administrative questions ONLY)

EXHIBIT A



PROPOSAL EVALUATION FORM

AS NEEDED, ON CALL, ARCHITECTURAL SERVICES;
 COUNTY PROJECT NO. 6685PWS

Prepared November 15, 2021

RESPONDENT: _____
 EVALUATOR: _____
 DATE: _____
 EVALUATOR SIGNATURE: _____

RATING POINTS:

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

CRITERIA	WEIGHT FACTOR	X	RATING	=	WEIGHTED RATING
A. Relevant Experience					
• Responsiveness & understanding of work to be done, (i.e. scope of work).	(0.20)		_____		_____
• Past three (3) years of relevant Experience, key personnel, & staff	(0.15)		_____		_____
B. Project Management					
• Consultants ability to provide respective Services within budget and on schedule.	(0.15)		_____		_____
• Demonstrates organizational skills, and Ability to meet client program requirements and goals.	(0.10)		_____		_____
C. References					
	(0.05)		_____		_____
D. Understanding					
Familiarity and/or specific experience with Federal, State, and Local government projects.	(0.20)		_____		_____
E. Problem Solving					
Demonstrate creative problem solving and solutions in dealing with difficult planning, programming, and evaluation analysis.	(0.15)		_____		_____
Subtotal Score					_____
					(0 to -5)
F. Previous Experience and performance working					
With County of Imperial Department of Public Works					_____
					(0 to -5)
Total Score					_____

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 _____, 2015, by and between the County of Imperial, a political subdivision of
5 the State of California, by and through its Department of Public Works (“COUNTY”) and
6 **«Consultant_Business_Name»**, **«Consultant_Business_Type»** (“CONSULTANT”) (individually,
7 “Party;” collectively, “Parties”).

8 **RECITALS**

9 **WHEREAS**, COUNTY desires to retain a qualified individual, firm or business entity to provide
10 **«Contract_Services»** for **«Project_Name»**; **«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
15 the 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
17 CONSULTANT have and hereby agree to the following:

18 **1. DEFINITIONS.**

19 **1.1.** “Request for Proposal” or “RFP” shall mean that document that describes the Project and
20 project requirements to prospective bidders entitled, “**«Name_of_RFP»**,” dated **«Date_of_RFP»**. The
21 Request for Proposal is attached hereto as **Exhibit “A”** and incorporated herein by this reference.

22 **1.2.** “Proposal” shall mean CONSULTANT’s document entitled, “**«Name_of_Proposal»**,”
23 dated **«Date_of_Proposal»** and submitted to COUNTY’s Department of Public Works. The Proposal is
24 attached hereto as **Exhibit “B”** and incorporated herein by reference.

25 **2. CONTRACT COORDINATION.**

26 **2.1.** The Director of Public Works or his/her designee shall be the representative of
27 COUNTY for all purposes under this Agreement. The Director of Public Works or his/her designee is
28 hereby designated as the Contract Manager for COUNTY. He/she shall supervise the progress and

1 execution of this Agreement.

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

6 **3. DESCRIPTION OF WORK.**

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

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

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

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

16 **4.3.** CONSULTANT shall:

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

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

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

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

28 **5. REPRESENTATIONS BY CONSULTANT.**

1 **5.1.** CONSULTANT understands and agrees that COUNTY has limited knowledge in the
2 multiple areas specified in the Proposal. CONSULTANT has represented itself to be an expert in these
3 fields and understands that COUNTY is relying upon such representation.

4 **5.2.** CONSULTANT represents and warrants that it is a lawful entity possessing all required
5 licenses and authorities to do business in the State of California and perform all aspects of this
6 Agreement.

7 **5.3.** CONSULTANT shall not commence any work under this Agreement or provide any
8 other services, or materials, in connection therewith until CONSULTANT has received written
9 authorization from COUNTY's Contract manager to do so.

10 **5.4.** CONSULTANT represents and warrants that the people executing this Agreement on
11 behalf of CONSULTANT have the authority of CONSULTANT to sign this Agreement and bind
12 CONSULTANT to the performance of all duties and obligations assumed by CONSULTANT herein.

13 **5.5.** CONSULTANT represents and warrants that any employee, contractor and/or agent who
14 will be performing any of the duties and obligations of CONSULTANT herein possess all required
15 licenses and authorities, as well as the experience and training, to perform such tasks.

16 **5.6.** CONSULTANT represents and warrants that the allegations contained in the Proposal are
17 true and correct.

18 **5.7.** CONSULTANT understands that COUNTY considers the representations made herein
19 to be material and would not enter into this Agreement with CONSULTANT if such representations
20 were not made.

21 **5.8.** CONSULTANT understands and agrees not to discuss this Agreement or work
22 performed pursuant to this Agreement with anyone not a party to this Agreement without the prior
23 permission of COUNTY. CONSULTANT further agrees to immediately advise COUNTY of any
24 contacts or inquiries made by anyone not a party to this Agreement with respect to work performed
25 pursuant to this Agreement.

26 **5.9.** Prior to accepting any work under this Agreement, CONSULTANT shall perform a due
27 diligence review of its files and advise COUNTY of any conflict or potential conflict CONSULTANT
28 may have with respect to the work requested.

1 **5.10.** CONSULTANT understands and agrees that in the course of performance of this
2 Agreement CONSULTANT may be provided with information or data considered by the owner or the
3 COUNTY to be confidential. COUNTY shall clearly identify such information and/or data as
4 confidential. CONSULTANT shall take all necessary steps necessary to maintain such confidentiality
5 including but not limited to restricting the dissemination of all material received to those required to
6 have such data in order for CONSULTANT to perform under this Agreement.

7 **5.11.** CONSULTANT represents that the personnel dedicated to this project as identified in
8 CONSULTANT’s Proposal, will be the people to perform the tasks identified therein. CONSULTANT
9 will not substitute other personnel or engage any contractors to work on any tasks identified herein
10 without prior written notice to COUNTY.

11 **6. TERM OF AGREEMENT.**

12 This Agreement shall commence on the date first written above and shall remain in effect until
13 the services provided as outlined in Paragraph 3, (“DESCRIPTION OF WORK”), have been
14 completed, unless otherwise terminated as provided for in this Agreement.

15 **7. COMPENSATION.**

16 **7.1.** The total compensation payable under this Agreement shall not exceed
17 «Cost_of_Original_Contract», unless otherwise previously agreed to in writing by COUNTY.

18 **7.2.** The fee for any additional services required by COUNTY will be computed either on a
19 negotiated lump sum basis or upon actual hours and expenses incurred by CONSULTANT and based
20 on CONSULTANT’s current standard rates as set forth in the Proposal. Additional services or costs
21 will not be paid without a prior written agreement between the Parties.

22 **7.3.** Except as provided under paragraph 7.1 and 7.2, COUNTY shall not be responsible to
23 pay CONSULTANT any compensation, out of pocket expenses, fees, reimbursement of expenses or
24 other remuneration.

25 **8. PAYMENT.**

26 **8.1.** CONSULTANT shall bill COUNTY on a time and material basis as set forth in **Exhibit**
27 **“A.”** COUNTY shall pay CONSULTANT for completed and approved services upon presentation of its
28 itemized billing.

1 **8.2.** COUNTY shall have the right to retain five percent (5%) of the total of amount of each
2 invoice, not to exceed five percent (5%) of the total compensation amount of the completed project.
3 “Completion of the Project” is when the work to be performed has been completed in accordance with this
4 Agreement, as determined by COUNTY, and all subcontractors, if any, have been paid in full by
5 CONSULTANT. Upon completion of the Project CONSULTANT shall bill COUNTY the retention for
6 payment by COUNTY.

7 **9. METHOD OF PAYMENT.**

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

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

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

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

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

23 **11.1.** CONSULTANT shall maintain all ledgers, books of accounts, invoices, vouchers,
24 canceled checks, and other records relating to CONSULTANT’s charges for services or expenditures
25 and disbursements charged to COUNTY for a minimum period of three (3) years, or for any longer
26 period required by law, from the date of final payment to CONSULTANT pursuant to this Agreement.

27 **11.2.** CONSULTANT shall maintain all reports, documents, and records, which demonstrate
28 performance under this Agreement for a minimum period of five (5) years, or for any longer period

1 required by law, from the date of termination or completion of this Agreement.

2 **11.3.** Any records or documents required to be maintained by CONSULTANT pursuant to
3 this Agreement shall be made available to COUNTY for inspection or audit at any time during
4 CONSULTANT's regular business hours provided that COUNTY provides CONSULTANT with
5 seven (7) days advanced written or e-mail notice. Copies of such documents shall, at no cost to
6 COUNTY, be provided to COUNTY for inspection at CONSULTANT's address indicated for receipt
7 of notices under this Agreement.

8 **12. SUSPENSION OF AGREEMENT.**

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

13 **13. TERMINATION.**

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

22 **14. INSPECTION.**

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

28 **15. OWNERSHIP OF MATERIALS.**

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

6 **16. INTEREST OF CONSULTANT.**

7 **16.1.** CONSULTANT covenants that it presently has no interest, and shall not acquire any
8 interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with
9 the performance of the services hereunder.

10 **16.2.** CONSULTANT covenants that, in the performance of this Agreement, no sub-
11 contractor or person having such an interest shall be employed.

12 **16.3.** CONSULTANT certifies that no one who has or will have any financial interest under
13 this Agreement is an officer or employee of COUNTY.

14 **17. INDEMNIFICATION.**

15 **17.1.** CONSULTANT agrees to the fullest extent permitted by law to indemnify, defend,
16 protect and hold COUNTY and its representatives, officers, directors, designees, employees,
17 successors and assigns harmless from any and all claims, expenses, liabilities, losses, causes of actions,
18 demands, losses, penalties, attorneys' fees and costs, in law or equity, of every kind and nature
19 whatsoever arising out of or in connection with CONSULTANT's negligent acts and omissions or
20 willful misconduct under this Agreement ("Claims"), whether or not arising from the passive
21 negligence of COUNTY, but does not include Claims that are the result of the negligence or willful
22 misconduct of COUNTY.

23 **17.2.** CONSULTANT agrees to defend with counsel acceptable to COUNTY, indemnify and
24 hold COUNTY harmless from all Claims, including but not limited to:

25 **17.2.1.** Personal injury, including but not limited to bodily injury, emotional injury,
26 sickness or disease or death to persons including but not limited to COUNTY's representatives,
27 officers, directors, designees, employees, agents, successors and assigns, subcontractors and other third
28 parties and/or damage to property of anyone (including loss of use thereof) arising out of

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

4 **17.2.2.** Liability arising from injuries to CONSULTANT and/or any of
5 CONSULTANT's employees or agents arising out of CONSULTANT's negligent performance of, or
6 willful misconduct surrounding, any of the terms contained in this Agreement, or anyone directly or
7 indirectly employed by CONSULTANT or anyone for whose acts CONSULTANT may be liable;

8 **17.2.3.** Penalties imposed upon account of the violation of any law, order, citation, rule,
9 regulation, standard, ordinance or statute caused by the negligent action or inaction, or willful
10 misconduct of CONSULTANT or anyone directly or indirectly employed by CONSULTANT or
11 anyone for whose acts CONSULTANT may be liable;

12 **17.2.4.** Infringement of any patent rights which may be brought against COUNTY
13 arising out of CONSULTANT's work;

14 **17.2.5.** Any violation or infraction by CONSULTANT of any law, order, citation, rule,
15 regulation, standard, ordinance or statute in any way relating to the occupational health or safety of
16 employees; and

17 **17.2.6.** Any breach by CONSULTANT of the terms, requirements or covenants of this
18 Agreement.

19 **17.3.** These indemnification provisions shall extend to Claims occurring after this Agreement
20 is terminated, as well as while it is in force.

21 **18. INDEPENDENT CONTRACTOR.**

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

25 **18.1.** CONSULTANT is not an employee or agent of COUNTY and is only responsible for
26 the requirements and results specified by this Agreement or any other agreement.

27 **18.2.** CONSULTANT shall be responsible to COUNTY only for the requirements and results
28 specified by this Agreement and except as specifically provided in this Agreement, shall not be subject

1 to COUNTY's control with respect to the physical actions or activities of CONSULTANT in
2 fulfillment of the requirements of this Agreement.

3 **18.3.** CONSULTANT is not, and shall not be, entitled to receive from, or through, COUNTY,
4 and COUNTY shall not provide, or be obligated to provide, CONSULTANT with Workers'
5 Compensation coverage or any other type of employment or worker insurance or benefit coverage
6 required or provided by any Federal, State or local law or regulation for, or normally afforded to, an
7 employee of COUNTY.

8 **18.4.** CONSULTANT shall not be entitled to have COUNTY withhold or pay, and COUNTY
9 shall not withhold or pay, on behalf of CONSULTANT, any tax or money relating to the Social
10 Security Old Age Pension Program, Social Security Disability Program, or any other type of pension,
11 annuity, or disability program required or provided by any Federal, State or local law or regulation.

12 **18.5.** CONSULTANT shall not be entitled to participate in, nor receive any benefit from, or
13 make any claim against any COUNTY fringe program, including, but not limited to, COUNTY's
14 pension plan, medical and health care plan, dental plan, life insurance plan, or any other type of benefit
15 program, plan, or coverage designated for, provided to, or offered to COUNTY's employees.

16 **18.6.** COUNTY shall not withhold or pay, on behalf of CONSULTANT, any Federal, State,
17 or local tax, including, but not limited to, any personal income tax, owed by CONSULTANT.

18 **18.7.** CONSULTANT is, and at all times during the term of this Agreement, shall represent
19 and conduct itself as an independent contractor, not as an employee of COUNTY.

20 **18.8.** CONSULTANT shall not have the authority, express or implied, to act on behalf of,
21 bind or obligate COUNTY in any way without the written consent of COUNTY.

22 **19. INSURANCE.**

23 **19.1.** CONSULTANT hereby agrees at its own cost and expense to procure and maintain,
24 during the entire term of this Agreement and any extended term therefore, insurance in a sum
25 acceptable to COUNTY and adequate to cover potential liabilities arising in connection with the
26 performance of this Agreement and in any event not less than the minimum limit set forth in the
27 "Minimum Insurance Amounts" attachment to the Plans and Specifications (**Exhibit A**) which are
28 incorporated as if set forth fully herein.

1 **19.2. Special Insurance Requirements.** All insurance required shall:

2 **19.2.1.** Be procured from California admitted insurers (licensed to do business in
3 California) with a current rating by Best's Key Rating Guide, acceptable to COUNTY. A rating of at
4 least A-VII shall be acceptable to COUNTY; lesser ratings must be approved in writing by COUNTY.

5 **19.2.2.** Be primary coverage as respects COUNTY and any insurance or self-insurance
6 maintained by COUNTY shall be in excess of CONSULTANT's insurance coverage and shall not
7 contribute to it.

8 **19.2.3.** Name The Imperial County Department of Public Works and the County of
9 Imperial and their officers, employees, and volunteers as additional insured on all policies, except
10 Workers' Compensation insurance and Errors & Omissions insurance, and provide that COUNTY may
11 recover for any loss suffered by COUNTY due to CONSULTANT's negligence.

12 **19.2.4.** State that it is primary insurance and regards COUNTY as an additional insured
13 and contains a cross-liability or severability of interest clause.

14 **19.2.5.** Not be canceled, non-renewed or reduced in scope of coverage until after thirty
15 (30) days written notice has been given to COUNTY. CONSULTANT may not terminate such
16 coverage until it provides COUNTY with proof that equal or better insurance has been secured and is
17 in place. Cancellation or change without prior written consent of COUNTY shall, at the option of
18 COUNTY, be grounds for termination of this Agreement.

19 **19.2.6.** If this Agreement remains in effect more than one (1) year from the date of its
20 original execution, COUNTY may, at its sole discretion, require an increase to liability insurance to the
21 level then customary in similar COUNTY Agreements by giving sixty (60) days notice to
22 CONSULTANT.

23 **19.3. Additional Insurance Requirements.**

24 **19.3.1.** COUNTY is to be notified immediately of all insurance claims. COUNTY is
25 also to be notified if any aggregate insurance limit is exceeded.

26 **19.3.2.** The comprehensive or commercial general liability shall contain a provision of
27 endorsements stating that such insurance:
28

1 a. Includes contractual liability;

2 b. Does not contain any exclusions as to loss or damage to property caused by
3 explosion or resulting from collapse of buildings or structures or damage to property underground,
4 commonly referred to by insurers as the “XCU Hazards;”

5 c. Does not contain a “pro rata” provision which looks to limit the insurer’s
6 liability to the total proportion that its policy limits bear to the total coverage available to the insured;

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

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

11 f. Includes COUNTY as an additional insured.

12 g. States that it is primary insurance and regards COUNTY as an additional insured
13 and contains a cross-liability or severability of interest clause.
14

15 **19.4. Deposit of Insurance Policy.** Promptly on issuance, reissuance, or renewal of any
16 insurance policy required by this Agreement, CONSULTANT shall, if requested by COUNTY,
17 provide COUNTY satisfactory evidence that insurance policy premiums have been paid together with
18 a duplicate copy of the policy or a certificate evidencing the policy and executed by the insurance
19 company issuing the policy or its authorized agent.

20 **19.5. Certificates of Insurance.**

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

23 **19.5.1.** Complete copies of certificates of insurance for all required coverages including
24 additional insured endorsements shall be attached hereto as **Exhibit “C”** and incorporated herein.

25 **19.5.2.** The documents enumerated in this Paragraph shall be sent to the following:

26 County of Imperial
27 Risk Management Department
 940 Main Street, Suite 101
28 El Centro, CA 92243

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

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

20. PREVAILING WAGE.

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

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

20.3. CONSULTANT hereby acknowledges and stipulates to the following:

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

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

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

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

20.3.5 CONSULTANT has reviewed and agrees to comply with any applicable provisions for those Projects subject to Department of Industrial Relations (DIR) Monitoring and Enforcement of prevailing wages. COUNTY hereby notifies CONSULTANT that CONSULTANT is

1 responsible for complying with the requirements of Senate Bill 854 (SB854) regarding certified payroll
2 record reporting. Further information concerning the requirements of SB854 is available on the DIR
3 website located at: <http://www.dir.ca.gov/Public-Works/PublicWorksEnforcement.html>.

4 **21. WORKERS' COMPENSATION CERTIFICATION.**

5 **21.1.** Prior to the commencement of work, CONSULTANT shall sign and file with
6 COUNTY the following certification: "I am aware of the provisions of California Labor Code §§3700
7 et seq. which require every employer to be insured against liability for workers' compensation or to
8 undertake self-insurance in accordance with the provisions of that code, and I will comply with such
9 provisions before commencing the performance of the work of this contract."

10 **21.2.** This certification is included in this Agreement and signature of the Agreement shall
11 constitute signing and filing of the certificate.

12 **21.3.** CONSULTANT understands and agrees that any and all employees, regardless of hire
13 date, shall be covered by Workers' Compensation pursuant to statutory requirements prior to beginning
14 work on the Project.

15 **21.4.** If CONSULTANT has no employees, initial here: _____.

16 **22. ASSIGNMENT.**

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

20 **23. NON-DISCRIMINATION.**

21 During the performance of this Agreement, CONSULTANT and its subcontractors shall not
22 unlawfully discriminate, harass or allow harassment against any employee or applicant for
23 employment because of sex, race, color, ancestry, religious creed, national origin, physical disability
24 (including HIV and AIDS), mental disability, medical condition (cancer), age (over forty (40)), marital
25 status and denial of family care leave. CONSULTANT and its subcontractors shall insure that the
26 evaluation and treatment of their employees and applicants for employment are free from such
27 discrimination and harassment. CONSULTANT and its subcontractors shall comply with the
28 provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the

1 applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285 et seq.).
2 The applicable regulations of the Fair Employment and Housing Commission implementing
3 Government Code §12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code
4 of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth
5 in full. The applicable regulations of §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794 (a)) are
6 incorporated into this Agreement by reference and made a part hereof as if set forth in full.
7 CONSULTANT and its subconsultants shall give written notice of their obligations under this clause
8 to labor organizations with which they have a collective bargaining or other agreement.
9 CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all
10 subcontracts to perform work under this Agreement.

11 **24. NOTICES AND REPORTS.**

12 **24.1.** Any notice and reports under this Agreement shall be in writing and may be given by
13 personal delivery or by mailing by certified mail, addressed as follows:

14 **COUNTY**

15 Director of Public Works
16 155 South 11th Street
17 El Centro, CA 92243

17 County of Imperial
18 Clerk of the Board of Supervisors
19 940 W. Main Street, Suite 209
20 El Centro, CA 92243

CONSULTANT

«Consultant_Business_Name»
«Consultant_Street_Address»
«Consultant_City_State»

21 **24.2.** 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 deposit with an
23 overnight carrier.

24 **24.3.** The addressees and addresses for purposes of this paragraph may be changed to any
25 other addressee and address by giving written notice of such change. Unless and until written notice of
26 change of addressee and/or address is delivered in the manner provided in this paragraph, the addressee
27 and address set forth in this Agreement shall continue in effect for all purposes hereunder.

28 **25. ENTIRE AGREEMENT.**

This Agreement contains the entire Agreement between COUNTY and CONSULTANT

1 relating to the transactions contemplated hereby and supersedes all prior or contemporaneous
2 agreements, understandings, provisions, negotiations, representations, or statements, either written or
3 oral.

4 **26. MODIFICATION.**

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

7 **27. CAPTIONS.**

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

10 **28. PARTIAL INVALIDITY.**

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

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

15 As used in this Agreement and whenever required by the context thereof, each number, both
16 singular and plural, shall include all numbers, and each gender shall include a gender.
17 CONSULTANT as used in this Agreement or in any other document referred to in or made a part of
18 this Agreement shall likewise include the singular and the plural, a corporation, a partnership,
19 individual, firm or person acting in any fiduciary capacity as executor, administrator, trustee or in any
20 other representative capacity or any other entity. All covenants herein contained on the part of
21 CONSULTANT shall be joint and several if more than one person, firm or entity executes the
22 Agreement.

23 **30. WAIVER.**

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

27 **31. CHOICE OF LAW.**

28 This Agreement shall be governed by the laws of the State of California. This Agreement is

1 made and entered into in Imperial County, California. Any action brought by either party with respect
2 to this agreement shall be brought in a court of competent jurisdiction within said County.

3 **32. AUTHORITY.**

4 **32.1.** Each individual executing this Agreement on behalf of CONSULTANT represents and
5 warrants that:

6 **32.1.1.** He/She is duly authorized to execute and deliver this Agreement on behalf of
7 CONSULTANT;

8 **32.1.2.** Such execution and delivery is in accordance with the terms of the Articles of
9 Incorporation or Partnership, any by-laws or Resolutions of CONSULTANT and;

10 **32.1.3.** This Agreement is binding upon CONSULTANT accordance with its terms.

11 **32.2.** CONSULTANT shall deliver to COUNTY evidence acceptable to COUNTY of the
12 foregoing within thirty (30) days of execution of this Agreement.

13 **33. COUNTERPARTS.**

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

18 **34. REVIEW OF AGREEMENT TERMS.**

19 **34.1.** Each Party has received independent legal advice from its attorneys with respect to the
20 advisability of making the representations, warranties, covenants and agreements provided for herein,
21 and with respect to the advisability of executing this Agreement.

22 **34.2.** Each Party represents and warrants to and covenants with the other Party that:

23 **34.2.1.** This Agreement in its reduction to final written form is a result of extensive
24 good faith negotiations between the Parties and/or their respective legal counsel;

25 **34.2.2.** The Parties and their legal counsel have carefully reviewed and examined this
26 Agreement for execution by said Parties; and

27 **34.3.** Any statute or rule of construction that ambiguities are to be resolved against the
28 drafting party shall not be employed in the interpretation of this Agreement.

1 **35. NON-APPROPRIATION.**

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

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

8
9 **County of Imperial**

«Consultant_Business_Name»

10
11 By: _____
12 Ryan E. Kelley, Chairman
13 Imperial County Board of Supervisors

By: _____
«Consultant_Name_for_Signature»

14 **ATTEST:**

15
16 _____
17 Blanca Acosta, Clerk of the Board,
18 County of Imperial, State of California

19 **APPROVED AS TO FORM:**

20 Katherine Turner,
21 County Counsel

22
23 By: _____
24 «CC_Attorney»,
«CC_Attorney_Title»