



## Request for Proposals (RFP)

### Fiscal and Compliance Audit Services for SB325 Funds for Transportation Development Act (TDA) County Project No. 5416ADM

Requested by:

John A. Gay, P.E.  
Director of Public Works

Prepared By:

Naomi Robles,  
Administrative Analyst III

Reviewed By:

Sergio Perez  
Deputy Director of Public Works - Administration

**Deadline for Submissions: June 3, 2022 4:00 P.M.**

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

**RFP Released May 4, 2022**

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

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## EXHIBITS

A – Sample Proposal Evaluation Form

B – Sample Consultant Agreement for Services and Minimum Insurance Amounts\*  
***\*No changes shall be made to consultant agreement.***

# **Request for Proposals (RFP) for Fiscal and Compliance Audit Services for SB325 funds for Transportation Development Act (TDA) County Project Number 5416ADM**

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## **I. PURPOSE AND BACKGROUND**

The Imperial County Department of Public Works (hereinafter ICDPW) is responsible for acquiring and utilizing Transportation Development Act (hereinafter TDA) funds for the County of Imperial; and is required to certify compliance of its administration of these funds. The TDA requires that fiscal audits be performed by December 31 of each year, in order to receive funds for the following year. The audits must be conducted in compliance with relevant sections of the Transportation Development Act.

ICDPW requests proposals for professional audit services from qualified certified public accountant individuals or firms, to perform the required performance audits of Imperial County's administration of SB325 Article 8a, Article 8e, and Article 3 Funds. The intent of this RFP is to procure a five year agreement for fiscal audits for FY 2021-2022, FY 2022-2023, FY 2023-2024, FY 2024-2025, and FY 2025-2026.

This Request for Proposal (RFP) describes the project, the scope of required services, the consultant selection process, and the minimum information that must be included in the proposal.

Qualified entities are invited to submit written proposals for consideration in accordance with this request. By submitting the proposal, the consultant is representing itself as a qualified professional with experience necessary to perform the scope of required services. These services will be conducted under a contract with the County of Imperial, hereinafter referred to as "County" and the consultant entity is hereinafter referred to as "Consultant". A sample Consultant Agreement and insurance requirements are attached as Attachment B.

The contract will be regulated according to the provisions of the TDA, and all applicable Federal, State and local laws and ordinances. The primary objective of the audit will be to report on the compliance and fiduciary capacity of the County of Imperial with respect to its administration of TDA funds. The audits must be conducted to satisfy the requirements of the Secretary of State's Business, Transportation and Housing Agency as set forth in the TDA, as published by the State Department of Transportation PUC Sections 99245; CCR 6662, 6664, 6665, and 6667. The audits shall be performed in accordance with generally accepted auditing standards for financial audits as set forth in the U.S. General Accounting Office's Government Auditing Standards.

## **II. PROJECT POSTING AND SCHEDULING**

This RFP is being distributed over the internet and is posted at the Imperial County 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. The County will maintain a list of RFP holders based on self identification by interested firms. If you are interested in being added to the RFP holder list, please contact the project manager listed in section VII. CLOSING ITEMS. The County will make every effort to provide individual notification of amendments or addendums to this RFP to known self-identified firms, but it will be the responsibility of each interested firm in checking the "Projects Out To Bid" webpage for any updates as the Web page will be the official

media for dissemination of addendums.

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 addendum. Signed copies of all addendums shall be included in their proposal.

### **Proposed Schedule of Events**

Issue Request for Proposals	May 4, 2022
Deadline for Written Requests for Clarification	May 19, 2022
Proposals Due	June 3, 2022
Consultant Selection	June/July 2022
County Awards Contract	July/August 2022
Notice to Proceed	August/September 2022
Fiscal Year 2021-2022 Audit Due	November 2022
Fiscal Year 2022-2023 Audit Due	November 2023
Fiscal Year 2023-2024 Audit Due	November 2024
Fiscal Year 2024-2025 Audit Due	November 2025
Fiscal Year 2025-2026 Audit Due	November 2026

### **III. SCOPE OF WORK**

The County of Imperial is required to have annual financial statements and fiscal/compliance audits of TDA funded activities. The selected audit firm will be responsible for preparing the draft and final fiscal compliance audit (financial statement), with an independent auditor's report; statement of revenues, expenditures and changes in fund balance; compliance statements; a management letter; and supplementary schedules as appropriate.

The work must be done according to the provisions of the TDA, and all applicable Federal, State and local laws and ordinances; and must be in conformance with all standards as described in the Introduction of this RFP.

Consultant must establish communications and interaction with ICDPW staff and with the staff of the Imperial County Auditor-Controller.

The Consultant will review the most recent prior performance audit, and assess the County's implementation of audit recommendations. The Consultant will make determinations as to whether recommendations which have not been implemented are (a) no longer applicable, (b) infeasible, or (c)

should still be implemented. If a prior audit recommendation has not been implemented but still has merit, the Consultant should include the prior audit recommendation in the current audit report. The Consultant will evaluate recommendations which have been implemented or are being implemented. For these recommendations, the Consultant should assess the benefits provided (or likely to be provided) by the recommendation. Significant accomplishments in implementing prior recommendations should be recognized.

Draft audits will be delivered to the Director of Public Works or his designee for review and comment by October 31 of each year. The final audit will be delivered to the Director of Public Works by November 15 of each year, who will submit it for acceptance by the Imperial County Board of Supervisors. The audit is due in final form to the State Controller by December 31 of each calendar year.

Upon completion of this project, the accumulated documentation becomes the property of the County. The selected consultant will turn over all data, documents, reports, graphs, maps etc. to the ICDPW staff upon delivery of the final report.

#### **IV. RESPONSIBILITIES OF THE COUNTY**

1. This RFP is being conducted in accordance with the “One Step RFP” as per Chapter 10, “Consultant Selection”, of the Caltrans Local Assistance Procedures Manual.
2. The County will direct the development of the project, provide management oversight, and conduct administrative arrangements only.
3. The County will pay an agreed upon amount within 30 days after receipt of an invoice. County will retain 5% of each invoice until completion of project. Completion of project is when ICDPW formally accepts the final document and/or a presentation is completed during a regularly scheduled meeting at the Imperial County Board of Supervisors meeting.
4. The County will not provide dedicated workspace facilities, but upon request will provide a conference room for meetings with the Department and the Consultant.
5. The County reserves the right to perform any portion of the scope of work by County staff or other consultants should the County determine it would be in the best interest of the County to do so.

#### **V. PROPOSAL CONTENT AND INFORMATION**

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

##### **General Requirements**

1. Provide a cover letter.
2. State the interpretation of the work to be performed. State a positive commitment to perform the work in the required manner and time frame; include a basic summary; and demonstrate an understanding of the project. Provide a statement that the offer is valid for at least a ninety (90) day period.

3. Provide the name(s) of the primary and/or alternate individuals authorized to respond to this RFP. Include titles, addresses, e-mail, and phone numbers.
4. The Consultant is representing itself as a qualified professional in fiscal and compliance auditing services. Therefore, it is acceptable to submit recommendations and comments for consideration on format, process, schedule, and additional content of projects. The County will consider comments and recommendations; however is not required to select any of the recommendations or comments.
5. Expensive bindings, colored displays, promotional materials, etc., are neither necessary nor desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.

### **Table of Contents**

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

### **Summary of Qualifications and Experience**

1. State whether the firm is local, regional, national or international.
2. Identify the owner(s) of the firm and legal status (sole proprietor, corporation, etc.).
3. Give the location of the office from which work is anticipated to be done and the number of employees of the company.
4. Identify the qualifications and resumes of all individuals who will be associated with this service. Include professional registrations and affiliations.
5. Summarize specific experiences and qualification for similar and related projects; federally funded, state 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.

### **Analysis of Effort/Methodology**

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

### **Cost and Fees**

1. It is requested that responders submit a not-to-exceed fee cost quote to perform the services set forth in the scope of required services. Provide a clear breakdown of the costs by phase including staff

or by item, by hour. No subcontractors shall be utilized without prior authorization by County. Costs and fees are to be submitted in a separate sealed envelope. Costs should be organized for full time hourly rates. Such hourly rates should be fully burdened or loaded, including full compensation for all overhead and profit. Billing rates shall include provision for normal office costs, including but not limited to office rental, utilities, insurance, cell phone or radio, equipment, normal supplies and materials, in-house reproduction services and local travel costs. As much as possible, a not-to-exceed fee cost quote breakdown by phase of the project based on billable hours is desirable.

2. Submit itemized hourly fee schedule for additional services beyond the scope of work.
3. Costs and Fees must be provided within a separate sealed envelope within the submittal of the proposal.

## **VI. EVALUATION OF PROPOSALS**

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

The County will utilize a one-step selection process.

The Evaluations Committee will determine if qualifications are met in reviewing the proposals. 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 a number 1, number 2, or even number 3 originally ranked consultant. The County reserves the right to reject any and all proposals submitted and/or request additional information for clarification.

To prevent the spread of COVID-19, consultants are to submit one electronic copy in Portable Document Format (PDF) via email to Naomi Robles, Administrative Analyst III, at [naomirobles@co.imperial.ca.us](mailto:naomirobles@co.imperial.ca.us) with the subject line: [Consultant Name] Proposal for Fiscal and Compliance Audit Services for SB325 Funds for Transportation Development Act (TDA); County Project Number 5416ADM

Proposals are to be sent no later than 4:00 P.M. on June 3, 2022.

## **VII. CLOSING ITEMS**

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

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

The County will not consider proposals received after the specified date and time. An amendment is considered a new proposal and will not be accepted after the specified date and time.



Any contract resulting from this RFP will be financed with funds available to the County from local County and/or State Aid or other grant funds.

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

Questions concerning this RFP are to be directed to Naomi Robles, Administrative Analyst III, via electronic mail to [naomirobles@co.imperial.ca.us](mailto:naomirobles@co.imperial.ca.us) by May 19, 2022.

# EXHIBIT “A”



**PROPOSAL EVALUATION FORM**  
**Request for Proposal for Fiscal and Compliance Audit Services for**  
**SB325 Funds for Transportation Development Act (TDA); Imperial**  
**County Project Number 5416 ADM**

Prepared May 4, 2022 by N.Robles

DATE: \_\_\_\_\_

EVALUATOR: \_\_\_\_\_

RESPONDENT: \_\_\_\_\_

**RATING POINTS:**

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

<b>CRITERIA</b>	<b>WEIGHT FACTOR</b>	<b>X</b>	<b>RATING</b>	<b>=</b>	<b>WEIGHTED RATING</b>
• Responsiveness & understanding of work to be done, i.e. scope of required services	<b>(0.20)</b>		_____		_____
• Approach to be followed and the tasks to be performed, including detailed steps and resources required	<b>(0.20)</b>		_____		_____
• Specific experience with similar and related projects	<b>(0.15)</b>		_____		_____
• Capacity to perform the scope of work and the ability to conclude in a timely manner	<b>(0.15)</b>		_____		_____
• Quality of staff based on recent experience	<b>(0.10)</b>		_____		_____
• References	<b>(0.10)</b>		_____		_____
• Overall quality of proposal, including qualifications and thoroughness.	<b>(0.10)</b>		_____		_____

**Total Score** \_\_\_\_\_

## EXHIBIT “B”

## 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	\$ 1 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.

# SAMPLE

## AGREEMENT FOR SERVICES

«Consultant\_Business\_Name»

THIS AGREEMENT FOR SERVICES (“Agreement”), made and entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the County of Imperial, a political subdivision of the State of California, by and through its Department of Public Works (“COUNTY”) and «Consultant\_Business\_Name», «Consultant\_Business\_Type» (“CONSULTANT”) (individually, “Party;” collectively, “Parties”).

### RECITALS

**WHEREAS**, COUNTY desires to retain a qualified individual, firm or business entity to provide «Contract\_Services» for «Project\_Name»; «Project\_Number» (“Project”); and

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

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

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

#### **1. DEFINITIONS.**

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

**1.2.** “Proposal” shall mean CONSULTANT’s document entitled, “«Name\_of\_Proposal»,” dated «Date\_of\_Proposal» and submitted to COUNTY’s Department of Public Works. The Proposal is attached hereto as **Exhibit “B”** and incorporated herein by reference.

#### **2. CONTRACT COORDINATION.**

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

1 execution of this Agreement.

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

6 **3. DESCRIPTION OF WORK.**

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

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

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

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

16       **4.3.** CONSULTANT shall:

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

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

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

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

28 **5. REPRESENTATIONS BY CONSULTANT.**

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

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

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

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

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

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

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

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

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



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

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

11 **6.     TERM OF AGREEMENT.**

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

15 **7.     COMPENSATION.**

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

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

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

25 **8.     PAYMENT.**

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

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

7           **9.     METHOD OF PAYMENT.**

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

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

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

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

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

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

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

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

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

8 **12. SUSPENSION OF AGREEMENT.**

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

13 **13. TERMINATION.**

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

22 **14. INSPECTION.**

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

28 **15. OWNERSHIP OF MATERIALS.**

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

6 **16. INTEREST OF CONSULTANT.**

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

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

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

14 **17. INDEMNIFICATION.**

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

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

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

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

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

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

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

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

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

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

21 **18. INDEPENDENT CONTRACTOR.**

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

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

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

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

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

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

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

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

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

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

22 **19. INSURANCE.**

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

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

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

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

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

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

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

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

23           **19.3. Additional Insurance Requirements.**

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

26           **19.3.2.** The comprehensive or commercial general liability shall contain a provision of  
27 endorsements stating that such insurance:  
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County of Imperial  
Department of Public Works  
155 South 11th Street  
El Centro, CA 92243

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

**20. PREVAILING WAGE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **22. ASSIGNMENT.**

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

20 **23. NON-DISCRIMINATION.**

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

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

11 **24. NOTICES AND REPORTS.**

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

14 **COUNTY**

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

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

**CONSULTANT**

«Consultant\_Business\_Name»  
«Consultant\_Street\_Address»  
«Consultant\_City\_State»

22 **24.2.** Notice shall be deemed to have been delivered only upon receipt by the Party, seventy-  
23 two (72) hours after deposit in the United States mail or twenty-four (24) hours after deposit with an  
24 overnight carrier.

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

**25. ENTIRE AGREEMENT.**

This Agreement contains the entire Agreement between COUNTY and CONSULTANT

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

4 **26. MODIFICATION.**

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

7 **27. CAPTIONS.**

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

10 **28. PARTIAL INVALIDITY.**

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

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

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

23 **30. WAIVER.**

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

27 **31. CHOICE OF LAW.**

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

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

3 **32. AUTHORITY.**

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

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

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

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

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

13 **33. COUNTERPARTS.**

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

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

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

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

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

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

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

1 **35. NON-APPROPRIATION.**

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

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

8  
9 **County of Imperial**

**«Consultant\_Business\_Name»**

10  
11 By: \_\_\_\_\_  
12 , Chairman  
13 Imperial County Board of Supervisors

By: \_\_\_\_\_  
«Consultant\_Name\_for\_Signature»

14 **ATTEST:**

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

19 **APPROVED AS TO FORM:**

20 Katherine Turner,  
21 County Counsel

22  
23 By: \_\_\_\_\_  
24 «CC\_Attorney»,  
25 «CC\_Attorney\_Title»  
26  
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