



REQUEST FOR PROPOSALS
ON CALL, AS NEEDED, SURVEYING SERVICES

Requested by:

John A. Gay, PE
Director of Public Works

Prepared By:

Janette Govea
Administrative Analyst I

Deadline for Submissions: Friday, May 19 2023 by 4:00 P.M

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

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

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B. SAMPLE CONSULTANT AGREEMENT AND INSURANCE REQUIREMENTS

**THE CONSULTING FIRM MUST REVIEW THE ATTACHED SAMPLE AGREEMENT*

I. PURPOSE AND BACKGROUND:

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

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

It is the intention of the County to select and contract with more than one (1) Consultant for this service. The term of the as needed, on call agreements shall be for three (3) years, no extensions. Contracts will commence upon Board approval.

Each proposal will be scored in accordance with the Consultant's qualifications and experience. The aforementioned services will be conducted under a contract with the County of Imperial, hereinafter referred to as "County" and the consultant entity, hereinafter referred to as "Consultant". The contract will be regulated according to the provisions of all federal, state and local laws and ordinances that are applicable. This includes compliance with prevailing wage rates and their payment in accordance with the Davis Bacon Wage Determinations.

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

Compensation for the as needed, on call, agreement shall be handled through task orders at the consultant's proposed hourly rates and will be financed through project specific sources.

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

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

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

II. PROJECT POSTING AND SCHEDULING:

This RFP is being distributed over the internet and is posted at the County of Imperial Department of Public Works website at the following address: <https://publicworks.imperialcounty.org/> under “Projects out to Bid.” Consultants wishing to propose in response to this RFP must obtain this document from our website. Due to the fact that anyone can download the RFP and the County has no method for tracking the distribution, the County is not able to maintain a list of potential consultants and/or proposers and cannot provide individual notification of amendments or addendums to this RFP.

The County will therefore post any addendums to the RFP on the above mentioned website. All consultants shall refer to the website to verify all addendums that have been issued and that they have acknowledged all such addendums in their proposal.

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

EVENT	DATE
Issue Request for Proposal	Tuesday April 18, 2023
Last Day for Request(s) for Clarification <i>must be submitted in writing</i>	Tuesday May 2, 2023 by 5:00pm
Proposal Due	Friday May 19, 2023 by 4:00pm
Consultant Selection	May 2023/ June 2023
Agreement for Services	June 2023/ July 2023

III: SCOPE OF WORK

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

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

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

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- Conduct various field surveying activities as needed for the benefit of the Imperial County. Some activities may be performed under the responsible charge of the County Surveyor. Prior to any field surveys, the consultant shall submit a DIR number to the County. Field surveys made by consultants shall require the payment of prevailing wages. For wage determinations, see

<https://www.dir.ca.gov/oprl/dprevwagedetermination.htm>

- Loan of personnel for various field surveying activities. Some activities may be performed under the responsible charge of the County Surveyor.
- Research and due diligence investigations as needed for the benefit of the Imperial County. Some activities may be performed under the responsible charge of the County Surveyor.

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

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

IV. ASSIGNMENT OF WORK

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

For each project for which services will be requested, the County will issue a Task Order, with a not-to-exceed amount based on time and materials. The not-to-exceed amount shall be determined by County staff based on the complexity of the map. The Consultant shall obtain written approval by the County prior to exceeding the task order amount. Invoices shall include a breakdown of the hours spent per task by staff classification.

Time frames for the consultant to complete tasks or achieve task milestones shall be per the Professional Land Surveyor's Act, latest edition (Business and Professions Code §§ 8700 – 8805). Any delays in the submitted schedule of work must be pre-authorized by authorized Public Works staff.

At the conclusion of the task, the selected firm shall submit to the County a project completion file which contains the required information, forms, certifications, communications, etc. A digital version of the project file will also need to be submitted on a compact disc (CD) containing all required documentation in portable document format (PDF) as well as any modifiable document used (.docx files, etc.). The required project file will need to be submitted before the final payment and retention can be released.

V. RESPONSIBILITY OF COUNTY

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

On Call, As Needed, Surveying Services

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

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

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

The County reserves the right to perform any portion of the scope of work by County personnel or other consultants should the County determine it would be in the best interest of the County to do so.

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

VI. PROPOSAL CONTENT AND FORMAT

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

1. General Requirements

- a. Provide a cover letter.
- b. State the interpretation of the work to be performed. State a positive commitment to perform the work in the required manner and time frame; include a basic summary; and demonstrate an understanding of the services being requested. Provide a statement that the offer is valid for at least a ninety (90) day period.
- c. Provide the name(s) of the primary and/or alternate individuals authorized to respond to the RFP(s). Include titles, addresses, e-mail if available, and phone number.
- d. The Consultant is representing itself as a qualified professional. Therefore, it is acceptable to submit recommendations and comments for consideration on format, process, schedule, and additional content of projects. The County will consider comments and recommendations; however it is not required to select any of the recommendations or comments.
- e. Expensive bindings, colored displays, promotional materials, etc., are neither necessary nor desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.
- f. If any subcontractors are utilized, the lead Consultant must submit a description of the firm, the portion of work to be done, and cost of each subcontractor. All subcontracts exceeding \$25,000 in cost shall contain all required provisions of the prime contract

2. Table of Contents

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

3. Summary of Qualifications and Experience

- a. State whether the firm is local, regional, national or international.
- b. Identify the owner(s) of the firm and legal status (sole proprietor, corporation, etc.)
- c. Give the location of the office from which work is anticipated to be done and the number of employees of the company.
- d. Identify the qualifications and resumes of all individuals who will be associated with this service. Include professional registrations and affiliations.
- e. Provide specific survey project experience, especially with the County of Imperial and the Imperial Irrigation District (IID).
- f. Demonstrate a thorough understanding of the Subdivision Map Act, the Professional Land Surveyors' Act, local ordinances, accepted land surveying principles, and relevant rules or codes governing the conduct of Professional Land Surveyors. Identify any continuing education seminars or courses, active involvement in professional associations or committees, etc., which may have contributed to said thorough understanding.

4. Analysis of Effort/Methodology

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

5. Cost/Fees and Invoicing

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

- a. Costs should be organized for full time hourly rates. Such hourly rates should be fully burdened or loaded, including full compensation for all overhead and profit. Billing rates shall include provision for normal office costs, including, but not limited to; office rental, utilities, insurance, cell phone or radio, equipment, normal supplies and materials, in-house reproduction services, and local travel costs. Also, detail what hourly rates for overtime will be used.
- b. Submit itemized hourly fee schedule for additional services beyond the scope of work.

- c. Invoicing will be submitted to the County on a per task completed basis. Milestone payments will be observed and it will be the responsibility of the selected consultant to propose the completed task milestone payment schedule. The schedule submitted will be a recommendation to the County. The County will then evaluate and discuss with the consultant if any modifications are required.

Insurance Requirements

Prior to execution of the agreement with the County, the successful firm must provide evidence of insurance coverages as noted in the sample contract and insurance requirements exhibit. The successful firm will be required to maintain the required coverages, at its sole cost and expense, throughout the entire term and any subsequent modification terms of the contract.

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

VII. PROPOSAL EVALUATION

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

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

The proposals shall be evaluated by a selection committee, who will determine if proposal objectives are met, and whose evaluation may include interviews of the top five (5) ranked firms submitting qualifying packages. Once the proposals are reviewed and the qualifications considered, recommendations will then be submitted to the County Board of Supervisors for final selection. The selection committee will only include persons duly licensed as a Professional Land Surveyor or a Registered Civil Engineer, or have 20+ years' experience working under the direct supervision of a Professional Land Surveyor or Registered Civil Engineer.

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

VIII. PROPOSAL SUBMITTAL

Per Proposal - One (1) original, two (2) copies, and one (1) electronic copy in Portable Document Format (PDF) on a USB Thumb Drive of the proposal must be received in person or by mail to Imperial County Department of Public Works no later than 4:00pm on Friday, May 19, 2023. Proposal must be clearly titled: REQUEST FOR PROPOSAL: On Call, As Needed, Surveying Services.

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

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

On Call, As Needed, Surveying Services

To prevent the spread of the novel coronavirus, proposals for this Request for Proposals will also be accepted electronically if firms choose. Proposals shall be submitted no later than Friday, May 19, 2023 at 4:00 p.m. in Portable Document Format (PDF) via email to Janette Govea, Administrative Analyst I, to janettegovea@co.imperial.ca.us with the subject line: **REQUEST FOR PROPOSAL: On Call, As Needed, Surveying Services**

All cost / fees proposed must accompany proposal within a separate sealed envelope. If submitting electronically, cost/ fees are to be submitted as a separate PDF document.

Note: Late proposals will not be considered.

IX. CONSULTING AGREEMENT AND INSURANCE REQUIREMENTS

A sample agreement is attached for review as Exhibit B.

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

Prior to submittal, for board approval, of the agreement with the County, the successful firm must provide evidence of insurance coverage as noted in the sample contract and insurance requirements exhibit. The successful firm will be required to maintain the required coverages, at its sole cost and expense, throughout the entire term and any subsequent modification terms of the contract.

Insurance requirements noted in sample contract and insurance exhibit are based on projected County estimates. Insurance amounts may be adjusted once the final cost and fees proposal is reviewed. Any contract resulting from this RFP will be financed with funds available to the County through project specific sources.

X. CLOSING ITEMS

A pre-proposal conference has not been scheduled for this project.

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

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

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

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

XI. QUESTIONS AND CONTACT INFORMATION

Questions concerning this RFP will be responded to collectively, and made available for interested consultants via the ICDPW website <https://publicworks.imperialcounty.org/> under “Projects out to Bid” as an addendum. *All inquiries must be submitted in writing no later than (5:00pm) on Tuesday, May 2, 2023* to the contact person below. **No oral questions will be taken or responded to except for administrative clarifications.**

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

EXHIBIT A



PROPOSAL EVALUATION FORM

AS NEEDED, ON CALL, SURVEYING SERVICES;

Prepared March 1, 2023

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

RATING POINTS:

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

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

Note: Positive previous experience and no previous experience will constitute a score of zero (0). Negative experience points will be deducted from the overall score.

Comments:

EXHIBIT B

1 **AGREEMENT FOR SERVICES**

2 <Name>

3 THIS AGREEMENT FOR SERVICES ("Agreement"), made and entered into effective the
4 _____ day of _____, 2023, by and between the County of Imperial, a political subdivision of the
5 State of California, by and through its Department of Public Works ("COUNTY") and <Name>, a
6 California corporation licensed to do business within the state of California ("CONSULTANT")
7 (individually, "Party;" collectively, "Parties") shall be as follows:

8 **RECITALS**

9 **WHEREAS**, COUNTY desires to retain a qualified individual, firm or business entity to provide
10 Plan Checking Services for On-Call, As Needed, _____ Services; County Project No.
11 _____ ("Project"); and

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

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

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

19 **1. INCORPORATION OF RECITALS.**

20 The Parties certify that, to the best of their knowledge, the above recitals are true and correct. The
21 above recitals are hereby adopted and incorporated within this Agreement.

22 **2. DEFINITIONS.**

23 **2.1.** "Request for Proposal" or "RFP" shall mean that document that describes the Project and
24 project requirements to prospective bidders entitled, "On-Call, As Needed,
25 _____ Services," dated _____. The Request for Proposal is attached hereto
26 as **Exhibit "A"** and incorporated herein by this reference.

27 **2.2.** "Proposal" shall mean CONSULTANT's document entitled, "On-Call, As Needed,
28 _____ Services," _____ and submitted to COUNTY's

Department of Public Works. The Proposal is attached hereto as **Exhibit “B”** and incorporated herein this by reference.

3. CONTRACT COORDINATION.

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

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

4. DESCRIPTION OF WORK.

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

5. WORK TO BE PERFORMED BY CONSULTANT.

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

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

5.3. CONSULTANT shall:

5.3.1. Procure all permits and licenses, pay all charges and fees, and give all notices that

may be necessary and incidental to the due and lawful prosecution of the services to be performed by CONSULTANT under this agreement;

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

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

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

6. REPRESENTATIONS BY CONSULTANT.

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

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

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

6.5. CONSULTANT represents and warrants that any employee, contractor and/or agent who will be performing any of the duties and obligations of CONSULTANT herein possess all

required licenses and authorities, as well as the experience and training, to perform such tasks.

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

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

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

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

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

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

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 4, ("DESCRIPTION OF WORK"), have been completed, unless otherwise terminated as provided for in this Agreement.

8. COMPENSATION.

8.1. COUNTY hereby agrees to pay CONSULTANT on a monthly basis based on documented invoices consistent with the requirements set forth in section 9 of this agreement, provided to the County by CONSULTANT.

8.2. The fee for any additional services required by COUNTY will be computed upon actual hours and expenses incurred by CONSULTANT and based on CONSULTANT's current standard rates as set forth in the Proposal. An Standard Hourly Rate Schedule will be incorporated to the Agreement for Services and paid as outlined in **EXHIBIT "C"**. Any additional services or costs will not be paid without a prior written agreement between the Parties.

8.3. Except as provided under Paragraphs 8.1 and 8.2, COUNTY shall not be responsible to pay CONSULTANT any compensation, out of pocket expenses, fees, reimbursement of expenses or other remuneration.

9. PAYMENT.

9.1. CONSULTANT shall bill COUNTY on a time and material basis as set forth in **Exhibit "B."** COUNTY shall pay CONSULTANT for completed and approved services upon presentation of its itemized billing.

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

10. METHOD OF PAYMENT.

CONSULTANT shall at any time prior to the fifteenth (15th) day of any month, submit to COUNTY a written claim for compensation for services performed. The claim shall be in a format approved by

COUNTY. No payment shall be made by COUNTY prior to the claims being approved in writing by COUNTY's Contract Manager or his/her designee. CONSULTANT 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 claim is submitted.

11. TIME FOR COMPLETION OF THE WORK.

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

12. MAINTENANCE AND ACCESS OF BOOKS AND RECORDS.

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

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

12.3. CONSULTANT shall maintain all reports, documents, and records, which demonstrate performance under this Agreement for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

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

1 **13. SUSPENSION OF AGREEMENT.**

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

6 **14. TERMINATION.**

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

15 **15. INSPECTION.**

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

21 **16. OWNERSHIP OF MATERIALS.**

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

27 **17. INTEREST OF CONSULTANT.**

28 **17.1.** CONSULTANT covenants that it presently has no interest, and shall not acquire any

1 interest, direct or indirect, financial or otherwise, which would conflict in any manner or
2 degree with the performance of the services hereunder.

3 **17.2.** CONSULTANT covenants that, in the performance of this Agreement, no sub-contractor
4 or person having such an interest shall be employed.

5 **17.3.** CONSULTANT certifies that no one who has or will have any financial interest under
6 this Agreement is an officer or employee of COUNTY.

7 **18. INDEMNIFICATION.**

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

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

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

CONSULTANT may be liable;

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

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

(a) Any loss of funding, penalties, fees, or other costs resulting from CONSULTANT'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;

(a) Any loss of funding, penalties, fees, or other costs resulting from CONSULTANT'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;

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

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

18.2.6. Any breach by CONSULTANT of the terms, requirements or covenants of this

Agreement.

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

19. INDEPENDENT CONTRACTOR.

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

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

19.2. CONSULTANT 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 CONSULTANT in fulfillment of the requirements of this Agreement.

19.3. CONSULTANT is not, and shall not be, entitled to receive from, or through, COUNTY, and COUNTY shall not provide, or be obligated to provide, CONSULTANT with Workers' 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.

19.4. CONSULTANT shall not be entitled to have COUNTY withhold or pay, and COUNTY shall not withhold or pay, on behalf of CONSULTANT, 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.

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

1 **19.6.** COUNTY shall not withhold or pay, on behalf of CONSULTANT, any Federal, State, or
2 local tax, including, but not limited to, any personal income tax, owed by
3 CONSULTANT.

4 **19.7.** CONSULTANT is, and at all times during the term of this Agreement, shall represent
5 and conduct itself as an independent contractor, not as an employee of COUNTY.

6 **19.8.** CONSULTANT shall not have the authority, express or implied, to act on behalf of, bind
7 or obligate COUNTY in any way without the written consent of COUNTY.

8 **20. INSURANCE.**

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

15 **20.2. Special Insurance Requirements.** All insurance required shall:

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

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

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

28 **20.2.4.** State that it is primary insurance and regards COUNTY as an additional insured

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

20.2.5. Not be canceled, non-renewed or reduced in scope of coverage until after thirty (30) days written notice has been given to COUNTY. CONSULTANT 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 prior written consent of COUNTY shall, at the option of COUNTY, be grounds for termination of this Agreement.

20.2.6. 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 to liability insurance to the level then customary in similar COUNTY Agreements by giving sixty (60) days notice to CONSULTANT.

20.3. Additional Insurance Requirements.

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

20.3.2. 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 require the exhaustion of other insurance prior to providing coverage;
- (e) Does not contain an “escape clause” which extinguishes the insurer’s liability if the loss is covered by other insurance;

1 (f) Includes COUNTY as an additional insured.

2 (g) States that it is primary insurance and regards COUNTY as an additional
3 insured and contains a cross-liability or severability of interest clause.

4 **20.4. Deposit of Insurance Policy.** Promptly on issuance, reissuance, or renewal of any
5 insurance policy required by this Agreement, CONSULTANT shall, if requested by
6 COUNTY, provide COUNTY satisfactory evidence that insurance policy premiums have
7 been paid together with a duplicate copy of the policy or a certificate evidencing the
8 policy and executed by the insurance company issuing the policy or its authorized agent.

9 **20.5. Certificates of Insurance.** CONSULTANT agrees to provide COUNTY with the following
10 insurance documents on or before the effective date of this Agreement:

11 **20.5.1.** Complete copies of certificates of insurance for all required coverages including
12 additional insured endorsements shall be attached hereto as **Exhibit "D"** and
13 incorporated herein.

14 **20.5.2.** The documents enumerated in this Paragraph shall be sent to the following:

15 County of Imperial
16 Risk Management Department
17 Re: County Project No. 6685PWS
18 940 Main Street, Suite 101
El Centro, CA 92243

19 County of Imperial
20 Department of Public Works
21 Re: County Project No. 6685PWS
22 155 South 11th Street
El Centro, CA 92243

23 **20.6. Additional Insurance.** Nothing in this, or any other provision of this Agreement, shall be
24 construed to preclude CONSULTANT from obtaining and maintaining any additional
25 insurance policies in addition to those required pursuant to this Agreement.

26 **21. PREVAILING WAGE.**

27 **21.1.** CONSULTANT acknowledges that any work that qualifies as a "public work" within the
28 meaning of California Labor Code section 1720 shall cause CONSULTANT, and its sub-

consultants, to comply with the provisions of California Labor Code sections 1775 et seq.

21.2. When applicable, copies of the prevailing rate of per diem wages shall be on file at COUNTY's Department of Public Works and/or Clerk of the Board of Supervisors, and available to any interested party upon request. CONSULTANT shall post copies of the prevailing wage rate of per diem wages at the Project site.

21.3. CONSULTANT hereby acknowledges and stipulates to the following:

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

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

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

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

21.3.5. CONSULTANT has reviewed and agrees to comply with any applicable provisions for those Projects subject to Department of Industrial Relations (DIR) Monitoring and Enforcement of prevailing wages. COUNTY hereby notifies CONSULTANT that CONSULTANT is responsible for complying with the requirements of Senate Bill 854 (SB854) regarding certified payroll record reporting. Further information concerning the requirements of SB854 is available on the DIR website located at: <http://www.dir.ca.gov/Public-Works/PublicWorksEnforcement.html>.

22. WORKERS' COMPENSATION CERTIFICATION.

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

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

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

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

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

10 **23. ASSIGNMENT.**

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

14 **24. NON-DISCRIMINATION.**

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

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

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

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

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

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

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

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

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

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

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

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

federal agency contributing funds to the Project, then CONSULTANT 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 CONSULTANT under this Agreement.

25.5. In addition to the above, CONSULTANT'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:

25.5.1. Termination of this Agreement;

25.5.2. Withholding monthly progress payments;

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

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

26. NOTICES AND REPORTS.

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

COUNTY

Director of Public Works
Re: County Project No. 6685PWS
155 South 11th Street
El Centro, CA 92243

CONSULTANT

<name>

County of Imperial
Clerk of the Board of Supervisors
Re: PW County Project No. 6685PWS
940 W. Main Street, Suite 209
El Centro, CA 92243

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

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

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

27. ENTIRE AGREEMENT.

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

28. MODIFICATION.

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

29. CAPTIONS.

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

30. PARTIAL INVALIDITY.

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

31. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.

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

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

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

32. WAIVER.

No waiver of any breach or of any of the covenants or conditions of this Agreement shall be

1 construed to be a waiver of any other breach or to be a consent to any further or succeeding breach of
2 the same or any other covenant or condition.

3 **33. CHOICE OF LAW.**

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

7 **34. AUTHORITY.**

8 **34.1.** Each individual executing this Agreement on behalf of CONSULTANT represents and
9 warrants that:

10 **34.1.1.** He/She is duly authorized to execute and deliver this Agreement on behalf of
11 CONSULTANT;

12 **34.1.2.** Such execution and delivery is in accordance with the terms of the Articles of
13 Incorporation or Partnership, any by-laws or Resolutions of CONSULTANT and;

14 **34.1.3.** This Agreement is binding upon CONSULTANT accordance with its terms.

15 **34.2.** CONSULTANT shall deliver to COUNTY evidence acceptable to COUNTY of the
16 foregoing within thirty (30) days of execution of this Agreement.

17 **35. COUNTERPARTS.**

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

22 **36. REVIEW OF AGREEMENT TERMS.**

23 **36.1.** Each Party has had the opportunity to receive independent legal advice from its attorneys
24 with respect to the advisability of making the representations, warranties, covenants and
25 agreements provided for herein, and with respect to the advisability of executing this
26 Agreement.

27 **36.2.** Each Party represents and warrants to and covenants with the other Party that:

28 **36.2.1.** This Agreement in its reduction to final written form is a result of extensive good

1 faith negotiations between the Parties and/or their respective legal counsel; and

2 **36.2.2.** The Parties and/or their legal counsel have carefully reviewed and examined this
3 Agreement for execution by said Parties.

4 **36.3.** Any statute or rule of construction that ambiguities are to be resolved against the drafting
5 party shall not be employed in the interpretation of this Agreement.

6 **37. NON-APPROPRIATION.**

7 **37.1.** All obligations of COUNTY are subject to appropriation of resources by various federal,
8 State, and local agencies, including but not limited to the U.S. Department of
9 Transportation (“DOT”) and the California Department of Transportation (“Caltrans”).

10 **37.2.** This Agreement is valid and enforceable only if sufficient funds are made available to
11 COUNTY for the purposes of this Project. In addition, this Agreement is subject to any
12 additional restrictions, limitations, conditions, or any statute enacted by Congress, State
13 Legislature, or COUNTY, and any regulations prescribed therefrom, that may affect the
14 provisions, terms, or funding of this Agreement.

15 **37.3.** If sufficient funds for the Project are not appropriated, this Agreement may be amended
16 or terminated in order to reflect said reduction in funding.

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

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

21 **38.1. Pertinent Nondiscrimination Authorities:**

22 (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq, 78 stat. 252),
23 (prohibits discrimination on the basis of race, color, national origin); and 49 CFR
24 Part 21.

25 (b) The Uniform Relocation Assistance and Real Property Acquisition Policies Act
26 of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or
27 whose property has been acquired because of Federal or Federal-Aid programs
28 and projects);

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

on minority and low-income populations;

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

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

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

County of Imperial

<Name>

By: _____
Ryan E. Kelley, Chairman
Imperial County Board of Supervisors

By: _____
<Signatory>

ATTEST:

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

APPROVED AS TO FORM:

Eric R. Havens,
County Counsel

By: _____
Mistelle Abdelmagied,

Assistant County Counsel

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MINIMUM INSURANCE AMOUNTS

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

Insurance Minimum Amounts *

<u>Insurance</u>	<u>Minimum Limit *</u>
Errors & Omissions/Professional Liability	\$2 million per occurrence
Workers Compensation, Coverage A	Statutory
Employers Liability, Coverage B	\$1 million
Commercial General Liability (Including Contractual Liability):	
Bodily Injury	\$1 million per occurrence \$2 million aggregate
Property Damage	\$1 million per occurrence \$2 million aggregate
Comprehensive Automobile Liability (Owned, hired & non-owned vehicles)	
Bodily Injury	\$1 million per occurrence
Property Damage	\$1 million per occurrence

An endorsement covering any explosion collapse and underground exposures, “XCU”, in the Commercial General Liability policy is also required.

*Minimums subject to additional review after Consultant is selected.