

COUNTY OF IMPERIAL
DEPARTMENT OF PUBLIC WORKS

NOTICE TO BIDDERS
SPECIAL PROVISIONS
PROPOSAL AND BID BOOK

FOR

SB-1 ANNUAL ON CALL POTHOLE REPAIR ON VARIOUS ROADS
PROJECT
County Project No. 6907



Notice to bidders and Special Provision dated:

Project Plans approved: _____

Standard Specifications: 2006

Standard Plans Dated: 2006

Contract No. To be determined

Bid Opening Date: February 10, 2023 @ 2:00 P.M.



For use in connection with the Standard Specification Dated May 2006, Standard Plans Dated May 2006. General Prevailing Wage Rates and Labor Surcharge and Equipment Rental Rates to the State of California, Department of Transportation.

SPECIAL NOTICE NO. 1

The bidder's attention is directed to the section entitled "Required Listing of Proposed Subcontractors" in Section 2 of the Special Provisions regarding the requirement that proposed subcontractors be listed in the bidder's proposal. Instead of listing only subcontractors for signal and lighting work as in the past, all subcontractors are now to be listed in the bid proposal for items of work or portions thereof to be subcontracted in excess of one-half of one percent of the total bid or \$10,000, whichever is greater.

In the case where a bidder claims an inadvertent clerical error in listing subcontractors, a notice of the claim must be submitted to the Director of Public Works in writing within two working days after the time of the bid opening, and copies sent to the subcontractors involved.

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SPECIAL NOTICE NO. 2

- Attention is directed to Section 1-1.01 entitled, “General,” found under Part II. Special Provisions – Special Conditions, Section 1. Specifications and Plans, which lists amendments to the Standard Specifications, dated May 2006, regarding plain language specifications.
- The “Proposal and Contract” book has been retitled and is now the “Bid” book.
- The “Notice to Contractors” has been retitled and is now the “Notice to Bidders.”

SPECIAL NOTICE NO. 3

Pursuant to the requirements of Senate Bill 854 and California Labor Code section 1725.5, all contractors and subcontractors that wish to engage in public work through a public works contract must first register with the Department of Industrial Relation and pay all applicable fees.

Beginning March 1, 2015, no contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations, pursuant to Labor Code section 1725.5 (with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)).

Beginning April 1, 2015, no contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations, pursuant to Labor Code section 1725.5

This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

For more information concerning Senate Bill 854 compliance, please visit: <http://www.dir.ca.gov/Public-Works/SB854.html>.

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COUNTY OF IMPERIAL

PART I BIDDING INFORMATION

NOTICE TO BIDDERS

Sealed proposals will be received at the office of the Clerk of the Board of Supervisors at the County Administration Center located at 940 Main Street in El Centro, California 92243, until 2:00 O'clock p.m. on Friday, February 10, 2023 at which time they will be publicly opened and read at the above stated time and place, for construction in accordance with the specifications therefore, to which special reference is made, as follows:

SB-1 ANNUAL ON CALL POTHOLE REPAIR ON VARIOUS ROADS PROJECT IN IMPERIAL COUNTY County Project No. 6907

The Department of Public Works has developed this Request for Proposals for the purpose of obtaining competitive bids from qualified applicants interested in providing Imperial County with Pothole Repair Services. Therefore, Imperial County is soliciting Request for Proposals (RFP) from reputable contractors to provide pothole repair services on roads located within unincorporated areas of Imperial County. The successful applicant will be required to enter into an agreement for the Pothole Repair Services. Said Agreement shall include all labor, material, equipment, supervision, delivery, insurance, traffic control, safety items, and all other related expenses. Imperial County does not guarantee any minimum amount of work with respect to the agreement. The services will only be required on an as needed basis and shall be provided as delegated by Imperial County Road Department's management staff.

The work to be done consists in general of providing on call pothole repairs using a SC800 cold mix material (areas greater than 6-inches x 6-inches and less than 5-feet x 5-feet each) for various paved roads in the County of Imperial as described in the Scope of Work under this contract. The County roads to be focused on will be predominately located in rural agricultural areas. The contractor shall provide all needed materials, labor and equipment to complete the work. The work includes cleaning the pothole by removing loose material, blowing the pothole with compressed air, applying a tack coat of oil on the edges of the pothole, place the SC800 cold mix material and roll with a heavy rubber truck tire and other items as described in the contract documents.

The contractor shall possess a California contractor's license, Class A, at the time this contract is awarded. In all contracts subject to this part where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of the State of California. However, at the time the contract is awarded, the contractor shall be properly licensed in accordance with the laws of the State of California. The first payment for work or material under any contract shall not be made unless and until the Registrar of Contractors verifies to the agency that the records of the Contractors' State License Board indicate that the contractor was properly licensed at the time other contract was awarded. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors' State License Board.

Bids are required for the entire work described herein. The contractor does not have the option to submit a bid proposal on only a portion of the following described work. The contractor must respond with a bid proposal for Base Bid.

Recommendation of selection to award Base Bid will be based on cost and budget availability at time of award. For purposes of determination of the lowest bid, Public Contract Code Section 20103.8 (a) will be used.

A non-mandatory pre-bid meeting is scheduled for Monday, January 23, 2023 to be held at the Imperial County Department of Public Works, 155 S. 11th Street, El Centro CA 92243 to accept questions, and/or provide clarifications.

Technical questions of clarifications must be in writing and should be directed to the Imperial County Department of Public Works, Attention to both, Frank Fiorenza, Resident Engineer II and Naomi Robles, Administrative Analyst III, at 155 S. 11th Street, El Centro, CA 92243 or emailed to both, frankfiorenza@co.imperial.ca.us and naomirobles@co.imperial.ca.us before 4:00 pm on January 26, 2023. No questions will be responded to after this day. An addendum(s) will be provided for results of non-mandatory pre-bid meeting and results of any technical questions of clarifications received, prior to the bid opening date.

BID ITEM LIST

Item No.	ITEM DESCRIPTION	UNIT	Quantity	ITEM PRICE (in figures)	TOTAL (in figures)
1	Mobilization. Contractor to include any additional costs (if any) for mobilization and demobilization into the hourly price for Items 2A, 2B, 2C and 2D. See Item 10-1.15 in the Specification for what is included in mobilization. Mobilization also includes the purchase and storage of 1,000 Cubic Yards of SC800 cold mix material. Any material left at the conclusion of the project will become the property of the County of Imperial. County to transport any leftover material.	LS	1	\$175,000.00	\$175,000.00
2	ITEMS 2A, 2B, 2C and 2D Below – Perform all pothole patching repair work on call, in paved areas. Includes all additional mobilization and demobilization costs not included in line item 1. Deliver SC800 Cold Mix, furnish tack coat, labor, tools, materials and equipment, prepare & implement traffic control plans, clean and blow out loose material from the pothole repair area, remove loose asphalt material and other debris, apply tack coat, place and compact asphalt material, document repairs, provide daily reports to County on a weekly basis and other requirements per the specifications				

	and contract documents. Areas described below are per the Imperial County Pothole Repair Map in the Contract Documents. Salton City, Palo Verde or Winterhaven areas are not included. Unpaved roads, High Volume major collectors and prime arterial roads, and roadways within cities and towns, and roads owned by other agencies are not included. Only Low Volume 2-lane roads in agricultural areas are included. Item price is inclusive of all labor, tools, equipment, materials, and incidentals for work crew per hour.				
Item No.	ITEM DESCRIPTION	UNIT	Quantity	ITEM PRICE (in figures)	TOTAL (in figures)
2A	Area 1 - North of Aten Road, West of Hwy 111	Hour	TBD	TBD	\$125,000.00
2B	Area 2 - South of Aten Road, West of Hwy 111	Hour	TBD	TBD	\$125,000.00
2C	Area 3 - North of Aten Road, East of Hwy 111	Hour	TBD	TBD	\$125,000.00
2D	Area 4 - South of Aten Road, East of Hwy 111	Hour	TBD	TBD	\$200,000.00
3	Time and Material Allocation	LS	1	\$50,000	\$50,000

Plans, specifications, and proposal forms (bid documents) for bidding this project can be obtained at the office of the Imperial County Department of Public Works; 155 South 11th Street, El Centro, CA 92243. A \$100.00 fee is required (no refund will be made). Mail service is available at an additional cost of \$15.00 per set of documents. Make checks payable to the County of Imperial Department of Public Works.

Alternately, the bid documents can be found on Imperial County Public Works website under “Projects Out to Bid” at www.co.imperial.ca.us/PublicWorks/Index.htm.

Only those firms who have purchased the bid documents and the required trade journals will be directly provided any addendums that may be issued for this project prior to the bid opening date. Every attempt will be made to post addendums on the above mentioned Imperial County Public Works website as well.

This contract is subject to state contract nondiscrimination and compliance requirements pursuant to Government Code, Section 12990.

Inquiries or questions based on alleged patents ambiguity of the plans, specifications, or estimate must be communicated as a bidder inquiry prior to bid opening. Any such inquiries or questions, submitted after bid opening, will not be treated as a bid protest.

Bid security shall accompany the bid in the form of a certified or cashier's check, or a Bid Bond for ten (10) percent of the maximum bid amount being proposed.

The successful bidder shall furnish a payment bond and a performance bond, both equal to 100% of the contract amount. The submission of a labor and materials bond (payment bond) is required on projects in excess of \$25,000.00.

Bidders are advised that, they may substitute securities in place retained funds withheld by County. Cal. Pub. Cont. Code Section 22300. Alternatively, an escrow agreement, in the form prescribed by the code, may be used by the bidder.

The County of Imperial hereby affirms and notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, sex, color, or national origin in consideration for an award.

Federal, State and local regulations and reporting requirements applicable to the proposed work must be complied with for this project.

Pursuant to Section 1773 of the Labor Code, the general prevailing rate of wages in the County in which the work is to be done has been determined by the Director of the California Department of Industrial Relations and are on file and available from the Clerk of the Board of Supervisors located at the County Administration Center, 940 Main Street, El Centro, CA 92243.

These wages are also available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov>. Future effective general prevailing wage rates, which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

The Contractor represents and warrants that it and its subcontractors are not ineligible to work for the County due to violations of Sections 1777.1 and 1777.7 of the Labor Code.

The U.S. Department of Transportation (DOT) provides a toll-free "hotline" service to report bid rigging activities. Bid rigging activities can be reported Mondays through Fridays, between 8:00 a.m. and 5:00 p.m., eastern time, telephone no. 1-800-424-9071. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report these activities. The "hotline" is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

Withdrawal of bids shall not be permitted for a period of seventy-five (75) days after the date set for the opening thereof.

Monies withheld by the owner to ensure performance under the contract may be released in accordance with Government Code Section 4590 and these contract documents.

Blanca Acosta

01-11-23

Blanca Acosta
Clerk of the Board of Supervisors

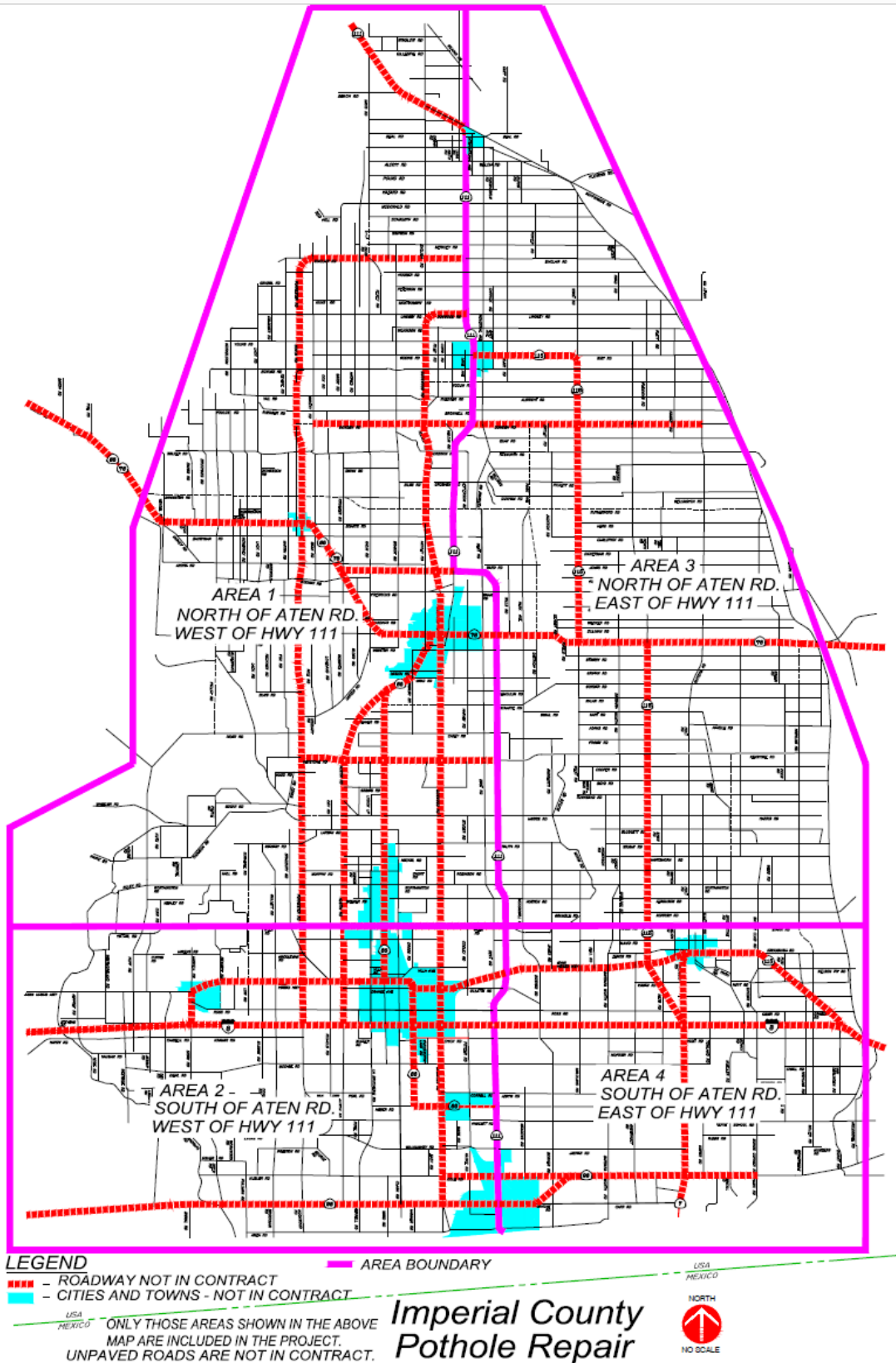
Date

Approved for Construction

John A. Gay

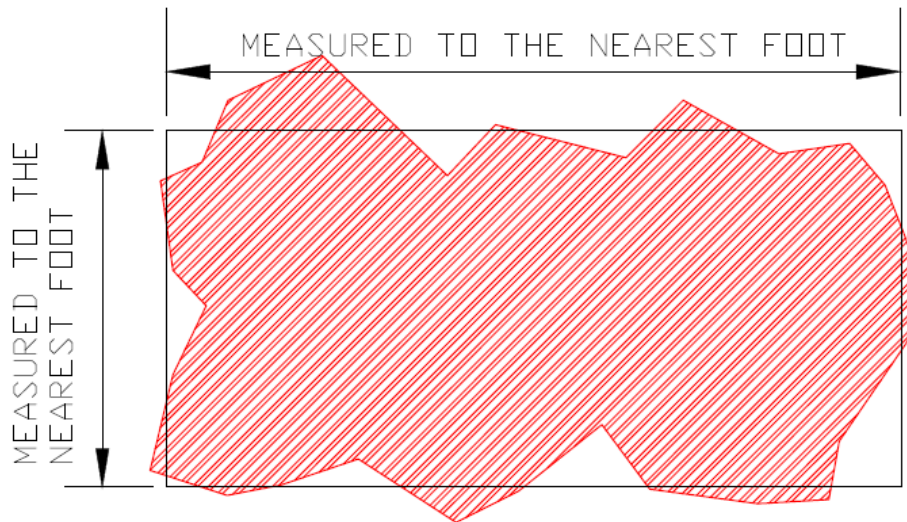
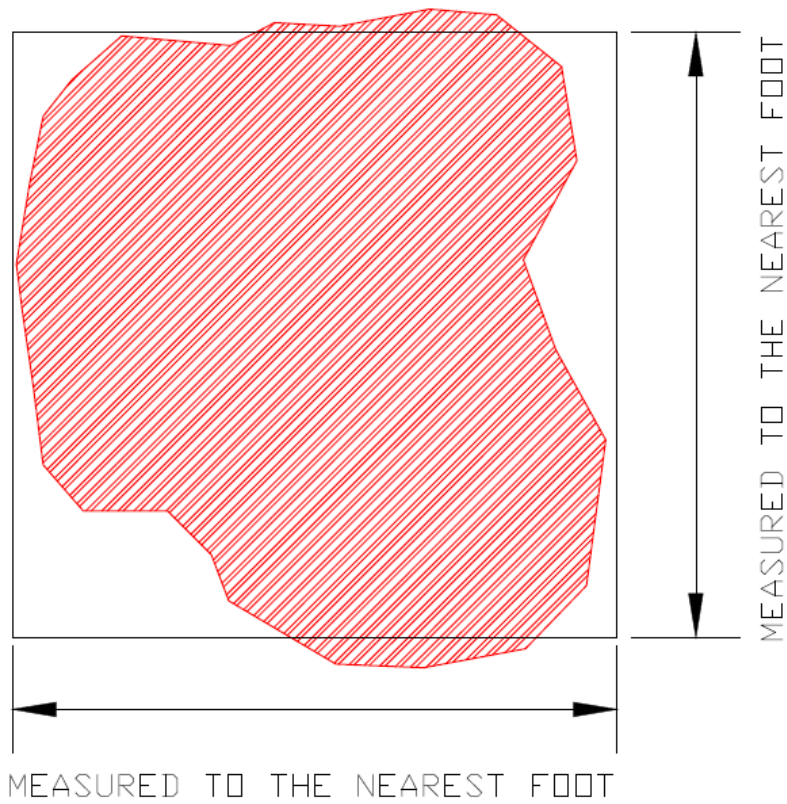
John A. Gay, P. E.
Director of Public Works

Date



LOCATION MAP

TYPICAL MEASUREMENT OF POTHOLE AREAS



PART II. SPECIAL PROVISIONS – SPECIAL CONDITIONS
SB-1 ANNUAL ON CALL POTHOLE REPAIR ON VARIOUS ROADS PROJECT
IN IMPERIAL COUNTY, County Project No. 6907

SECTION 1. SPECIFICATIONS AND PLANS

1-1.01 GENERAL

The work embraced herein shall be done in accordance with the Standard Specifications dated May 2006 and the Standard Plans dated May 2006, of the Department of Transportation insofar as the same may apply, the project plans (Drawing R-983, 15 sheets) and these special provisions. The special provisions shall take precedence over and be used in lieu of the conflicting portions.

Amendments to the Standard Specifications set forth in these special provisions shall be considered as part of the Standard Specifications for the purposes set forth in Section 5-1.04, "Coordination and Interpretation of Plans, Standard Specifications and Special Provisions," of the Standard Specifications. Whenever either the term "Standard Specifications is amended" or the term "Standard Specifications are amended" is used in the special provisions, the indented text or table following the term shall be considered an amendment to the Standard Specifications. In case of conflict between such amendments and the Standard Specifications, the amendments shall take precedence over and be used in lieu of the conflicting portions.

1-1.02 DEFINITIONS

Whenever in the Standard Specifications the following terms are used, they shall be understood to mean and refer to the following.

Attorney General: Wherever used in the Standard Specifications shall refer to County Counsel.

Board of Supervisors: Also, Board: Refers to the Board of Supervisors of the County of Imperial, the governing body created by law and the awarding authority of the County of Imperial, acting either directly or through its duly appointed officials.

California Standard Specifications: The Standard Specifications dated May 2006, State of California, Department of Transportation.

Chief Engineer: Wherever used in the Standard Specifications, shall refer to the County Director of Public Works.

County: County of Imperial, a political subdivision of the State of California, as created by law.

Director of Public Works: The appointed official of the County of Imperial authorized to administer the contract.

Department of Transportation: Also, Department: Whenever used in the Standard Specifications, refers to the Board of Supervisors, except when used in reference to test methods of, or to denote publications or designate the mailing address of an agency of the State of California.

Director of Transportation: Also, Director: Means, whenever used in the Standard Specifications, the Board.

Division of Measurement Standards: Wherever used in the Standard Specifications, shall refer to the Department of Agricultural Commissioner-Weights and Measures of the County of Imperial.

Engineer: The Director of Public Works, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties delegated to them.

Liquidated Damages: The amount prescribed in the Specifications to be paid to the County or to be deducted from any payments due or to become due the Contractor for each day's delay in completing the whole or any specified portion of the work beyond the time allowed in the specifications.

State of California: Also, State: As used in these Specifications relative to the contract administration, refers to the County of Imperial.

Section 1-1.40, "State Contract Act," of the Standard Specifications is amended to read:

1-1.40 State Contract Act. -- Chapter 1, Part 2, Division 2 of the Public Contract Code. The provisions of this act and other applicable laws form and constitute a part of the provisions of this contract to the same extent as if set forth herein in full. Any reference in the specifications and other contract documents to Sections of former Chapter 3 (Sections 14250-14424) inclusive of Part 5 of Division 3 of Title 2 of the Government Code shall be deemed to be a reference to the successor section of the Public Contract Code.

SECTION 2. PROPOSAL REQUIREMENTS AND CONDITIONS

2-1.01 GENERAL

The bidder's attention is directed to the provisions in Section 2, "Proposal Requirements and Conditions," of the Standard Specifications and these special provisions for the requirements and conditions which the bidder must observe in the preparation of the proposal form and the submission of the bid.

The bidder's bond shall conform to the bond form in the Bid book for the project and shall be properly filled out and executed. The bidder's bond form included in that book may be used.

In addition to the subcontractors required to be listed in conformance with Section 2-1.054, "Required Listing of Proposed Subcontractors," of the Standard Specifications, each proposal shall have listed therein the portion of work that will be done by each subcontractor listed. A sheet for listing the subcontractors is included in the Proposal.

The form of Bidder's Bond mentioned in the last paragraph in Section 2-1.07, "Proposal Guaranty," of the Standard Specifications will be found following the signature page of the Proposal.

In conformance with Public Contract Code Section 7106, a Noncollusion Affidavit is included in the Proposal. Signing the Proposal shall also constitute signature of the Noncollusion Affidavit.

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate. Each subcontract signed by the bidder must include this assurance.

Failure of the bidder to fulfill the requirements of the Special Provisions for submittals required to be furnished after bid opening, including but not limited to escrowed bid documents, where applicable, may subject the bidder to a determination of the bidder's responsibility in the event it is the apparent low bidder on future Public Works contracts.

1. **BID OPENING** The Agency publicly opens and reads bids at the time and place shown on the Notice to Contractors.
2. **BID RIGGING** The U.S. Department of Transportation (DOT) provides a toll-free hotline to report bid rigging activities. Use the hotline to report bid rigging, bidder collusion, and other fraudulent activities. The hotline number is (800) 424-9071. The service is available 24 hours 7 days a week and is confidential and anonymous. The hotline is part of the DOT's effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General.
3. **CONTRACT AWARD** If the Agency awards the contract, the award is made to the lowest responsible and responsive bidder.
4. **CONTRACTOR LICENSE**
The Contractor must be properly licensed as a contractor from contract award through Contract acceptance (Public Contract Code § 10164).
5. **CHANGED CONDITIONS**
 - a. **Differing Site Conditions**

1. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.
2. Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated

profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.

3. No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.
4. No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the Local Agency, at their option.)

b. Suspensions of Work Ordered by the Engineer

1. If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
2. Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.
4. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

c. Significant Changes in the Character of Work

1. The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.
2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in

character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

3. If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
4. The term “significant change” shall be construed to apply only to the following circumstances:
 - When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
 - When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

7. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES

Refer to Section 4 – Beginning of Work, Time of Completion and Liquidated Damage in Part II Special Provisions – Special Conditions of these Specifications.

8. QUALITY ASSURANCE

The Agency uses a Quality Assurance Program (QAP) to ensure a material is produced to comply with the Contract. You may examine the records and reports of tests the Agency performs if they are available at the job site. Schedule work to allow time for QAP.

9. PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS

The agency may hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime contractor, or subcontractor, shall return all monies withheld in retention from a subcontractor within seven (7) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency, unless as agreed to in writing by the prime contractor and subcontractor, pursuant to Section 7108.5 of the Business and Professions Code and Section 10262 of the California Public Contract Code. Any violation of these provisions shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified therein. These

requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

THE CONTRACTOR SHALL MAINTAIN RECORDS AND SUBMIT REPORTS DOCUMENTING YOUR PERFORMANCE UNDER THIS SECTION

2-1.03 REQUIRED LISTING OF PROPOSED SUBCONTRACTORS – Subcontractors shall be listed in accordance with the provisions in Section 2-1.054 of the Standard Specifications.

A sheet for listing subcontractors, as required herein is included in the proposal.

For purposes of this reporting, the term Subcontractor shall include:

- A. A contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who contracts with you; or
- B. Any subcontractor as defined in Public Contracts Code 4113 that performs work or labor or otherwise renders service to you; or
- C. Any person, corporation, partnership, joint venture, association or other business entity that provides machinery or other equipment, together with the operator of such equipment or machinery, unless such business entity is paid an hourly rate, works under your sole control and can terminate its business relationship with you at will without incurring any liability for such termination.

SECTION 3. AWARD AND EXECUTION OF CONTRACT

The bidder's attention is directed to the provisions in Section 3, "Award and Execution of Contract," of the Standard Specifications and these special provisions for the requirements and conditions concerning award and execution of contract.

**Bid protests are to be delivered to the following address:
155 S. 11th Street, El Centro, CA, 92243.**

The award of the contract, if it be awarded, will be to the lowest responsible bidder whose proposal complies with all the requirements prescribed.

The contract shall be executed by the successful bidder and shall be returned, together with the contract bonds, to the Agency so that it is received within 10 days, not including Saturdays, Sundays and legal holidays, after the bidder has received the contract for execution. Failure to do so shall be just cause for forfeiture of the proposal guaranty. The executed contract documents shall be delivered to the following address: 155 S. 11th Street, El Centro, Ca, 92243

SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES

Attention is directed to the provisions in Section 8-1.03, "Beginning of Work," in Section 8-1.06, "Time of Completion," and in Section 8-1.07, "Liquidated Damages," of the Standard Specifications and these special provisions.

The Contractor shall begin work within 10 working days after receiving a Notice to Proceed. This Notice to Proceed will be given after the contract has been approved by the Imperial County Board of Supervisors.

The work shall be diligently prosecuted to completion before the expiration of:

SB-1 ANNUAL ON CALL POTHOLE REPAIR ON VARIOUS ROADS PROJECT

Total: 365 Calendar Days

This is an annual maintenance contract, and will expire after 365 calendar days after the notice to proceed, and as such there are **no set liquidated damages**. (\$0.00 per day for each and every working day delay in finishing the work in excess of number of working days prescribed above)

SECTION 5. GENERAL

SECTION 5-1. MISCELLANEOUS

5-1.01 LABOR NONDISCRIMINATION –

Attention is directed to the following Notice that is required by Chapter 5 of Division 4 of Title 2, California Code of Regulations.

NOTICE OF REQUIREMENT FOR NONDISCRIMINATION PROGRAM (GOV. CODE, SECTION 12990)

Your attention is called to the "Nondiscrimination Clause", set forth in Section 7-1.01A (4), "Labor Nondiscrimination," of the Standard Specifications, which is applicable to all nonexempt state contracts and subcontracts, and to the "Standard California Nondiscrimination Construction Contract Specifications" set forth therein. The Specifications are applicable to all nonexempt state construction contracts and subcontracts of \$5,000 or more.

5-1.02 PUBLIC SAFETY –

The Contractor shall provide for the safety of traffic and the public in conformance with the provisions in Section 7-1.09, "Public Safety," of the Standard Specifications and these special provisions.

The Contractor shall install temporary railing (Type K) between a lane open to public traffic and an excavation, obstacle or storage area when the following conditions exist:

- A. Excavations - The near edge of the excavation is 12 feet or less from the edge of the lane, except:
1. Excavations covered with sheet steel or concrete covers of adequate thickness to prevent accidental entry by traffic or the public.
 2. Excavations less than one foot deep.
 3. Trenches less than one foot wide for irrigation pipe or electrical conduit, or excavations less than one foot in diameter.
 4. Excavations parallel to the lane for the purpose of pavement widening or reconstruction.
 5. Excavations in side slopes, where the slope is steeper than 1:4 (vertical:horizontal).
 6. Excavations protected by existing barrier or railing.
- B. Temporarily Unprotected Permanent Obstacles - The work includes the installation of a fixed obstacle together with a protective system, such as a sign structure together with protective railing, and the Contractor elects to install the obstacle prior to installing the protective system; or the Contractor, for the Contractor's convenience and with permission of the Engineer, removes a portion of an existing protective railing at an obstacle and does not replace such railing complete in place during the same day.
- C. Storage Areas - Material or equipment is stored within one foot of the lane and the storage is not otherwise prohibited by the provisions of the Standard Specifications and these special provisions.

The approach end of temporary railing (Type K), installed in conformance with the provisions in this section "Public Safety" and in Section 7-1.09, "Public Safety," of the Standard Specifications, shall be offset a minimum of 15 feet from the edge of the traffic lane open to public traffic. The temporary railing shall be installed on a skew toward the edge of the traffic lane of not more than one foot transversely to 10 feet longitudinally with respect to the edge of the traffic lane. If the 15 feet minimum offset cannot be achieved, the temporary railing shall be installed on the 10 to 1 skew to obtain the maximum available offset between the approach end of the railing and the edge of the traffic lane, and an array of temporary crash cushion modules shall be installed at the approach end of the temporary railing.

Temporary railing (Type K) shall conform to the provisions in Section 12-3.08, "Temporary Railing (Type K)," of the Standard Specifications. Temporary railing (Type K), conforming to the details shown on 1999 Standard Plan T3, may be used. Temporary railing (Type K) fabricated prior to January 1, 1993, and conforming to 1988 Standard Plan B11-30 may be used, provided the fabrication date is printed on the required Certificate of Compliance.

Temporary crash cushion modules shall conform to the provisions in "Temporary Crash Cushion Module" of these special provisions.

Except for installing, maintaining and removing traffic control devices, whenever work is performed or equipment is operated in the following work areas, the Contractor shall close the adjacent traffic lane unless otherwise provided in the Standard Specifications and these special provisions:

Approach Speed of Public Traffic (Posted Limit) (Kilometers Per Hour)	Work Areas
Over 72 (45 Miles Per Hour)	Within 6 feet of a traffic lane but not on a traffic lane
56 to 72 (35 to 45 Miles Per Hour)	Within 3 feet of a traffic lane but not on a traffic lane

The lane closure provisions of this section shall not apply if the work area is protected by permanent or temporary railing or barrier.

When traffic cones or delineators are used to delineate a temporary edge of a traffic lane, the line of cones or delineators shall be considered to be the edge of the traffic lane, however, the Contractor shall not reduce the width of an existing lane to less than 10 feet without written approval from the Engineer.

When work is not in progress on a trench or other excavation that required closure of an adjacent lane, the traffic cones or portable delineators used for the lane closure shall be placed off of and adjacent to the edge of the traveled way. The spacing of the cones or delineators shall be not more than the spacing used for the lane closure.

Suspended loads or equipment shall not be moved nor positioned over public traffic or pedestrians.

Full compensation for conforming to the provisions in this section "Public Safety," including furnishing and installing temporary railing (Type K) and temporary crash cushion modules, shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefor.

5-1.03 REMOVAL OF ASBESTOS AND HAZARDOUS SUBSTANCES –

When the presence of asbestos or hazardous substances are not shown on the plans or indicated in the specifications and the Contractor encounters materials which the Contractor reasonably believes to be asbestos or a hazardous substance as defined in Section 25914.1 of the Health and Safety Code, and the asbestos or hazardous substance has not been rendered harmless, the Contractor may continue work in unaffected areas reasonably believed to be safe. The Contractor shall immediately cease work in the affected area and report the condition to the Engineer in writing.

In conformance with Section 25914.1 of the Health and Safety Code, removal of asbestos or hazardous substances including exploratory work to identify and determine the extent of the asbestos or hazardous substance will be performed by separate contract.

If delay of work in the area delays the current controlling operation, the delay will be considered a right of way delay and the Contractor will be compensated for the delay in conformance with the provisions in Section 8-1.09, "Right of Way Delays," of the Standard Specifications.

5-1.04 CONTRACTORS AND SUBCONTRACTOR'S ELIGIBILITY –

The Contractor represents and warrants that it and its subcontractors are not ineligible to work for the County due to violations of Sections 1777.1 and 1777.7 of the Labor Code.

5-1.05 PERFORMANCE OF SUBCONTRACTORS –

The subcontractors listed by you in Bid book shall list therein the name and address of each subcontractor to whom the bidder proposes to subcontract portions of the work in an amount in excess of one-half of one percent of the total bid or \$10,000, whichever is greater, in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code. The bidder's attention is invited to other provisions of the Act related to the imposition of penalties for a failure to observe its provisions by using unauthorized subcontractors or by making unauthorized substitutions.

If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the prevailing wage rates determined by the State for similar classifications of labor, the Contractor and his subcontractor shall pay not less than the higher wage rate

5-1.06 SUBCONTRACTOR AND/OR TRUCKING RECORDS –

The Contractor shall maintain records showing the name and business address of each subcontractor and/or trucking company, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all of these firms. Prime contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of the contract, a summary of these records shall be provided to the Engineer by the Contractor. These records shall be furnished to the Engineer within 90 days from the date of contract acceptance. \$10,000 will be withheld from payment until this is submitted and accepted.

Prior to the fifteenth of each month, the Contractor shall submit documentation to the Engineer showing the amount paid to trucking companies. The Contractor shall also obtain and submit documentation to the Engineer showing the amount paid by trucking companies to all firms, including owner-operators, for the leasing of trucks.

The Contractor shall also obtain and submit documentation to the Engineer showing the truck number, owner's name and California Highway Patrol CA number of the owner of the truck for all trucks used during that month.

5-1.07 SUBCONTRACTING –

Attention is directed to the provisions in Section 8-1.01, "Subcontracting," and Section 2, "Proposal Requirements and Conditions," and Section 3, "Award and Execution of Contract," of the Standard Specifications and these special provisions.

No subcontract releases the Contractor from the contract or relieves the Contractor of their responsibility for a subcontractor's work.

If the Contractor violates Pub Cont Code § 4100 et seq., the County of Imperial may exercise the remedies provided under Pub Cont Code § 4110. The County of Imperial may refer the violation to the Contractors State License Board as provided under Pub Cont Code § 4111.

The Contractor shall perform work equaling at least 30 percent of the value of the original total bid with the Contractor's own employees and equipment, owned or rented, with or without operators.

Each subcontract must comply with the contract.

Each subcontractor must have an active and valid State contractor's license with a classification appropriate for the work to be performed (Bus & Prof Code, § 7000 et seq.).

Submit copies of subcontracts upon request by the Engineer. Before subcontracted work starts, submit a Subcontracting Request form.

Do not use a debarred contractor; a current list of debarred contractors is available at the Department of Industrial Relations' Web site at:
http://www.dir.ca.gov/dir/Labor_law/DLSE/Debar.html.

Upon request by the Engineer, immediately remove and not again use a subcontractor who fails to prosecute the work satisfactorily.

5-1.08 PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS –

A prime contractor or subcontractor shall pay to any subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless, a longer period is agreed to in writing. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions and other remedies of that Section. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days of receipt of each payment may take place only for good cause and with the agency's prior written approval. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

5-1.09 PROMPT PAYMENT OF WITHHELD FUNDS TO SUBCONTRACTORS –

The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental

acceptances of portions of the contract work by the agency. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or non-payment by the prime contractor, deficient subcontract performance and/or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

5-1.10 PAYMENTS –

Attention is directed to Section 9-1.06, "Partial Payments," and 9-1.07, "Payment After Acceptance," of the Standard Specifications and these special provisions.

No "Partial Payments" will be made under this On Call contract. All payments for work will be invoiced on a monthly basis and paid accordingly. After acceptance of the contract pursuant to the provisions in Section 7-1.17, "Acceptance of Contract," of the Standard Specifications, the amount, if any, payable for a contract item of work in excess of the maximum value for progress payment purposes hereinabove listed for the item, will be included for payment in the first estimate made after acceptance of the contract.

No payment will be made for any materials on hand which are furnished but not incorporated in the work.

The final payment of five percent (5%) of the value of work under this contract, if unencumbered, shall be made thirty-five (35) days after acceptance of work by owner. Acceptance will be made only by an action of the Board of Supervisors in session.

5-1.11 INSURANCE –

The Contractor shall carry Public Liability and Property Damage Liability Insurance as well as vehicle liability insurance at all times when work is being performed. Before beginning work, the Contractor shall provide the Engineer a Certificate of Insurance detailing the Contractor's insurance amounts to be reviewed and approved by the County. For more information see "Construction Contract and minimum Insurance Amounts" in Part VI elsewhere in these special provisions.

5-1.12 ARBITRATION –

The Provisions of Section 9-1.10, "Arbitration" of the Standard Specifications shall not apply. Any unresolved claims shall be resolved by litigation in a court of competent jurisdiction within the County of Imperial.

5-1.13 APPRENTICESHIP REQUIREMENTS –

CONTRACTOR agrees to comply with §1777.5, 1777.6 and 1777.7 of the California Labor Code relating to the employment of apprentices and to provide COUNTY with copies of any contract award information and verified statements of the journeyman and apprentice hours performed pursuant to this Agreement as required by §1777.5(e).

The responsibility for compliance with these provisions is fixed with CONTRACTOR for all apprenticeable occupations, where journeymen in the craft are employed on the public work, in a ratio of not less than one (1) apprentice for each five (5) journeymen (unless an exemption is granted in accordance with §1777.5) and CONTRACTOR and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public work solely on the ground of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in §3077 of the Labor Code.

Only apprentices, as defined in §3077, who are in training under apprenticeship standards and who have signed written apprentice agreements will be employed on public works in apprenticeable occupations. This section shall not be enforced if the total contract amount of this contract is less than thirty thousand dollars (\$30,000).

5-1.14 QUESTIONS OR CLARIFICATIONS—

All questions or clarifications must be in writing and shall be mailed to Veronica Atondo, at 155 S. 11th Street, El Centro, CA 92243 or emailed to veronicaatondo@co.imperial.ca.us before _____. No questions will be responded to after this day.

5-1.15 RESOLUTION OF CLAIMS –

(1) Compliance with all change order procedures is a prerequisite to filing a Public Contract Code Claim pursuant to this Section. Claims must be submitted no later than (a) 30 days after the dispute resolution process set forth in Section 5-14.3 is complete or (b) 30 days after the occurrence of the event giving rise to the claim.

(2) In accordance with the procedures set forth in Public Contract Code Sections 9204 and 20104-20104.6, a Contractor may submit a claim by registered or certified mail with return receipt requested, for one or more of the following: (a) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the County; (b) payment by the County of money or damages arising from work done by, or on behalf of, the Contractor pursuant to this contract and payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled; or (c) payment of an amount that is disputed by the County.

(3) The Contractor shall furnish reasonable documentation to support the claim, including but not limited to: 1) a clear, concise recital of the basis upon which the claim is asserted, including a designation of the provisions of the Contract upon which the claim is based, 2) a statement as to the amount of time and/or compensation sought pursuant to the claim; 3) whether the Contractor's claim arises from an ongoing occurrence, and if so a description of the specific Work activities affected by the claim, 4) a time impact analysis in the event that Contractor requests a time extension, 5) full and complete cost records supporting the amount of any claim for additional compensation and 6) a notarized certification by the Contractor as follows: "Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code Section 12650 et seq., the undersigned hereby certifies that the information contained herein is a true, accurate and complete statement of all features relating to the claim asserted." Failure by the Contractor to provide sufficient documentation will result in denial of the claim. The County reserves the right to request additional documentation, or clarification of the documentation provided.

(4) Upon receipt of a claim, the County will conduct a reasonable review and provide a written statement to the Contractor identifying what portion of the claim is disputed and what

portion is undisputed within 45 days of receipt of the claim. The County and Contractor may, by mutual agreement, extend the 45-day time period. For any undisputed portion of a claim, the County must make payment within 60 days of its issuance of the written statement.

(5) If the Contractor disputes the County's written statement, or if the County fails to respond, the Contractor may demand an informal conference to meet and confer for settlement of the issues in dispute. The County will then schedule the meet and confer conference within 30 days of the demand. Within 10 business days following the meet and confer conference, the County will provide a written statement identifying the portion of the claim that remain in dispute. Any payment due on an undisputed portion of the claim will be made within 60 days of the meet and confer conference.

(6) After the meet and confer conference, any disputed portion of the claim shall be submitted to non-binding mediation. Alternatively, upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable. If mediation is unsuccessful, the parts of the claim that remain in dispute shall be subject to applicable procedures set forth below.

(7) Failure of a public entity to respond to a claim within the time periods described above shall result in the claim being deemed rejected in its entirety. Additionally, amounts not paid in a timely manner shall bear interest at 7 percent per year.

(8) In the event that the mediation is unsuccessful, Contractor must file a government claim pursuant to Government Code Sections 910 et seq. in order to initiate a civil action.

(9) In any civil action filed to resolve claims, the court shall submit the matter to nonbinding mediation within 60 days following the filing or responsive pleading, provided that the parties have not already participated in mediation of the claim as outlined above. If the matter remains in dispute after nonbinding mediation, the court shall submit the matter to judicial arbitration pursuant to Code of Civil Procedure Section 1141.10 et seq. If the matter remains in dispute after judicial arbitration, the County or the Contractor may request a trial de novo.

5-1.16 REQUIRED LICENSES –

At the time the contract is awarded, and at all times during construction of the Project, CONTRACTOR shall possess and maintain a California contractor's license, Class A.

5-1.17 UNFAIR BUSINESS PRACTICE CLAIMS –

Contractor and its subcontractor offer and agree to assign to COUNTY all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Agreement. This assignment shall be made and become effective at the time COUNTY tenders final payment to CONTRACTOR, without further acknowledgment by the parties.

5-1.18 SECURITIES IN LIEU OF RETENTIONS –

Bidders are advised that, they may substitute securities in place retained funds withheld by County. Cal. Pub. Cont. Code Section 22300. Alternatively, an escrow agreement, in the form prescribed by the code, may be used by the bidder.

5-1.19 TIME AND MATERIAL ALLOCATION –

The Contractor shall provide a rate schedule for all labor and equipment that may reasonably be anticipated for use during the project. Labor rates shall be consistent with those required by the prevailing wage requirements of the contract and shall reflect all benefits and employer costs. Once the labor and equipment rates have been approved by the engineer, they become the basis for compensation for any Time and Material work requested by the County, as Extra Work, not contemplated in the scope of work of the On Call contract. The Contractor is advised, however, that there will be no compensation from the Time and Material Allocation unless the extra work has been authorized in writing by the engineer. Additionally, the use of the Time and Material Allocation will be at the sole discretion of the County. All or any portion of the allocation amount may be deleted from the Contract. The Time and Material Allocation for this project shall be **\$50,000**. This is the number to be used for the bid proposals schedule.

PART III. SPECIAL PROVISIONS – TECHNICAL PROVISIONS

SECTION 6. (BLANK)

SECTION 7. (BLANK)

SECTION 9. DESCRIPTION OF WORK

The Department of Public Works has developed this Request for Proposals for the purpose of obtaining competitive bids from qualified applicants interested in providing Imperial County with Pothole Repair Services to augment the County's maintenance of paved roads on an On Call basis. Therefore, Imperial County is soliciting Request for Proposals (RFP) from reputable contractors to provide pothole repair services on roads located within unincorporated areas of Imperial County. The successful applicant will be required to enter into an agreement for the Pothole Repair Services. Said Agreement shall include all labor, material, tools, equipment, supervision, delivery, insurance, traffic control, flaggers, safety items, profit, and all other related and incidental expenses. Imperial County does not guarantee any minimum amount of work with respect to the agreement. The services will only be required on an on call, as needed basis and work site notifications shall be provided by Imperial County.

The work to be done consists in general of **providing on call pothole repairs (areas greater than 6-inches x 6-inches and less than 5-feet x 5-feet) using a SC800 cold mix material**, for various paved roads in the County of Imperial as described in the Scope of Work under this contract. **Areas with needed repairs greater than 5' x 5' are not included in this contract.** The County roads to be focused on will be predominately located in rural, agricultural areas with low traffic volumes expected. Contractor shall purchase and legally store a minimum of 1,000 cubic yards of SC800 cold mix material for use in the project.

The County will provide the Contractor with a list of County road segments to be repaired as needed, throughout the year. The total services to be performed by contractor hereunder shall not exceed a total contract price of **\$750,000.00** plus **\$50,000.00** Time and Material Allocation, unless an increase is approved by the Public Works Director in writing.

The work includes purchase and stockpile of SC800 cold mix material, provision of tack coat as needed, providing traffic control, cleaning the pothole by removing loose material, blowing the pothole with compressed air, applying a tack coat of oil on the edges of the pothole, place the SC800 cold mix material and roll with a heavy rubber truck tire.

Specifically:

1. Contractor shall mobilize the pothole patching repair services within 7 calendar days after being notified that pothole patching services are needed and a list of road segments is provided, unless an extension is otherwise approved by the Director of Public Works. Lists of road segments requiring pothole patching shall be provided intermittently throughout the annual year period. With each notification of roads to be patched, Contractor shall provide a schedule for County review and approval.

2. Contractor shall be prepared to work on an **average of 1-2 days per week** during the course of this contract. The pothole patching schedule is based on amount of potholes called in by the public, and County staff reports, which are on an ongoing, intermittent basis.
3. Contractor shall provide a truck with a minimum of 5 tons of asphalt hauling capacity, with all tools, supplies, materials, fuels, oils, and incidentals needed for pothole patching with a minimum labor crew of three (3), including supervision, by foreman or construction lead worker.
4. If an unforeseen temporary circumstance, that does not compromise safety to Contractor, or the public, result in Contractor only able to a two (2) person labor crew, upon Contractor written request, County may permit same on a temporary and limited basis, subject to reduced hourly rate of payment. In any case, a foreman or construction lead worker must be included in the two (2) person labor crew.
5. In addition to pothole patching, Contractor shall implement traffic control, operate as flagmen for temporary lane closures, and perform the needed repairs, as required.
6. Contractor shall provide all tools and equipment necessary to patch potholes including, but not limited to appropriate vehicle(s), shovels, rakes, leaf blowers, brooms, and hand tamps, traffic control signs and safety equipment, including personal protective equipment.
7. The Contractor shall prepare or use a typical traffic control plan for shoulder closure, one lane closure, full road closure (not anticipated, only if needed) and intersection work, as determined by Contractor. The Contractor shall provide traffic control as necessary to conduct these road repair operations, in a manner that causes minimum obstruction and inconvenience to the public, and safety to its crew. The Contractor's traffic control shall be in compliance with the latest edition of the California Manual on Uniform Traffic Control Device (CA MUTCD) guidelines. The Contractor shall apply for and obtain a County blanket encroachment permit, for the use of typical TCPs for shoulder closure, one lane closure, full road closures, and/ any intersection work. There is no cost to Contractor for the blanket encroachment permit.
8. All of the contractor's vehicles used for this work shall be equipped and will utilize a safety beacon that must be visible 360 degrees, when occupying the road and shoulder areas for potholing work.
9. Contractor shall purchase and legally store at least 1,000 cubic yards of SC800 cold mix material for use on the project. Contractor shall provide material tickets to the County for the material. Contractor shall load contractor's work truck with sufficient cold mix material and other materials, tools, equipment and labor to ensure pothole patching work day operations can be conducted.
10. The Contractor shall remove all loose material using shovel and/or air pressure device prior to patching the potholes of approximate size between 6-inches by 6-inches to 5-feet by 5-feet maximum size for pothole patching. Additionally, potholes may be located

along road edges, and will similarly be repaired using same methods, with the edge of road re-established with the repairs. Based on past practice, the loose material expected to be removed on potholes is a minor amount, and can be hand shoveled and distributed evenly along the adjacent road shoulder area, outside the paved road. A tack coat shall be applied onto the edges of the pothole and SC800 cold mix material placed and raked, and compacted with heavy rubber tire of the patch truck.

11. Contractor shall notify County if any potholes are greater in size than 5-feet by 5-feet so determination can be made if dig out should be scheduled by Contractor as an extra work item, or if County forces will schedule.
12. The Contractor shall keep a daily log of the patching operations including equipment and personnel names, hours worked, estimated volume of SC800 cold mix material used, describe each location worked (limits of each road segment). This daily information log shall be provided to the County weekly, with a monthly summary with each submittal of invoice for payment. The daily log shall also be used to report any unusual conditions, or issues that may require County review and determinations.
13. The Contractor shall provide County with 24 hour contact information of Contractor and Contractor's designated crew supervisor. The Contractor's supervisor will be responsible for the completion of the daily log. The County will monitor the progress and may perform routine, daily inspections and review of work. Work will be evaluated for quality and consistency. Any work not meeting the requirements in these special provisions shall be corrected at the contractor's expense.
14. The project funds are from SB-1 and are considered local funds. Therefore, the **federal** prevailing wages and documentation are **not required**. The contractor **will be** responsible for **State** prevailing wages and documentation. The contractor will provide the County certified payroll once per month.
15. The Contractor shall abide by all applicable local, state and federal laws and regulations for working in the road right of way and shall also comply with all related Cal/OSHA safety regulations and requirements.
16. Contractor Working Hours and Schedule: Contractor's working hours shall be daylight hours from 7:00am – 3:30pm, Monday through Friday. Weekends, State Holidays and overtime work is not permitted unless specifically directed in writing by the Director of Public Works. The County will coordinate and work with selected Contractor to determine alternative schedule on a case by case basis, or depending on appropriate circumstances that do not conflict with labor regulations.

Payment will be made per hourly rate of complete crew working time, starting and ending at Contractor's work yard, or location to be mutually determined. Payment shall be inclusive of all costs associated with making pothole repairs. A crew is designated as a truck with all materials, tools, and all labor including three (3) individuals to perform and supervise pothole repairs as described in these special provisions.

The County roads to have pothole repairs have been divided into four separate areas for distinct costs in those areas in the bid documents. Please reference the map in the project documents. Most roads designated as major arterials and major collectors are not included in this project, as shown the map. Roadways in rights-of-ways and easements not owned by the County are also not included (such as Caltrans, or cities).

SECTION 10. CONSTRUCTION DETAILS

SECTION 10-1. GENERAL

10-1.01 ORDER OF WORK –

Order of Work shall conform to the provisions in Section 5-1.05, “Order of Work,” of the Standard Specifications and these special provisions.

The County will provide the Contractor with a list of County road segments to be repaired as needed on an intermittent basis throughout the contract period. The contractor shall mobilize work crew to the first road segment and begin pothole patching work within 7 calendar days. The Contractor shall provide a schedule of anticipated road segment repairs. The total services to be performed by CONTRACTOR hereunder shall not exceed a total contract price of **\$750,000.00** plus a **\$50,000.00 Time and Material Allocation**, unless an increase is approved by the Public Works Director in writing.

10-1.02 OBSTRUCTIONS –

The Contractors attention is directed to Section 8-1.10, “Utility and Non-Highway Facilities,” and Section 15, “Existing Highway Facilities,” of the Standard Specifications and these special provisions.

The Contractor’s attention is directed to the existence of certain underground facilities that may require special precautions be taken by the Contractor to protect the health, safety and welfare of workers and of the public. Facilities requiring special precautions include, but are not limited to: conductors of petroleum products, oxygen, chlorine, and toxic or flammable gases; natural gas in pipelines greater than 6 inches (150 mm) in diameter or pipelines operating at pressures greater than 60 psi (415 KPa) gage; underground electric supply system conductors or cables with potential to ground of more than 300 V, either directly buried or in a duct or conduit which do not have concentric grounded or other effectively grounded metal shields or sheaths.

The Contractor shall notify the Engineer and the appropriate regional notification center for operators of subsurface installations at least 2 working days, but not more than 14 calendar days, prior to performing any excavation or other work close to any underground pipeline, conduit, duct, wire or other structure. Regional notification centers include, but are not limited to, the following:

Notification Center			Telephone Number
Underground	Service	Alert-Southern	811

The Contractor shall be responsible to protect in place existing survey monuments, private or IID water and or drain lines and coordinate with all the affected agencies running under the roadways and any other utility that may be impacted by the proposed work. Compensation for providing protection and coordination to impacted utilities and agencies shall be included in the various items of work and no additional compensation shall be made therefore.

10-1.03 CONSTRUCTION AREA SIGNS –

No stationary (fixed) construction area sign is required as a part of this project. Only transient traffic control for the work as described in other sections within these special provisions

10-1.04 MAINTAINING TRAFFIC –

Attention is directed to Sections 7-1.08, “Public Convenience,” 7-1.09, “Public Safety,” and 12, “Construction Area Traffic Control Devices,” of the Standard Specifications and to the provisions in “Public Safety” of these special provisions. Nothing in these special provisions shall be construed as relieving the Contractor from the responsibilities specified in Section 7-1.09.

Lane closures shall conform to the provisions in section “Traffic Control System for Lane Closure” of these special provisions.

Personal vehicles of the Contractor’s employees shall not be parked on the traveled way including any section closed to public traffic.

A typical Traffic Control Plan for lane closures, road closures, and/or intersection work shall be provided by the contractor for the County’s review and approval to address all traffic control and construction area signs that are to be placed in the roadway. All traffic control shall be in accordance with the latest California addition of the Manual for Uniform Traffic Control Devices (MUTCD). The County will issue the Contractor a blanket encroachment permit upon application by Contractor for the potholing work at no cost, and upon review and approval of the typical Traffic Control Plan(s) to be used and implemented by Contractor.

If lane closures are to be utilized for improvements, the roadway shall be closed one lane at a time during the work and public traffic shall be allowed to travel around the work area as per the traffic control plan and as directed by the Engineer, and or their representative, before work is commenced. Local traffic shall be maintained.

For Road Closures, if required, the Contractor shall notify local authorities, residents, and commercial business of the Contractor’s intent to begin work at least 10 days before work is begun. The Contractor shall cooperate with local authorities relative to handling traffic through the area and shall make arrangements relative to keeping the working area clear of parked vehicles.

The Contractor is advised that emergency vehicle access must be maintained during the course of work.

Whenever vehicles or equipment are parked on the shoulder within 6 feet of a traffic lane, the shoulder area shall be closed with fluorescent traffic cones or portable delineators placed on a taper in advance of the parked vehicles or equipment and along the edge of the pavement at 25 feet intervals to a point not less than 25 feet past the last vehicle or piece of equipment. A minimum of 9 cones or portable delineators shall be used for the taper. A C23 (Road Work Ahead) or C24 (Shoulder Work Ahead) sign shall be mounted on a portable sign stand with flags. The sign shall be placed where designated by the Engineer or their representative.

All traffic lanes shall be no less than 10 feet wide. A minimum of two lanes shall remain open for use by the public traffic when construction operations are not actively in progress.

The full width of the traveled way shall be open for use by public traffic on Saturdays, Sundays and designated legal holidays; after 3:00 p.m. on Fridays and the day preceding designated legal holidays; and when construction operations are not actively in progress.

Designated legal holidays are: January 1st, the third Monday in January and February, the last Monday in May, July 4th, the first Monday in September, November 11th, Thanksgiving Day, and December 25th. When a designated legal holiday falls on a Sunday, the following Monday shall be a designated legal holiday. When November 11th falls on a Saturday, the preceding Friday shall be a designated legal holiday.

Minor deviations from the requirements of this section concerning hours of work which do not significantly change the cost of the work may be permitted upon the written request of the Contractor if, in the opinion of the Engineer, or their representative, public traffic will be better served and the work expedited. These deviations shall not be adopted by the Contractor until the County has approved the deviations in writing. Other modifications will be made by contract change order.

Full compensation for providing the Traffic Control Plan, including furnishing, placing, maintaining and removing signals, signs and barricades, including flagging shall be considered as included in the contract sum for the various items of work and no additional compensation shall be considered therefor.

10-1.05 TRAFFIC CONTROL SYSTEM FOR LANE CLOSURES –

A traffic control system shall consist of closing traffic lanes in accordance with the provisions of Section 12, “Construction Area Traffic Control Devices, of the Standard Specifications, the provisions under “Maintaining Traffic” and “Construction Area Signs” elsewhere in these special provisions, and these special provisions. Lane closures are to be performed when practical and applicable as determined by the Engineer, or their representative.

The provisions in this section will not relieve the Contractor from his responsibility to provide such additional devices or take such measures as may be necessary to comply with the provisions in Section 7-1.09, “Public Safety,” of the Standard Specifications.

If any component in the traffic control system is displaced, or ceases to operate or function as specified, from any cause, during the progress of the work, the Contractor shall immediately repair said component to its original condition or replace said component and shall restore the component to its original location.

When lane closures are made for work periods only, at the end of each work period, all components of the traffic control system, If the Contractor so elects, said components may be stored at selected central locations, approved by the Engineer, within the limits of the highway right of way.

The Contractor shall utilize radios and flaggers if lane closures are performed. Flaggers shall have radio contact with personnel in the work area. Maximum speed of public traffic through the traffic control zone shall be 25 miles per hour (mph).

The flagging costs indicated in the provisions of Section 12-2.02 “Flagging Costs” of the standard specifications shall not apply. All costs in relation to flaggers shall be borne solely by the Contractor.

Full compensation for providing the traffic control system (including signs and flagging costs), the traffic control plan and any other tools, labor and equipment shall be considered as included in the various items of work of these special provisions and no separate payment will be made therefor. Traffic control system required by work, which is classed as extra work, as provided in Section 4-1.03D of the Standard Specifications, will be paid for as part of said extra work.

10-1.06 EXISTING HIGHWAY FACILITIES –

The work performed in connection with various existing highway facilities shall conform to the provisions in Section 15, “Existing Highway Facilities,” of the Standard Specifications and these special provisions.

10-1.07 ROADWORK EXCAVATION, EARTHWORK, & HAULING –

Pothole repair includes the removal, and disposal of loose existing asphalt concrete pavements, and/or loose earthen materials.

It is expected that that the majority of work will NOT require significant excavation, saw cutting or removal of material. Any removed materials are typically considered minor, and can be shoveled and distributed evenly along the adjacent road shoulder areas, outside the paved road. Any significant excavation needed for any reason that this cannot be performed with hand methods, shall require immediate notification to County, and if determined that more extensive excavation is required, will be considered as extra work, subject to County approval and the material shall become the property of the Contractor and shall be disposed of as provided in Section 7-1.13, “Disposal of Materials Outside the Highway Right of Way,” of the Standard Specifications. The contract allows for up to 5 ft. by 5 ft. pothole repairs. In the event that significant excavation is required it will be considered extra work and any extra work shall be accounted for separately through a contract change order.

10-1.08 WATERING –

Watering shall conform to the provision in Section 17 “Watering,” of the Standard Specifications and these special provisions. Water is not anticipated to be necessary for pothole patching. Water, if needed, shall be provided by the Contractor and included in the costs for the various items of work and not additional payment shall be made therefor.

10-1.09 AGGREGATE BASE FOR DIGOUTS –

Digouts are not anticipated to be a part of the project. If digouts are needed, aggregate base shall be Class II and shall conform to the provisions in Section 26, “Aggregate Bases,” of the Standard Specifications and these special provisions. Aggregate base shall be compacted to 95% maximum density. Whenever compliance for compaction is required by the County tests will be made utilizing ASTM D1557. The provisions in Section 6-3.01, “General” for using California Test 216 or 231 shall not apply.

Quantities of Class II Aggregate Base, if required, will be paid for as extra work through a contract change order per ton or cubic yard, whichever unit is designated in the contract item, for the class or classes involved.

The above prices and payments shall include full compensation for furnishing all labor, materials (including water in the material at the time of weighing as provided in Section 26-1.06, "Measurement"), tools, equipment, and incidentals, and for doing all the work involved in constructing aggregate base, complete in place, as specified in these specifications and the special provisions, and as directed by the Engineer, or their representative. All aggregate base for digouts will be considered as extra-work.

10-1.10 ASPHALT CONCRETE --

Asphalt concrete shall be spread and compacted in accordance with Section 39, “Asphalt Concrete”, of the Standard Specifications and these special provisions.

The completed surfacing shall be true to grade and cross section, of uniform smoothness and texture, compacted firmly and free from depressions, humps or irregularities.

The finished surface shall meet the straight edge requirements of Section 39-6.03 “Compacting” of the Standard Specifications.

If the finished surface of the asphalt concrete on the traffic lanes does not meet the specified surface tolerances, it shall be brought within tolerance by either:

1. Abrasive grinding (with fog seal coat on the areas which have been ground),
2. Removal and replacement, or
3. Placing an overlay of asphalt concrete. The Engineer will select the method. The corrective work shall be at the Contractor’s expense.

MEASUREMENT: The quantity of liquid asphalt to be paid for by contract item will be considered as included in various items of work and no additional compensation shall be considered therefore.

10-1.11 PAINT STRIPING AND SIGNAGE –

It is not expected that paint and permanent signage will be necessary under this contract. Any such items of work, if needed will be handled as extra work under the contract. Paint striping,

signage and pavement markings shall conform to the provisions in Section 84-1, General,” and 84-3, “Painted Traffic Stripes and Pavement Markings”, Section 85, “Pavement Markers” of the Standard Specifications, Chapter 6, Markings” of the California Department of Transportation “Traffic Manual, hereinafter referred to as “Traffic Manual”, the project plans and these special provisions.

Thermo plastic stripes and markings may be allowed or accepted upon the Engineer’s written approval.

In conformance with CCR Title 8 1532.1(e)(2) for all construction work where an employee may be occupationally exposed to lead, regardless if it is hazardous or non-hazardous, a Lead Compliance Plan shall be prepared by a Certified Industrial Hygienist and implemented for all workers handling the removal of traffic striping and pavement markings.

Full compensation for furnishing all labor, materials, tools, equipment and incidentals, and for doing all the work involved in paint striping and signage and removal of conflicting existing striping and all signage and pavement markings including establishing alignment for the stripes and layout work, complete in place, as specified in these specifications, special provisions and as directed by the engineer shall be considered as extra work and handled through a Contract Change Order.

10-1.12 MONUMENT PRESERVATION/PERPETUATION –

It is anticipated that no survey monuments will be impacted by the proposed work.

Any existing survey monuments or County recognized benchmarks will be identified by the County of Imperial prior to any work, and shall be protected by the Contractor. Prior to any excavation work, the County shall review the proposed work areas and determine if survey monuments are in place in the locations of the proposed work.

If a survey monument appears to be located within a paved section of the pothole work area, prior to any work around the area the Contractor shall locate the survey monument through the use of a California Licensed Land Surveyor. The Contractor shall not disturb the area around the monument. If the County deems it necessary in writing, the Contractor shall employ a California Licensed Land Surveyor to preserve or perpetuate the monument by the proper resetting of the same as per the Subdivision Map Act, the Professional Land Surveyors Act and to the satisfaction of the County Surveyor/Director of Public Works Department including all required documentation, including corner records. All the above work by a Licensed Land Surveyor shall be **considered extra work** and a contract change order shall be prepared.

Should any such monuments or benchmarks be removed, damaged, obliterated or altered by the Contractor’s operations *without* County consent, the Contractor shall be responsible for all costs for preservation or perpetuation by the proper resetting of the same as per the Subdivision Map Act, the Professional Land Surveyors Act and to the satisfaction of the County Surveyor/Director of Public Works Department. Such points shall be preserved or perpetuated with appropriate monumentation by a licensed land surveyor or a registered civil engineer authorized to practice land surveying.

10-1.13 EROSION CONTROL –

Best Management Practices (BMP) shall be placed if requested by the County. Full compensation for providing all BMP items and responsibilities shall be considered as extra work and accounted for separately through a contract change order.

As a minimum the following BMP's shall be installed (if needed):

- Temporary Drainage inlet protection – Provide Filter Rolls or Trap by every storm drain inlet to prevent sediment or material from entering drain system for any storage pile of asphalt material.
- Stabilized Construction entrance for any staging areas outside of roadway that are longer than 7 calendar days.

10-1.14 ENVIRONMENTAL MITIGATION –

The following conditions apply to this project and shall be complied by the contractor:

BIOLOGY CONDITIONS:

- No removal of vegetation is necessary, or will be authorized, as part of the proposed project activities.
- Staging or storage areas will occur in paved areas or level areas devoid of vegetation or animal burrows.
- If modifications are made to the project plans, such as identification of staging areas, the County of Imperial Planning Department and County of Imperial Public Works Dept must be notified so that a reevaluation may be completed.
- Possible work debris or runoff shall be restricted to the work area directed away from the drainages to prevent into the waterways.

Air Quality

Comply with air-pollution-control rules, regulations, ordinances, and statutes that apply to work performed under the Contract, including those provided in Govt Code § 11017 (Pub Cont Code § 10231).

Do not dispose of material by burning.

The US EPA has established the National Emission Standards for Hazardous Air Pollutants (NESHAP). Under the Health & Safety Code § 39658(b)(1), your demolition and rehabilitation activities must comply with 40 CFR 61, Subpart M (National Emission Standard for Asbestos).

The Initial Site Assessment (ISA) includes asbestos survey and sampling analysis for this project and is included in the *Information Handout*.

Notify the US EPA and the California Air Resources Board of your demolition activities even if the activities will not disturb asbestos-containing material.

You may obtain an Asbestos NESHAP Notification of Demolition and Renovation Form at the California Air Resources Board's website:

<http://www.arb.ca.gov/enf/asbestos/asbestos.htm>

Instead of the 10 working days specified at the website, mail or deliver the form with the necessary attachments at least 15 days before starting demolition or rehabilitation activities to:

US EPA - REGION IX
ASBESTOS NESHAP NOTIFICATION (AIR-5)
75 HAWTHORNE ST
SAN FRANCISCO, CA 94105

Mail or fax a copy of the notification form to:

CALIFORNIA AIR RESOURCES BOARD
ENFORCEMENT DIVISION
ASBESTOS NESHAP NOTIFICATION
P.O. BOX 2815
SACRAMENTO, CA 95812
FAX: (916) 229-0645

Submit a copy of the notification form and attachments as informational submittals before starting demolition or rehabilitation activities.

If you discover unanticipated asbestos-containing material during the demolition or rehabilitation activities, immediately stop work in that area and notify the Engineer. The Department will use other forces to remove and dispose of the material. Do not resume work in the area until authorized.

Notify the California Air Resources Board of a change to your demolition or rehabilitation activities, including a revised work plan or the discovery of unanticipated asbestos-containing materials, within 2 days of the change or discovery.

Full compensation for furnishing all labor, materials, tools, equipment and incidentals, and for doing all the work to comply with the environmental section shall be considered as included in the various items of work and no separate payment will be made therefore.

10-1.15 MOBILIZATION –

Mobilization shall also include any demobilization, and consist of preparatory work and operations including, but not limited to, those necessary for the movement of personnel, equipment, supplies and incidentals to and from the Project sites for all other work and operations that must be performed or costs incurred before beginning and after completion work on the various Contract items on the Project sites.

Mobilization shall include, but not be limited to, the following items, all as required for the proper performance and completion of the work:

1. Obtaining all permits, licenses, insurance (general liability insurance, workman's compensation insurance, vehicle insurance, etc.), and bonds (performance, payment, etc.). Providing copies to the ENGINEER. Paying the fees, taxes and freight costs;

2. Moving onto and off the Jobsites (various road segments) all of CONTRACTOR’S labor and equipment as required, throughout the contract period;
3. Providing portable restroom facilities;
4. Providing for potable water facilities as specified. This includes a means by which all on site CONTRACTOR, Subcontractor or supplier personnel can wash their hands with soap;
5. Submitting all required Subcontractor insurance certificates and bonds;
6. Posting all CAL/OSHA required notices and establishment of safety programs;
7. Having the CONTRACTOR’S representative at the Jobsite full time;
8. Furnishing of Construction Schedule, Contract Price Breakdown (Schedule of Values) and Submittal Schedules;
9. Complying with the Air Pollution Control District Requirements and paying the associated Fees;
10. Paying other miscellaneous fees.
11. Purchase and storage of 1,000 cubic yards of SC800 cold mix material to be used in the project. Any leftover material not used in the project will become the property of the County of Imperial. County to transport any leftover material after contract period.
12. Provision of tack coat and any other materials necessary for the pothole patching repairs.

All costs incurred for the mobilization, demobilization and the associated work and any other work items not specifically included in other bid items shall be included in the Bid Item for the Lump Sum “Mobilization” cost, and may be included in the various other items of work, and no additional compensation shall be provided therefore.

10-1.16 CRACK SEALING –

Crack sealing is not a part of this project.

10-1.17 SURVEYING AND CONSTRUCTION STAKING –

The County will provide the contractor with a list of roads to compete repairs. The contractor shall locate the specific pothole repair areas. A California Land Surveyor is not required unless a survey monument is disturbed.

If additional surveying is required for any work specified in this Special Provisions, i.e., digouts, it shall be considered extra work and paid for through a contract change order.

10-1.18 REMOVE AC PAVEMENT –

This item will only be required if requested as extra work by the County, or advised by Contractor and approved by County. The Engineer determines the rectangular limits of unsound AC Pavement. Before removing pavement/concrete, mark the saw cut lines and spall repair area on the pavement surface.

- Where a portion of the existing A.C. pavement is to be removed, the outline of the area to be removed shall be cut on a neat line with a power-driven saw to full depth before removal.
- Do not remove pavement/concrete until the Engineer verbally authorizes the saw cut area.
- Use a power-driven saw with a diamond blade.
- Remove pavement as shown and:
- From the center of the repair area towards the edge, saw cut to the full asphalt depth. Continue to at least 2 inches beyond the saw cut edge to produce a rough angled surface.
- Produce a rough surface by chipping or other removal methods that do not damage the pavement remaining in-place. Completely remove any saw overcuts. Pneumatic hammers used for concrete removal must weigh 15 pounds or less.
- If contractor damages Asphalt Concrete pavement or concrete outside the removal area, enlarge the area to remove the damaged pavement/concrete at no extra cost to the County.
- If dowel bars are exposed during removal, remove concrete from the exposed surface and cover with duct tape.

Full compensation for saw cutting the existing surfacing shall be considered extra work and paid for through a contract change order.

SECTION 11. (BLANK)

SECTION 12. (BLANK)

SECTION 13. (BLANK)

PART IV. (BLANK)

PART V. DOCUMENTS TO BE EXECUTED BY BIDDER

(Because some colored inks will not reproduce in copy machines, please use black ink to complete this proposal.)
(DO NOT DETACH)

PROPOSAL TO THE COUNTY OF IMPERIAL DEPARTMENT OF PUBLIC WORKS

Contract No. : _____ TBD _____

NAME OF BIDDER _____

BUSINESS P.O. BOX _____

CITY, STATE, ZIP _____

BUSINESS STREET ADDRESS _____

CITY, STATE, ZIP _____

TELEPHONE NO: AREA CODE () _____

FAX NO: AREA CODE () _____

CONTRACTOR LICENSE NO. _____

EMAIL ADDRESS _____

The work for which this proposal is submitted is for construction in accordance with the special provisions (including the payment of not less than the State general prevailing wage rates) The project plans described below, including any addenda thereto, the contract annexed hereto, and also in conformance with the 2006 California Department of Transportation Standard Plans, the 2006 Standard Specifications, and the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished.

**COUNTY OF IMPERIAL
DEPARTMENT OF PUBLIC WORKS
NOTICE TO BIDDERS AND SPECIAL PROVISIONS FOR**

The special provisions and plans for the work to be done are dated and are entitled:

**SB-1 ANNUAL ON CALL POTHOLE REPAIR ON VARIOUS ROADS PROJECT
IN IMPERIAL COUNTY
County Project No. 6907**

**SB-1 ANNUAL ON CALL POTHOLE REPAIR ON VARIOUS ROADS PROJECT
IN IMPERIAL COUNTY
County Project No. 6907**

Item No.	ITEM DESCRIPTION	UNIT	Quantity	ITEM PRICE (in figures)	TOTAL (in figures)
1	Mobilization. Contractor to include any additional costs (if any) for mobilization and demobilization into the hourly price for Items 2A, 2B, 2C and 2D. See Item 10-1.15 in the Specification for what is included in mobilization. Mobilization also includes the purchase and storage of 1,000 Cubic Yards of SC800 cold mix material. Any material left at the conclusion of the project will become the property of the County of Imperial. County to transport any leftover material.	LS	1	\$175,000.00	\$175,000.00
2	ITEMS 2A, 2B, 2C and 2D Below – Perform all pothole patching repair work on call, in paved areas. Includes all additional mobilization and demobilization costs not included in line item 1. Deliver SC800 Cold Mix, furnish tack coat, labor, tools, materials and equipment, prepare & implement traffic control plans, clean and blow out loose material from the pothole repair area, remove loose asphalt material and other debris, apply tack coat, place and compact asphalt material, document repairs, provide daily reports to County on a weekly basis and other requirements per the specifications and contract documents. Areas described below are per the Imperial County Pothole Repair Map in the Contract Documents. Salton City, Palo Verde or Winterhaven areas are not included. Unpaved roads, High Volume major collectors and prime arterial roads, and roadways within cities and towns, and roads owned by other agencies are not included. Only Low Volume 2-lane roads in agricultural areas are included. Item price is inclusive of all labor, tools, equipment, materials, and incidentals for work crew per hour.				

Item No.	ITEM DESCRIPTION	UNIT	QUANTITY	ITEM PRICE (in figures)	TOTAL (in figures)
2A	Area 1 - North of Aten Road, West of Hwy 111	Hour		\$	\$125,000.00
2B	Area 2 - South of Aten Road, West of Hwy 111	Hour		\$	\$125,000.00
2C	Area 3 - North of Aten Road, East of Hwy 111	Hour		\$	\$125,000.00
2D	Area 4 - South of Aten Road, East of Hwy 111	Hour		\$	\$200,000.00
3	Time and Material Allocation	LS	1	\$50,000	\$50,000.00

Total No. of Bid Quantity of Crew Work Hours Total Item No 2A, 2B, 2C and 2D Only	
--	--

Total Bid Price (Total of Items 1, 2A, 2B, 2C, 2D and 3): \$ _____

Contractor to bid on bid items 2A through 2D by unit price per hour, inclusive of all costs associated with labor, tools, equipment, materials, fuel, oils and incidentals as described in these special provisions. Recommendation of selection to award Base Bid will be based on cost and budget availability at time of award. For purposes of determination of the lowest bid, Public Contract Code Section 20103.8 (a) will be used. The lowest overall bid cost will be determined by the highest number of crew work hours.

Bids are to be submitted for the entire work. The amount of the bid for comparison purposes will be the total of all items. The bidder shall set forth for each unit basis item of work an item price and a total for the item, and for each lump sum item a total for the item, all in clearly legible figures in the respective spaces provided for this purpose. In the case of unit basis items, the amount set forth under the "Total" column shall be the extension of the item price bid on the basis of the estimated quantity for the item.

In case of discrepancy between the unit price and the total set forth for a unit basis item, the item price shall prevail, provided in (a) or (b), as follows:

- (a) If the amount set forth as a unit price is unreadable or otherwise unclear, or is omitted, or is the same as the amount of the entry in the item total column, then the amount set forth in the item total column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price;
- (b) (Decimal Errors) If the product of the entered unit price and the estimated quantity is exactly off by a factor of ten, one hundred, etc., or one-tenth, or one-hundredth, etc. from the entered total, the discrepancy will be

resolved by using the entered unit price or item total, whichever most closely approximates percentage-wise the unit price or item total in the County of Imperial's Final Estimate of cost.

If both the unit price and the item total are unreadable or otherwise unclear, or are omitted, the bid may be deemed irregular. Likewise, if the item total for a lump sum item is unreadable or otherwise unclear, or is omitted, the bid may be deemed irregular unless the project being bid has only a single item and a clear, readable total bid is provided.

Symbols such as commas and dollar signs will be ignored and have no mathematical significance in establishing any unit price or item total or lump sums. Written unit prices, item totals and lump sums will be interpreted according to the number of digits and, if applicable, decimal placement. Cents symbols also have no significance in establishing any unit price or item total since all figures are assumed to be expressed in dollars and/or decimal fractions of a dollar. Bids on lump sum items shall be item totals only; if any unit price for a lump sum item is included in a bid and it differs from the item total, the items total shall prevail.

The foregoing provisions for the resolution of specific irregularities cannot be so comprehensive as to cover every omission, inconsistency, error or other irregularity which may occur in a bid. Any situation not specifically provided for will be determined in the discretion of the County of Imperial, and that discretion will be exercised in the manner deemed by the County of Imperial to best protect the public interest in the prompt and economical completion of the work. The decision of the County of Imperial respecting the amount of a bid, or the existence or treatment of an irregularity in a bid, shall be final.

If this proposal shall be accepted and the undersigned shall fail to enter into the contract and furnish the 2 bonds in the sums required by the State Contract Act, with surety satisfactory to the *County of Imperial*, within 8 days, not including Saturdays, Sundays and legal holidays, after the bidder has received notice from the *County of Imperial* that the contract has been awarded, the *County of Imperial* may, at its option, determine that the bidder has abandoned the contract, and thereupon this proposal and the acceptance thereof shall be null and void and the forfeiture of the security accompanying this proposal shall operate and the same shall be the property of the *County of Imperial*.

The undersigned, as bidder, declares that the only persons or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm, or corporation; that he has carefully examined the location of the proposed work, the annexed proposed form of contract, and the plans therein referred to; and he proposes, and agrees if this proposal is accepted, that he will contract with the *County of Imperial*, in the form of the copy of the contract annexed hereto, to provide all necessary machinery, tools, apparatus and other means of construction, and to do all the work and furnish all the materials specified in the contract, in the manner and time therein prescribed, and according to the requirements of the Engineer as therein set forth, and that he will take in full payment therefore the following prices, to wit:

:

Accompanying this proposal is

(NOTICE: INSERT THE WORDS "CASH(\$ _____)," "CASHIER'S CHECK,"
"CERTIFIED CHECK," OR "BIDDER'S BOND," AS THE CASE MAY BE.)

in amount equal to at least ten percent of the total of the bid.

The names of all persons interested in the foregoing proposal as principals are as follows:

IMPORTANT NOTICE: If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof; if a copartnership, state true name of firm, also names of all individual copartners composing firm; if bidder or other interested person is an individual, state first and last names in full.

Licensed in conformance with an act providing for the registration of Contractors,

License No. _____ Classification(s) _____

ADDENDA

This Proposal is submitted with respect to the changes to the contract included in addenda number/s

(Fill in addenda numbers if addenda have been received and insert, in this Proposal, any Engineer's Estimate sheets that were received as part of the addenda.)

By my signature on this proposal I certify, under penalty of perjury under the laws of the State of California, that the foregoing questionnaire and statements of Public Contract Code Sections 10162, 10232 and 10285.1 are true and correct and that the bidder has complied with the requirements of Section 8103 of the Fair Employment and Housing Commission Regulations (Chapter 5, Title 2 of the California Administrative Code). By my signature on this proposal I further certify, under penalty of perjury under the laws of the State of California and the United States of America, that the Noncollusion Affidavit required by Title 23 United States Code, Section 112 and Public Contract Code Section 7106; and the Title 49 Code of Federal Regulations, Part 29 Debarment and Suspension Certification are true and correct.

Date: _____



Signature and Title of Bidder

Business Address _____

Place of Business _____

Place of Residence _____

**COUNTY OF IMPERIAL
DEPARTMENT OF PUBLIC WORKS
BIDDER'S BOND**

KNOW ALL MEN BY THESE PRESENTS,

We _____,
_____, as Principal,

and _____
as SURETY are bound unto the County of Imperial, State of California, hereafter referred to as "Obligee", in the penal sum of TEN PERCENT (10%) of THE TOTAL AMOUNT OF THE BID of the Principal submitted to the Obligee for the work described below, for the payment of which sum we bind ourselves, jointly and severally

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT:

Whereas, the Principal is submitted the Obligee, For _____

(Copy here the exact description of work, including location as it appears on the proposal)

For which bids are to be opened at _____ on _____
(insert place where bids will be opened) (insert date of bid opening)

NOW, THEREFORE, If the Principal is awarded the contract and, within the time and manner required under the specifications, after the prescribed forms are presented to him for signature, enters into a written contract, in the prescribed form, in accordance with the bid, and files two bonds with the Obligee, one to guarantee faithful performance of the contract and the other to guarantee payment for labor and materials, as required by law, then this obligation shall be null and void; otherwise, it shall be and remain in full force.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the court.

Dated: _____, 20_____.

Principal

Surety
By _____
Attorney-in-fact

CERTIFICATE OF ACKNOWLEDGEMENT

State of California
County of Imperial, SS

On this _____ Day of _____ in the year 20_____ before me _____,
_____, personally appeared _____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument as the attorney-in-fact of _____, and acknowledged to me that he (she) subscribed the name of the said company thereto as surety, and his (her) own name as attorney-in-fact.

(SEAL)

Notary Public

PUBLIC CONTRACT CODE

PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT

In conformance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the bidder hereby declares under penalty of perjury under the laws of the State of California that the bidder has ____, has not ____ been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

Note: The bidder must place a checkmark after "has" or "has not" in one of the blank spaces provided. The above Statement is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Statement. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.



PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE

In conformance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the bidder, any officer of the bidder, or any employee of the bidder who has a proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes _____ No _____

If the answer is yes, explain the circumstances in the following space.

Public Contract Code 10232 Statement

In conformance with Public Contract Code Section 10232, the Contractor, hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

Note: The above Statement and Questionnaire are part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Statement and Questionnaire.
Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

**NONCOLLUSION AFFIDAVIT TO BE EXECUTED
BY BIDDER AND SUBMITTED WITH BID**

(Title 23 United States Code Section 112 and
Public Contract Code 7106)

**To the County of Imperial
Department of Public Works**

In conformance with Title 23 United States Code Section 112 and Public Contract Code 7106 the bidder declares that the bid is not made in the interest of, or on behalf of any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents therefor, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Note: The above Non-collusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Non-collusion Affidavit.
Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

The Bidder shall list the name and address, Contractor license number, and description of portion of work subcontracted of each subcontractor to whom the Bidder proposes to subcontract portions of the work, as required by the provisions of the Standard Specifications and of the special provisions.

LIST OF SUBCONTRACTORS

Business Name and Location	California Contractor License Number	Description of Portion of Work	Bid Items Numbers	Percentage of Bid Item Subcontracted

(THE BIDDER'S EXECUTION ON THE SIGNATURE PORTION OF THIS PROPOSAL SHALL ALSO CONSTITUTE AN ENDORSEMENT AND EXECUTION OF THOSE CERTIFICATIONS WHICH ARE A PART OF THIS PROPOSAL)

PART VI. DOCUMENTS TO BE EXECUTED BY THE SUCCESSFUL BIDDER

(FOR INFORMATION ONLY)

MINIMUM INSURANCE AMOUNTS

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

Insurance Minimum Amounts *

<u>Insurance</u>	<u>Minimum Limit *</u>
Workers Compensation, Coverage A	Statutory
Employers Liability, Coverage B	\$1 million
Comprehensive General Liability (Including Contractual Liability):	\$5 million per occurrence \$10 million aggregate
Bodily Injury	\$5 million per occurrence \$10 million aggregate
Property Damage	\$5 million per occurrence \$10 million aggregate
Comprehensive Automobile Liability (Owned, hired & non-owned vehicles)	\$1 million
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 required.

*Minimums subject to additional review after bid opens.

SAMPLE CONSTRUCTION CONTRACT

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AGREEMENT FOR CONSTRUCTION SERVICES

«Consultant_Business_Name»

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

RECITALS

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

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

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

1. DEFINITIONS.

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

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

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

2. CONTRACT COORDINATION.

1 **2.1.** The Director of Public Works or his/her designee shall be the representative of COUNTY
2 for all purposes under this Agreement. The Director of Public Works or his/her designee
3 is hereby designated as the Contract Manager for COUNTY. He/she shall supervise the
4 progress and execution of this Agreement.

5 **2.2.** CONTRACTOR shall assign a single Contract Manager to have overall responsibility for
6 the progress and execution of this Agreement. Should circumstances or conditions
7 subsequent to the execution of this Agreement require a substitute Contract Manager for any
8 reason, the Contract Manager designee shall be subject to the prior written acceptance and
9 approval of COUNTY's Contract Manager.

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

11 **3.1.** CONTRACTOR shall furnish all work, labor, tools, equipment, materials, supervision,
12 scheduling, coordination and contract administration necessary to construct and complete
13 the Project in a good, expeditious, workman-like and substantial manner under the terms of
14 and in full and complete compliance with this Agreement ("Work").

15 **3.2.** CONTRACTOR shall comply with and perform work consistent with all terms,
16 conditions and requirements of the Plans, Specifications, the Invitation for Bids and this
17 Agreement.

18 **3.3.** All described work shall be constructed, installed, placed and performed in conformance
19 with the Plans and Specifications and all Special Provisions contained therein and as directed
20 by COUNTY's engineer.

21 **3.4.** In the event of a conflict among this Agreement, the Invitation for Bid and the Proposal, the
22 Invitation for Bid shall take precedence over the Proposal and this Agreement shall take
23 precedence over both.

24 **3.5.** CONTRACTOR shall perform such other tasks as necessary and proper for the full
25 performance of the obligations assumed by CONTRACTOR hereunder; including but not
26 limited to any additional work or change orders agreed upon pursuant to written
27 authorization as described in Section 5. Proposed additional work or change order requests,
28 when applicable, will be attached and incorporated herein under **Exhibit "B"** (as "B-1," "B-

1 2," etc.).

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

3 **4.1. Four Feet (4') Below the Surface.** In the event the Project involves digging trenches or
4 other excavations that extend deeper than four feet (4') below the surface,
5 CONTRACTOR shall:

6 **4.1.1.** Promptly, and before the following conditions are disturbed, notify COUNTY, in
7 writing, of any:

- 8 (a) Material that CONTRACTOR believes may be material that is hazardous
9 waste, as defined in Health & Safety Code §25117, that is required to be
10 removed to a Class I, Class II or Class III disposal site in accordance with
11 provisions of existing law;
- 12 (b) Subsurface or latent physical conditions at the site differing from those
13 indicated by information about the site made available to bidders prior to
14 the deadline for submitting bids; and
- 15 (c) Unknown physical conditions at the site of any unusual nature, different
16 materially from those ordinarily encountered and generally recognized as
17 inherent in work of the character provided for in the Agreement.

18 **4.1.2.** In response to any written notice generated pursuant to Subparagraph 4.1.1,
19 COUNTY shall promptly investigate the conditions, and if it finds that the
20 conditions do materially so differ, or do involve hazardous waste, and cause a
21 decrease or increase in CONTRACTOR's cost of, or the time required for,
22 performance of any part of the Work, COUNTY shall issue a change order under
23 the procedures described in this Agreement.

24 **4.1.3.** In the event that a dispute arises between COUNTY and CONTRACTOR whether
25 the conditions materially differ, or involve hazardous waste, or cause a decrease
26 or increase in CONTRACTOR's cost of, or time required for, performance of any
27 part of the Work, CONTRACTOR shall not be excused from any scheduled
28 completion date provided for by this Agreement, but shall proceed with all Work

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to be performed under this Agreement. CONTRACTOR shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Parties.

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

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

5. CHANGE ORDERS.

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

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will execute a Change Order and CONTRACTOR’s execution of the Change Order shall confirm approval thereof. COUNTY may order additional work, and CONTRACTOR shall perform such changes in the Work as directed by COUNTY in any Change Order prepared by CONTRACTOR. COUNTY’s rights to eliminate portions of the Work or to initiate a Change Order shall not be limited in any way. The Change Order shall be in writing and shall include:

- 5.1.1. Any and all supporting documents and drawings depicting the source and location of the desired change, and explain in detail the field conditions and reasons for the requested change;
- 5.1.2. Any change or adjustment to the compensation set forth in this Agreement as a result of changes in the Work based on a lump sum or time and material basis, as may be directed by COUNTY; and
- 5.1.3. Any request for adjustments to time for completion of the Project.

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

5.3. Disputed Change Order Work. Any dispute concerning the performance of such Change Order Work or the amount of compensation to be paid to CONTRACTOR by COUNTY shall not affect CONTRACTOR’s obligation to perform such Change Order Work. CONTRACTOR agrees that it shall timely complete all Change Order Work even if there shall be a dispute between CONTRACTOR and COUNTY over the amount or scope of the Change Order Work. CONTRACTOR shall have the right to be compensated for any

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undisputed Change Order Work amounts as determined to be undisputed in COUNTY's sole discretion.

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

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

6. REPRESENTATIONS BY CONTRACTOR.

- 6.1.** CONTRACTOR understands and agrees that COUNTY has limited knowledge in the construction specified in the description of work. CONTRACTOR has represented itself to be expert in these fields and understands that COUNTY is relying upon such representation.
- 6.2.** CONTRACTOR represents and warrants that it is a lawful entity possessing all required licenses and authorities to do business in the State of California and perform all aspects of this Agreement.
- 6.3.** CONTRACTOR shall not commence any work under this Agreement or provide any other services, or materials, in connection therewith until CONTRACTOR has received written authorization from the Director of Public Works, or his/her designee ("Notice to Proceed") to do so.
- 6.4.** CONTRACTOR represents and warrants that the people executing this Agreement on

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behalf of CONTRACTOR have the authority of CONTRACTOR to sign this Agreement and bind CONTRACTOR to the performance of all duties and obligations assumed by CONTRACTOR herein.

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

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

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

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

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

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

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

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

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

7. TERM OF AGREEMENT.

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

8. COMPENSATION.

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

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

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

4 **9.1. Retention.**

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

10 **9.1.2.** The 5% retention amount may be exceeded if the COUNTY's Board of Supervisors
11 has approved a finding, during a properly noticed and normally scheduled public
12 hearing conducted either prior to or concurrent with authorizing this Project to go
13 out to bid, that the Project is substantially complex and therefore requires a higher
14 retention amount than 5%. Should the retention amount exceed 5% for this Project,
15 then the actual retention will be listed in the Plans and Specifications, along
16 with the findings justifying the increased retention amount.

17 **9.2. Substitution of Retention.**

18 **9.2.1.** CONTRACTOR may elect to substitute securities for any retention of funds by
19 COUNTY to ensure performance under this Agreement. At the request and
20 expense of CONTRACTOR, securities equivalent to the amount retained shall be
21 deposited with the COUNTY, or with a state or federally chartered bank in this state
22 as the escrow agent, who shall then return the securities to CONTRACTOR once
23 the Work to be performed has been completed in accordance with this Agreement,
24 as determined by COUNTY, and payment in full of all of CONTRACTOR's
25 subcontractors has been certified.

26 **9.2.2.** Alternatively, CONTRACTOR may request and COUNTY shall make payment of
27 retentions earned directly to the escrow agent at the expense of CONTRACTOR.
28 CONTRACTOR, at its sole cost and expense, may direct the investment of the

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payments into securities, and CONTRACTOR shall receive the interest earned on the investments upon the same terms provided for in this Section for securities deposited by CONTRACTOR. Once the Work to be performed has been completed in accordance with this Agreement, as determined by COUNTY, and payment in full of all of CONTRACTOR's subcontractors has been certified, CONTRACTOR shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from COUNTY, pursuant to the terms of this Section.

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

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

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

10. METHOD OF PAYMENT.

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

10.2. After determining that the claim is a proper payment request, the Director of Public

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Works, or his/her designee, shall submit to COUNTY’s Auditor/Controller undisputed and properly submitted claims approved for payment within ten (10) days following the date the claim was submitted to his/her Department.

- 10.3. CONTRACTOR may expect to receive payment within a reasonable time thereafter and in any event in the normal course of business within thirty (30) days after the undisputed and properly submitted claim is submitted.
- 10.4. Any claim determined to be an improper payment request shall be returned to CONTRACTOR as soon as practicable, but not later than seven (7) days, after receipt with a written explanation as to why the claim is an improper request for payment.
- 10.5. In order for prompt payment to be made by COUNTY pursuant to Public Contract Code §20104.50, CONTRACTOR must properly fill out all written claims for compensation for services performed.
- 10.6. COUNTY shall pay interest at the legal rate set forth in Code of Civil Procedure §685.010 in the event payment is not made within thirty (30) days of an undisputed properly submitted request.

11. INDEMNIFICATION.

- 11.1. CONTRACTOR agrees to the fullest extent permitted by law to indemnify, defend, protect and hold COUNTY and its representatives, officers, directors, designees, employees, agents, successors and assigns harmless from any and all claims, expenses, liabilities, causes of action, demands, losses, penalties, attorneys’ fees and costs, in law or equity, of every kind and nature whatsoever arising out of or in connection with CONTRACTOR’s negligent acts and omissions or willful misconduct under this Agreement (“Claims”), whether or not arising from the passive negligence of COUNTY, but does not include Claims that are finally determined to be the result of the sole negligence or willful misconduct of COUNTY.
- 11.2. CONTRACTOR agrees to defend with counsel acceptable to COUNTY, indemnify and hold COUNTY harmless from all Claims, including but not limited to:
 - 11.2.1. Personal injury, including but not limited to bodily injury, emotional injury,

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sickness or disease or death to persons including but not limited to COUNTY’s representatives, officers, directors, designees, employees, agents, successors and assigns, subcontractors and other third parties and/or damage to property of anyone (including loss of use thereof) arising out of CONTRACTOR’s negligent performance of, or willful misconduct surrounding, any of the terms contained in this Agreement, or anyone directly or indirectly employed by CONTRACTOR or anyone for whose acts CONTRACTOR may be liable;

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

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

- (a) Any loss of funding, penalties, fees, or other costs resulting from CONTRACTOR’s failure to adhere to Disadvantaged Business Enterprise requirements and/or goals, as determined by COUNTY or such other lawful entity in charge of monitoring Disadvantaged Business Enterprise compliance;
- (b) Any loss of funding, penalties, fees, or other costs resulting from CONTRACTOR’s failure to adhere to prevailing wage requirements, as determined by COUNTY, the California Department of Industrial Relations, or such other lawful entity in charge of monitoring prevailing wage compliance;

11.2.4. Infringement of any patent rights which may be brought against COUNTY arising

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out of CONTRACTOR's work;

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

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

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

12. INDEPENDENT CONTRACTOR.

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

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

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

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

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

- 1 **12.6.** CONTRACTOR shall not be entitled to participate in, or receive any benefit from, or
2 make any claim against any COUNTY fringe benefit program, including, but not limited
3 to, COUNTY’s pension plan, medical and health care plan, dental plan, life insurance
4 plan, or any other type of benefit program, plan, or coverage designated for, provided to,
5 or offered to COUNTY’s employee.
- 6 **12.7.** COUNTY shall not withhold or pay, on behalf of CONTRACTOR, any Federal, State,
7 or local tax, including, but not limited to, any personal income tax, owed by
8 CONTRACTOR.
- 9 **12.8.** CONTRACTOR is, and at all times during the term of this Agreement shall represent and
10 conduct itself as, an independent contractor, not an employee of COUNTY.
- 11 **12.9.** CONTRACTOR shall not have the authority, express or implied, to act on behalf of, bind
12 or obligate COUNTY in any way without the written consent of COUNTY.

13 **13. INSURANCE.**

14 **13.1.** CONTRACTOR hereby agrees at its own cost and expense to procure and maintain,
15 during the entire term of this Agreement and any extended term therefore, insurance in a
16 sum acceptable to COUNTY and adequate to cover potential liabilities arising in
17 connection with the performance of this Agreement and in any event not less than the
18 minimum limit set forth in the “Minimum Insurance Amounts” attachment to the Plans
19 and Specifications which are incorporated as if set forth fully herein.

20 **13.2. Special Insurance Requirements.** All insurance required shall:

21 **13.2.1.** Be procured from California admitted insurers (licensed to do business in
22 California) with a current rating by Best’s Key Rating Guide, acceptable to
23 COUNTY. A rating of at least A-VII shall be acceptable to COUNTY; lesser
24 ratings must be approved in writing by COUNTY.

25 **13.2.2.** Be primary coverage as respects COUNTY and any insurance or self-insurance
26 maintained by COUNTY shall be in excess of CONTRACTOR’s insurance
27 coverage and shall not contribute to it.

28 **13.2.3.** Name COUNTY as an additional insured on all policies, except Workers’

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Compensation, and provide that COUNTY may recover for any loss suffered by COUNTY by reason of CONTRACTOR’s negligence.

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

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

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

13.3. Additional Insurance Requirements.

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

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

- (a) Includes contractual liability;
- (b) Does not contain any exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to by insurers as the “XCU Hazards”;
- (c) Does not contain a “pro rata” provision which looks to limit the insurer’s liability to the total proportion that its policy limits bear to the total coverage available to the insured;
- (d) Does not contain an “excess only” clause which requires the exhaustion

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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.

14.3. CONTRACTOR understands and agrees that any and all employees, regardless of hire

1 date, shall be covered by Workers' Compensation pursuant to statutory requirements
2 prior to beginning work on the Project.

3 **14.4.** If CONTRACTOR has no employees, initial here: _____.

4 **15. WARRANTY.**

5 **15.1. One Year Warranty.** CONTRACTOR agrees to provide a one-year warranty for all of its
6 work and component parts and guarantees that all work shall be performed in a
7 professional and workman-like manner and be free from defects. CONTRACTOR
8 guarantees to timely correct all work performed by it under this Agreement which
9 COUNTY determines to be defective in design, material and/or workmanship within a
10 period of one (1) year from the date of the completion of the Work. The warranties set
11 forth in this Agreement shall be in addition to, and not in lieu of, all other statutory and
12 case law warranties and obligations of CONTRACTOR. CONTRACTOR expressly
13 agrees that all warranties made by CONTRACTOR, all obligations under this Agreement
14 and all remedies for breach of such warranties shall survive this Agreement in the event
15 it is terminated or expires for any reason prior to the running of the full warranty periods
16 listed above.

17 **15.2. Materials.** All materials furnished by CONTRACTOR shall be new, manufactured
18 during the current year, of first quality and carrying full manufacturer's warranty.
19 CONTRACTOR shall be responsible for any expiration of manufacturer or other
20 warranties of material or equipment being supplied for this Agreement. CONTRACTOR
21 guarantees that all warranties of material and equipment shall become effective when the
22 project is accepted by COUNTY's Board of Supervisors, not at time of installation by
23 CONTRACTOR.

24 **15.3. Manufacturers' Warranty Information.** CONTRACTOR agrees to promptly provide such
25 information and maintenance recommendations to COUNTY at the inception of
26 CONTRACTOR's work to the extent such information is reasonably available.

27 **16. DEFAULT AND REMEDIES.**

28 **16.1. Default.** In the event that (i) CONTRACTOR files a petition requesting relief under any

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

16.1.1. Without terminating this Agreement or the obligations of CONTRACTOR hereunder as to all of the Work required to be performed or furnished by CONTRACTOR pursuant to this Agreement, COUNTY may require CONTRACTOR, at CONTRACTOR's expense, to cure such default(s) as may exist in the performance of CONTRACTOR's obligations hereunder within forty-eight (48) hours after such default(s) has/have occurred including but not limited to repairing, replacing and correcting material or Work determined by COUNTY to be defective or not complying with the requirements of this Agreement. Should CONTRACTOR fail to timely repair, replace and/or correct non-complying or

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defective materials and workmanship or otherwise cure its default(s) hereunder, and in the case of emergencies in which case COUNTY may act immediately if CONTRACTOR is not available or is not responding, and without further notice, COUNTY may make required repairs, replacements and other corrections or otherwise remedy the default by CONTRACTOR pursuant to the subparagraph below.

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

16.1.3. COUNTY may terminate CONTRACTOR’s right to perform upon written notice and COUNTY shall then have the option of completing the Work or any portion thereof by exercise of its interest under the performance bond issued in favor by CONTRACTOR, or having such Work in whole or in part be completed by others for CONTRACTOR’s account. A calculation shall take place at the conclusion of the Project wherein to the degree the sum of COUNTY’s costs and any amounts

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paid to complete the Project exceed the compensation payable pursuant to this Agreement, then any such excess shall be immediately due and owing from CONTRACTOR to COUNTY.

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

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

16.4. Limit on Force Majeure Damages. CONTRACTOR shall not be responsible for repairing or restoring damage to work caused by an act of God in excess of five (5) percent of the contract amount, provided that the work damaged is built in accordance with accepted and applicable building standards and the plans and specifications of COUNTY. In the event of such damage, COUNTY may, at its option, elect to terminate this Agreement. For purposes of this Agreement, an “act of God” shall be defined as an earthquake in excess of 3.5 on the Richter Scale and a tidal wave.

1 **16.5. Resolution of Claims.** COUNTY and CONTRACTOR agree to follow and comply with
2 the mediation, arbitration, claim, civil action procedure and trial de novo provisions set
3 forth in California Public Contracts Code §§ 9204 and 20104 – 20104.6.

4 **16.6. No Limitation of Rights.** The options and rights granted to COUNTY herein shall not be
5 deemed as limitations upon the other rights and remedies of COUNTY in the event of a
6 failure of performance or breach by CONTRACTOR, and COUNTY shall be entitled to
7 exercise the rights and remedies hereinabove specified and all other rights and remedies
8 which may be provided in this Agreement or by law or in equity, either cumulatively or
9 consecutively, and in such order as COUNTY in its sole discretion shall determine.

10 **17. NON-DISCRIMINATION.**

11 **17.1.** During the performance of this Agreement, CONTRACTOR and its subcontractors shall
12 not unlawfully discriminate, harass or allow harassment against any employee or
13 applicant for employment because of sex, race, color, ancestry, religious creed, national
14 origin, physical disability (including HIV and AIDS), mental disability, medical
15 condition (cancer), age (over forty (40)), marital status and denial of family care leave.

16 **17.2.** CONTRACTOR and its subcontractors shall insure that the evaluation and treatment of
17 their employees and applicants for employment are free from such discrimination and
18 harassment.

19 **17.3.** CONTRACTOR and its subcontractors shall comply with the provisions of the Fair
20 Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable
21 regulations promulgated thereunder (California Code of Regulations, Title 2, Section
22 7285 et seq.).

23 **17.4.** The applicable regulations of the Fair Employment and Housing Commission
24 implementing Government Code §12990 (a-f), set forth in Chapter 5 of Division 4 of
25 Title 2 of the California Code of Regulations, are incorporated into this Agreement by
26 reference and made a part hereof as if set forth in full.

27 **17.5.** The applicable regulations of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.
28 §794 (a)) are incorporated into this Agreement by reference and made a part hereof as if

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set forth in full.

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

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

18. DISADVANTAGED BUSINESS ENTITY COMPLIANCE.

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

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

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

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

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

18.6. In addition to the above, CONTRACTOR’s failure to comply with DBE requirements/goals shall subject it to such sanctions as are permitted by law, which may include, but shall not be limited to the following:

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- 18.6.1.** Termination of this Agreement;
- 18.6.2.** Withholding monthly progress payments;
- 18.6.3.** Denial of payment for any portion of the Project that was committed at the time of the execution of this Agreement to be performed by a DBE subcontractor, but was completed by CONTRACTOR or a substitute non-DBE subcontractor;
- 18.6.4.** Compensatory, special, incidental, liquidated and other damages; and/or
- 18.6.5.** Designation of CONTRACTOR as “nonresponsible,” and disqualification from bidding on future public works projects advertised by COUNTY.

19. PREVAILING WAGE.

- 19.1.** CONTRACTOR and its subcontractors shall pay all workers employed on the Project the higher of either the rates determined by the Director of the California Department of Industrial Relations (“DIR”) or, when applicable, the Davis-Bacon Federal wage rates as supplemented by the Department of Labor regulations. The Davis-Bacon Federal wage rates are attached to the RFP. Copies of the State prevailing rate of per diem wages are on file with the Department of Industrial Relations, Division of Apprenticeship Standards, 445 Golden Gate Avenue, San Francisco, California, and at COUNTY’s Department of Public Works, and are available to CONTRACTOR and any other interested party upon request. CONTRACTOR shall post the prevailing rate of per diem wages to be posted at the Project site.
- 19.2.** CONTRACTOR is responsible for compliance with the provisions herein.
- 19.3. Mandatory Registration with the Department of Industrial Relations – NEW REQUIREMENTS PURSUANT TO SB 854.**
 - 19.3.1.** CONTRACTOR and its subcontractors shall register with the DIR and pay all applicable fees as set forth in Labor Code section 1725.5.
 - 19.3.2.** CONTRACTOR and its subcontractors acknowledge that they shall not be listed on any bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the DIR pursuant to Labor Code section 1725.5. The requirements of this section shall apply unless one of the limited exceptions

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provided under Labor Code Section 1771.1(a) applies.

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

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

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

19.4. Cognizance of Violations by County.

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

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

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

- (a) COUNTY previously affirmatively represented to CONTRACTOR in writing, in the call for bids, or otherwise, that the Work was not a “public work,” as defined in Chapter 1 of Part 7 of Division 2 of the California

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Labor Code; or

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

19.5. Prevailing Wage Rates and Payroll Records.

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

19.5.2. *Prevailing Wage Compliance For those Projects subject to DIR Monitoring and Enforcement.* CONTRACTOR 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 CONTRACTOR that CONTRACTOR is responsible for complying with the requirements of Senate Bill 854 (SB854) regarding certified payroll record reporting. Further information concerning the requirements of SB854 is available on the DIR website located at: <http://www.dir.ca.gov/Public-Works/PublicWorksEnforcement.html>.

19.5.3. CONTRACTOR shall be liable for penalties pursuant to this section when a subcontractor on the Project fails to pay its workers the general prevailing rate of per diem wages and any of the following conditions are met:

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

19.6. Work Day and Work Week Requirements. CONTRACTOR agrees to comply with §§1810 through 1815 of the California Labor Code and, when applicable, sections 103 and 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§3700 et seq., as supplemented by the Department of Labor regulations, which provide that CONTRACTOR’s workers and its subcontractor’s workers may not be required or

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permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week. Further, work performed by employees of CONTRACTOR or its subcontractor in excess of eight (8) hours per day, and forty (40) hours during any one (1) week, shall be compensated for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay. The responsibility for compliance with these provisions is fixed with CONTRACTOR. CONTRACTOR understands and agrees that it shall, as a penalty to COUNTY, forfeit specific monetary fines to COUNTY should CONTRACTOR or its subcontractors fail to comply with the provisions contained within this Paragraph.

19.7. Apprenticeship Requirements.

19.7.1. CONTRACTOR agrees to comply with §§1777.5, 1777.6 and 1777.7 of the California Labor Code relating to the employment of apprentices and to provide COUNTY with copies of any contract award information and verified statements of the journeyman and apprentice hours performed pursuant to this Agreement as required by §1777.5(e). The responsibility for compliance with these provisions is fixed with CONTRACTOR for all apprenticeable occupations, where journeymen in the craft are employed on the public work, in a ratio of not less than one (1) apprentice for each five (5) journeymen (unless an exemption is granted in accordance with §1777.5) and CONTRACTOR and its subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public work solely on the ground of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in California Labor Code §3077. Only apprentices, as defined in California Labor Code §3077, who are in training under apprenticeship standards and who have signed written apprentice agreements will be employed on public works in apprenticeable occupations. This section shall not be enforced if the not-to-exceed amount of this Agreement set forth and/or incorporated in the “COMPENSATION” Section is less than thirty thousand dollars (\$30,000).

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

19.8. Labor Standards Compliance Requirements.

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

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

20. INELIGIBILITY.

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

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

21. SIGNAGE REQUIREMENTS.

21.1. Project Identity Signage. CONTRACTOR is required to provide and install the required

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project identity signage as detailed in the Plans and Specifications, in the size and at the location indicated by the Director of Public Works or his/her designee, and to maintain the signage in good condition for the duration of the Project. The signage may not be removed until the Notice of Completion is recorded or by written direction of the Director of Public Works or his/her designee.

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

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

22. CONFLICT OF INTEREST AND GRATUITIES.

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

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

22.3. If it is found, after notice and hearing by COUNTY, that gratuities (in the form of

1 entertainment., gifts, or otherwise) were offered or given by CONTRACTOR, or any
2 agent or representative of CONTRACTOR, to any officer, employee or agent of
3 COUNTY with a view toward securing a contract or securing favorable treatment with
4 respect to the awarding or amending or the making of any determinations with respect to
5 the performance of this Agreement, COUNTY may, by written notice to
6 CONTRACTOR, terminate the right of CONTRACTOR to proceed under this
7 Agreement and/or may pursue such other rights and remedies provided by law or under
8 this Agreement.

9 **22.4.** In the event this Agreement is terminated as provided herein, COUNTY shall be entitled
10 to:

11 **22.4.1.** Pursue the same remedies against CONTRACTOR as it could pursue in the event
12 of a breach of the Agreement by CONTRACTOR; and

13 **22.4.2.** As a penalty in addition to any other damages to which it may be entitled by law,
14 to exemplary damages in an amount (as determined by COUNTY) which shall be
15 not less than three (3) nor more than ten (10) times the costs incurred by
16 CONTRACTOR in providing any such gratuities to any such officer, employee
17 or agent.

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

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

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

25 When applicable, CONTRACTOR agrees to comply with the Copeland Act
26 (*18 USC §874* and *40 USC §276c*; *29 C.F.R. Part 3*) which precludes CONTRACTOR and its
27 subcontractors from in any way inducing an employee to give up any part of the compensation to which
28 he or she is entitled under his or her contract of employment. CONTRACTOR and its subcontractors

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

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

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

14 **26. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER**
15 **RESPONSIBILITY MATTERS.**

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

19 **27. FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT**
20 **SPECIFICATIONS.**

21 When applicable, CONTRACTOR agrees to incorporate the notice set forth in paragraph (d) of
22 41 C.F.R. 60-4.2 relating to the "Equal Opportunity Clause" and the "Standard Federal Equal
23 Employment Specifications." The responsibility for compliance with this provision is fixed with
24 CONTRACTOR.

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

26 When applicable, CONTRACTOR agrees to comply with all applicable standards, orders or
27 regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), the Federal Water Pollution
28 Control Act as amended (33 U.S.C. 1251 et seq.), Presidential Executive Order 11738 and

1 Environmental Protection Agency regulations set forth at 40 C.F.R. Part 15. CONTRACTOR
2 understands and agrees that violations shall be reported to the Federal awarding agency and the Regional
3 Office of the Environmental Protection Agency. The responsibility for compliance with these provisions
4 is fixed with CONTRACTOR.

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

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

14 **30. FEDERAL EMPLOYMENT ELIGIBILITY VERIFICATION.**

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

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

20 **31.1.** During the performance of this Agreement, CONTRACTOR assures that no otherwise
21 qualified person shall be excluded from participation or employment, denied program
22 benefits or be subjected to discrimination based on race, color, national origin, gender,
23 age or handicap, under any program or activity funded by this Agreement, as required by
24 Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community
25 Development Act of 1974, as amended, and the Age Discrimination Act of 1975, and all
26 implementing regulations. The responsibility for compliance with these provisions is
27 fixed with CONTRACTOR.

28 **31.2.** CONTRACTOR and its subcontractors shall not discriminate on the basis of race, color,

1 national origin, or sex in the performance of this Agreement. CONTRACTOR shall carry
2 out the applicable requirements of 49 C.F.R. Chapter 26 in the award and administration
3 of Department of Transportation assisted contracts. Failure by CONTRACTOR to carry
4 out these requirements is a material breach of this Agreement, which may result in the
5 termination of this Agreement, or such other remedy as COUNTY deems appropriate.
6 CONTRACTOR shall include the nondiscrimination and compliance provisions of this
7 Paragraph in all subcontracts to perform Work under this Agreement.

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

9 **32.1.** CONTRACTOR hereby agrees that it will incorporate or cause to be incorporated into
10 any contract for construction work, or modification thereof, as defined in the regulations
11 of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part
12 with funds obtained from the Federal Government or borrowed on the credit of the
13 Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or
14 undertaken pursuant to any Federal program involving such grant, contract, loan,
15 insurance, or guarantee, the following equal opportunity clause. For the purposes of this
16 Subsection, the term “contractor” shall refer to CONTRACTOR, and the term “contract”
17 shall refer to this Agreement:

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

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

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- notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.*
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.*
 - (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.*
 - (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.*
 - (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.*
 - (6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed*

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and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

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

32.3. CONTRACTOR agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Department and HUD and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency’s primary responsibility for securing compliance.

1 **32.4.** CONTRACTOR further agrees that it will refrain from entering into any contract or
2 contract modification subject to Executive Order 11246 of September 24, 1965, with a
3 contractor debarred from, or who has not demonstrated eligibility for, government
4 contracts and federally-assisted construction contracts, pursuant to the Executive Order
5 and will carry out such sanctions and penalties for violation of the equal opportunity
6 clause as may be imposed upon contractors and subcontractors by the administering
7 agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.
8 In addition, CONTRACTOR agrees that if it fails or refuses to comply with these
9 undertakings, COUNTY may take any or all of the following actions: Cancel, terminate,
10 or suspend in whole or in part this funding commitment (contract, loan, grant, insurance,
11 guarantee); refrain from extending any further assistance to the applicant under the
12 program with respect to which the failure or refund occurred until satisfactory assurance
13 of future compliance has been received from such Contractor; and refer the case to the
14 Department of Justice for appropriate legal proceedings.

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

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

20 *“In entering into a public works contract or a subcontract to supply goods, services, or*
21 *materials pursuant to a public works contract, the contractor or subcontractor offers and*
22 *agrees to assign to the awarding body all rights, title, and interest in and to all causes of*
23 *action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the*
24 *Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the*
25 *Business and Professions Code), arising from purchases of goods, services, or materials*
26 *pursuant to the public works contract or the subcontract. This assignment shall be made*
27 *and become effective at the time the awarding body tenders final payment to the contractor,*
28 *without further acknowledgment by the parties.”*

1 **34. NON-COLLUSION.**

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

4 **35. NOTICES AND REPORTS.**

5 **35.1.** All notices and reports under this Agreement shall be in writing and may be given by
6 personal delivery or by mailing by certified mail, addressed as follows:

7	<u>COUNTY</u>	<u>CONTRACTOR</u>
8	Imperial County Department of Public Works	«Consultant_Business_Name»
9	Attention: Director	«Consultant_Street_Address»
	155 South Eleventh Street	«Consultant_City_State»
	El Centro, CA 92243	

10 with copies to:

11 Imperial County Executive Office
12 Attention: County Executive Officer
13 940 West Main Street, Suite 208
14 El Centro, CA 92243

15 and:

16 Imperial County Department of Human
17 Resources and Risk Management
18 Attention: Director
19 940 West Main Street, Suite 101
20 El Centro, CA 92243

21 **35.2.** Notices and reports under this Agreement may be given by personal delivery or by
22 mailing by certified mail at such other address as either Party may designate in a notice
23 to the other Party given in such manner. Any notice given by mail shall be considered
24 given when deposited in the United States Mail, postage prepaid, addressed as provided
25 herein.

26 **36. ENTIRE AGREEMENT.**

27 This Agreement contains the entire agreement between COUNTY and CONTRACTOR relating
28 to the transactions contemplated hereby and supersedes all prior or contemporaneous agreements,
29 understandings, provisions, negotiations, representations, or statements, either written or verbal.

30 **37. ASSIGNMENT.**

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

3 **38. MODIFICATION.**

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

7 **39. 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 **40. PARTIAL INVALIDITY.**

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

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

15 Words and expressions in the masculine gender include the feminine and neuter genders. Words
16 and expressions in the singular include the plural and words and expressions in the plural include the
17 singular. CONTRACTOR as used in this Agreement or in any other document referred to in or made a
18 part of this Agreement shall likewise include both 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 CONTRACTOR shall be joint and several if more than one person, firm or entity executes the
22 Agreement.

23 **42. 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 consent to any further or succeeding breach of the
26 same or any other covenant or condition.

27 **43. CHOICE OF LAW.**

28 The laws of the State of California shall govern this Agreement. This Agreement is made and

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

3 **44. AUTHORITY.**

4 **44.1.** Each individual executing this Agreement on behalf of CONTRACTOR represents and
5 warrants that:

6 **44.1.1.** He/She is duly authorized to execute and deliver this Agreement on behalf of
7 CONTRACTOR;

8 **44.1.2.** Such execution and delivery is in accordance with the terms of the Articles of
9 Incorporation or Partnership, any by-laws or Resolutions of CONTRACTOR and;

10 **44.1.3.** This Agreement is binding upon CONTRACTOR in accordance with its terms.

11 **44.2.** CONTRACTOR shall deliver to COUNTY evidence acceptable to COUNTY of the
12 foregoing within thirty days of execution of this Agreement.

13 **45. COUNTERPARTS.**

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

18 **46. TIMING.**

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

20 **47. REVIEW OF AGREEMENT TERMS.**

21 **47.1.** Each Party has had the opportunity to receive independent legal advice from its attorneys
22 with respect to the advisability of making the representations, warranties, covenants and
23 agreements provided for herein, and with respect to the advisability of executing this
24 Agreement.

25 **47.2.** Each Party represents and warrants to and covenants with the other Party that:

26 **47.2.1.** This Agreement in its reduction to final written form is a result of extensive good
27 faith negotiations between the Parties and/or their respective legal counsel; and

28 **47.2.2.** The Parties and/or their legal counsel have carefully reviewed and examined this

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Agreement for execution by said Parties.

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

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

County of Imperial

«Consultant_Business_Name»

By: _____
Luis A. Plancarte, Chairman
Imperial County Board of Supervisors

By: _____
«Consultant_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»

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: THAT

WHEREAS, the COUNTY OF IMPERIAL (hereinafter designated as "Public Entity") by resolution passed _____, 202__ has awarded to hereinafter designated as the "Principal," a contract for the work described as follows:

**SB-1 ANNUAL ON CALL POTHOLE REPAIR ON VARIOUS ROADS PROJECT
IN IMPERIAL COUNTY
County Project No. 6907**

WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract,

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the Public Entity in the penal sum of _____ Dollars (\$ _____), lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform, the covenants conditions and agreements in the said contract and any alteration thereof made as therein provided, on this or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the Public Entity, its officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise, it shall be and remain in full force and virtue.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work, or to the specifications.

In the event suit is brought upon this bond by the Public Entity and judgment is recovered, the Surety shall pay all costs incurred by the Public Entity in such suit, including a reasonable attorney's fee to be fixed by the court.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the _____ day of _____, 202__.

Principal

BY: _____

Surety

BY: _____

Attorney-in-Fact

[Attach Required Acknowledgement]

PAYMENT BOND FOR PUBLIC WORKS

KNOW ALL MEN BY THESE PRESENTS: That
WHEREAS, the COUNTY OF IMPERIAL
(hereinafter designated as "Public Entity") by resolution passed _____, 202__, has awarded to _____

(hereinafter designated as the "Principal") a contract for the work described as follows:

**SB-1 ANNUAL ON CALL POTHOLE REPAIR ON VARIOUS ROADS PROJECT
IN IMPERIAL COUNTY
County Project No. 6907**

WHEREAS, said Principal is required by Chapter 5 (commencing at Section 3225) and Chapter 7 (commencing at Section 3247), Title 15, Part 4, Division 3 of the California Civil Code to furnish a bond in connection with said contract:

NOW, THEREFORE, we, the Principal and _____

as Surety, are held and firmly bound unto the Public Entity in the penal sum of _____ Dollars (\$ _____), lawful money of the United States of America for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named in Section 3181 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18806 of the California Revenue and Taxation Code, with respect to such work and labor the surety or sureties will pay for the same, in an amount not exceeding the sum hereinabove specified, and also, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the court.

This bond shall insure to the benefit of any of the persons named in Section 3181 of the California Civil Code, so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement hereinabove described or pertaining or relating to the furnishing of labor, materials, or equipment therefor, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement hereinabove described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Public Entity and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 or 3112 of the California Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF this instrument has been duly executed by the Principal and Surety above named, on the _____ day of _____, 202__.

Principal
BY: _____

Surety
BY: _____
Attorney-in-Fact