



REQUEST FOR PROPOSALS

Material Testing for Heber Avenue Improvements from 10th Street to Fawcett Road (Westside); County Project Number 6515

Requested by:

John A. Gay, PE
Director of Public Works

Prepared By:

Naomi Robles
Administrative Analyst III

Reviewed By:

Veronica Atondo, P.E.
Deputy Director of Public Works - Engineering

Deadline for Submissions: Monday, January 10 2022 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://www.dir.ca.gov/Public-Works/Contractor-Registration.html
Classifications and Minimum Labor Rates	http://www.dir.ca.gov/OPRL/Pwd/

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1. **PROCUREMENT TIMELINE** 04

EXHIBITS

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- 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 construction management and field inspections professionals to provide Material Testing Services for the above referenced state funded project in Imperial County.

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

Qualified entities are invited to submit written proposals for consideration in accordance with this request. These services will be conducted under a contract with the County of Imperial, hereinafter referred to as "County", and the consultant entity is hereinafter referred to as "Consultant".

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.

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 consultants 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. Although there is no calculated DBE goal for this contract, DBE participation is encouraged. Consultants wishing to receive credit for DBE participation shall provide proof of DBE certification within their proposal.

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	Wednesday December 15, 2021
Last Day for Request(s) for Clarification <i>must be submitted in writing</i>	Friday December 23, 2021 by 4:00pm
Proposal Due	Monday January 10, 2022 by 4:00pm
Consultant Selection	February 2022 / March 2022
Agreement for Services	March 2022 / April 2022

III. SCOPE OF WORK

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

Consultant will assist the County with material testing tasks including but not limited to:

1. Testing and sampling of materials such as soil, aggregate, asphalt concrete, slurry, concrete, non-destructive materials testing and any applicable testing in accordance with the project plans and specifications for the subject project.
2. Material testing, specification recommendations, review and other related testing for the project.
3. Review and approval of proposed design mixes and any other applicable review of submittals related to material testing.
4. Licensed Geotechnical Engineer of record for all proposed work or other related testing as required for the improvements identified on the project plans/ specifications.
5. All testing shall be done in accordance to the County of Imperial approved Quality Assurance Program (QAP). The QAP can be found on the County’s web page.
6. Consultant shall possess all applicable certifications for personnel and laboratories, with all certifications valid and up to date.
7. Understanding of and extensive experience with federal, state and local guidelines, procedures, and certifications for laboratory and personnel assigned to the project.

8. Laboratory facilities of Consultant shall have and maintain current Caltrans accreditation throughout duration of the contract. Verification of minimum required qualification for these accreditations is required to be submitted with the proposal.
9. Any sub-consultants providing professional services to Consultant shall be held to the same licensing, accreditation, and certification standards as Consultant.
10. No subcontractors shall be utilized without prior authorization by the County.

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

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

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

Throughout the course of the project, Consultant will maintain orderly project files. All tracings, plans, specifications and maps prepared or obtained under the terms of the agreement with County shall be delivered to and become property of the County; and basic survey notes and sketches, charts, computations and other data prepared or obtained under such agreement shall be made available upon request to the County without restriction or limitation on their use.

At the conclusion of the project, Consultant shall submit to the County a project completion file which contains the required information, test results, forms, certifications, communications, and other information pertaining to the project. The report will be clearly labeled with the Project title.

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

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

IV. 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 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 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.

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.

V. 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 within 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 experience and qualifications for similar and related projects. Provide detailed knowledge and experience in working on projects that require adherence to the Local Assistance Procedures Manual, i.e. federally funded projects. Describe the material testing services previously performed. List at least 3 references with contact information.
- f. If applicable, Consultant shall provide proof of DBE certification within their proposal

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. Develop costs and fees for the services requested. A not to exceed fee based on anticipated fully burdened hourly rates for the actual RE/ Inspection for the construction contract duration of 30 working days, or less depending on the Consultant's anticipated schedule.

- b. Additionally, consider the scope of work involving preconstruction review of requests for information (RFIs), material submittals, project documentation, including before and after construction such as finalizing forms, certification, and tabulation of material testing and prepare a lump sum fixed fee breakdown based on anticipated staff and hours. Costs and fees are to be submitted in a separate sealed envelope. Costs should be organized for full-time hourly rates. Such hourly rates should be fully burdened or loaded, including full compensation for all overhead and profit. Billing rates shall include provision for normal office costs, including but not limited to office rental, utilities, insurance, cell phone or radio, equipment, normal supplies and materials, in-house reproduction services, and local travel costs. As much as possible, a fixed fee lump sum breakdown by phase of the construction based on billable hours is desirable for preconstruction and post construction.
- c. Breakdown shall include preconstruction services, construction services, and post construction services. Assume field construction services will last the number of working days in the construction contract s mentioned 30 working days. Provide a clear breakdown of the costs by phase including staff or by item, by hour. No subcontractors shall be utilized without prior authorization by the County.

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.

VI. 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.

Proposals will be reviewed by an evaluation committee. The evaluation committee will determine if qualifications are met. The qualifications will be considered, and recommendations then submitted to the County Board of Supervisors for final selection.

Please take note that the County reserves the right to select any consultant who is determined qualified and may not correlate to a number 1, number 2 or even number 3 ranked consultant. Additionally, the County reserves the right to reject any and all proposals submitted and/or request additional information for clarification.

VII. 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, January 10, 2022**. Proposal must be clearly titled: REQUEST FOR PROPOSAL: Material Testing Services for the Heber Avenue Improvements from 10th Street to Fawcett Road (Westside); County Project Number 6515

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

Imperial County Department of Public Works
Attn: Naomi Robles – Administrative Analyst III
155 S. 11th Street El Centro, California 92243

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

Note: Late proposals will not be considered.

VIII. 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 County 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.

IX. 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.

X. 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 Friday December 23, 2021* to the contact person below. **No oral questions will be taken or responded to except for administrative clarifications.**

Contact:

Naomi Robles-Administrative Analyst III
naomirobles@co.imperial.ca.us (for proposal questions)
442-265-1843 (for administrative questions ONLY)

EXHIBIT “A”



PROPOSAL EVALUATION FORM

Material Testing Services for the Heber Avenue Improvements from 10th Street to Fawcett Road (Westside); County Project Number 6515

Prepared December 15, 2021 by N.Robles

DATE: _____

EVALUATOR: _____

RESPONDENT: _____

PROJECT RATING POINTS: _____

RATING POINTS:

5 = excellent

4 = good

3 = above average

2 = average

1 = below average

0 = unsatisfactory

CRITERIA	WEIGHT FACTOR	X	RATING	= WEIGHTED RATING
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A. Technical Approach	0.35			
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- | | | | | |
|---|---------------|--|-------|-------|
| <ul style="list-style-type: none"> • Responsiveness & understanding of work to be done, (i.e. scope of work) | (0.20) | | _____ | _____ |
| <ul style="list-style-type: none"> • Specific experience with similar Soils & Material Testing | (0.15) | | _____ | _____ |

B. Project Management	0.30			
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- | | | | | |
|--|---------------|--|-------|-------|
| <ul style="list-style-type: none"> • Capacity to perform the scope of work and the ability to conclude in a timely manner | (0.20) | | _____ | _____ |
| <ul style="list-style-type: none"> • Quality of staff based on recent experience | (0.10) | | _____ | _____ |

C. References	(0.05)			
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D. Familiarity and/or specific experience with local, state and federal project procedures.	(0.25)		_____	_____
			_____	_____

E. Overall quality of proposal, including qualifications and thoroughness.	(0.05)		_____	_____
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F. Proof of DBE certification				_____
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(Voluntary participation with a maximum extra 0.05 point)

(0 to -5)

Total Score: _____

Comments:

EXHIBIT “B”

1 **AGREEMENT FOR SERVICES**

2 **SAMPLE**

3 THIS AGREEMENT FOR SERVICES (“Agreement”), made and entered into effective the
4 _____ day of _____, 2021, 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 [CONSULTANT],
6 an active California corporation (“CONSULTANT”) (individually, “Party;” collectively, “Parties”) shall be
7 as follows:

8 **RECITALS**

9 **WHEREAS**, COUNTY desires to retain a qualified individual, firm or business entity to provide
10 updates to the (“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, [RFP] dated [RFP Date]. The Request
24 for Proposal is attached hereto as **Exhibit “A”** and incorporated herein by this reference.

25 **2.2.** “Proposal” shall mean CONSULTANT’s document entitled, [Proposal] and submitted to
26 COUNTY’s Department of Public Works. The Proposal is attached hereto as **Exhibit “B”**
27 and incorporated herein this by reference.

28 **3. CONTRACT COORDINATION.**

1 **3.1.** The Director of Public Works or his/her designee shall be the representative of COUNTY
2 for all purposes under this Agreement. The Director of Public Works or his/her designee
3 is hereby designated as the Contract Manager for COUNTY. He/she shall supervise the
4 progress and execution of this Agreement.

5 **3.2.** CONSULTANT shall assign a single Contract Manager to have overall responsibility for
6 the progress and execution of this Agreement. Should circumstances or conditions
7 subsequent to the execution of this Agreement require a substitute Contract Manager for any
8 reason, the Contract Manager designee shall be subject to the prior written acceptance and
9 approval of COUNTY's Contract Manager.

10 **4. DESCRIPTION OF WORK.**

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

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

16 **5.1.** CONSULTANT shall comply with all terms, conditions and requirements of the Proposal
17 and this Agreement.

18 **5.2.** CONSULTANT shall perform such other tasks as necessary and proper for the full
19 performance of the obligations assumed by CONSULTANT hereunder; including but not
20 limited to any additional work or change orders agreed upon pursuant to written
21 authorization as described in Paragraph 6.3, and as contemplated under Sections 13, 14, and
22 28. Proposed additional work or change order requests, when applicable, will be attached
23 and incorporated herein under **Exhibit "B"** (as "B-1," "B-2," etc.).

24 **5.3.** CONSULTANT shall:

25 **5.3.1.** Procure all permits and licenses, pay all charges and fees, and give all notices that
26 may be necessary and incidental to the due and lawful prosecution of the services
27 to be performed by CONSULTANT under this agreement;

28 **5.3.2.** Keep itself fully informed of all existing and proposed federal, state and local laws,

1 ordinances, regulations, orders and decrees which may affect those engaged or
2 employed under this Agreement;

3 **5.3.3.** At all times observe and comply with, and cause all of its employees to observe and
4 comply with all of said laws, ordinances, regulations, orders and decrees mentioned
5 above; and

6 **5.3.4.** Immediately report to COUNTY's Contract Manager in writing any discrepancy
7 or inconsistency it discovers in said laws, ordinances, regulations, orders and
8 decrees mentioned above in relation to any plans, drawings, specifications or
9 provisions of this Agreement.

10 **6. REPRESENTATIONS BY CONSULTANT.**

11 **6.1.** CONSULTANT understands and agrees that COUNTY has limited knowledge in the
12 multiple areas specified in the Proposal. CONSULTANT has represented itself to be an
13 expert in these fields and understands that COUNTY is relying upon such representation.

14 **6.2.** CONSULTANT represents and warrants that it is a lawful entity possessing all required
15 licenses and authorities to do business in the State of California and perform all aspects
16 of this Agreement.

17 **6.3.** CONSULTANT shall not commence any work under this Agreement or provide any
18 other services, or materials, in connection therewith until CONSULTANT has received
19 written authorization from COUNTY's Contract manager to do so.

20 **6.4.** CONSULTANT represents and warrants that the people executing this Agreement on behalf
21 of CONSULTANT have the authority of CONSULTANT to sign this Agreement and bind
22 CONSULTANT to the performance of all duties and obligations assumed by
23 CONSULTANT herein.

24 **6.5.** CONSULTANT represents and warrants that any employee, contractor and/or agent who
25 will be performing any of the duties and obligations of CONSULTANT herein possess all
26 required licenses and authorities, as well as the experience and training, to perform such
27 tasks.

28 **6.6.** CONSULTANT represents and warrants that the allegations contained in the Proposal are

1 true and correct.

2 **6.7.** CONSULTANT understands and agrees not to discuss this Agreement or work performed
3 pursuant to this Agreement with anyone not a party to this Agreement without the prior
4 permission of COUNTY. CONSULTANT further agrees to immediately advise
5 COUNTY of any contacts or inquiries made by anyone not a party to this Agreement with
6 respect to work performed pursuant to this Agreement.

7 **6.8.** Prior to accepting any work under this Agreement, CONSULTANT shall perform a due
8 diligence review of its files and advise COUNTY of any conflict or potential conflict
9 CONSULTANT may have with respect to the work requested.

10 **6.9.** CONSULTANT understands and agrees that in the course of performance of this
11 Agreement CONSULTANT may be provided with information or data considered by the
12 owner or the COUNTY to be confidential. COUNTY shall clearly identify such
13 information and/or data as confidential. CONSULTANT shall take all necessary steps
14 necessary to maintain such confidentiality including but not limited to restricting the
15 dissemination of all material received to those required to have such data in order for
16 CONSULTANT to perform under this Agreement.

17 **6.10.** CONSULTANT represents that the personnel dedicated to this project as identified in
18 CONSULTANT's Proposal, will be the people to perform the tasks identified therein.
19 CONSULTANT will not substitute other personnel or engage any contractors to work on
20 any tasks identified herein without prior written notice to COUNTY.

21 **6.11.** CONSULTANT understands that COUNTY considers the representations made herein
22 to be material and would not enter into this Agreement with CONSULTANT if such
23 representations were not made.

24 **7. TERM OF AGREEMENT.**

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

28 **8. COMPENSATION.**

1 **8.1.** The total compensation payable under this Agreement shall not exceed **[amount]** unless
2 otherwise previously agreed to in writing by COUNTY, and shall be broken down as
3 follows:

4 **8.1.1.** [Cost Proposal]

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 ///

19 **16. OWNERSHIP OF MATERIALS.**

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

25 **17. INTEREST OF CONSULTANT.**

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

1 **17.2.** CONSULTANT covenants that, in the performance of this Agreement, no sub-contractor
2 or person having such an interest shall be employed.

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

5 **18. INDEMNIFICATION.**

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

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

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

28 **18.2.2.** Liability arising from injuries to CONSULTANT and/or any of

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

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

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

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

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

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

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

28 **18.3.** These indemnification provisions shall extend to Claims occurring after this Agreement

1 is terminated, as well as while it is in force.

2 **19. INDEPENDENT CONTRACTOR.**

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

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

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

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

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

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

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

1 CONSULTANT.

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

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

6 **20. INSURANCE.**

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

13 **20.2. Special Insurance Requirements.** All insurance required shall:

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

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

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

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

28 **20.2.5.** Not be canceled, non-renewed or reduced in scope of coverage until after thirty

1 (30) days written notice has been given to COUNTY. CONSULTANT may not
2 terminate such coverage until it provides COUNTY with proof that equal or better
3 insurance has been secured and is in place. Cancellation or change without prior
4 written consent of COUNTY shall, at the option of COUNTY, be grounds for
5 termination of this Agreement.

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

10 **20.3.** Additional Insurance Requirements.

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

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

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

insured and contains a cross-liability or severability of interest clause.

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

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

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

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

County of Imperial
Risk Management Department
Re: County Project No. [Project Number]
940 Main Street, Suite 101
El Centro, CA 92243

///
///
///
///

County of Imperial
Department of Public Works
Re: County Project No.[Project Number]
155 South 11th Street
El Centro, CA 92243

20.6. 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.

21. PREVAILING WAGE.

21.1. 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.

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

21.3. CONSULTANT hereby acknowledges and stipulates to the following:

21.3.1. 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

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

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

21.3.4. 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.

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

22. **WORKERS' COMPENSATION CERTIFICATION.**

22.1. Prior to the commencement of work, CONSULTANT shall sign and file with COUNTY the following certification: "I am aware of the provisions of California Labor Code §§3700 et seq. which require every employer to be insured against liability for workers'

1 compensation or to undertake self-insurance in accordance with the provisions of that
2 code, and I will comply with such provisions before commencing the performance of the
3 work of this contract.”

4 **22.2.** This certification is included in this Agreement and signature of the Agreement shall
5 constitute signing and filing of the certificate.

6 **22.3.** CONSULTANT understands and agrees that any and all employees, regardless of hire
7 date, shall be covered by Workers’ Compensation pursuant to statutory requirements
8 prior to beginning work on the Project.

9 **22.4.** If CONSULTANT has no employees, initial here: _____.

10 **23. ASSIGNMENT.**

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

14 **24. NON-DISCRIMINATION.**

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

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

1 **24.3.** CONSULTANT and its subcontractors shall comply with the provisions of the Fair
2 Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable
3 regulations promulgated thereunder (California Code of Regulations, Title 2, §7285 et
4 seq.).

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

9 **24.5.** The applicable regulations of §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794 (a))
10 are incorporated into this Agreement by reference and made a part hereof as if set forth
11 in full.

12 **24.6.** CONSULTANT and its subconsultants shall give written notice of their obligations under
13 this clause to labor organizations with which they have a collective bargaining or other
14 agreement.

15 **24.7.** CONSULTANT shall include the nondiscrimination and compliance provisions of this
16 clause in all subcontracts to perform work under this Agreement.

17 **25. DISADVANTAGED BUSINESS ENTITY COMPLIANCE.**

18 **25.1.** When applicable, CONSULTANT represents and warrants that it has fully read the
19 applicable Disadvantaged Business Enterprise (“DBE”) requirements pertaining to this
20 Project and has fully and accurately completed any and all required DBE forms.

21 **25.2.** CONSULTANT represents and warrants that it will comply with all applicable DBE
22 requirements for this Project.

23 **25.3.** CONSULTANT shall comply with any applicable DBE provisions attached hereto as
24 **Exhibit “D”** and incorporated by this reference as though fully set forth herein.

25 **25.4.** If any state or federal funds are withheld from COUNTY or not reimbursed to COUNTY
26 due to CONSULTANT’s failure to either comply with the DBE requirements set forth in
27 the RFP and this Agreement, or to meet the mandatory DBE goals as determined by
28 COUNTY, Caltrans, the Federal Highway Administration, and/or any other state or

1 federal agency contributing funds to the Project, then CONSULTANT shall fully
2 reimburse COUNTY the amount of funding lost. COUNTY reserves the right to deduct
3 any such loss in funding from the amount of compensation due to CONSULTANT under
4 this Agreement.

5 **25.5.** In addition to the above, CONSULTANT's failure to comply with DBE
6 requirements/goals shall subject it to such sanctions as are permitted by law, which may
7 include, but shall not be limited to the following:

8 **25.5.1.** Termination of this Agreement;

9 **25.5.2.** Withholding monthly progress payments;

10 **25.5.3.** Compensatory, special, incidental, liquidated and other damages; and/or

11 **25.5.4.** Designation of CONSULTANT as "nonresponsible," and disqualification from
12 bidding on future public works projects advertised by COUNTY.

13 **26. NOTICES AND REPORTS.**

14 **26.1.** Any notice and reports under this Agreement shall be in writing and may be given by
15 personal delivery or by mailing by certified mail, addressed as follows:

COUNTY	CONSULTANT
Director of Public Works	
Re: County Project No.[Project Number]	
155 South 11th Street	
El Centro, CA 92243	

County of Imperial
Clerk of the Board of Supervisors
Re: PW County Project No.[Project Number]
940 W. Main Street, Suite 209
El Centro, CA 92243

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

26 **26.3.** The addressees and addresses for purposes of this Section may be changed to any other
27 addressee and address by giving written notice of such change. Unless and until written
28 notice of change of addressee and/or address is delivered in the manner provided in this

1 Section, the addressee and address set forth in this Agreement shall continue in effect for
2 all purposes hereunder.

3 **27. ENTIRE AGREEMENT.**

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

7 **28. MODIFICATION.**

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

10 **29. CAPTIONS.**

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

13 **30. PARTIAL INVALIDITY.**

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

17 ///

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

19 **31.1.** As used in this Agreement and whenever required by the context thereof, each number,
20 both singular and plural, shall include all numbers, and each gender shall include a
21 gender.

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

26 **31.3.** All covenants herein contained on the part of CONSULTANT shall be joint and several
27 if more than one person, firm or entity executes the Agreement.

28 **32. WAIVER.**

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

4 **33. CHOICE OF LAW.**

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

8 **34. AUTHORITY.**

9 **34.1.** Each individual executing this Agreement on behalf of CONSULTANT represents and
10 warrants that:

11 **34.1.1.** He/She is duly authorized to execute and deliver this Agreement on behalf of
12 CONSULTANT;

13 **34.1.2.** Such execution and delivery is in accordance with the terms of the Articles of
14 Incorporation or Partnership, any by-laws or Resolutions of CONSULTANT and;

15 **34.1.3.** This Agreement is binding upon CONSULTANT accordance with its terms.

16 **34.2.** CONSULTANT shall deliver to COUNTY evidence acceptable to COUNTY of the
17 foregoing within thirty (30) days of execution of this Agreement.

18 **35. COUNTERPARTS.**

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

23 **36. REVIEW OF AGREEMENT TERMS.**

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

28 **36.2.** Each Party represents and warrants to and covenants with the other Party that:

1 **36.2.1.** This Agreement in its reduction to final written form is a result of extensive good
2 faith negotiations between the Parties and/or their respective legal counsel; and
3 **36.2.2.** The Parties and/or their legal counsel have carefully reviewed and examined this
4 Agreement for execution by said Parties.

5 **36.3.** Any statute or rule of construction that ambiguities are to be resolved against the drafting
6 party shall not be employed in the interpretation of this Agreement.

7 **37. NON-APPROPRIATION.**

8 **37.1.** All obligations of COUNTY are subject to appropriation of resources by various federal,
9 State, and local agencies, including but not limited to the U.S. Department of
10 Transportation (“DOT”) and the California Department of Transportation (“Caltrans”).

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

16 **37.3.** If sufficient funds for the Project are not appropriated, this Agreement may be amended
17 or terminated in order to reflect said reduction in funding.

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

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

22 **38.1. Pertinent Nondiscrimination Authorities:**

- 23 (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq, 78 stat. 252),
24 (prohibits discrimination on the basis of race, color, national origin); and 49 CFR
25 Part 21.
- 26 (b) The Uniform Relocation Assistance and Real Property Acquisition Policies Act
27 of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or
28 whose property has been acquired because of Federal or Federal-Aid programs

1 and projects);

- 2 (c) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits
3 discrimination on the basis of sex);
- 4 (d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as
5 amended, (prohibits discrimination on the basis of disability); and 49 CFR Part
6 27;
- 7 (e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.),
8 (prohibits discrimination on the basis of age);
- 9 (f) Airport and Airway Improvement Act of 1982, 949 U.S.C. § 4 71, Section 4
10 7123), as amended, (prohibits discrimination based on race, creed, color, national
11 origin, or sex);
- 12 (g) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope,
13 coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age
14 Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by
15 expanding the definition of the terms “programs or activities” to include all the
16 programs or activities of the Federal-aid recipients, subrecipients and contractors,
17 whether such programs or activities are Federally funded or not);
- 18 (h) Titles II and III of the Americans with Disabilities Act, which prohibit
19 discrimination on the basis of disability in the operation of public entities, public
20 and private transportation systems, places of public accommodation, and certain
21 testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of
22 Transportation regulations at 49 C.F.R. parts 37 and 38;
- 23 (i) The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. §
24 47123) (prohibits discrimination on the basis of race, color, national origin, and
25 sex);
- 26 (j) Executive Order 12898, Federal Actions to Address Environmental Justice in
27 Minority Populations and Low-Income Populations, which ensures discrimination
28 against minority populations by discouraging programs, policies, and activities

1 with disproportionately high and adverse human health or environmental effects
2 on minority and low-income populations;

3 (k) Executive Order 13166, Improving Access to Services for persons with Limited
4 English Proficiency, and resulting agency guidance, national origin
5 discrimination includes discrimination because of limited English proficiency
6 (LEP). To ensure compliance with Title VI, you must take reasonable steps to
7 ensure that LEP persons have meaningful access to your programs (70 Fed. Reg.
8 at 74087 to 74100);

9 (l) Title IX of the Education Amendment of 1972, as amended, which prohibits you
10 from discriminating because of sex in education programs or activities (20 U.S.C.
11 1681 et seq).

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14 [Signatures to Follow on Next Page]
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27 **IN WITNESS WHEREOF**, the Parties have executed this Agreement on the day and year first
28 above written.

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County of Imperial

[Consultant]

By: _____

By: _____

Michael W. Kelly, Chairman
Imperial County Board of Supervisors

[Signatory]

ATTEST:

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

APPROVED AS TO FORM:

Eric Havens,
County Counsel

By: _____

Faye Winkler,
Deputy County Counsel

MINIMUM INSURANCE AMOUNTS

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

Insurance Minimum Amounts *

<u>Insurance</u>	<u>Minimum Limit</u> *
Errors & Omissions/Professional Liability	\$2 million per occurrence
Workers Compensation, Coverage A	Statutory
Employers Liability, Coverage B	\$1 million
Commercial 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.

*Minimums subject to additional review after Consultant is selected.