



REQUEST FOR PROPOSALS

ON-CALL, AS NEEDED, MECHANICAL ENGINEERING SERVICES COUNTY PROJECT NO. 6685PWS

Requested by:

John A. Gay, PE
Director of Public Works

Prepared By:

Janette Govea
Administrative Analyst I

Reviewed By:

Norma Lillegard
Capital Improvement Program Project Coordinator

Deadline for Submissions: Wednesday, June 1, 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 Consultant Registration Requirements (where required)

Pursuant to the requirements of California Labor Code section 1771.1, all consultants and sub-consultants 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 consultant or sub-consultant may be listed on a bid proposal for a public works project unless registered with DIR.

Beginning April 1, 2015, no consultant or sub-consultant 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 consultants, including sub-consultants, 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 consultants and/or sub-consultants 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.

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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**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 licensed to practice in the State of California 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 Mechanical Engineering 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 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.

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 May 2, 2022
Last Day for Request(s) for Clarification <i>must be submitted in writing</i>	Monday May 16, 2022 by 5:00pm
Proposal Due	Wednesday June 1, 2022 by 4:00pm
Consultant Selection	June 2022 / July 2022
Agreement for Services	June 2022 / July 2022

III. SCOPE OF WORK

The County’s usage of the consultants’ services are on an as-needed basis so that if the demand is not there, then the services will not be requested. For each on-call service request, the consultant and the County will agree upon the specific scope of work and cost for that project. The County has the right to retain other consulting firms in its sole discretion when the County believes there will be an economic or other significant advantage for doing so. Services for each contract will be provided on a negotiated fee basis, per task order. No minimum amount of work is guaranteed under these agreements. Compensation will be based on time and materials with a not-to-exceed limit agreed upon by both Consultant and County before work begins.

The County desires to obtain the services of one or more outside organizations to assist with Mechanical Engineering Services for maintenance and capital improvement projects for various occupancy group building uses, such as, but not limited to.

- Assembly
- Business
- High Hazard
- Institutional

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- Laboratory
- Residential
- Storage

The scope of work includes, but is not limited to, the following:

1. Providing staff and services on an on-call, as-needed basis.
2. Conduct assessments of existing systems, including evaluations of energy efficiency opportunities.
3. Provide mechanical engineering design and/or construction management services for repair, replacement and new installation of County infrastructures.
4. Provide the full range of engineering services including preliminary studies reviewing of existing drawings and site conditions, inventory of existing systems, public outreach, plans and specifications, construction estimates, permit acquisition, and other professional mechanical engineering services. The plans, specifications, and bid documents must be stamped by a professional engineer currently registered in the State of California.
5. Provide in-house personnel or sub-consultants for minor civil, structural, electrical, instrumentation and controls, asbestos and lead abatement, landscaping architecture, and LEED certification as needed to complete work.
6. During construction, make on-site visits; review material submittals, shop drawings and test results; respond to RFIs; draft change orders; and review pay estimates.
7. Typical projects may include:
 - a. HVAC analysis, renovations, upgrades, replacement and new installations.
 - i. Control systems.
 - ii. Structural analysis and renovations
 - iii. Plumbing analysis and renovations
 - iv. Electrical analysis and renovations
 - v. Testing and balancing
 - vi. Provide commissioning services to include developing and coordinating the execution of a testing plan, observation and documentation performance of improvements, system integration and functionality in accordance with documented design. This shall include testing and observing the operation and function of all components and controls involved in the new systems, including an assessment of responsible parties for correcting any problems and errors in the system, and providing a final commissioning report.
 - b. Sewer, storm drain, and lagoon pump station upgrades, replacements or new installations
 - c. Boilers, heaters pumps, valves, appurtenances and lines used in the distribution of steam and heated or processed water.
 - d. Pumps handling brines or other secondary refrigerating liquids, including water, together with all valves, appurtenances and lines used in the system.

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- e. Air compressors, together with distribution lines and all valves and devices for air control, including air dryer and filtering and separating systems
- f. All natural and manufactured gas distribution lines, including all valves and devices for their distribution, regulation and control.
- g. Building automation systems for HVAC, lighting and other controlled mediums, including consoles, data gathering panels, remote sensors and indicating devices.

The Consultant being selected through this Request for Proposal process shall (as relevant to the Project):

1. Review existing floor plans, and actual conditions, and advise County on issues of concern in regard to design, material selection, cost estimation as well as cost (life-cycle) analysis.
2. Provide schematic and design development for mechanical, electrical, and plumbing (MEP) bid documents, and a detailed cost estimate at each phase, which may include:
 - a. Attend coordination meetings
 - b. Provide progress prints/cost estimates (labor and materials) at appropriate intervals
 - c. Include elevations of exposed mechanical or electrical units, and/or three- dimensional renderings (as requested)
 - d. Provide architectural design drawings which shall include all components and accessories
3. Assist in the bidding phases:
 - a. Attend pre-bid and pre-construction meetings
 - b. Answer questions/clarifications during bidding
 - c. Review and evaluate submittals and claims for extra costs.
 - d. Inspect the construction site and actively participate in on-site construction meetings as needed. Advise County regarding interpretations of contract documents and payments to contractors when requested.
4. Conduct and assist County for substantial completion by preparing a punch list and conducting a final inspection.

Detail/Phases

Pre-Design Evaluation

Consult with County and other necessary and appropriate government units, utilities, organizations, and persons in order to ascertain project requirements and review the proposal prepared by County, recommending any necessary revisions.

Cost Estimating / Condition Survey and Report

Investigate, analyze, and measure the existing facilities to the extent necessary to determine the information necessary for project work. Measure and verify floor plans and equipment locations in the existing building. Review existing system replacement studies (if applicable), analyze building components, heating/cooling load requirements, County floor plans and drawings (as available) and make system recommendations. Prepare drawings and a report summarizing existing facilities, their condition, and their effect on the Project or the Project's effect on them.

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Prepare probable construction cost estimates to assist County in the preparation of Capital Improvement Funding requests. As part of the investigation, identify and document issues pertaining to a future project (accessibility, operations impact, etc.) to inform the project schedule.

Schematic Design and Development

Upon receipt of written notification to proceed, prepare schematic designs for review and approval by County. The schematic drawings shall show project design features. A detailed cost estimate separating labor and materials shall accompany the schematic drawings for each design option developed. Life-cycle cost estimates to be provided upon request. Advancement to next design phase pending County review of report, comments and approval to proceed.

Provide architectural design drawings which shall include all components and accessories, including system elevations (when applicable) in relation to project. Prepare a list of all permits, licenses, review, and approvals as required.

Contract Documents

Perform the final design and the preparation of detailed contract documents in accordance with applicable City, County, State, and Federal regulations (“codes”) for all elements of work including architectural plans, custom details, phasing plans and structural and/or engineering modifications, as needed. Provide design progress reviews with County and other authorities as required (typically at 50% and 95% completion). Provide progress prints, specifications and revised cost estimates at specified intervals for County’s review and approval.

Construction Administration

Attend a preconstruction conference. Such preconstruction conference shall include at least the Consultant, or its authorized representative, the contractor(s), authorized representatives of County, as well as representatives of any other public or private agencies which County determines should be in attendance. At the pre-construction conference, the Consultant shall:

- a. Observe that all necessary permits and licenses have been obtained prior to work commencement.
- b. Raise for discussion and decision, the manner in which the construction will be administered, the scheduling of construction, and any and all other issues or questions which in the opinion of the Consultant or County must be settled before the start of construction
- c. Make visits to the job site for the purpose of clarifying or interpreting any phase of the work and monitoring job progress, where necessary and/or requested. Attend on-the-job field meetings (at a frequency dictated by specific project) to review procedures, progress, scheduling, contractor compliance and other issues.
- d. Furnish to County, based on marked up prints, drawings and other data furnished by the contractor, a set of reproducible drawings showing all construction (elements/systems) as actually built.

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

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registered with the State of California. No sub-consultants 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 County 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, .xlsx, 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 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 sub-consultants are utilized, the lead Consultant must submit a description of the firm, the portion of work to be done, and cost of each sub-consultant. 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, for consultant and any sub-consultants, as noted in the sample contract and insurance requirements exhibit. The successful firm will be required to maintain the required coverages, at its sole cost and expense, throughout the entire term and any subsequent modification terms of the contract.

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

VII. 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.

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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 Wednesday, June 1, 2022. Proposal must be clearly titled: REQUEST FOR PROPOSAL: On-Call, As Needed, Mechanical Engineering Services; County Project No. 6685PWS.

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

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 Wednesday, June 1, 2022 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, Mechanical Engineering 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 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.

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, May 16, 2022* 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, MECHANICAL ENGINEERING SERVICES;
 COUNTY PROJECT NO. 6685PWS

Prepared April 27, 2022

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
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A. Relevant Experience					
<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"> • Past three (3) years of relevant Experience, key personnel, & staff 	(0.15)		_____		_____

B. Project Management					
<ul style="list-style-type: none"> • Consultants ability to provide respective Services within budget and on schedule. 	(0.15)		_____		_____
<ul style="list-style-type: none"> • Demonstrates organizational skills, and Ability to meet client program requirements and goals. 	(0.10)		_____		_____

C. References	(0.05)		_____		_____
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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 CONSTRUCTION SERVICES**

2 **«Contractor_Business_Name»**

3 THIS AGREEMENT FOR CONSTRUCTION SERVICES (“Agreement”), made and entered into
4 effective the ____ day of _____, 2021, by and between the COUNTY OF IMPERIAL, a political
5 subdivision of the State of California, through its Department of Public Works (“COUNTY”) and
6 **«Contractor_Business_Name»**, a **«Contractor_Business_Type»** licensed to do business within the state of
7 California (“CONTRACTOR”) (individually, “Party;” collectively, “Parties”) shall be as follows:

8 **RECITALS**

9 **WHEREAS**, COUNTY desires to retain a qualified individual, firm or business entity to provide
10 professional construction services for Imperial County Project Number **«Project_Number»**,
11 **«Project_Name»** (“Project”); and

12 **WHEREAS**, COUNTY wishes to engage CONTRACTOR for performance of such services as are
13 provided for herein and CONTRACTOR is willing to accept such engagement.

14 **NOW, THEREFORE**, COUNTY and CONTRACTOR have and hereby agree to the following:

15 **1. DEFINITIONS.**

16 **1.1.** “Invitation for Bid” shall mean the document entitled, “**«Name_of_RFP»**,” dated
17 **«Date_of_RFP»**, which includes all special notices, addendums, exhibits and Plans and
18 Specifications as defined in Paragraph 1.3. The Invitation for Bid is attached hereto as
19 **Exhibit “A”** and incorporated herein as though fully set forth.

20 **1.2.** “Proposal” shall mean CONTRACTOR’s document entitled “**«Name_of_Proposal»**,”
21 dated **«Date_of_Proposal»** and submitted to the Clerk of the Board. The Proposal is
22 attached hereto as **Exhibit “B”** and incorporated herein as though fully set forth.

23 **1.3.** “Plans and Specifications” shall mean the plans and specifications approved by the
24 Director of Public Works, or his/her designee, for Project Number **«Project_Number»**.
25 While COUNTY is responsible for the completeness and accuracy of the Plans and
26 Specifications for the Project, CONTRACTOR is required to review the Plans and
27 Specifications and promptly report any errors or omissions to COUNTY.

28 ///

1 **2. CONTRACT COORDINATION.**

2 **2.1.** The Director of Public Works or his/her designee shall be the representative of COUNTY
3 for all purposes under this Agreement. The Director of Public Works or his/her designee
4 is hereby designated as the Contract Manager for COUNTY. He/she shall supervise the
5 progress and execution of this Agreement.

6 **2.2.** CONTRACTOR shall assign a single Contract Manager to have overall responsibility for
7 the progress and execution of this Agreement. Should circumstances or conditions
8 subsequent to the execution of this Agreement require a substitute Contract Manager for any
9 reason, the Contract Manager designee shall be subject to the prior written acceptance and
10 approval of COUNTY's Contract Manager.

11 **3. SCOPE OF WORK TO BE PERFORMED BY CONTRACTOR.**

12 **3.1.** CONTRACTOR shall furnish all work, labor, tools, equipment, materials, supervision,
13 scheduling, coordination and contract administration necessary to construct and complete
14 the Project in a good, expeditious, workman-like and substantial manner under the terms of
15 and in full and complete compliance with this Agreement ("Work").

16 **3.2.** CONTRACTOR shall comply with and perform work consistent with all terms,
17 conditions and requirements of the Plans, Specifications, the Invitation for Bids and this
18 Agreement.

19 **3.3.** All described work shall be constructed, installed, placed and performed in conformance
20 with the Plans and Specifications and all Special Provisions contained therein and as directed
21 by COUNTY's engineer.

22 **3.4.** In the event of a conflict among this Agreement, the Invitation for Bid and the Proposal, the
23 Invitation for Bid shall take precedence over the Proposal and this Agreement shall take
24 precedence over both.

25 **3.5.** CONTRACTOR shall perform such other tasks as necessary and proper for the full
26 performance of the obligations assumed by CONTRACTOR hereunder; including but not
27 limited to any additional work or change orders agreed upon pursuant to written
28 authorization as described in Section 5. Proposed additional work or change order requests,

1 when applicable, will be attached and incorporated herein under **Exhibit “B”** (as “B-1,” “B-
2 2,” etc.).

3 **4. TRENCHING REQUIREMENTS AND UTILITY RELOCATION.**

4 **4.1. Four Feet (4’) Below the Surface.** In the event the Project involves digging trenches or
5 other excavations that extend deeper than four feet (4’) below the surface,
6 CONTRACTOR shall:

7 **4.1.1.** Promptly, and before the following conditions are disturbed, notify COUNTY, in
8 writing, of any:

9 (a) Material that CONTRACTOR believes may be material that is hazardous
10 waste, as defined in Health & Safety Code §25117, that is required to be
11 removed to a Class I, Class II or Class III disposal site in accordance with
12 provisions of existing law;

13 (b) Subsurface or latent physical conditions at the site differing from those
14 indicated by information about the site made available to bidders prior to
15 the deadline for submitting bids; and

16 (c) Unknown physical conditions at the site of any unusual nature, different
17 materially from those ordinarily encountered and generally recognized as
18 inherent in work of the character provided for in the Agreement.

19 **4.1.2.** In response to any written notice generated pursuant to Subparagraph 4.1.1,
20 COUNTY shall promptly investigate the conditions, and if it finds that the
21 conditions do materially so differ, or do involve hazardous waste, and cause a
22 decrease or increase in CONTRACTOR’s cost of, or the time required for,
23 performance of any part of the Work, COUNTY shall issue a change order under
24 the procedures described in this Agreement.

25 **4.1.3.** In the event that a dispute arises between COUNTY and CONTRACTOR whether
26 the conditions materially differ, or involve hazardous waste, or cause a decrease
27 or increase in CONTRACTOR’s cost of, or time required for, performance of any
28 part of the Work, CONTRACTOR shall not be excused from any scheduled

1 completion date provided for by this Agreement, but shall proceed with all Work
2 to be performed under this Agreement. CONTRACTOR shall retain any and all
3 rights provided either by contract or by law which pertain to the resolution of
4 disputes and protests between the Parties.

5 **4.2. Trenching Requirements – Project in Excess of Twenty-Five Thousand Dollars (\$25,000)**
6 **and Five Feet (5’) Below the Surface.** For projects involving both an estimated expenditure
7 in excess of twenty-five thousand dollars (\$25,000) and the excavation of any trench five
8 feet (5’) or more in depth, CONTRACTOR shall submit a detailed plan showing the
9 design of shoring, bracing, sloping or other provisions to be made for worker protection
10 from the hazard of caving ground during the excavation of such trench. The plan must
11 be accepted by COUNTY (or by a registered civil or structural engineer, employed by
12 COUNTY, to whom authority to accept has been delegated) in advance of excavation. If
13 such plan varies from the shoring system standards, the plan shall be prepared by a
14 registered civil or structural engineer. Nothing in this Paragraph shall allow
15 CONTRACTOR to use a shoring, sloping, or protective system less effective than that
16 required by California Construction Safety Orders. Further, nothing in this Paragraph
17 shall be construed to impose tort liability on COUNTY or any of its employees.

18 **4.3. Utilities Relocation.** In the event that CONTRACTOR, in the scope of work, encounters
19 utilities not shown on COUNTY’S plans, COUNTY shall compensate CONTRACTOR
20 for utilities relocation work. COUNTY shall also waive liquidated damages for any delay
21 that occurs as a result of said encounter and/or relocation of utilities.

22 **5. CHANGE ORDERS.**

23 **5.1. Change Orders.** CONTRACTOR shall make no changes to the Work to be performed
24 pursuant to this Agreement, including but not limited to additions, deletions, modifications
25 or substitutions, nor shall CONTRACTOR perform any extra work (collectively, “Change
26 Order Work”) without the prior written consent of COUNTY. If CONTRACTOR
27 encounters conditions it considers different from those described in **Exhibit “A”** to this
28 Agreement, CONTRACTOR may request a change order in conformance with COUNTY’S

1 standard procedure (“Change Order”). If COUNTY approves the request, CONTRACTOR
2 will execute a Change Order and CONTRACTOR’s execution of the Change Order shall
3 confirm approval thereof. COUNTY may order additional work, and CONTRACTOR shall
4 perform such changes in the Work as directed by COUNTY in any Change Order prepared
5 by CONTRACTOR. COUNTY’s rights to eliminate portions of the Work or to initiate a
6 Change Order shall not be limited in any way. The Change Order shall be in writing and
7 shall include:

8 **5.1.1.** Any and all supporting documents and drawings depicting the source and location
9 of the desired change, and explain in detail the field conditions and reasons for the
10 requested change;

11 **5.1.2.** Any change or adjustment to the compensation set forth in this Agreement as a result
12 of changes in the Work based on a lump sum or time and material basis, as may be
13 directed by COUNTY; and

14 **5.1.3.** Any request for adjustments to time for completion of the Project.

15 **5.2.** Payment for Change Order Work. CONTRACTOR shall not be entitled to receive any
16 compensation for work, labor, materials or changes of any kind, regardless of whether
17 ordered by COUNTY or any of its representatives, unless a Change Order has been
18 submitted in writing and approved prior to the commencement of any Change Order Work
19 as described above. If the changes are required by any inspecting governmental agencies or
20 utility companies, or are otherwise required to comply with any codes, laws, rules or
21 regulations, including those set forth in this Agreement, then CONTRACTOR shall not be
22 entitled to any increases in the compensation set forth in this Agreement or other
23 compensation as a result of the changes.

24 **5.3.** Disputed Change Order Work. Any dispute concerning the performance of such Change
25 Order Work or the amount of compensation to be paid to CONTRACTOR by COUNTY
26 shall not affect CONTRACTOR’s obligation to perform such Change Order Work.
27 CONTRACTOR agrees that it shall timely complete all Change Order Work even if there
28 shall be a dispute between CONTRACTOR and COUNTY over the amount or scope of the

1 Change Order Work. CONTRACTOR shall have the right to be compensated for any
2 undisputed Change Order Work amounts as determined to be undisputed in COUNTY's
3 sole discretion.

4 **5.4. Authorized Representative.** No Change Order shall be valid or binding against COUNTY
5 unless such Change Order has been executed by COUNTY's designated representative, who
6 is the Director of Public Works. COUNTY shall notify CONTRACTOR in writing if the
7 designated representative is changed.

8 **5.5. Limits.** When applicable, the authority to execute a Change Order on this Project shall not
9 exceed the amount allowed by law pursuant to Public Contract Code sections 20137-20142
10 et seq. Where Change Orders are in an amount between ten percent (10%) and twenty-five
11 percent (25%) of the amount set forth in this Agreement and based on a need for additional
12 quantities due to an increase in the unit quantities required to complete the project in excess
13 of the COUNTY's Engineer's estimate of unit quantities as set forth in the Invitation to Bid,
14 CONTRACTOR shall be paid pursuant to Public Contract Code sections 20143 and 20139
15 and section 4 of the Standard Specifications, State of California, Business, Transportation
16 and Housing Agency, May 2006 Issued by the Department of Transportation ("Caltrans
17 Standard Specifications") referred to in **Exhibit "A"** and incorporated herein by reference.

18 **6. REPRESENTATIONS BY CONTRACTOR.**

19 **6.1.** CONTRACTOR understands and agrees that COUNTY has limited knowledge in the
20 construction specified in the description of work. CONTRACTOR has represented itself to
21 be expert in these fields and understands that COUNTY is relying upon such representation.

22 **6.2.** CONTRACTOR represents and warrants that it is a lawful entity possessing all required
23 licenses and authorities to do business in the State of California and perform all aspects
24 of this Agreement.

25 **6.3.** CONTRACTOR shall not commence any work under this Agreement or provide any
26 other services, or materials, in connection therewith until CONTRACTOR has received
27 written authorization from the Director of Public Works, or his/her designee ("Notice to
28 Proceed") to do so.

1 **6.4.** CONTRACTOR represents and warrants that the people executing this Agreement on
2 behalf of CONTRACTOR have the authority of CONTRACTOR to sign this Agreement
3 and bind CONTRACTOR to the performance of all duties and obligations assumed by
4 CONTRACTOR herein.

5 **6.5.** CONTRACTOR represents and warrants that any employee, contractor, subcontractor and
6 agent who will be performing any of the duties and obligations of CONTRACTOR herein
7 possess all required licenses and authorities, as well as the experience and training, to
8 perform such tasks.

9 **6.6.** CONTRACTOR represents and warrants that the allegations contained in its Proposal are
10 true and correct.

11 **6.7.** CONTRACTOR understands that COUNTY considers the representations made herein
12 to be material and would not enter into this Agreement with CONTRACTOR if such
13 representations were not made.

14 **6.8.** Retention and Access of Books and Records. CONTRACTOR represents and warrants
15 that it shall maintain books, records, documents, reports and other materials developed
16 under this Agreement as follows:

17 **6.8.1.** CONTRACTOR shall hold and possess as the property of COUNTY all papers,
18 books, files, correspondence and other records of all kinds which at any time shall
19 come into its possession or under its control relating only to services performed
20 by CONTRACTOR under this Agreement for a minimum period of five (5) years,
21 or for any longer period required by law, from the date said papers came into the
22 possession of CONTRACTOR pursuant to this Agreement.

23 **6.8.2.** Any records or documents required to be maintained by CONTRACTOR
24 pursuant to this Agreement shall be made available to COUNTY for inspection or
25 audit, at any time during CONTRACTOR's regular business hours provided
26 COUNTY provides CONTRACTOR with seven (7) days advanced written or oral
27 notice. Copies of such documents shall, at no cost to COUNTY, be provided to
28 COUNTY for inspection at CONTRACTOR's address indicated for receipt of

1 notices under this Agreement.

2 **6.8.3.** CONTRACTOR shall surrender all papers maintained by CONTRACTOR
3 pursuant to Subparagraph 6.8.1 of this Agreement within thirty (30) days of
4 termination of this Agreement.

5 **6.8.4.** CONTRACTOR represents and warrants that it has not been engaged by, nor will
6 it be engaged by and owes no duty of performance to any other person or entity
7 that would constitute a conflict. For breach or violation of this warranty,
8 COUNTY shall amongst other remedies at law, have the right to terminate this
9 Agreement without liability, or at its sole discretion, to deduct from the
10 Agreement price or consideration, or otherwise recover the full amount of such
11 fee, commission, percentage brokerage fee, gift or contingent fee paid or received
12 from another entity or person.

13 **6.9.** CONTRACTOR shall perform pursuant to this Agreement in accordance with and in full
14 compliance with all applicable Federal, State and local statues, rules, regulations and
15 policies and procedures, regardless of whether they are expressly set forth in this
16 Agreement. It is understood that in the event COUNTY is investigated or audited by any
17 State or Federal governmental agency, or any other recognized investigative/auditing
18 entity, CONTRACTOR shall fully cooperate with such agencies' reasonable and lawful
19 request for information.

20 **7. TERM OF AGREEMENT.**

21 This Agreement shall commence on the date first written above and shall remain in effect until
22 the services provided as outlined in Section 3, ("SCOPE OF WORK TO BE PERFORMED BY
23 CONTRACTOR"), have been completed, unless otherwise terminated as provided for in this Agreement.

24 **8. COMPENSATION.**

25 The total compensation payable under this Agreement shall be in accordance with the item prices
26 incorporated within the Proposal submitted by CONTRACTOR for labor, materials and all other services
27 related to the performance of this Agreement, attached hereto as **Exhibit "B"** and incorporated herein
28 as though fully set forth. The total compensation payable under this Agreement shall not exceed

1 «Cost_of_Original_Contract».

2 **9. PAYMENT AND RETENTION OF FUNDS.**

3 COUNTY shall pay CONTRACTOR for completed and approved services upon presentation
4 and approval of its itemized billing, subject to the following.

5 **9.1. Retention.**

6 **9.1.1.** In accordance with Cal. Pub. Contract Code §§ 7201 and 9203, COUNTY shall
7 generally retain five percent (5%) of the total compensation payable under this
8 Agreement until the Work to be performed has been completed in accordance with
9 this Agreement, as determined by COUNTY, and payment in full of all of
10 CONTRACTOR's subcontractors has been certified.

11 **9.1.2.** The 5% retention amount may be exceeded if the COUNTY's Board of Supervisors
12 has approved a finding, during a properly noticed and normally scheduled public
13 hearing conducted either prior to or concurrent with authorizing this Project to go
14 out to bid, that the Project is substantially complex and therefore requires a higher
15 retention amount than 5%. Should the retention amount exceed 5% for this Project,
16 then the actual retention amount will be listed in the Plans and Specifications, along
17 with the findings justifying the increased retention amount.

18 **9.2. Substitution of Retention.**

19 **9.2.1.** CONTRACTOR may elect to substitute securities for any retention of funds by
20 COUNTY to ensure performance under this Agreement. At the request and
21 expense of CONTRACTOR, securities equivalent to the amount retained shall be
22 deposited with the COUNTY, or with a state or federally chartered bank in this state
23 as the escrow agent, who shall then return the securities to CONTRACTOR once
24 the Work to be performed has been completed in accordance with this Agreement,
25 as determined by COUNTY, and payment in full of all of CONTRACTOR's
26 subcontractors has been certified.

27 **9.2.2.** Alternatively, CONTRACTOR may request and COUNTY shall make payment of
28 retentions earned directly to the escrow agent at the expense of CONTRACTOR.

1 CONTRACTOR, at its sole cost and expense, may direct the investment of the
2 payments into securities, and CONTRACTOR shall receive the interest earned on
3 the investments upon the same terms provided for in this Section for securities
4 deposited by CONTRACTOR. Once the Work to be performed has been
5 completed in accordance with this Agreement, as determined by COUNTY, and
6 payment in full of all of CONTRACTOR's subcontractors has been certified,
7 CONTRACTOR shall receive from the escrow agent all securities, interest, and
8 payments received by the escrow agent from COUNTY, pursuant to the terms of
9 this Section.

10 **9.2.3.** Securities eligible for investment under this Section shall include those listed in Cal.
11 Gov. Code § 16430, bank or savings and loan certificates of deposit, interest-bearing
12 demand deposit accounts, standby letters of credit, or any other security mutually
13 agreed to by COUNTY and CONTRACTOR. CONTRACTOR shall be the
14 beneficial owner of any securities substituted for retained funds and shall receive
15 any interest thereon.

16 **9.2.4.** Substitution of securities shall be conducted through an Escrow Agreement
17 substantially similar to that found in Cal. Pub. Contract Code § 22300(f).

18 **9.2.5.** Notwithstanding any other provision in this Section, substitution of securities is
19 prohibited where funding for the Project, in whole or in part, will be provided by
20 the Farmers Home Administration of the United States Department of Agriculture
21 pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921
22 et seq.), or where otherwise disallowed by federal law.

23 **10. METHOD OF PAYMENT.**

24 **10.1.** CONTRACTOR shall at any time prior to the fifteenth (15th) day of any month, submit
25 to COUNTY's Director of Public Works or his/her designee, a complete and accurate
26 written claim for compensation for services performed. The claim shall be in a format
27 approved by COUNTY. COUNTY shall make no payment prior to the claims being
28 approved in writing by the Director of Public Works or his/her designee.

1 **10.2.** After determining that the claim is a proper payment request, the Director of Public
2 Works, or his/her designee, shall submit to COUNTY’s Auditor/Controller undisputed
3 and properly submitted claims approved for payment within ten (10) days following the
4 date the claim was submitted to his/her Department.

5 **10.3.** CONTRACTOR may expect to receive payment within a reasonable time thereafter and
6 in any event in the normal course of business within thirty (30) days after the undisputed
7 and properly submitted claim is submitted.

8 **10.4.** Any claim determined to be an improper payment request shall be returned to
9 CONTRACTOR as soon as practicable, but not later than seven (7) days, after receipt with
10 a written explanation as to why the claim is an improper request for payment.

11 **10.5.** In order for prompt payment to be made by COUNTY pursuant to Public Contract Code
12 §20104.50, CONTRACTOR must properly fill out all written claims for compensation for
13 services performed.

14 **10.6.** COUNTY shall pay interest at the legal rate set forth in Code of Civil Procedure §685.010
15 in the event payment is not made within thirty (30) days of an undisputed properly submitted
16 request.

17 **11. INDEMNIFICATION.**

18 **11.1.** CONTRACTOR agrees to the fullest extent permitted by law to indemnify, defend,
19 protect and hold COUNTY and its representatives, officers, directors, designees,
20 employees, agents, successors and assigns harmless from any and all claims, expenses,
21 liabilities, causes of action, demands, losses, penalties, attorneys’ fees and costs, in law
22 or equity, of every kind and nature whatsoever arising out of or in connection with
23 CONTRACTOR’s negligent acts and omissions or willful misconduct under this
24 Agreement (“Claims”), whether or not arising from the passive negligence of COUNTY,
25 but does not include Claims that are finally determined to be the result of the sole
26 negligence or willful misconduct of COUNTY.

27 **11.2.** CONTRACTOR agrees to defend with counsel acceptable to COUNTY, indemnify and
28 hold COUNTY harmless from all Claims, including but not limited to:

1 **11.2.1.** Personal injury, including but not limited to bodily injury, emotional injury,
2 sickness or disease or death to persons including but not limited to COUNTY's
3 representatives, officers, directors, designees, employees, agents, successors and
4 assigns, subcontractors and other third parties and/or damage to property of
5 anyone (including loss of use thereof) arising out of CONTRACTOR's negligent
6 performance of, or willful misconduct surrounding, any of the terms contained in
7 this Agreement, or anyone directly or indirectly employed by CONTRACTOR or
8 anyone for whose acts CONTRACTOR may be liable;

9 **11.2.2.** Liability arising from injuries to CONTRACTOR and/or any of
10 CONTRACTOR's employees or agents arising out of CONTRACTOR's
11 negligent performance of, or willful misconduct surrounding, any of the terms
12 contained in this Agreement, or anyone directly or indirectly employed by
13 CONTRACTOR or anyone for whose acts CONTRACTOR may be liable;

14 **11.2.3.** Penalties imposed upon account of the violation of any law, order, citation, rule,
15 regulation, standard, ordinance or statute caused by the negligent action or
16 inaction, or willful misconduct of CONTRACTOR or anyone directly or
17 indirectly employed by CONTRACTOR or anyone for whose acts
18 CONTRACTOR may be liable, including but not limited to:

19 **(a)** Any loss of funding, penalties, fees, or other costs resulting from
20 CONTRACTOR's failure to adhere to Disadvantaged Business Enterprise
21 requirements and/or goals, as determined by COUNTY or such other
22 lawful entity in charge of monitoring Disadvantaged Business Enterprise
23 compliance;

24 **(b)** Any loss of funding, penalties, fees, or other costs resulting from
25 CONTRACTOR's failure to adhere to prevailing wage requirements, as
26 determined by COUNTY, the California Department of Industrial
27 Relations, or such other lawful entity in charge of monitoring prevailing
28 wage compliance;

1 **11.2.4.** Infringement of any patent rights which may be brought against COUNTY arising
2 out of CONTRACTOR's work;

3 **11.2.5.** Any violation or infraction by CONTRACTOR of any law, order, citation, rule,
4 regulation, standard, ordinance or statute in any way relating to the occupational
5 health or safety of employees; and

6 **11.2.6.** Any breach by CONTRACTOR of the terms, requirements or covenants of this
7 Agreement.

8 **11.3.** The indemnification provisions of this Agreement shall extend to Claims occurring after
9 this Agreement is terminated, as well as while it is in force.

10 **12. INDEPENDENT CONTRACTOR.**

11 **12.1.** In all situations and circumstances arising out of the terms and conditions of this
12 Agreement, CONTRACTOR is an independent contractor, and as an independent
13 contractor, the following shall apply:

14 **12.2.** CONTRACTOR is not an employee or agent of COUNTY and is only responsible for the
15 requirements and results specified by this Agreement.

16 **12.3.** CONTRACTOR shall be responsible to COUNTY only for the requirements and results
17 specified by this Agreement and except as specifically provided in this Agreement, shall
18 not be subject to COUNTY's control with respect to the physical actions or activities of
19 CONTRACTOR in fulfillment of the requirements of this Agreement.

20 **12.4.** CONTRACTOR is not, and shall not be, entitled to receive from, or through, COUNTY,
21 and COUNTY shall not provide, or be obligated to provide, CONTRACTOR with
22 Worker's Compensation coverage or any other type of employment or worker insurance
23 or benefit coverage required or provided by any Federal, State or local law or regulation
24 for, or normally afforded to, an employee of COUNTY.

25 **12.5.** CONTRACTOR shall not be entitled to have COUNTY withhold or pay, and COUNTY
26 shall not withhold or pay, on behalf of CONTRACTOR, any tax or money relating to the
27 Social Security Old Age Pension Program, Social Security Disability Program, or any
28 other type of pension, annuity, or disability program required or provided by any Federal,

1 State or local law or regulation.

2 **12.6.** CONTRACTOR shall not be entitled to participate in, or receive any benefit from, or
3 make any claim against any COUNTY fringe benefit program, including, but not limited
4 to, COUNTY's pension plan, medical and health care plan, dental plan, life insurance
5 plan, or any other type of benefit program, plan, or coverage designated for, provided to,
6 or offered to COUNTY's employee.

7 **12.7.** COUNTY shall not withhold or pay, on behalf of CONTRACTOR, any Federal, State,
8 or local tax, including, but not limited to, any personal income tax, owed by
9 CONTRACTOR.

10 **12.8.** CONTRACTOR is, and at all times during the term of this Agreement shall represent and
11 conduct itself as, an independent contractor, not an employee of COUNTY.

12 **12.9.** CONTRACTOR shall not have the authority, express or implied, to act on behalf of, bind
13 or obligate COUNTY in any way without the written consent of COUNTY.

14 **13. INSURANCE.**

15 **13.1.** CONTRACTOR hereby agrees at its own cost and expense to procure and maintain,
16 during the entire term of this Agreement and any extended term therefore, insurance in a
17 sum acceptable to COUNTY and adequate to cover potential liabilities arising in
18 connection with the performance of this Agreement and in any event not less than the
19 minimum limit set forth in the "Minimum Insurance Amounts" attachment to the Plans
20 and Specifications which are incorporated as if set forth fully herein.

21 **13.2. Special Insurance Requirements.** All insurance required shall:

22 **13.2.1.** Be procured from California admitted insurers (licensed to do business in
23 California) with a current rating by Best's Key Rating Guide, acceptable to
24 COUNTY. A rating of at least A-VII shall be acceptable to COUNTY; lesser
25 ratings must be approved in writing by COUNTY.

26 **13.2.2.** Be primary coverage as respects COUNTY and any insurance or self-insurance
27 maintained by COUNTY shall be in excess of CONTRACTOR's insurance
28 coverage and shall not contribute to it.

1 **13.2.3.** Name COUNTY as an additional insured on all policies, except Workers'
2 Compensation, and provide that COUNTY may recover for any loss suffered by
3 COUNTY by reason of CONTRACTOR's negligence.

4 **13.2.4.** State that it is primary insurance and regards COUNTY as an additional insured
5 and contains a cross-liability or severability of interest clause.

6 **13.2.5.** Not be canceled, non-renewed or reduced in scope of coverage until after thirty
7 (30) days written notice has been given to COUNTY. However, CONTRACTOR
8 may not terminate such coverage until it provides COUNTY with proof that equal
9 or better insurance has been secured and is in place. Cancellation or change
10 without the prior written consent of COUNTY shall, at the option of COUNTY,
11 be grounds for termination of this Agreement.

12 **13.2.6.** If this Agreement remains in effect more than one (1) year from the date of its
13 original execution, COUNTY may, at its sole discretion, require an increase in the
14 amount of liability insurance to the level then customary in similar COUNTY
15 Agreements by giving sixty (60) days notice to CONTRACTOR.

16 **13.3.** Additional Insurance Requirements.

17 **13.3.1.** COUNTY is to be notified immediately of all insurance claims. COUNTY is also
18 to be notified if any aggregate insurance limit is exceeded.

19 **13.3.2.** The comprehensive or commercial general liability shall contain a provision of
20 endorsements stating that such insurance:

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

- (d) Does not contain an “excess only” clause which requires the exhaustion of other insurance prior to providing coverage;
- (e) Does not contain an “escape clause” which extinguishes the insurer’s liability if the loss is covered by other insurance;
- (f) Includes COUNTY as an additional insured; and
- (g) States that it is primary insurance and regards COUNTY as an additional insured and contains a cross-liability or severability of interest clause.

13.4. Deposit of Insurance Policy. Promptly on issuance, reissuance, or renewal of any insurance policy required by this Agreement, CONTRACTOR shall, if requested by COUNTY, cause to be given to 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.

13.5. Certificates of Insurance. Complete copies of certificates of insurance for all required coverages including additional insured endorsements shall be attached hereto as **Exhibit “C”** and incorporated herein as though fully set forth.

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

14. WORKERS’ COMPENSATION CERTIFICATION.

14.1. Prior to the commencement of work, CONTRACTOR 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’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

14.2. This certification is included in this Agreement and signature of the Agreement shall constitute signing and filing of the certificate.

1 **14.3.** CONTRACTOR understands and agrees that any and all employees, regardless of hire
2 date, shall be covered by Workers' Compensation pursuant to statutory requirements
3 prior to beginning work on the Project.

4 **14.4.** If CONTRACTOR has no employees, initial here: _____.

5 **15. WARRANTY.**

6 **15.1. One Year Warranty.** CONTRACTOR agrees to provide a one-year warranty for all of its
7 work and component parts and guarantees that all work shall be performed in a
8 professional and workman-like manner and be free from defects. CONTRACTOR
9 guarantees to timely correct all work performed by it under this Agreement which
10 COUNTY determines to be defective in design, material and/or workmanship within a
11 period of one (1) year from the date of the completion of the Work. The warranties set
12 forth in this Agreement shall be in addition to, and not in lieu of, all other statutory and
13 case law warranties and obligations of CONTRACTOR. CONTRACTOR expressly
14 agrees that all warranties made by CONTRACTOR, all obligations under this Agreement
15 and all remedies for breach of such warranties shall survive this Agreement in the event
16 it is terminated or expires for any reason prior to the running of the full warranty periods
17 listed above.

18 **15.2. Materials.** All materials furnished by CONTRACTOR shall be new, manufactured
19 during the current year, of first quality and carrying full manufacturer's warranty.
20 CONTRACTOR shall be responsible for any expiration of manufacturer or other
21 warranties of material or equipment being supplied for this Agreement. CONTRACTOR
22 guarantees that all warranties of material and equipment shall become effective when the
23 project is accepted by COUNTY's Board of Supervisors, not at time of installation by
24 CONTRACTOR.

25 **15.3. Manufacturers' Warranty Information.** CONTRACTOR agrees to promptly provide such
26 information and maintenance recommendations to COUNTY at the inception of
27 CONTRACTOR's work to the extent such information is reasonably available.

28 ///

1 **16. DEFAULT AND REMEDIES.**

2 **16.1. Default.** In the event that (i) CONTRACTOR files a petition requesting relief under any
3 bankruptcy act, or is adjudged as bankrupt, or makes a general assignment for the benefit
4 of creditors or has a receiver appointed on account of its insolvency, or (ii)
5 CONTRACTOR refuses or is unable, for whatever reason, to supply enough properly
6 skilled workers or proper materials to complete the Project, or (iii) CONTRACTOR fails
7 to follow the directions of COUNTY, or (iv) CONTRACTOR fails to make prompt
8 payment to its subcontractors and suppliers for materials or labor supplied or permits any
9 lien to be imposed upon all or any portion of the Project, or (v) CONTRACTOR
10 disregards any laws or orders of any public or private authority having jurisdiction over
11 the Work or the Project, or (vi) CONTRACTOR fails to perform in accordance with any
12 of the terms of this Agreement or breaches any provision of this Agreement, COUNTY
13 may give notice of such failure or breach to CONTRACTOR, identifying the failure or
14 breach of this Agreement. Should any such failure or breach continue for twenty-four
15 (24) hours after delivery of notice without a good faith effort on the part of
16 CONTRACTOR to commence all necessary corrective action, or should such a breach
17 continue despite CONTRACTOR's efforts for forty-eight (48) hours, then at that time
18 such failure shall be deemed a default by CONTRACTOR under this Agreement and
19 COUNTY shall have all rights and remedies available at law or in equity, including the
20 right to terminate this Agreement. Without limiting its rights and remedies, COUNTY
21 may then proceed as follows:

22 **16.1.1.** Without terminating this Agreement or the obligations of CONTRACTOR
23 hereunder as to all of the Work required to be performed or furnished by
24 CONTRACTOR pursuant to this Agreement, COUNTY may require
25 CONTRACTOR, at CONTRACTOR's expense, to cure such default(s) as may
26 exist in the performance of CONTRACTOR's obligations hereunder within forty-
27 eight (48) hours after such default(s) has/have occurred including but not limited
28 to repairing, replacing and correcting material or Work determined by COUNTY

1 to be defective or not complying with the requirements of this Agreement. Should
2 CONTRACTOR fail to timely repair, replace and/or correct non-complying or
3 defective materials and workmanship or otherwise cure its default(s) hereunder,
4 and in the case of emergencies in which case COUNTY may act immediately if
5 CONTRACTOR is not available or is not responding, and without further notice,
6 COUNTY may make required repairs, replacements and other corrections or
7 otherwise remedy the default by CONTRACTOR pursuant to the subparagraph
8 below.

9 **16.1.2.** Without terminating this Agreement or the obligations of CONTRACTOR
10 hereunder as to all of the Work required to be performed or furnished by
11 CONTRACTOR pursuant to this Agreement, COUNTY may engage another
12 contractor to perform such portion of CONTRACTOR's Work required pursuant
13 to this Agreement or furnish any materials or other items required hereunder as
14 COUNTY in its sole discretion may deem necessary to avoid delay in the progress
15 of the Work, and in connection therewith, COUNTY may perform such Work or
16 any portion thereof itself or have the same performed by others and COUNTY
17 may procure all necessary materials, equipment or other items required for the
18 continued progress of such Work. The costs incurred by COUNTY as a result of
19 engaging another contractor shall be deducted from the compensation payable
20 pursuant to this Agreement and if COUNTY's costs exceed or may reasonably be
21 anticipated to exceed the balance of the compensation due to CONTRACTOR for
22 such work, such excess, or anticipated excess, shall be immediately due and owing
23 from CONTRACTOR to COUNTY and may be withheld from any funds due to
24 CONTRACTOR pursuant to this Agreement or any other agreement.

25 **16.1.3.** COUNTY may terminate CONTRACTOR's right to perform upon written notice
26 and COUNTY shall then have the option of completing the Work or any portion
27 thereof by exercise of its interest under the performance bond issued in favor by
28 CONTRACTOR, or having such Work in whole or in part be completed by others

1 for CONTRACTOR's account. A calculation shall take place at the conclusion
2 of the Project wherein to the degree the sum of COUNTY's costs and any amounts
3 paid to complete the Project exceed the compensation payable pursuant to this
4 Agreement, then any such excess shall be immediately due and owing from
5 CONTRACTOR to COUNTY.

6 **16.2. Damages.** CONTRACTOR shall be liable for all damages suffered by COUNTY by
7 reason of CONTRACTOR's default in any provision of this Agreement and the exercise
8 of COUNTY of its option to terminate this Agreement shall not release CONTRACTOR
9 of such liability. CONTRACTOR shall have no right to receive any further payment after
10 a default has occurred until such time as the Work to be performed by CONTRACTOR
11 pursuant hereto has been completed and accepted by COUNTY and damages suffered by
12 COUNTY, if any, ascertained. Damages shall include by way of illustration, but not of
13 exclusion, COUNTY's costs of completing the Work which exceeds the compensation
14 payable pursuant to this Agreement, other general, liquidated, special or consequential
15 damages, attorney fees and costs.

16 **16.3. Actions After Default.** Should COUNTY exercise any of its options, remedies or rights
17 granted pursuant to the terms of this Agreement in the event of a default by
18 CONTRACTOR, COUNTY at its sole election may, but shall not be obligated to, use
19 any materials, supplies, tools or equipment on the work site which belong to
20 CONTRACTOR to complete the Work required to be completed by CONTRACTOR,
21 whether such work is completed by COUNTY or by others, and CONTRACTOR agrees
22 that it shall not remove such materials, supplies, tools and equipment from the work site
23 unless directed in writing by COUNTY to do so.

24 **16.4. Limit on Force Majeure Damages.** CONTRACTOR shall not be responsible for repairing
25 or restoring damage to work caused by an act of God in excess of five (5) percent of the
26 contract amount, provided that the work damaged is built in accordance with accepted
27 and applicable building standards and the plans and specifications of COUNTY. In the
28 event of such damage, COUNTY may, at its option, elect to terminate this Agreement.

1 For purposes of this Agreement, an “act of God” shall be defined as an earthquake in
2 excess of 3.5 on the Richter Scale and a tidal wave.

3 **16.5. Resolution of Claims.** COUNTY and CONTRACTOR agree to follow and comply with
4 the mediation, arbitration, claim, civil action procedure and trial de novo provisions set
5 forth in California Public Contracts Code §§ 9204 and 20104 – 20104.6.

6 **16.6. No Limitation of Rights.** The options and rights granted to COUNTY herein shall not be
7 deemed as limitations upon the other rights and remedies of COUNTY in the event of a
8 failure of performance or breach by CONTRACTOR, and COUNTY shall be entitled to
9 exercise the rights and remedies hereinabove specified and all other rights and remedies
10 which may be provided in this Agreement or by law or in equity, either cumulatively or
11 consecutively, and in such order as COUNTY in its sole discretion shall determine.

12 **17. NON-DISCRIMINATION.**

13 **17.1.** During the performance of this Agreement, CONTRACTOR and its subcontractors shall
14 not unlawfully discriminate, harass or allow harassment against any employee or
15 applicant for employment because of sex, race, color, ancestry, religious creed, national
16 origin, physical disability (including HIV and AIDS), mental disability, medical
17 condition (cancer), age (over forty (40)), marital status and denial of family care leave.

18 **17.2.** CONTRACTOR and its subcontractors shall insure that the evaluation and treatment of
19 their employees and applicants for employment are free from such discrimination and
20 harassment.

21 **17.3.** CONTRACTOR and its subcontractors shall comply with the provisions of the Fair
22 Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable
23 regulations promulgated thereunder (California Code of Regulations, Title 2, Section
24 7285 et seq.).

25 **17.4.** The applicable regulations of the Fair Employment and Housing Commission
26 implementing Government Code §12990 (a-f), set forth in Chapter 5 of Division 4 of
27 Title 2 of the California Code of Regulations, are incorporated into this Agreement by
28 reference and made a part hereof as if set forth in full.

1 **17.5.** The applicable regulations of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.
2 §794 (a)) are incorporated into this Agreement by reference and made a part hereof as if
3 set forth in full.

4 **17.6.** CONTRACTOR and its subcontractors shall give written notice of their obligations under
5 this clause to labor organizations with which they have a collective bargaining or other
6 agreement.

7 **17.7.** CONTRACTOR shall include the nondiscrimination and compliance provisions of this
8 clause in all subcontracts to perform Work under this Agreement.

9 **18. DISADVANTAGED BUSINESS ENTITY COMPLIANCE.**

10 **18.1.** When applicable, CONTRACTOR and its subcontractors shall reference and abide by
11 the guidance and Disadvantaged Business Enterprise (“DBE”) specifications contained
12 in the California Department of Transportation’s Standard Specifications.

13 **18.2.** CONTRACTOR represents and warrants that is has fully read the applicable DBE
14 requirements pertaining to this Project and has fully and accurately completed any and
15 all required DBE forms.

16 **18.3.** CONTRACTOR represents and warrants that it will comply with all applicable DBE
17 requirements for this Project.

18 **18.4.** CONTRACTOR shall comply with the applicable DBE provisions attached hereto as
19 **Exhibit “D”** and incorporated by this reference as though fully set forth herein.

20 **18.5.** If any state or federal funds are withheld from COUNTY or not reimbursed to COUNTY
21 due to CONTRACTOR’s failure to either comply with the DBE requirements set forth in
22 the RFP and this Agreement, or to meet the mandatory DBE goals as determined by
23 COUNTY, Caltrans, the Federal Highway Administration, and/or any other state or
24 federal agency contributing funds to the Project, then CONTRACTOR shall fully
25 reimburse COUNTY the amount of funding lost. COUNTY reserves the right to deduct
26 any such loss in funding from the amount of compensation due to CONTRACTOR under
27 this Agreement.

28 **18.6.** In addition to the above, CONTRACTOR’s failure to comply with DBE

1 requirements/goals shall subject it to such sanctions as are permitted by law, which may
2 include, but shall not be limited to the following:

3 **18.6.1.** Termination of this Agreement;

4 **18.6.2.** Withholding monthly progress payments;

5 **18.6.3.** Denial of payment for any portion of the Project that was committed at the time
6 of the execution of this Agreement to be performed by a DBE subcontractor, but
7 was completed by CONTRACTOR or a substitute non-DBE subcontractor;

8 **18.6.4.** Compensatory, special, incidental, liquidated and other damages; and/or

9 **18.6.5.** Designation of CONTRACTOR as “nonresponsible,” and disqualification from
10 bidding on future public works projects advertised by COUNTY.

11 **19. PREVAILING WAGE.**

12 **19.1.** CONTRACTOR and its subcontractors shall pay all workers employed on the Project the
13 higher of either the rates determined by the Director of the California Department of
14 Industrial Relations (“DIR”) or, when applicable, the Davis-Bacon Federal wage rates as
15 supplemented by the Department of Labor regulations. The Davis-Bacon Federal wage
16 rates are attached to the RFP. Copies of the State prevailing rate of per diem wages are
17 on file with the Department of Industrial Relations, Division of Apprenticeship Standards,
18 445 Golden Gate Avenue, San Francisco, California, and at COUNTY’s Department of
19 Public Works, and are available to CONTRACTOR and any other interested party upon
20 request. CONTRACTOR shall post the prevailing rate of per diem wages to be posted at
21 the Project site.

22 **19.2.** CONTRACTOR is responsible for compliance with the provisions herein.

23 **19.3. Mandatory Registration with the Department of Industrial Relations – NEW**
24 **REQUIREMENTS PURSUANT TO SB 854.**

25 **19.3.1.** CONTRACTOR and its subcontractors shall register with the DIR and pay all
26 applicable fees as set forth in Labor Code section 1725.5.

27 **19.3.2.** CONTRACTOR and its subcontractors acknowledge that they shall not be listed
28 on any bid proposal for a public works project (submitted on or after March 1,

1 2015) unless registered with the DIR pursuant to Labor Code section 1725.5. The
2 requirements of this section shall apply unless one of the limited exceptions
3 provided under Labor Code Section 1771.1(a) applies.

4 **19.3.3.** CONTRACTOR and its subcontractors acknowledge that they shall not be
5 awarded any contract for public work on a public works project (awarded on or
6 after April 1, 2015) unless registered with the DIR pursuant to Labor Code section
7 1725.5.

8 **19.3.4.** The Project described herein is subject to compliance monitoring and enforcement
9 with the DIR.

10 **19.3.5.** For further information concerning compliance with SB 854, please visit:
11 <http://www.dir.ca.gov/Public-Works/SB854.html>.

12 **19.4. Cognizance of Violations by County.**

13 **19.4.1.** CONTRACTOR understands and agrees that COUNTY shall take cognizance of
14 violations of Chapter 1 of Part 7 of Division 2 of the California Labor Code
15 committed in the course of the execution of this Agreement, and shall promptly
16 report any suspected violations to the Labor Commissioner.

17 **19.4.2.** If CONTRACTOR determines as a result of its own investigation that there has
18 been a violation of Chapter 1 of Part 7 of Division 2 of the California Labor Code
19 and withholds payment to CONTRACTOR, the procedures in California Labor
20 Code §1771.6 shall be followed.

21 **19.4.3.** CONTRACTOR may bring an action in a court of competent jurisdiction to
22 recover from COUNTY the difference between the wages actually paid to an
23 employee and the wages that were required to be paid to an employee pursuant to
24 Chapter 1 of Part 7 of Division 2 of the California Labor Code, any penalties
25 required to be paid pursuant to Chapter 1 of Part 7 of Division 2 of the California
26 Labor Code, and costs and attorney's fees related to the action, if either of the
27 following is true:

28 **(a)** COUNTY previously affirmatively represented to CONTRACTOR in

1 writing, in the call for bids, or otherwise, that the Work was not a “public
2 work,” as defined in Chapter 1 of Part 7 of Division 2 of the California
3 Labor Code; or

4 (b) COUNTY received actual written notice from the Department of
5 Industrial Relations that the Work is a “public work,” as defined in
6 Chapter 1 of Part 7 of Division 2 of the California Labor Code, and failed
7 to disclose that information to CONTRACTOR before the bid opening or
8 award.

9 **19.5. Prevailing Wage Rates and Payroll Records.**

10 **19.5.1.** CONTRACTOR agrees to comply with §§1775 and 1776 of the California Labor
11 Code relating to the payment of prevailing wage and the maintenance of certified
12 payroll records and to make the certified payroll records available for inspection
13 at all reasonable hours at CONTRACTOR’s principal office. The responsibility
14 for compliance with these provisions is fixed with CONTRACTOR.
15 CONTRACTOR understands and agrees that it shall, as a penalty to COUNTY,
16 forfeit specific monetary fines for each worker paid less than the prevailing wage
17 rates as determined by the Labor Commissioner for the work or craft in which the
18 worker is employed for any Work done pursuant to this Agreement.

19 **19.5.2.** *Prevailing Wage Compliance For those Projects subject to DIR Monitoring and*
20 *Enforcement.* CONTRACTOR has reviewed and agrees to comply with any
21 applicable provisions for those Projects subject to Department of Industrial
22 Relations (DIR) Monitoring and Enforcement of prevailing wages. COUNTY
23 hereby notifies CONTRACTOR that CONTRACTOR is responsible for
24 complying with the requirements of Senate Bill 854 (SB854) regarding certified
25 payroll record reporting. Further information concerning the requirements of
26 SB854 is available on the DIR website located at: [http://www.dir.ca.gov/Public-](http://www.dir.ca.gov/Public-Works/PublicWorksEnforcement.html)
27 [Works/PublicWorksEnforcement.html](http://www.dir.ca.gov/Public-Works/PublicWorksEnforcement.html).

28 **19.5.3.** CONTRACTOR shall be liable for penalties pursuant to this section when a

1 subcontractor on the Project fails to pay its workers the general prevailing rate of
2 per diem wages and any of the following conditions are met:

- 3 (a) CONTRACTOR had knowledge of that failure of the subcontractor to pay
4 the specified prevailing rate of wages to those workers; or
- 5 (b) CONTRACTOR fails to comply with the following requirement: The
6 contract executed between CONTRACTOR and the subcontractor for the
7 performance of Work on the Project shall include a copy of the provisions
8 of California Labor Code §§1771, 1775, 1776, 1777.5, 1813 and 1815;
9 and
- 10 (c) CONTRACTOR fails to comply with the following requirement:
11 CONTRACTOR shall monitor the payment of the specified general
12 prevailing rate of per diem wages by the subcontractor to the employees,
13 by periodic review of the certified payroll records of the subcontractor;
14 and
- 15 (d) Upon becoming aware of the failure of the subcontractor to pay his or her
16 workers the specified prevailing rate of wages, CONTRACTOR shall
17 diligently take corrective action to halt or rectify the failure, including, but
18 not limited to, retaining sufficient funds due the subcontractor for work
19 performed on the public works project; and
- 20 (e) Prior to making final payment to the subcontractor for Work performed
21 on the Project, CONTRACTOR shall obtain an affidavit signed under
22 penalty of perjury from the subcontractor that the subcontractor has paid
23 the specified general prevailing rate of per diem wages to his or her
24 employees on the Project and any amounts due pursuant to California
25 Labor Code §1813.

26 **19.6. Work Day and Work Week Requirements.** CONTRACTOR agrees to comply with
27 §§1810 through 1815 of the California Labor Code and, when applicable, sections 103
28 and 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§3700 et seq.,

1 as supplemented by the Department of Labor regulations, which provide that
2 CONTRACTOR's workers and its subcontractor's workers may not be required or
3 permitted to work more than eight (8) hours in any one (1) calendar day and forty (40)
4 hours in any one (1) calendar week. Further, work performed by employees of
5 CONTRACTOR or its subcontractor in excess of eight (8) hours per day, and forty (40)
6 hours during any one (1) week, shall be compensated for all hours worked in excess of
7 eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.
8 The responsibility for compliance with these provisions is fixed with CONTRACTOR.
9 CONTRACTOR understands and agrees that it shall, as a penalty to COUNTY, forfeit
10 specific monetary fines to COUNTY should CONTRACTOR or its subcontractors fail to
11 comply with the provisions contained within this Paragraph.

12 **19.7. Apprenticeship Requirements.**

13 **19.7.1.** CONTRACTOR agrees to comply with §§1777.5, 1777.6 and 1777.7 of the
14 California Labor Code relating to the employment of apprentices and to provide
15 COUNTY with copies of any contract award information and verified statements
16 of the journeyman and apprentice hours performed pursuant to this Agreement as
17 required by §1777.5(e). The responsibility for compliance with these provisions
18 is fixed with CONTRACTOR for all apprenticeable occupations, where
19 journeymen in the craft are employed on the public work, in a ratio of not less
20 than one (1) apprentice for each five (5) journeymen (unless an exemption is
21 granted in accordance with §1777.5) and CONTRACTOR and its subcontractors
22 shall not discriminate among otherwise qualified employees as indentured
23 apprentices on any public work solely on the ground of race, religious creed, color,
24 national origin, ancestry, sex, or age, except as provided in California Labor Code
25 §3077. Only apprentices, as defined in California Labor Code §3077, who are in
26 training under apprenticeship standards and who have signed written apprentice
27 agreements will be employed on public works in apprenticeable occupations.
28 This section shall not be enforced if the not-to-exceed amount of this Agreement

1 set forth and/or incorporated in the “COMPENSATION” Section is less than
2 thirty thousand dollars (\$30,000).

3 **19.7.2.** If the Project falls within the jurisdiction of California Labor Code §1777.5,
4 COUNTY shall, within five (5) days of the award, send a copy of the award to the
5 Division of Apprenticeship Standards. In addition, COUNTY shall notify the
6 Division of Apprenticeship Standards of a finding of any discrepancy regarding
7 the ratio of apprentices to journeymen within five (5) days of the finding.

8 **19.8. Labor Standards Compliance Requirements.**

9 **19.8.1.** It is CONTRACTOR’s responsibility to provide all labor compliance
10 documentation from its subcontractors completely and accurately in a timely
11 manner. CONTRACTOR is responsible to review promptly and then forward on
12 all required documentation to COUNTY per the time schedules in the Labor
13 Compliance Handout. Included with the Labor Compliance Handout, COUNTY
14 will provide training, documentation requirements, forms, etc., at the
15 preconstruction conference or at a time designated by COUNTY.

16 **19.8.2.** In the event, during the review process of labor compliance documentation from
17 COUNTY’s labor compliance monitor, inaccurate, missing or incomplete
18 information was provided, the labor compliance monitor will request from
19 CONTRACTOR the items, revisions and documentation needed. The cost of this
20 additional labor compliance enforcement shall be borne by CONTRACTOR.

21 **20. INELIGIBILITY.**

22 **20.1.** CONTRACTOR represents and warrants that it and its subcontractors are not ineligible
23 to work for COUNTY due to violations of Labor Code §§1777.1 and 1777.7.

24 **20.2.** If CONTRACTOR is deemed ineligible to perform work on public works projects
25 pursuant to Labor Code Sections 1777.1 or 1777.7, then CONTRACTOR shall be
26 prohibited from bidding on, being awarded an agreement for, or performing work as a
27 subcontractor on this Project, or any other public works project within the state of
28 California.

1 **21. SIGNAGE REQUIREMENTS.**

2 **21.1. Project Identity Signage.** CONTRACTOR is required to provide and install the required
3 project identity signage as detailed in the Plans and Specifications, in the size and at the
4 location indicated by the Director of Public Works or his/her designee, and to maintain
5 the signage in good condition for the duration of the Project. The signage may not be
6 removed until the Notice of Completion is recorded or by written direction of the Director
7 of Public Works or his/her designee.

8 **21.2. Required Employee Signage and Posters.** CONTRACTOR is required to provide and
9 install the Federal and State required employee posters and the required material
10 pertaining to the required labor standards provisions are posted (including, but not limited
11 to, WH-1321, OSHA 3165 and OFCCP-English, EFCCP-Spanish) at the worksite in a
12 prominent and accessible place.

13 **21.3. Section 3 Compliant Signage.** If required by COUNTY, CONTRACTOR is directed to
14 provide and install the “Offer for Employment” signage as detailed in the Plans and
15 Specifications in the size and at the location indicated by the Director of Public Works or
16 his/her designee and to maintain the signage in good condition for the duration of the
17 Project. The signage may not be removed until the Notice of Completion is recorded or
18 by written direction of the Director of Public Works or his/her designee.

19 **22. CONFLICT OF INTEREST AND GRATUITIES.**

20 **22.1.** CONTRACTOR agrees that it presently has no interest and shall not acquire any interest,
21 direct or indirect, which could conflict in any manner or degree with the performance of
22 services required to be performed under this Agreement. CONTRACTOR further agrees
23 that in the performance of this Agreement, no person having any such interest shall be
24 employed.

25 **22.2.** CONTRACTOR agrees to designate such person or persons who have responsibility for
26 carrying out the services under this Agreement and that such person or persons as may be
27 designated shall take any and all actions necessary to comply with COUNTY’s Conflict
28 of Interest Code adopted pursuant to California Government Code §81000 to the extent

1 required thereunder.

2 **22.3.** If it is found, after notice and hearing by COUNTY, that gratuities (in the form of
3 entertainment., gifts, or otherwise) were offered or given by CONTRACTOR, or any
4 agent or representative of CONTRACTOR, to any officer, employee or agent of
5 COUNTY with a view toward securing a contract or securing favorable treatment with
6 respect to the awarding or amending or the making of any determinations with respect to
7 the performance of this Agreement, COUNTY may, by written notice to
8 CONTRACTOR, terminate the right of CONTRACTOR to proceed under this
9 Agreement and/or may pursue such other rights and remedies provided by law or under
10 this Agreement.

11 **22.4.** In the event this Agreement is terminated as provided herein, COUNTY shall be entitled
12 to:

13 **22.4.1.** Pursue the same remedies against CONTRACTOR as it could pursue in the event
14 of a breach of the Agreement by CONTRACTOR; and

15 **22.4.2.** As a penalty in addition to any other damages to which it may be entitled by law,
16 to exemplary damages in an amount (as determined by COUNTY) which shall be
17 not less than three (3) nor more than ten (10) times the costs incurred by
18 CONTRACTOR in providing any such gratuities to any such officer, employee
19 or agent.

20 **23. HOUSING AND URBAN DEVELOPMENT ACT COMPLIANCE.**

21 When applicable, CONTRACTOR agrees to comply with Section 3 of the Housing and Urban
22 Development Act of 1968 (42 U.S.C. 3601 et seq.) which provides that to the greatest extent feasible,
23 CONTRACTOR shall provide job training, employment and contracting opportunities for low- or very-
24 low income residents in connection with the Project. The responsibility for compliance with these
25 provisions is fixed with CONTRACTOR.

26 **24. COPELAND “ANTI-KICKBACK” ACT COMPLIANCE.**

27 When applicable, CONTRACTOR agrees to comply with the Copeland Act
28 (*18 USC §874* and *40 USC §276c; 29 C.F.R. Part 3*) which precludes CONTRACTOR and its

1 subcontractors from in any way inducing an employee to give up any part of the compensation to which
2 he or she is entitled under his or her contract of employment. CONTRACTOR and its subcontractors
3 shall submit a weekly statement of the wages paid to each employee performing on covered work during
4 the preceding payroll period. CONTRACTOR understands and agrees that should CONTRACTOR its
5 subcontractors induce an employee working on a covered contract to give up any part of the
6 compensation to which he or she is entitled, the inducing party may be subject to a five thousand dollar
7 (\$5,000) fine, or imprisonment for up to five (5) years, or both. CONTRACTOR also understands and
8 agrees that willful falsification of the statement of compliance may subject the employer to civil or
9 criminal prosecution and may be cause for contract termination or debarment. The responsibility for
10 compliance with these provisions is fixed with CONTRACTOR.

11 **25. FAIR LABOR STANDARDS ACT COMPLIANCE.**

12 When applicable, CONTRACTOR agrees to comply with the Fair Labor Standards Act of 1938
13 as amended (29 U.S.C. 201 et seq.) which establishes minimum wage, overtime pay, recordkeeping, and
14 youth employment standards affecting full-time and part-time workers on the Project. The responsibility
15 for compliance with these provisions is fixed with CONTRACTOR.

16 **26. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER**
17 **RESPONSIBILITY MATTERS.**

18 When applicable, CONTRACTOR agrees to execute a certification regarding debarment,
19 suspension and other responsibility matters. The responsibility for compliance with this provision is
20 fixed with CONTRACTOR.

21 **27. FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT**
22 **SPECIFICATIONS.**

23 When applicable, CONTRACTOR agrees to incorporate the notice set forth in paragraph (d) of
24 41 C.F.R. 60-4.2 relating to the "Equal Opportunity Clause" and the "Standard Federal Equal
25 Employment Specifications." The responsibility for compliance with this provision is fixed with
26 CONTRACTOR.

27 **28. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT.**

28 When applicable, CONTRACTOR agrees to comply with all applicable standards, orders or

1 regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), the Federal Water Pollution
2 Control Act as amended (33 U.S.C. 1251 et seq.), Presidential Executive Order 11738 and
3 Environmental Protection Agency regulations set forth at 40 C.F.R. Part 15. CONTRACTOR
4 understands and agrees that violations shall be reported to the Federal awarding agency and the Regional
5 Office of the Environmental Protection Agency. The responsibility for compliance with these provisions
6 is fixed with CONTRACTOR.

7 **29. PROHIBITION ON THE USE OF FEDERAL FUNDS FOR LOBBYING.**

8 When applicable, CONTRACTOR shall file the required certification. Each tier certifies to the
9 tier above that it will not and has not used Federal appropriated funds to pay any person or organization
10 for influencing or attempting to influence an officer or employee of any agency, a member of Congress,
11 officer or employee of Congress, or an employee of a member of Congress in connection with obtaining
12 any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose
13 any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
14 Such disclosures are forwarded from tier to tier up to the recipient. The responsibility for compliance
15 with this provision is fixed with CONTRACTOR.

16 **30. FEDERAL EMPLOYMENT ELIGIBILITY VERIFICATION.**

17 CONTRACTOR shall verify name, date of birth and social security number, along with
18 immigration information for non-citizens in order to verify the identity and employment eligibility of
19 both citizen and non-citizen new hires. The responsibility for compliance with this provision is fixed
20 with CONTRACTOR.

21 **31. THE CIVIL RIGHTS, HCD AND AGE DISCRIMINATION ACT ASSURANCES.**

22 **31.1.** During the performance of this Agreement, CONTRACTOR assures that no otherwise
23 qualified person shall be excluded from participation or employment, denied program
24 benefits or be subjected to discrimination based on race, color, national origin, gender,
25 age or handicap, under any program or activity funded by this Agreement, as required by
26 Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community
27 Development Act of 1974, as amended, and the Age Discrimination Act of 1975, and all
28 implementing regulations. The responsibility for compliance with these provisions is

1 fixed with CONTRACTOR.

2 **31.2.** CONTRACTOR and its subcontractors shall not discriminate on the basis of race, color,
3 national origin, or sex in the performance of this Agreement. CONTRACTOR shall carry
4 out the applicable requirements of 49 C.F.R. Chapter 26 in the award and administration
5 of Department of Transportation assisted contracts. Failure by CONTRACTOR to carry
6 out these requirements is a material breach of this Agreement, which may result in the
7 termination of this Agreement, or such other remedy as COUNTY deems appropriate.
8 CONTRACTOR shall include the nondiscrimination and compliance provisions of this
9 Paragraph in all subcontracts to perform Work under this Agreement.

10 **32. FEDERAL EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS.**

11 **32.1.** CONTRACTOR hereby agrees that it will incorporate or cause to be incorporated into
12 any contract for construction work, or modification thereof, as defined in the regulations
13 of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part
14 with funds obtained from the Federal Government or borrowed on the credit of the
15 Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or
16 undertaken pursuant to any Federal program involving such grant, contract, loan,
17 insurance, or guarantee, the following equal opportunity clause. For the purposes of this
18 Subsection, the term “contractor” shall refer to CONTRACTOR, and the term “contract”
19 shall refer to this Agreement:

20 *“During the performance of this contract, the Contractor agrees as follows:*

- 21 (1) *The contractor will not discriminate against any employee or applicant for*
22 *employment because of race, color, religion, sex, or national origin. The*
23 *contractor will take affirmative action to ensure that applicants are*
24 *employed, and that employees are treated during employment, without*
25 *regard to their race, color, religion, sex, or national origin. Such action*
26 *shall include, but not be limited to the following: Employment, upgrading,*
27 *demotion, or transfer, recruitment or recruitment advertising; layoff or*
28 *termination; rates of pay or other forms of compensation; and selection for*

1 training, including apprenticeship. The contractor agrees to post in
2 conspicuous places, available to employees and applicants for employment,
3 notices to be provided by the contracting officer setting forth the provisions
4 of this nondiscrimination clause.

5 (2) The contractor will, in all solicitations or advertisements for employees
6 placed by or on behalf of the contractor, state that all qualified applicants
7 will receive consideration for employment without regard to race, color,
8 religion, sex, or national origin.

9 (3) The contractor will send to each labor union or representative of workers
10 with which he has a collective bargaining agreement or other contract or
11 understanding, a notice to be provided by the agency contracting officer,
12 advising the labor union or workers' representative of the contractor's
13 commitments under section 202 of Executive Order 11246 of September 24,
14 1965, and shall post copies of the notice in conspicuous places available to
15 employees and applicants for employment.

16 (4) The contractor will comply with all provisions of Executive Order 11246 of
17 September 24, 1965, and of the rules, regulations, and relevant orders of
18 the Secretary of Labor.

19 (5) The contractor will furnish all information and reports required by
20 Executive Order 11246 of September 24, 1965, and by the rules,
21 regulations, and orders of the Secretary of Labor, or pursuant thereto, and
22 will permit access to his books, records, and accounts by the contracting
23 agency and the Secretary of Labor for purposes of investigation to ascertain
24 compliance with such rules, regulations, and orders.

25 (6) In the event of the contractor's non-compliance with the nondiscrimination
26 clauses of this contract or with any of such rules, regulations, or orders,
27 this contract may be canceled, terminated or suspended in whole or in part
28 and the contractor may be declared ineligible for further Government

1 *contracts in accordance with procedures authorized in Executive Order*
2 *11246 of September 24, 1965, and such other sanctions may be imposed*
3 *and remedies invoked as provided in Executive Order 11246 of September*
4 *24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as*
5 *otherwise provided by law.*

6 (7) *the contractor will include the provisions of paragraphs (1) through (7) in*
7 *every subcontract or purchase order unless exempted by rules, regulations,*
8 *or orders of the Secretary of Labor issued pursuant to section 204 of*
9 *Executive Order 11246 of September 24, 1965, so that such provisions will*
10 *be binding upon each subcontractor or vendor. The contractor will take*
11 *such action with respect to any subcontract or purchase order as may be*
12 *directed by the Secretary of Labor as a means of enforcing such provisions*
13 *including sanctions for noncompliance: Provided, however, that in the*
14 *event the contractor becomes involved in, or is threatened with, litigation*
15 *with a subcontractor or vendor as a result of such direction, the contractor*
16 *may request the United States to enter into such litigation to protect the*
17 *interests of the United States.”*

18 **32.2.** CONTRACTOR further agrees that it will be bound by the above equal opportunity
19 clause with respect to its own employment practices when it participates in federally-
20 assisted construction work; provided that if CONTRACTOR so participating is a State or
21 local government, the above equal opportunity clause is not applicable to any agency,
22 instrumentality, or subdivision of such government which does not participate in work on
23 or under the Agreement.

24 **32.3.** CONTRACTOR agrees that it will assist and cooperate actively with the administering
25 agency and the Secretary of Labor in obtaining the compliance of Contractors and
26 subcontractors with the equal opportunity clause and the rules, regulations, and relevant
27 orders of the Secretary of Labor, that it will furnish the Department and HUD and the
28 Secretary of Labor such information as they may require for the supervision of such

1 compliance, and that it will otherwise assist the administering agency in the discharge of
2 the agency's primary responsibility for securing compliance.

3 **32.4.** CONTRACTOR further agrees that it will refrain from entering into any contract or
4 contract modification subject to Executive Order 11246 of September 24, 1965, with a
5 contractor debarred from, or who has not demonstrated eligibility for, government
6 contracts and federally-assisted construction contracts, pursuant to the Executive Order
7 and will carry out such sanctions and penalties for violation of the equal opportunity
8 clause as may be imposed upon contractors and subcontractors by the administering
9 agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.
10 In addition, CONTRACTOR agrees that if it fails or refuses to comply with these
11 undertakings, COUNTY may take any or all of the following actions: Cancel, terminate,
12 or suspend in whole or in part this funding commitment (contract, loan, grant, insurance,
13 guarantee); refrain from extending any further assistance to the applicant under the
14 program with respect to which the failure or refund occurred until satisfactory assurance
15 of future compliance has been received from such Contractor; and refer the case to the
16 Department of Justice for appropriate legal proceedings.

17 **33. ASSIGNMENT OF CLAIMS – CLAYTON OR CARTWRIGHT ACTS.**

18 CONTRACTOR shall comply with the following provisions regarding the assignment of claims
19 arising from either the Clayton Act or the Cartwright. For the purposes of this Section, the term
20 "contractor" shall refer to CONTRACTOR, the term "awarding body" shall refer to COUNTY, and the
21 term "public works contract" shall refer to this Agreement:

22 *"In entering into a public works contract or a subcontract to supply goods, services, or*
23 *materials pursuant to a public works contract, the contractor or subcontractor offers and*
24 *agrees to assign to the awarding body all rights, title, and interest in and to all causes of*
25 *action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the*
26 *Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the*
27 *Business and Professions Code), arising from purchases of goods, services, or materials*
28 *pursuant to the public works contract or the subcontract. This assignment shall be made*

1 *and become effective at the time the awarding body tenders final payment to the contractor,*
2 *without further acknowledgment by the parties.”*

3 **34. NON-COLLUSION.**

4 CONTRACTOR agrees he/she has executed and submitted with the Bid a Non-Collusion
5 Affidavit that complies with Cal. Public Code §7106, included in **Exhibit “B”** and incorporated herein.

6 **35. NOTICES AND REPORTS.**

7 **35.1.** All notices and reports under this Agreement shall be in writing and may be given by
8 personal delivery or by mailing by certified mail, addressed as follows:

9 COUNTY

10 Imperial County Department of Public Works
11 Attention: Director
12 155 South Eleventh Street
13 El Centro, CA 92243

CONTRACTOR

«Contractor_Business_Name»
«Contractor_Street_Address»
«Contractor_City_State»

14 with copies to:

15 Imperial County Executive Office
16 Attention: County Executive Officer
17 940 West Main Street, Suite 208
18 El Centro, CA 92243

19 and:

20 Imperial County Department of Human
21 Resources and Risk Management
22 Attention: Director
23 940 West Main Street, Suite 101
24 El Centro, CA 92243

25 **35.2.** Notices and reports under this Agreement may be given by personal delivery or by
26 mailing by certified mail at such other address as either Party may designate in a notice
27 to the other Party given in such manner. Any notice given by mail shall be considered
28 given when deposited in the United States Mail, postage prepaid, addressed as provided
herein.

29 **36. ENTIRE AGREEMENT.**

30 This Agreement contains the entire agreement between COUNTY and CONTRACTOR relating
31 to the transactions contemplated hereby and supersedes all prior or contemporaneous agreements,

1 understandings, provisions, negotiations, representations, or statements, either written or verbal.

2 **37. ASSIGNMENT.**

3 Neither this Agreement nor any duties or obligations hereunder shall be assignable by
4 CONTRACTOR without the prior written consent of COUNTY.

5 **38. MODIFICATION.**

6 No modification, waiver, amendment, discharge, or change of this Agreement shall be valid
7 unless the same is in writing and signed by the Party against whom the enforcement of such modification,
8 waiver, amendment, discharge, or change is or may be sought.

9 **39. CAPTIONS.**

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

12 **40. PARTIAL INVALIDITY.**

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

16 **41. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.**

17 Words and expressions in the masculine gender include the feminine and neuter genders. Words
18 and expressions in the singular include the plural and words and expressions in the plural include the
19 singular. CONTRACTOR as used in this Agreement or in any other document referred to in or made a
20 part of this Agreement shall likewise include both singular and the plural, a corporation, a partnership,
21 individual, firm or person acting in any fiduciary capacity as executor, administrator, trustee or in any
22 other representative capacity or any other entity. All covenants herein contained on the part of
23 CONTRACTOR shall be joint and several if more than one person, firm or entity executes the
24 Agreement.

25 **42. WAIVER.**

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

1 **43. CHOICE OF LAW.**

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

5 **44. AUTHORITY.**

6 **44.1.** Each individual executing this Agreement on behalf of CONTRACTOR represents and
7 warrants that:

8 **44.1.1.** He/She is duly authorized to execute and deliver this Agreement on behalf of
9 CONTRACTOR;

10 **44.1.2.** Such execution and delivery is in accordance with the terms of the Articles of
11 Incorporation or Partnership, any by-laws or Resolutions of CONTRACTOR and;

12 **44.1.3.** This Agreement is binding upon CONTRACTOR in accordance with its terms.

13 **44.2.** CONTRACTOR shall deliver to COUNTY evidence acceptable to COUNTY of the
14 foregoing within thirty days of execution of this Agreement.

15 **45. COUNTERPARTS.**

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

20 **46. TIMING.**

21 The Parties agree that time is of the essence in this Agreement.

22 **47. REVIEW OF AGREEMENT TERMS.**

23 **47.1.** Each Party has had the opportunity to receive independent legal advice from its attorneys
24 with respect to the advisability of making the representations, warranties, covenants and
25 agreements provided for herein, and with respect to the advisability of executing this
26 Agreement.

27 **47.2.** Each Party represents and warrants to and covenants with the other Party that:

28 **47.2.1.** This Agreement in its reduction to final written form is a result of extensive good

1 faith negotiations between the Parties and/or their respective legal counsel; and
2 **47.2.2.** The Parties and/or their legal counsel have carefully reviewed and examined this
3 Agreement for execution by said Parties.

4 **47.3.** Any statute or rule of construction that ambiguities are to be resolved against the drafting
5 party shall not be employed in the interpretation of this Agreement.

6 **48. APPENDIX E OF THE TITLE VI ASSURANCES.**

7 During the performance of this contract, the CONTRACTOR, for itself, its assignees, and
8 successors in interest agrees to comply with the following nondiscrimination statutes and
9 authorities; including but not limited to:

10 **48.1. Pertinent Nondiscrimination Authorities:**

- 11 (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq, 78 stat. 252),
12 (prohibits discrimination on the basis of race, color, national origin); and 49 CFR
13 Part 21.
- 14 (b) The Uniform Relocation Assistance and Real Property Acquisition Policies Act
15 of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or
16 whose property has been acquired because of Federal or Federal-Aid programs
17 and projects);
- 18 (c) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits
19 discrimination on the basis of sex);
- 20 (d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as
21 amended, (prohibits discrimination on the basis of disability); and 49 CFR Part
22 27;
- 23 (e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.),
24 (prohibits discrimination on the basis of age);
- 25 (f) Airport and Airway Improvement Act of 1982, 949 U.S.C. § 4 71, Section 4
26 7123), as amended, (prohibits discrimination based on race, creed, color, national
27 origin, or sex);
- 28 (g) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope,

1 coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age
2 Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by
3 expanding the definition of the terms “programs or activities” to include all the
4 programs or activities of the Federal-aid recipients, subrecipients and contractors,
5 whether such programs or activities are Federally funded or not);

6 (h) Titles II and III of the Americans with Disabilities Act, which prohibit
7 discrimination on the basis of disability in the operation of public entities, public
8 and private transportation systems, places of public accommodation, and certain
9 testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of
10 Transportation regulations at 49 C.F.R. parts 37 and 38;

11 (i) The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. §
12 47123) (prohibits discrimination on the basis of race, color, national origin, and
13 sex);

14 (j) Executive Order 12898, Federal Actions to Address Environmental Justice in
15 Minority Populations and Low-Income Populations, which ensures discrimination
16 against minority populations by discouraging programs, policies, and activities
17 with disproportionately high and adverse human health or environmental effects
18 on minority and low-income populations;

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

25 (l) Title IX of the Education Amendment of 1972, as amended, which prohibits you
26 from discriminating because of sex in education programs or activities (20 U.S.C.
27 1681 et seq).
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IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

County of Imperial

«Contractor_Business_Name»

By: _____
Michael W. Kelley, Chairman
Imperial County Board of Supervisors

By: _____
«Contractor_Name_for_Signature»

ATTEST:

By: _____
Blanca Acosta,
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

Adam G. Crook,
County Counsel

By: _____
«CC_Attorney»,
«CC_Attorney_Title»

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.