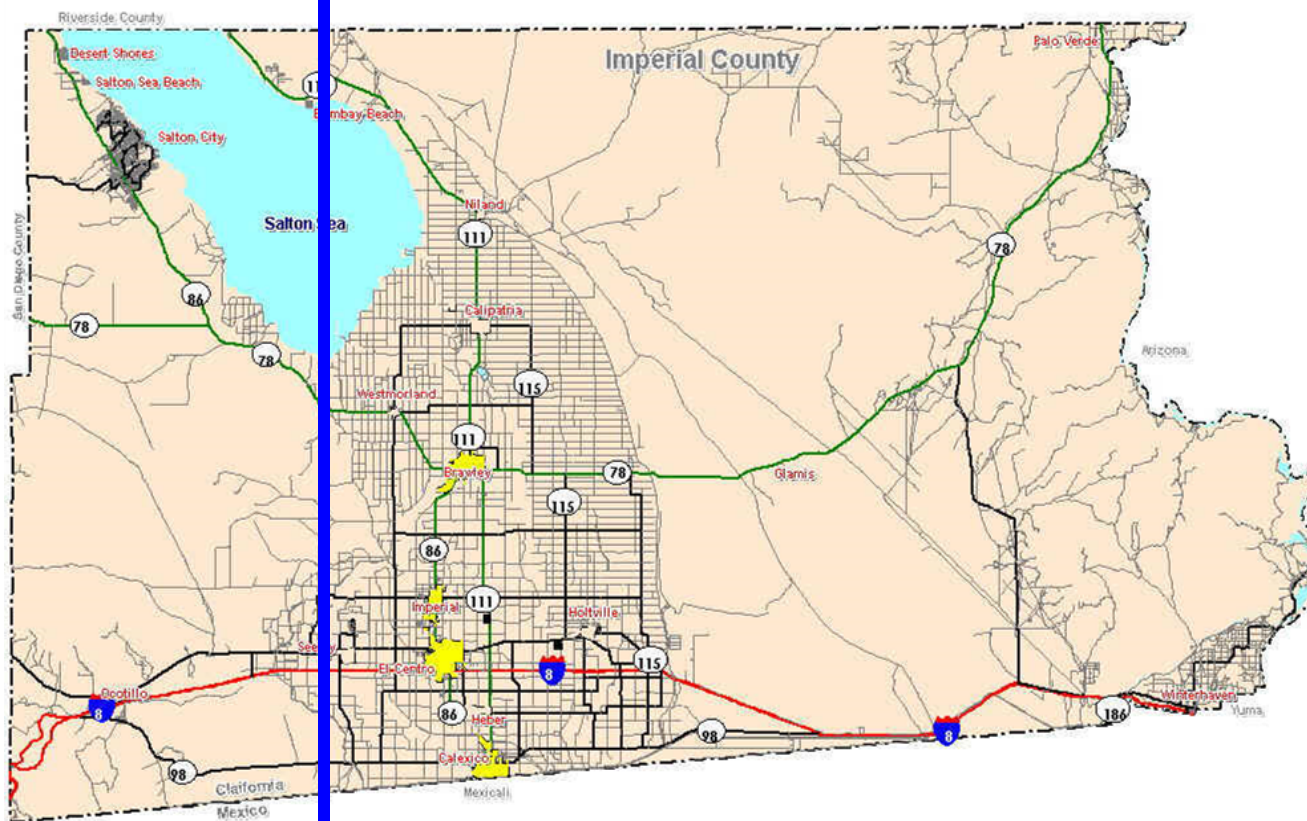




# REQUEST FOR PROPOSALS: ARCHITECTURAL/ENGINEERING DESIGN SERVICES COUNTY PROJECT NO. SR7163SO

## COUNTY OF IMPERIAL SHERIFF SERVICE CENTER CORRECTIONS PROGRAMS SITE IMPROVEMENTS



Release Date:  
**Monday, June 3, 2024**

Submission Deadline:  
**Monday, June 17, 2024 at 3:00 P.M.**

Imperial County Department of Public Works  
155 South 11th Street, El Centro, CA 92243  
Phone: 442-265-1818

# Special Notice

---

## Notification of Contractor Registration Requirements (where required)

Pursuant to the requirements of California Labor Code section 1771.1, all contractors and subcontractors that wish to engage in public work through a public works contract must be registered with the Department of Industrial Relations (DIR).

Beginning March 1, 2015, no contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with DIR.

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

All contractors, including subcontractors, listed in the proposal must be registered with the DIR at the time proposals are due, and must submit proof of registration with the proposal. Any proposals received listing unregistered contractors and/or subcontractors will be deemed non-responsive.

NOTE: DIR number is to be specified on the cover page of the consultant proposal. Proof of registration for consultant and sub consultant shall also be submitted as an exhibit of the proposal.

Application and renewal are completed online with a non-refundable fee of \$400. Read the Public Works Reforms (SB 854) Fact Sheet for requirements. Instructions for completing the form and additional information can be found on the DIR website.

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

## SOURCES OF INFORMATION

INFORMATION	WEBSITE
Department of Industrial Relations (Public Works)	<a href="http://www.dir.ca.gov/Public-Works/PublicWorks.html">http://www.dir.ca.gov/Public-Works/PublicWorks.html</a>
SB 854 Fact Sheet	<a href="http://www.dir.ca.gov/Public-Works/PublicWorksSB854.html">http://www.dir.ca.gov/Public-Works/PublicWorksSB854.html</a>
Senate Bill 854 Compliance	<a href="http://www.dir.ca.gov/Public-Works/SB854.html">http://www.dir.ca.gov/Public-Works/SB854.html</a>
Public Works Contractor (PWC) Registration	<a href="https://www.dir.ca.gov/public-works/contractor-registration.html">https://www.dir.ca.gov/public-works/contractor-registration.html</a>
Classifications and Minimum Labor Rates	<a href="http://www.dir.ca.gov/OPRL/Pwd/">http://www.dir.ca.gov/OPRL/Pwd/</a>

---

## FREQUENTLY ASKED QUESTIONS ON PUBLIC WORKS

Are awarding bodies required to use registered contractors or submit a PWC-100 for any of the following?

- Professional service contracts
- Mechanics who service vehicles at the local dealership or auto shop
- Engineering firms or construction managers hired to manage public works projects
- Design consultants, architects, and engineers performing professional design services
- Material or product suppliers
- BIM (Building Information Modeling) or CAD (Computer-Aided Design) consultants
- Consultants providing Division of State Architect inspection services;
- Trucking companies and truck drivers
- Furniture dealers who deliver and install furniture
- Community Conservation Corps certified by the California Conservation Corps

Awarding bodies are required to use registered contractors and register the project for any work subject to prevailing wage requirements. California's public works prevailing wage requirements extend broadly to workers employed "in the execution of the public works contract" (Labor Code, section 1774). Coverage is not necessarily limited to work performed at the construction site by those in traditional construction trades. Awarding bodies and other interested parties can ask DIR's Director to make a formal determination on whether a particular work or project is subject to public works requirements. [Public Works Coverage Determinations](https://www.dir.ca.gov/oprl/pwdecision.asp) <https://www.dir.ca.gov/oprl/pwdecision.asp> issued by the Director since 2002 are available online.

## Notification

The County of Imperial invites professional firms to submit proposals to provide Architectural/Engineering Services for the County of Imperial Sheriff Service Center Corrections Programs Site Improvements, located at 326 Applestill Rd, El Centro, CA 92243. (See Exhibits A & B).

If your firm is able to complete the requested task(s), please submit a response to the request by Monday, June 17, 2024, at 3:00 P.M. exhibit

At this time, a site walk-through is not anticipated for the RFP process.

Responses will be evaluated, and the selected firm shall receive an Agreement for Services followed by a Notice to Proceed.

Each firm will receive the following:

- Copy of the Request for Proposal which includes background information, scope of work and deliverables.
- Exhibits A & B for the site location and existing floor plan.

## Background

---

The Imperial County Corrections Community Service & Re-Entry Programs Department is seeking site improvements to better accommodate their program's needs located at 326 Applestill Road, El Centro, California.

The area is currently improved with two modular structures which are “permanently” anchored to the site.

## Scope of Work

---

The Imperial County Public Works Department is seeking Architectural/Engineering Services to provide conceptual drawings, a full set of construction plans and technical specifications that meet and comply with current federal, state, and local building, program, ADA and energy codes. The project consists of an assessment, inspection and evaluation of the existing site to determine all work to be performed as part of the requested site improvements. All applicable aspects of the improvements shall be considered in the construction plans.

Note: This is not an all-inclusive list, it shall be the consultant's responsibility to provide a finished product which meets all applicable codes and the client's requirements.

A comprehensive bid package including a cost estimate and project specifications shall be prepared together with a construction set of plans addressing all items related to this project. (See Exhibit C for Additional Program Needs and Information.)

**A. Design Proposed Schedule**

Task	Tentative Milestone Dates
Release of Request for Proposals	Monday, June 3, 2024
Submittal Deadline	Monday, June 17, 2024, at 3:00 P.M.
Award Date	Tuesday, July 23, 2024
Notice to Proceed Date	Tuesday, July 30, 2024
Design Completion Date & Estimate(s)	Friday, September 20, 2024, by 3:00 P.M.

**B. Task 1: Project Scoping and Concept Design (10% Design)**

1. The selected consultant will meet with County staff to develop a full understanding of the project. Necessary filed data will be obtained by the consultant to prepare working drawings.
2. Prepare bid documents and provide construction estimates for the requested work.
3. Provide conceptual drawing and shall develop/apply evaluation criteria to assess and weigh the relative advantages and disadvantages of each conceptual design alternative.
4. All the above shall also be provided in electronic formats (AutoCAD, MS Word, pdf, etc.).

**C. Task 2: Preliminary Drawings (30% Design).**

1. Shall be responsible for providing an outline specification, identifying specification sections and major building material systems and finishes.
2. Shall provide a schematic design estimate of probable costs. The estimate shall include major components and identify escalation factors.
3. Shall prepare a schedule for the construction period, identify phased work and any long-lead time for specialty items.
4. The Consultant will be responsible for issuing schematic design documents that are in compliance with the program, the budget, and the schedule as set forth by the County.

**C. Task 3: Design Development – Bid Documents (60% Design)**

1. All miscellaneous consultant work shall be sufficiently developed that could impact design, performance, and coordination.
2. Provide a draft 24x36 plan set copy and a pdf copy of all specification sections and front-end documents.

3. Update the schematic design estimate of probable costs.
4. Prepare an updated schedule for the construction period.
5. Provide design development documents that are in compliance with the program, the budget, and the schedule as set forth by the County.
6. All of the above shall also be provided in electronic formats (AutoCAD, MS Word, pdf, etc.).

**D. Task 4: Bid Documentation (75-100% Design)**

1. The consultant shall, at a minimum, provide the following documentation:
  - a. One full-size reproducible set of final building construction and improvement plans with each page wet stamped and signed by a licensed professional.
  - b. Three 24x36 copies of the final building construction and improvement plans.
  - c. Three unbound copies of project construction specifications.
  - d. One hard copy of the final Architect's / Engineer's Cost estimate.
  - e. All the above shall also be provided in electronic formats (AutoCAD, MS Word, pdf, etc.).
2. Prepare a final schedule for the construction period.
3. Shall submit any engineering or other calculations used in the design. Design calculations shall be submitted in hard-copy format and bound.
4. Secure all necessary permits.
5. Develop the scope of work for inclusion to the bid documents for special inspection services required during construction.
6. Process permits through the applicable governmental agency until the permit is approved.

Note: This is not an all-inclusive list; it shall be the engineer's responsibility to provide all the required design requirements for a final product. The consultant shall be responsible for providing a complete set of plans and specifications necessary for the overall project per applicable local, state, federal code and program regulatory requirements.

**E. Task 5: Bid Phase**

1. During the bid phase respond bidder's Request(s) for Information (RFI(s)), issue

clarifications and addenda, as necessary, attend the pre-bid meetings (includes site walk-through), review and provide responses to bidders.

2. Review and respond to substitution requests.

**F. Task 6: Construction Phase**

1. Conduct a post-award meeting at the Public Works Department.
2. The Consultant Team shall be a representative of, and shall advise and consult with, the County during the construction phase.
3. Shall provide assistance with the following:
  - a. Review and respond to shop and field drawings submittals, and substitutions submitted by the Contractor for compliance with permits and contract documents.
  - b. Review submittals and provide written responses and recommendations.
  - c. Review change orders and provide written responses and recommendations.
4. Address Request for Information (RFIs) from the Contractor and Building and Safety inspectors, as needed.
5. Prepare preliminary and final punch lists for substantially completed construction work.
6. Prepare record (as-built) drawings on original contract documents as per the data supplied by Contractor.
7. Provide Minutes of meeting(s).

**G. Task 7: Hourly Documentation**

1. Include hourly rate schedule(s).

## **Deliverables**

---

1. At the conclusion of this project, the Consultant shall submit to the County a project report, the required project file shall need to be submitted before the final payment and retention can be released and as stated below:
2. Two (2) bound copies of the final report including all documentation, logs, plans, permits, and drawings will need to be submitted as well as a copy in PDF form.

3. Items to be included in the final report are as follows:

Construction Documents	Electronic Formats	Hardcopy Formats
Construction Drawings	Autocad 2020 or later (*.dwg)	Full Size Paper (24" x 36"-Ansi D)
Product File	Microsoft Word & PDF Format	Letterhead
Supplemental Design Reports (If Applicable)	Microsoft Word & PDF Format	Letterhead
Design Calculations	Microsoft Word or Excel & PDF Format	Letterhead
Minutes of meeting(s)	Microsoft Word & PDF Format	Letterhead

## **PROPOSAL EVALUATION**

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

Proposals received will be reviewed/evaluated according to the criteria and weighting shown in Table 2 "Scoring Criteria" below. In addition to ICDPW Staff, the evaluation panel may include representatives from project stakeholders. A recommendation to award contract will be presented to the Imperial County Board of Supervisors for approval to enter into an agreement.

The Director shall provide a report of the committee's evaluation and recommendations, along with his recommendation, for the selection of a firm to the Board of Supervisors for final review and approval to enter into negotiations for an agreement. All firms submitting a proposal will be notified of final rankings.

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.

## **Table 2 – Scoring Criteria**



CRITERIA	WEIGHT FACTOR
<b>Relevant Experience</b> –Past 3 years of relevant experience of the prospective Service Provider team and its key personnel-consultants in the development of quality solutions for buildings, or similar program-intensive, public agency, institutional buildings; for non-project specific work, relevant experience in the evaluation of existing infrastructure, code compliance, design and/or planning solutions.	0.20
<b>Project Management</b> -Demonstrated ability of Service Provider to design building renovations within budget and on schedule and, for non-building work, demonstrate an ability to provide services on schedule and within budget to meet client program requirements and goals.	0.20
<b>Current &amp; Upcoming Workload Capacity</b> :- Capacity to provide resources necessary to develop and manage work within the geographic region(s) for which you proposed	.15
<b>References</b> -Documentation that the Service Provider has delivered high quality consulting services and contract documents to its clients, and has in place an effective continuous quality improvement process.	.10
<b>Understanding</b> -Familiarity and/or specific experience with federal, state, and local government projects, including adherence to prevailing wage regulations.	.20
<b>Problem Solving</b> -Demonstrate creative problem solving and solutions in dealing with difficult planning, programming, site planning-selection, Architectural/MEP Engineering form generation, environmental evaluation-analysis.	.15
<i>*Previous experience and performance working with ICDPW</i>	
<b>Total</b>	<b>1.0</b>

*(Rating points range from 0 to 5 with 0 being unsatisfactory and 5 being excellent. Rating point is then multiplied by the weight factor to obtain weighted rating)*

\*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.

## Proposal Submittal

---

One (1) original, three (3) 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 3:00pm on Monday, June 17, 2024. Proposal must be clearly titled:

**REQUEST FOR PROPOSAL: Architectural/ Engineering Design Services; County Project No. SR7163SO.**

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

Imperial County Department of Public Works  
Attn: Carlos Garcia – Building Project Technician  
155 S. 11th Street El Centro, California 92243

Portable Document Format (PDF) copy of proposal is to be submitted via email to Carlos Garcia, Building Project Technician, [carlosgarcia@co.imperial.ca.us](mailto:carlosgarcia@co.imperial.ca.us) and Norma Lillegard, CIP Project Coordinator, [normalillegard@co.imperial.ca.us](mailto:normalillegard@co.imperial.ca.us) with the subject line: **RFP: Architectural/ Engineering Design Services; County Project No. SR7163SO.**

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

**Note: Late proposals will not be considered.**

## **CONSULTING AGREEMENT AND INSURANCE REQUIREMENTS**

*A sample agreement is attached for review as Exhibit E.*

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.

---

### **XIII. CLOSING ITEMS**

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

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

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.

### **XIV. QUESTIONS AND CONTACT INFORMATION**

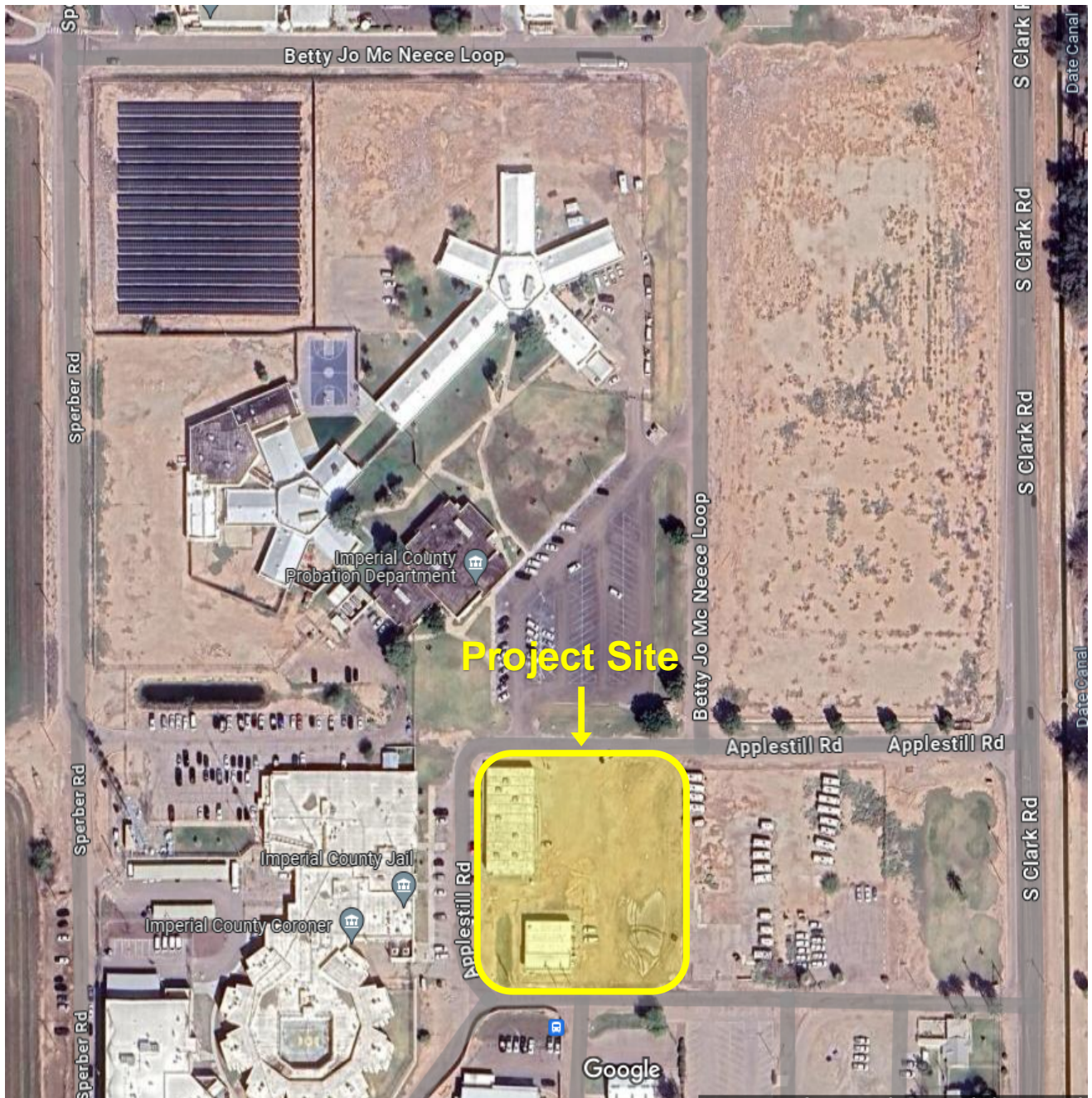
Questions concerning this RFP will be responded to collectively, and made available for interested consultants via the ICDPW website <http://www.co.imperial.ca.us/publicwork/index.asp> under "Projects out to Bid as an addendum. *All inquiries must be submitted in writing (3:00pm) on June 17, 2024* to the contact person below. **No oral questions will be taken or responded to except for administrative clarifications.**

Contact: Carlos Garcia – Building Project Technician  
[carlosggarcia@co.imperial.ca.us](mailto:carlosggarcia@co.imperial.ca.us) (for proposal questions)  
442-265-1818 (for administrative questions ONLY)  
Norma Lillegard, CIP Project Coordinator  
[normalillegard@co.imperial.ca.us](mailto:normalillegard@co.imperial.ca.us)

# Cost/Fee Proposal Submittal

Item No.	Description	Cost per Item
1.	Task 1: Project Scoping and Concept Design (10% Design)	
2.	Task 2: Preliminary Drawings (30% Design).	
3.	Task 3: Design Development – Bid Documents (60% Design)	
4.	Task 4: Bid Documentation (75-100% Design)	
5.	Task 5: Bid Phase	
6.	Task 6: Construction Phase	
7.	Task 7: Hourly Documentation	
8.	List of sub-consultants by respective discipline and cost(s).	
	<b>TOTAL</b>	

# Exhibit A – Vicinity Map



IMPERIAL COUNTY  
PUBLIC WORKS  
DEPARTMENT  
EL CENTRO, CA

TOA for On-Call Architectural/Engineering Design Services  
 APN: 054-510-008  
 County of Imperial Sheriffs Corrections  
 Community Services & Re-Entry Programs Site Improvements  
 Located at 326 Applestill Rd, El Centro, CA 92243  
 County Project No: SR7163SO

## Exhibit B – Location Map



IMPERIAL COUNTY  
PUBLIC WORKS  
DEPARTMENT  
EL CENTRO, CA

TOA for On-Call Architectural/Engineering Design Services  
APN: 054-510-008  
County of Imperial Sheriffs Corrections  
Community Services & Re-Entry Programs Site Improvements  
Located at 326 Applestill Rd, El Centro, CA 92243  
County Project No: SR7163SO

# **Exhibit C - Scope of Work**

## **Additional Program Needs and Information**

The improvements are needed to store equipment, vehicles, and conex boxes for programs staff. The area will also support an area for vehicle decal applications in close proximity to the Print Shop, in addition to providing storage solutions for the Print Shop Program.

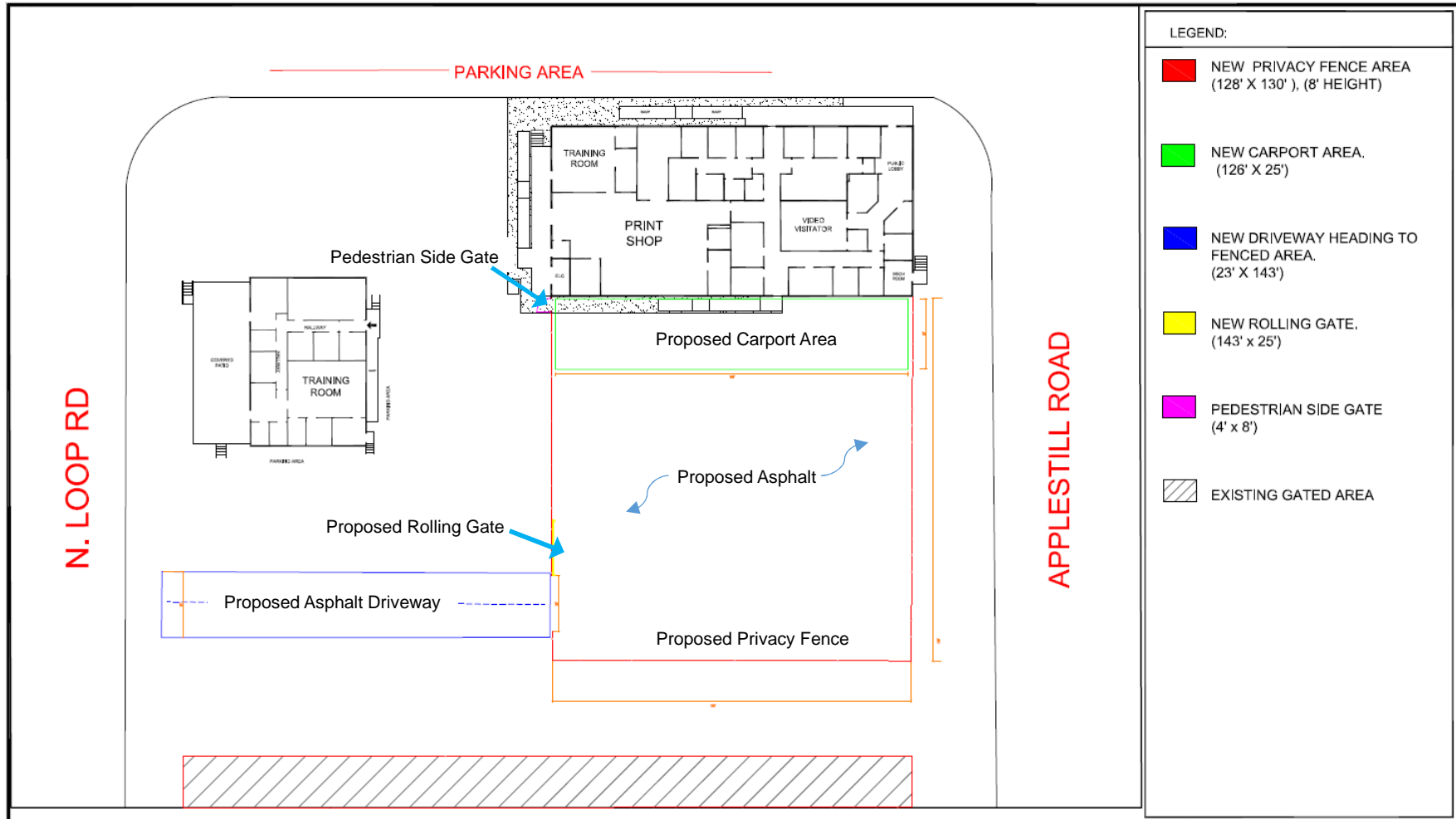
### **SCOPE OF WORK (PROPOSED WORK)**

- New Paved Asphalt Parking Area.
  - Grading
  - Drainage
  - Note: Cargo containers will be placed on the asphalt
- New Shade Structure
  - Lighting and Power Outlets
- New Fencing
  - Chain Link / Privacy Slats
  - Automatic Security Gate Opener / Fence Gate Door
  - Gate with Security Lock(s)
- New Driveway

### **EXISTING CONDITIONS & REPORTS.**

1. Dirt Lot is currently empty and has been used as a parking area.

# Exhibit D – Proposed Site Improvements



**LEGEND:**

- NEW PRIVACY FENCE AREA (128' X 130' ), (8' HEIGHT)
- NEW CARPORT AREA. (126' X 25')
- NEW DRIVEWAY HEADING TO FENCED AREA. (23' X 143')
- NEW ROLLING GATE. (143' x 25')
- PEDESTRIAN SIDE GATE (4' x 8')
- EXISTING GATED AREA

COUNTY OF IMPERIAL - CC2 SHERIFFS CORRECTIONS PROGRAMS  
 326 APPLESTILL RD, EL CENTRO, CA 92243

PROJECT NO.: SR7163SO

REVISIONS:	



SCALE: NTS



# Exhibit E – Sample Agreement

1 **AGREEMENT FOR CONSTRUCTION SERVICES**

2 <<Business Name>>

3 THIS AGREEMENT FOR CONSTRUCTION SERVICES (“Agreement”), made and entered into  
4 effective the \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the COUNTY OF IMPERIAL, a political  
5 subdivision of the State of California, through its Department of Public Works (“COUNTY”)  
6 and<<Business Name>>, a «Consultant\_Business\_Type» licensed to do business within the state of  
7 California (“CONTRACTOR”) (individually, “Party;” collectively, “Parties”) shall be as follows:

8 **RECITALS**

9 **WHEREAS**, COUNTY desires to retain a qualified individual, firm or business entity to provide  
10 professional construction services for <<Project Description>>(“Project”); and

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

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

14 **1. DEFINITIONS.**

15 **1.1.** “Invitation for Bid” shall mean the document entitled, “«Name\_of\_RFP»,” dated  
16 «Date\_of\_RFP», which includes all special notices, addendums, exhibits and Plans and  
17 Specifications as defined in Paragraph 1.3. The Invitation for Bid is attached hereto as  
18 **Exhibit “A”** and incorporated herein as though fully set forth.

19 **1.2.** “Proposal” shall mean CONTRACTOR’s document entitled “«Name\_of\_Proposal»,”  
20 dated «Date\_of\_Proposal» and submitted to the Clerk of the Board. The Proposal is  
21 attached hereto as **Exhibit “B”** and incorporated herein as though fully set forth.

22 **1.3.** “Plans and Specifications” shall mean the plans and specifications approved by the  
23 Director of Public Works, or his/her designee, for Project Number «Project\_Number».  
24 While COUNTY is responsible for the completeness and accuracy of the Plans and  
25 Specifications for the Project, CONTRACTOR is required to review the Plans and  
26 Specifications and promptly report any errors or omissions to COUNTY.

27 **2. CONTRACT COORDINATION.**

28 **2.1.** The Director of Public Works or his/her designee shall be the representative of COUNTY

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

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

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

10 **3.1.** CONTRACTOR shall furnish all work, labor, tools, equipment, materials, supervision,  
11 scheduling, coordination and contract administration necessary to construct and complete  
12 the Project in a good, expeditious, workman-like and substantial manner under the terms of  
13 and in full and complete compliance with this Agreement ("Work").

14 **3.2.** CONTRACTOR shall comply with and perform work consistent with all terms,  
15 conditions and requirements of the Plans, Specifications, the Invitation for Bids and this  
16 Agreement.

17 **3.3.** All described work shall be constructed, installed, placed and performed in conformance  
18 with the Plans and Specifications and all Special Provisions contained therein and as directed  
19 by COUNTY's engineer.

20 **3.4.** In the event of a conflict among this Agreement, the Invitation for Bid and the Proposal, the  
21 Invitation for Bid shall take precedence over the Proposal and this Agreement shall take  
22 precedence over both.

23 **3.5.** CONTRACTOR shall perform such other tasks as necessary and proper for the full  
24 performance of the obligations assumed by CONTRACTOR hereunder; including but not  
25 limited to any additional work or change orders agreed upon pursuant to written  
26 authorization as described in Section 5. Proposed additional work or change order requests,  
27 when applicable, will be attached and incorporated herein under **Exhibit "B"** (as "B-1," "B-  
28 2," etc.).

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

2 **4.1. Four Feet (4') Below the Surface.** In the event the Project involves digging trenches or  
3 other excavations that extend deeper than four feet (4') below the surface,  
4 CONTRACTOR shall:

5 **4.1.1.** Promptly, and before the following conditions are disturbed, notify COUNTY, in  
6 writing, of any:

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

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

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

17 **4.1.2.** In response to any written notice generated pursuant to Subparagraph 4.1.1,  
18 COUNTY shall promptly investigate the conditions, and if it finds that the  
19 conditions do materially so differ, or do involve hazardous waste, and cause a  
20 decrease or increase in CONTRACTOR's cost of, or the time required for,  
21 performance of any part of the Work, COUNTY shall issue a change order under  
22 the procedures described in this Agreement.

23 **4.1.3.** In the event that a dispute arises between COUNTY and CONTRACTOR whether  
24 the conditions materially differ, or involve hazardous waste, or cause a decrease  
25 or increase in CONTRACTOR's cost of, or time required for, performance of any  
26 part of the Work, CONTRACTOR shall not be excused from any scheduled  
27 completion date provided for by this Agreement, but shall proceed with all Work  
28 to be performed under this Agreement. CONTRACTOR shall retain any and all

1 rights provided either by contract or by law which pertain to the resolution of  
2 disputes and protests between the Parties.

3 **4.2. Trenching Requirements – Project in Excess of Twenty-Five Thousand Dollars (\$25,000)**  
4 **and Five Feet (5’) Below the Surface.** For projects involving both an estimated expenditure  
5 in excess of twenty-five thousand dollars (\$25,000) and the excavation of any trench five  
6 feet (5’) or more in depth, CONTRACTOR shall submit a detailed plan showing the  
7 design of shoring, bracing, sloping or other provisions to be made for worker protection  
8 from the hazard of caving ground during the excavation of such trench. The plan must  
9 be accepted by COUNTY (or by a registered civil or structural engineer, employed by  
10 COUNTY, to whom authority to accept has been delegated) in advance of excavation. If  
11 such plan varies from the shoring system standards, the plan shall be prepared by a  
12 registered civil or structural engineer. Nothing in this Paragraph shall allow  
13 CONTRACTOR to use a shoring, sloping, or protective system less effective than that  
14 required by California Construction Safety Orders. Further, nothing in this Paragraph  
15 shall be construed to impose tort liability on COUNTY or any of its employees.

16 **4.3. Utilities Relocation.** In the event that CONTRACTOR, in the scope of work, encounters  
17 utilities not shown on COUNTY’S plans, COUNTY shall compensate CONTRACTOR  
18 for utilities relocation work. COUNTY shall also waive liquidated damages for any delay  
19 that occurs as a result of said encounter and/or relocation of utilities.

20 **5. CHANGE ORDERS.**

21 **5.1. Change Orders.** CONTRACTOR shall make no changes to the Work to be performed  
22 pursuant to this Agreement, including but not limited to additions, deletions, modifications  
23 or substitutions, nor shall CONTRACTOR perform any extra work (collectively, “Change  
24 Order Work”) without the prior written consent of COUNTY. If CONTRACTOR  
25 encounters conditions it considers different from those described in **Exhibit “A”** to this  
26 Agreement, CONTRACTOR may request a change order in conformance with COUNTY’S  
27 standard procedure (“Change Order”). If COUNTY approves the request, CONTRACTOR  
28 will execute a Change Order and CONTRACTOR’S execution of the Change Order shall

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

6 **5.1.1.** Any and all supporting documents and drawings depicting the source and location  
7 of the desired change, and explain in detail the field conditions and reasons for the  
8 requested change;

9 **5.1.2.** Any change or adjustment to the compensation set forth in this Agreement as a result  
10 of changes in the Work based on a lump sum or time and material basis, as may be  
11 directed by COUNTY; and

12 **5.1.3.** Any request for adjustments to time for completion of the Project.

13 **5.2.** Payment for Change Order Work. CONTRACTOR shall not be entitled to receive any  
14 compensation for work, labor, materials or changes of any kind, regardless of whether  
15 ordered by COUNTY or any of its representatives, unless a Change Order has been  
16 submitted in writing and approved prior to the commencement of any Change Order Work  
17 as described above. If the changes are required by any inspecting governmental agencies or  
18 utility companies, or are otherwise required to comply with any codes, laws, rules or  
19 regulations, including those set forth in this Agreement, then CONTRACTOR shall not be  
20 entitled to any increases in the compensation set forth in this Agreement or other  
21 compensation as a result of the changes.

22 **5.3.** Disputed Change Order Work. Any dispute concerning the performance of such Change  
23 Order Work or the amount of compensation to be paid to CONTRACTOR by COUNTY  
24 shall not affect CONTRACTOR's obligation to perform such Change Order Work.  
25 CONTRACTOR agrees that it shall timely complete all Change Order Work even if there  
26 shall be a dispute between CONTRACTOR and COUNTY over the amount or scope of the  
27 Change Order Work. CONTRACTOR shall have the right to be compensated for any  
28 undisputed Change Order Work amounts as determined to be undisputed in COUNTY's

1 sole discretion.

2 **5.4.** Authorized Representative. No Change Order shall be valid or binding against COUNTY  
3 unless such Change Order has been executed by COUNTY's designated representative, who  
4 is the Director of Public Works. COUNTY shall notify CONTRACTOR in writing if the  
5 designated representative is changed.

6 **5.5.** Limits. When applicable, the authority to execute a Change Order on this Project shall not  
7 exceed the amount allowed by law pursuant to Public Contract Code sections 20137-20142  
8 et seq. Where Change Orders are in an amount between ten percent (10%) and twenty-five  
9 percent (25%) of the amount set forth in this Agreement and based on a need for additional  
10 quantities due to an increase in the unit quantities required to complete the project in excess  
11 of the COUNTY's Engineer's estimate of unit quantities as set forth in the Invitation to Bid,  
12 CONTRACTOR shall be paid pursuant to Public Contract Code sections 20143 and 20139  
13 and section 4 of the Standard Specifications, State of California, Business, Transportation  
14 and Housing Agency, May 2006 Issued by the Department of Transportation ("Caltrans  
15 Standard Specifications") referred to in **Exhibit "A"** and incorporated herein by reference.

16 **6. REPRESENTATIONS BY CONTRACTOR.**

17 **6.1.** CONTRACTOR understands and agrees that COUNTY has limited knowledge in the  
18 construction specified in the description of work. CONTRACTOR has represented itself to  
19 be expert in these fields and understands that COUNTY is relying upon such representation.

20 **6.2.** CONTRACTOR represents and warrants that it is a lawful entity possessing all required  
21 licenses and authorities to do business in the State of California and perform all aspects  
22 of this Agreement.

23 **6.3.** CONTRACTOR shall not commence any work under this Agreement or provide any  
24 other services, or materials, in connection therewith until CONTRACTOR has received  
25 written authorization from the Director of Public Works, or his/her designee ("Notice to  
26 Proceed") to do so.

27 **6.4.** CONTRACTOR represents and warrants that the people executing this Agreement on  
28 behalf of CONTRACTOR have the authority of CONTRACTOR to sign this Agreement

1 and bind CONTRACTOR to the performance of all duties and obligations assumed by  
2 CONTRACTOR herein.

3 **6.5.** CONTRACTOR represents and warrants that any employee, contractor, subcontractor and  
4 agent who will be performing any of the duties and obligations of CONTRACTOR herein  
5 possess all required licenses and authorities, as well as the experience and training, to  
6 perform such tasks.

7 **6.6.** CONTRACTOR represents and warrants that the allegations contained in its Proposal are  
8 true and correct.

9 **6.7.** CONTRACTOR understands that COUNTY considers the representations made herein  
10 to be material and would not enter into this Agreement with CONTRACTOR if such  
11 representations were not made.

12 **6.8.** Retention and Access of Books and Records. CONTRACTOR represents and warrants  
13 that it shall maintain books, records, documents, reports and other materials developed  
14 under this Agreement as follows:

15 **6.8.1.** CONTRACTOR shall hold and possess as the property of COUNTY all papers,  
16 books, files, correspondence and other records of all kinds which at any time shall  
17 come into its possession or under its control relating only to services performed  
18 by CONTRACTOR under this Agreement for a minimum period of five (5) years,  
19 or for any longer period required by law, from the date said papers came into the  
20 possession of CONTRACTOR pursuant to this Agreement.

21 **6.8.2.** Any records or documents required to be maintained by CONTRACTOR  
22 pursuant to this Agreement shall be made available to COUNTY for inspection or  
23 audit, at any time during CONTRACTOR's regular business hours provided  
24 COUNTY provides CONTRACTOR with seven (7) days advanced written or oral  
25 notice. Copies of such documents shall, at no cost to COUNTY, be provided to  
26 COUNTY for inspection at CONTRACTOR's address indicated for receipt of  
27 notices under this Agreement.

28 **6.8.3.** CONTRACTOR shall surrender all papers maintained by CONTRACTOR



1                   pursuant to Subparagraph 6.8.1 of this Agreement within thirty (30) days of  
2                   termination of this Agreement.

3                   **6.8.4.** CONTRACTOR represents and warrants that it has not been engaged by, nor will  
4                   it be engaged by and owes no duty of performance to any other person or entity  
5                   that would constitute a conflict. For breach or violation of this warranty,  
6                   COUNTY shall amongst other remedies at law, have the right to terminate this  
7                   Agreement without liability, or at its sole discretion, to deduct from the  
8                   Agreement price or consideration, or otherwise recover the full amount of such  
9                   fee, commission, percentage brokerage fee, gift or contingent fee paid or received  
10                  from another entity or person.

11                  **6.9.** CONTRACTOR shall perform pursuant to this Agreement in accordance with and in full  
12                  compliance with all applicable Federal, State and local statues, rules, regulations and  
13                  policies and procedures, regardless of whether they are expressly set forth in this  
14                  Agreement. It is understood that in the event COUNTY is investigated or audited by any  
15                  State or Federal governmental agency, or any other recognized investigative/auditing  
16                  entity, CONTRACTOR shall fully cooperate with such agencies' reasonable and lawful  
17                  request for information.

18 **7.       TERM OF AGREEMENT.**

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

22 **8.       COMPENSATION.**

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

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

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

3 **9.1. Retention.**

4 **9.1.1.** In accordance with Cal. Pub. Contract Code §§ 7201 and 9203, COUNTY shall  
5 generally retain five percent (5%) of the total compensation payable under this  
6 Agreement until the Work to be performed has been completed in accordance with  
7 this Agreement, as determined by COUNTY, and payment in full of all of  
8 CONTRACTOR's subcontractors has been certified.

9 **9.1.2.** The 5% retention amount may be exceeded if the COUNTY's Board of Supervisors  
10 has approved a finding, during a properly noticed and normally scheduled public  
11 hearing conducted either prior to or concurrent with authorizing this Project to go  
12 out to bid, that the Project is substantially complex and therefore requires a higher  
13 retention amount than 5%. Should the retention amount exceed 5% for this Project,  
14 then the actual retention amount will be listed in the Plans and Specifications, along  
15 with the findings justifying the increased retention amount.

16 **9.2. Substitution of Retention.**

17 **9.2.1.** CONTRACTOR may elect to substitute securities for any retention of funds by  
18 COUNTY to ensure performance under this Agreement. At the request and  
19 expense of CONTRACTOR, securities equivalent to the amount retained shall be  
20 deposited with the COUNTY, or with a state or federally chartered bank in this state  
21 as the escrow agent, who shall then return the securities to CONTRACTOR once  
22 the Work to be performed has been completed in accordance with this Agreement,  
23 as determined by COUNTY, and payment in full of all of CONTRACTOR's  
24 subcontractors has been certified.

25 **9.2.2.** Alternatively, CONTRACTOR may request and COUNTY shall make payment of  
26 retentions earned directly to the escrow agent at the expense of CONTRACTOR.  
27 CONTRACTOR, at its sole cost and expense, may direct the investment of the  
28 payments into securities, and CONTRACTOR shall receive the interest earned on

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

8 **9.2.3.** Securities eligible for investment under this Section shall include those listed in Cal.  
9 Gov. Code § 16430, bank or savings and loan certificates of deposit, interest-bearing  
10 demand deposit accounts, standby letters of credit, or any other security mutually  
11 agreed to by COUNTY and CONTRACTOR. CONTRACTOR shall be the  
12 beneficial owner of any securities substituted for retained funds and shall receive  
13 any interest thereon.

14 **9.2.4.** Substitution of securities shall be conducted through an Escrow Agreement  
15 substantially similar to that found in Cal. Pub. Contract Code § 22300(f).

16 **9.2.5.** Notwithstanding any other provision in this Section, substitution of securities is  
17 prohibited where funding for the Project, in whole or in part, will be provided by  
18 the Farmers Home Administration of the United States Department of Agriculture  
19 pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921  
20 et seq.), or where otherwise disallowed by federal law.

21 **10. METHOD OF PAYMENT.**

22 **10.1.** CONTRACTOR shall at any time prior to the fifteenth (15<sup>th</sup>) day of any month, submit  
23 to COUNTY's Director of Public Works or his/her designee, a complete and accurate  
24 written claim for compensation for services performed. The claim shall be in a format  
25 approved by COUNTY. COUNTY shall make no payment prior to the claims being  
26 approved in writing by the Director of Public Works or his/her designee.

27 **10.2.** After determining that the claim is a proper payment request, the Director of Public  
28 Works, or his/her designee, shall submit to COUNTY's Auditor/Controller undisputed

1 and properly submitted claims approved for payment within ten (10) days following the  
2 date the claim was submitted to his/her Department.

3 **10.3.** CONTRACTOR may expect to receive payment within a reasonable time thereafter and  
4 in any event in the normal course of business within thirty (30) days after the undisputed  
5 and properly submitted claim is submitted.

6 **10.4.** Any claim determined to be an improper payment request shall be returned to  
7 CONTRACTOR as soon as practicable, but not later than seven (7) days, after receipt with  
8 a written explanation as to why the claim is an improper request for payment.

9 **10.5.** In order for prompt payment to be made by COUNTY pursuant to Public Contract Code  
10 §20104.50, CONTRACTOR must properly fill out all written claims for compensation for  
11 services performed.

12 **10.6.** COUNTY shall pay interest at the legal rate set forth in Code of Civil Procedure §685.010  
13 in the event payment is not made within thirty (30) days of an undisputed properly submitted  
14 request.

15 **11. INDEMNIFICATION.**

16 **11.1.** CONTRACTOR agrees to the fullest extent permitted by law to indemnify, defend,  
17 protect and hold COUNTY and its representatives, officers, directors, designees,  
18 employees, agents, successors and assigns harmless from any and all claims, expenses,  
19 liabilities, causes of action, demands, losses, penalties, attorneys' fees and costs, in law  
20 or equity, of every kind and nature whatsoever arising out of or in connection with  
21 CONTRACTOR's negligent acts and omissions or willful misconduct under this  
22 Agreement ("Claims"), whether or not arising from the passive negligence of COUNTY,  
23 but does not include Claims that are finally determined to be the result of the sole  
24 negligence or willful misconduct of COUNTY.

25 **11.2.** CONTRACTOR agrees to defend with counsel acceptable to COUNTY, indemnify and  
26 hold COUNTY harmless from all Claims, including but not limited to:

27 **11.2.1.** Personal injury, including but not limited to bodily injury, emotional injury,  
28 sickness or disease or death to persons including but not limited to COUNTY's

1 representatives, officers, directors, designees, employees, agents, successors and  
2 assigns, subcontractors and other third parties and/or damage to property of  
3 anyone (including loss of use thereof) arising out of CONTRACTOR's negligent  
4 performance of, or willful misconduct surrounding, any of the terms contained in  
5 this Agreement, or anyone directly or indirectly employed by CONTRACTOR or  
6 anyone for whose acts CONTRACTOR may be liable;

7 **11.2.2.** Liability arising from injuries to CONTRACTOR and/or any of  
8 CONTRACTOR's employees or agents arising out of CONTRACTOR's  
9 negligent performance of, or willful misconduct surrounding, any of the terms  
10 contained in this Agreement, or anyone directly or indirectly employed by  
11 CONTRACTOR or anyone for whose acts CONTRACTOR may be liable;

12 **11.2.3.** Penalties imposed upon account of the violation of any law, order, citation, rule,  
13 regulation, standard, ordinance or statute caused by the negligent action or  
14 inaction, or willful misconduct of CONTRACTOR or anyone directly or  
15 indirectly employed by CONTRACTOR or anyone for whose acts  
16 CONTRACTOR may be liable, including but not limited to:

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

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

27 **11.2.4.** Infringement of any patent rights which may be brought against COUNTY arising  
28 out of CONTRACTOR's work;



1 make any claim against any COUNTY fringe benefit program, including, but not limited  
2 to, COUNTY's pension plan, medical and health care plan, dental plan, life insurance  
3 plan, or any other type of benefit program, plan, or coverage designated for, provided to,  
4 or offered to COUNTY's employee.

5 **12.7.** COUNTY shall not withhold or pay, on behalf of CONTRACTOR, any Federal, State,  
6 or local tax, including, but not limited to, any personal income tax, owed by  
7 CONTRACTOR.

8 **12.8.** CONTRACTOR is, and at all times during the term of this Agreement shall represent and  
9 conduct itself as, an independent contractor, not an employee of COUNTY.

10 **12.9.** CONTRACTOR shall not have the authority, express or implied, to act on behalf of, bind  
11 or obligate COUNTY in any way without the written consent of COUNTY.

12 **13. INSURANCE.**

13 **13.1.** CONTRACTOR hereby agrees at its own cost and expense to procure and maintain,  
14 during the entire term of this Agreement and any extended term therefore, insurance in a  
15 sum acceptable to COUNTY and adequate to cover potential liabilities arising in  
16 connection with the performance of this Agreement and in any event not less than the  
17 minimum limit set forth in the "Minimum Insurance Amounts" attachment to the Plans  
18 and Specifications which are incorporated as if set forth fully herein.

19 **13.2. Special Insurance Requirements.** All insurance required shall:

20 **13.2.1.** Be procured from California admitted insurers (licensed to do business in  
21 California) with a current rating by Best's Key Rating Guide, acceptable to  
22 COUNTY. A rating of at least A-VII shall be acceptable to COUNTY; lesser  
23 ratings must be approved in writing by COUNTY.

24 **13.2.2.** Be primary coverage as respects COUNTY and any insurance or self-insurance  
25 maintained by COUNTY shall be in excess of CONTRACTOR's insurance  
26 coverage and shall not contribute to it.

27 **13.2.3.** Name COUNTY as an additional insured on all policies, except Workers'  
28 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 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 date, shall be covered by Workers’ Compensation pursuant to statutory requirements

1 prior to beginning work on the Project.

2 **14.4.** If CONTRACTOR has no employees, initial here: \_\_\_\_\_.

3 **15. WARRANTY.**

4 **15.1. One Year Warranty.** CONTRACTOR agrees to provide a one-year warranty for all of its  
5 work and component parts and guarantees that all work shall be performed in a  
6 professional and workman-like manner and be free from defects. CONTRACTOR  
7 guarantees to timely correct all work performed by it under this Agreement which  
8 COUNTY determines to be defective in design, material and/or workmanship within a  
9 period of one (1) year from the date of the completion of the Work. The warranties set  
10 forth in this Agreement shall be in addition to, and not in lieu of, all other statutory and  
11 case law warranties and obligations of CONTRACTOR. CONTRACTOR expressly  
12 agrees that all warranties made by CONTRACTOR, all obligations under this Agreement  
13 and all remedies for breach of such warranties shall survive this Agreement in the event  
14 it is terminated or expires for any reason prior to the running of the full warranty periods  
15 listed above.

16 **15.2. Materials.** All materials furnished by CONTRACTOR shall be new, manufactured  
17 during the current year, of first quality and carrying full manufacturer's warranty.  
18 CONTRACTOR shall be responsible for any expiration of manufacturer or other  
19 warranties of material or equipment being supplied for this Agreement. CONTRACTOR  
20 guarantees that all warranties of material and equipment shall become effective when the  
21 project is accepted by COUNTY's Board of Supervisors, not at time of installation by  
22 CONTRACTOR.

23 **15.3. Manufacturers' Warranty Information.** CONTRACTOR agrees to promptly provide such  
24 information and maintenance recommendations to COUNTY at the inception of  
25 CONTRACTOR's work to the extent such information is reasonably available.

26 **16. DEFAULT AND REMEDIES.**

27 **16.1. Default.** In the event that (i) CONTRACTOR files a petition requesting relief under any  
28 bankruptcy act, or is adjudged as bankrupt, or makes a general assignment for the benefit

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

19 **16.1.1.** Without terminating this Agreement or the obligations of CONTRACTOR  
20 hereunder as to all of the Work required to be performed or furnished by  
21 CONTRACTOR pursuant to this Agreement, COUNTY may require  
22 CONTRACTOR, at CONTRACTOR's expense, to cure such default(s) as may  
23 exist in the performance of CONTRACTOR's obligations hereunder within forty-  
24 eight (48) hours after such default(s) has/have occurred including but not limited  
25 to repairing, replacing and correcting material or Work determined by COUNTY  
26 to be defective or not complying with the requirements of this Agreement. Should  
27 CONTRACTOR fail to timely repair, replace and/or correct non-complying or  
28 defective materials and workmanship or otherwise cure its default(s) hereunder,

1 and in the case of emergencies in which case COUNTY may act immediately if  
2 CONTRACTOR is not available or is not responding, and without further notice,  
3 COUNTY may make required repairs, replacements and other corrections or  
4 otherwise remedy the default by CONTRACTOR pursuant to the subparagraph  
5 below.

6 **16.1.2.** Without terminating this Agreement or the obligations of CONTRACTOR  
7 hereunder as to all of the Work required to be performed or furnished by  
8 CONTRACTOR pursuant to this Agreement, COUNTY may engage another  
9 contractor to perform such portion of CONTRACTOR's Work required pursuant  
10 to this Agreement or furnish any materials or other items required hereunder as  
11 COUNTY in its sole discretion may deem necessary to avoid delay in the progress  
12 of the Work, and in connection therewith, COUNTY may perform such Work or  
13 any portion thereof itself or have the same performed by others and COUNTY  
14 may procure all necessary materials, equipment or other items required for the  
15 continued progress of such Work. The costs incurred by COUNTY as a result of  
16 engaging another contractor shall be deducted from the compensation payable  
17 pursuant to this Agreement and if COUNTY's costs exceed or may reasonably be  
18 anticipated to exceed the balance of the compensation due to CONTRACTOR for  
19 such work, such excess, or anticipated excess, shall be immediately due and owing  
20 from CONTRACTOR to COUNTY and may be withheld from any funds due to  
21 CONTRACTOR pursuant to this Agreement or any other agreement.

22 **16.1.3.** COUNTY may terminate CONTRACTOR's right to perform upon written notice  
23 and COUNTY shall then have the option of completing the Work or any portion  
24 thereof by exercise of its interest under the performance bond issued in favor by  
25 CONTRACTOR, or having such Work in whole or in part be completed by others  
26 for CONTRACTOR's account. A calculation shall take place at the conclusion  
27 of the Project wherein to the degree the sum of COUNTY's costs and any amounts  
28 paid to complete the Project exceed the compensation payable pursuant to this

1 Agreement, then any such excess shall be immediately due and owing from  
2 CONTRACTOR to COUNTY.

3 **16.2. Damages.** CONTRACTOR shall be liable for all damages suffered by COUNTY by  
4 reason of CONTRACTOR's default in any provision of this Agreement and the exercise  
5 of COUNTY of its option to terminate this Agreement shall not release CONTRACTOR  
6 of such liability. CONTRACTOR shall have no right to receive any further payment after  
7 a default has occurred until such time as the Work to be performed by CONTRACTOR  
8 pursuant hereto has been completed and accepted by COUNTY and damages suffered by  
9 COUNTY, if any, ascertained. Damages shall include by way of illustration, but not of  
10 exclusion, COUNTY's costs of completing the Work which exceeds the compensation  
11 payable pursuant to this Agreement, other general, liquidated, special or consequential  
12 damages, attorney fees and costs.

13 **16.3. Actions After Default.** Should COUNTY exercise any of its options, remedies or rights  
14 granted pursuant to the terms of this Agreement in the event of a default by  
15 CONTRACTOR, COUNTY at its sole election may, but shall not be obligated to, use  
16 any materials, supplies, tools or equipment on the work site which belong to  
17 CONTRACTOR to complete the Work required to be completed by CONTRACTOR,  
18 whether such work is completed by COUNTY or by others, and CONTRACTOR agrees  
19 that it shall not remove such materials, supplies, tools and equipment from the work site  
20 unless directed in writing by COUNTY to do so.

21 **16.4. Limit on Force Majeure Damages.** CONTRACTOR shall not be responsible for repairing  
22 or restoring damage to work caused by an act of God in excess of five (5) percent of the  
23 contract amount, provided that the work damaged is built in accordance with accepted  
24 and applicable building standards and the plans and specifications of COUNTY. In the  
25 event of such damage, COUNTY may, at its option, elect to terminate this Agreement.  
26 For purposes of this Agreement, an "act of God" shall be defined as an earthquake in  
27 excess of 3.5 on the Richter Scale and a tidal wave.

28 **16.5. Resolution of Claims.** COUNTY and CONTRACTOR agree to follow and comply with

1 the mediation, arbitration, claim, civil action procedure and trial de novo provisions set  
2 forth in California Public Contracts Code §§ 9204 and 20104 – 20104.6.

3 **16.6. No Limitation of Rights.** The options and rights granted to COUNTY herein shall not be  
4 deemed as limitations upon the other rights and remedies of COUNTY in the event of a  
5 failure of performance or breach by CONTRACTOR, and COUNTY shall be entitled to  
6 exercise the rights and remedies hereinabove specified and all other rights and remedies  
7 which may be provided in this Agreement or by law or in equity, either cumulatively or  
8 consecutively, and in such order as COUNTY in its sole discretion shall determine.

9 **17. NON-DISCRIMINATION.**

10 **17.1.** During the performance of this Agreement, CONTRACTOR and its subcontractors shall  
11 not unlawfully discriminate, harass or allow harassment against any employee or  
12 applicant for employment because of sex, race, color, ancestry, religious creed, national  
13 origin, physical disability (including HIV and AIDS), mental disability, medical  
14 condition (cancer), age (over forty (40)), marital status and denial of family care leave.

15 **17.2.** CONTRACTOR and its subcontractors shall insure that the evaluation and treatment of  
16 their employees and applicants for employment are free from such discrimination and  
17 harassment.

18 **17.3.** CONTRACTOR and its subcontractors shall comply with the provisions of the Fair  
19 Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable  
20 regulations promulgated thereunder (California Code of Regulations, Title 2, Section  
21 7285 et seq.).

22 **17.4.** The applicable regulations of the Fair Employment and Housing Commission  
23 implementing Government Code §12990 (a-f), set forth in Chapter 5 of Division 4 of  
24 Title 2 of the California Code of Regulations, are incorporated into this Agreement by  
25 reference and made a part hereof as if set forth in full.

26 **17.5.** The applicable regulations of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.  
27 §794 (a)) are incorporated into this Agreement by reference and made a part hereof as if  
28 set forth in full.

1       **17.6.** CONTRACTOR and its subcontractors shall give written notice of their obligations under  
2           this clause to labor organizations with which they have a collective bargaining or other  
3           agreement.

4       **17.7.** CONTRACTOR shall include the nondiscrimination and compliance provisions of this  
5           clause in all subcontracts to perform Work under this Agreement.

6   **18.   DISADVANTAGED BUSINESS ENTITY COMPLIANCE.**

7       **18.1.** When applicable, CONTRACTOR and its subcontractors shall reference and abide by  
8           the guidance and Disadvantaged Business Enterprise (“DBE”) specifications contained  
9           in the California Department of Transportation’s Standard Specifications.

10      **18.2.** CONTRACTOR represents and warrants that is has fully read the applicable DBE  
11           requirements pertaining to this Project and has fully and accurately completed any and  
12           all required DBE forms.

13      **18.3.** CONTRACTOR represents and warrants that it will comply with all applicable DBE  
14           requirements for this Project.

15      **18.4.** CONTRACTOR shall comply with the applicable DBE provisions attached hereto as  
16           **Exhibit “D”** and incorporated by this reference as though fully set forth herein.

17      **18.5.** If any state or federal funds are withheld from COUNTY or not reimbursed to COUNTY  
18           due to CONTRACTOR’s failure to either comply with the DBE requirements set forth in  
19           the RFP and this Agreement, or to meet the mandatory DBE goals as determined by  
20           COUNTY, Caltrans, the Federal Highway Administration, and/or any other state or  
21           federal agency contributing funds to the Project, then CONTRACTOR shall fully  
22           reimburse COUNTY the amount of funding lost. COUNTY reserves the right to deduct  
23           any such loss in funding from the amount of compensation due to CONTRACTOR under  
24           this Agreement.

25      **18.6.** In addition to the above, CONTRACTOR’s failure to comply with DBE  
26           requirements/goals shall subject it to such sanctions as are permitted by law, which may  
27           include, but shall not be limited to the following:

28           **18.6.1.** Termination of this Agreement;

1           **18.6.2.** Withholding monthly progress payments;

2           **18.6.3.** Denial of payment for any portion of the Project that was committed at the time  
3                           of the execution of this Agreement to be performed by a DBE subcontractor, but  
4                           was completed by CONTRACTOR or a substitute non-DBE subcontractor;

5           **18.6.4.** Compensatory, special, incidental, liquidated and other damages; and/or

6           **18.6.5.** Designation of CONTRACTOR as “nonresponsible,” and disqualification from  
7                           bidding on future public works projects advertised by COUNTY.

8 **19.    PREVAILING WAGE.**

9           **19.1.** CONTRACTOR and its subcontractors shall pay all workers employed on the Project the  
10                   higher of either the rates determined by the Director of the California Department of  
11                   Industrial Relations (“DIR”) or, when applicable, the Davis-Bacon Federal wage rates as  
12                   supplemented by the Department of Labor regulations. The Davis-Bacon Federal wage  
13                   rates are attached to the RFP. Copies of the State prevailing rate of per diem wages are  
14                   on file with the Department of Industrial Relations, Division of Apprenticeship Standards,  
15                   445 Golden Gate Avenue, San Francisco, California, and at COUNTY’s Department of  
16                   Public Works, and are available to CONTRACTOR and any other interested party upon  
17                   request. CONTRACTOR shall post the prevailing rate of per diem wages to be posted at  
18                   the Project site.

19           **19.2.** CONTRACTOR is aware of Labor Code Sections 1720 et seq, and 1770 et seq., as well  
20                   as California Code of Regulations, Title 8 , Section 16000 et seq. (“Prevailing Wage  
21                   Law”), which require the payment of prevailing wage rates and the performance of other  
22                   requirements on certain “public works” projects, including work done for irrigation,  
23                   utility, reclamation, and improvement districts, and other districts of this type. The Work  
24                   on the Project involves “public works”, as defined by the Prevailing Wage Laws, and the  
25                   total compensation is \$1,000 (one thousand) dollars or more. Contractor therefore agrees  
26                   to fully comply with such Prevailing Wage Laws. To the extent required under the Civil  
27                   Code or any other provision of law, Contractor shall deliver bonds to secure the payment  
28                   of its workers and subcontractors, including the payment of wages to works performing



1 the work identified in Labor Code section 1720(a)(2).

2 **19.3.** CONTRACTOR is responsible for compliance with the provisions herein.

3 **19.4.** Mandatory Registration with the Department of Industrial Relations – NEW  
4 REQUIREMENTS PURSUANT TO SB 854.

5 **19.4.1.** CONTRACTOR and its subcontractors shall register with the DIR and pay all  
6 applicable fees as set forth in Labor Code section 1725.5.

7 **19.4.2.** CONTRACTOR and its subcontractors acknowledge that they shall not be listed  
8 on any bid proposal for a public works project (submitted on or after March 1,  
9 2015) unless registered with the DIR pursuant to Labor Code section 1725.5. The  
10 requirements of this section shall apply unless one of the limited exceptions  
11 provided under Labor Code Section 1771.1(a) applies.

12 **19.4.3.** CONTRACTOR and its subcontractors acknowledge that they shall not be  
13 awarded any contract for public work on a public works project (awarded on or  
14 after April 1, 2015) unless registered with the DIR pursuant to Labor Code section  
15 1725.5.

16 **19.4.4.** The Project described herein is subject to compliance monitoring and enforcement  
17 with the DIR.

18 **19.4.5.** For further information concerning compliance with SB 854, please visit:  
19 <http://www.dir.ca.gov/Public-Works/SB854.html>.

20 **19.5.** Cognizance of Violations by County.

21 **19.5.1.** CONTRACTOR understands and agrees that COUNTY shall take cognizance of  
22 violations of Chapter 1 of Part 7 of Division 2 of the California Labor Code  
23 committed in the course of the execution of this Agreement, and shall promptly  
24 report any suspected violations to the Labor Commissioner.

25 **19.5.2.** If CONTRACTOR determines as a result of its own investigation that there has  
26 been a violation of Chapter 1 of Part 7 of Division 2 of the California Labor Code  
27 and withholds payment to CONTRACTOR, the procedures in California Labor  
28 Code §1771.6 shall be followed.

1           **19.5.3.** CONTRACTOR may bring an action in a court of competent jurisdiction to  
2           recover from COUNTY the difference between the wages actually paid to an  
3           employee and the wages that were required to be paid to an employee pursuant to  
4           Chapter 1 of Part 7 of Division 2 of the California Labor Code, any penalties  
5           required to be paid pursuant to Chapter 1 of Part 7 of Division 2 of the California  
6           Labor Code, and costs and attorney’s fees related to the action, if either of the  
7           following is true:

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

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

17          **19.6. Prevailing Wage Rates and Payroll Records.**

18          **19.6.1.** CONTRACTOR agrees to comply with §§1775 and 1776 of the California Labor  
19          Code relating to the payment of prevailing wage and the maintenance of certified  
20          payroll records and to make the certified payroll records available for inspection  
21          at all reasonable hours at CONTRACTOR’s principal office. The responsibility  
22          for compliance with these provisions is fixed with CONTRACTOR.  
23          CONTRACTOR understands and agrees that it shall, as a penalty to COUNTY,  
24          forfeit specific monetary fines for each worker paid less than the prevailing wage  
25          rates as determined by the Labor Commissioner for the work or craft in which the  
26          worker is employed for any Work done pursuant to this Agreement.

27          **19.6.2. *Prevailing Wage Compliance For those Projects subject to DIR Monitoring and***  
28          *Enforcement.* CONTRACTOR has reviewed and agrees to comply with any

1 applicable provisions for those Projects subject to Department of Industrial  
2 Relations (DIR) Monitoring and Enforcement of prevailing wages. COUNTY  
3 hereby notifies CONTRACTOR that CONTRACTOR is responsible for  
4 complying with the requirements of Senate Bill 854 (SB854) regarding certified  
5 payroll record reporting. Further information concerning the requirements of  
6 SB854 is available on the DIR website located at: [http://www.dir.ca.gov/Public-  
7 Works/PublicWorksEnforcement.html](http://www.dir.ca.gov/Public-Works/PublicWorksEnforcement.html).

8 **19.6.3.** CONTRACTOR shall be liable for penalties pursuant to this section when a  
9 subcontractor on the Project fails to pay its workers the general prevailing rate of  
10 per diem wages and any of the following conditions are met:

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

1 on the Project, CONTRACTOR shall obtain an affidavit signed under  
2 penalty of perjury from the subcontractor that the subcontractor has paid  
3 the specified general prevailing rate of per diem wages to his or her  
4 employees on the Project and any amounts due pursuant to California  
5 Labor Code §1813.

6 **19.7. Work Day and Work Week Requirements.** CONTRACTOR agrees to comply with  
7 §§1810 through 1815 of the California Labor Code and, when applicable, sections 103  
8 and 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§3700 et seq.,  
9 as supplemented by the Department of Labor regulations, which provide that  
10 CONTRACTOR's workers and its subcontractor's workers may not be required or  
11 permitted to work more than eight (8) hours in any one (1) calendar day and forty (40)  
12 hours in any one (1) calendar week. Further, work performed by employees of  
13 CONTRACTOR or its subcontractor in excess of eight (8) hours per day, and forty (40)  
14 hours during any one (1) week, shall be compensated for all hours worked in excess of  
15 eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.  
16 The responsibility for compliance with these provisions is fixed with CONTRACTOR.  
17 CONTRACTOR understands and agrees that it shall, as a penalty to COUNTY, forfeit  
18 specific monetary fines to COUNTY should CONTRACTOR or its subcontractors fail to  
19 comply with the provisions contained within this Paragraph.

20 **19.8. Apprenticeship Requirements.**

21 **19.8.1.** CONTRACTOR agrees to comply with §§1777.5, 1777.6 and 1777.7 of the  
22 California Labor Code relating to the employment of apprentices and to provide  
23 COUNTY with copies of any contract award information and verified statements  
24 of the journeyman and apprentice hours performed pursuant to this Agreement as  
25 required by §1777.5(e). The responsibility for compliance with these provisions  
26 is fixed with CONTRACTOR for all apprenticeable occupations, where  
27 journeymen in the craft are employed on the public work, in a ratio of not less  
28 than one (1) apprentice for each five (5) journeymen (unless an exemption is

1 granted in accordance with §1777.5) and CONTRACTOR and its subcontractors  
2 shall not discriminate among otherwise qualified employees as indentured  
3 apprentices on any public work solely on the ground of race, religious creed, color,  
4 national origin, ancestry, sex, or age, except as provided in California Labor Code  
5 §3077. Only apprentices, as defined in California Labor Code §3077, who are in  
6 training under apprenticeship standards and who have signed written apprentice  
7 agreements will be employed on public works in apprenticeable occupations.  
8 This section shall not be enforced if the not-to-exceed amount of this Agreement  
9 set forth and/or incorporated in the “COMPENSATION” Section is less than  
10 thirty thousand dollars (\$30,000).

11 **19.8.2.** If the Project falls within the jurisdiction of California Labor Code §1777.5,  
12 COUNTY shall, within five (5) days of the award, send a copy of the award to the  
13 Division of Apprenticeship Standards. In addition, COUNTY shall notify the  
14 Division of Apprenticeship Standards of a finding of any discrepancy regarding  
15 the ratio of apprentices to journeymen within five (5) days of the finding.

16 **19.9. Labor Standards Compliance Requirements.**

17 **19.9.1.** It is CONTRACTOR’s responsibility to provide all labor compliance  
18 documentation from its subcontractors completely and accurately in a timely  
19 manner. CONTRACTOR is responsible to review promptly and then forward on  
20 all required documentation to COUNTY per the time schedules in the Labor  
21 Compliance Handout. Included with the Labor Compliance Handout, COUNTY  
22 will provide training, documentation requirements, forms, etc., at the  
23 preconstruction conference or at a time designated by COUNTY.

24 **19.9.2.** In the event, during the review process of labor compliance documentation from  
25 COUNTY’s labor compliance monitor, inaccurate, missing or incomplete  
26 information was provided, the labor compliance monitor will request from  
27 CONTRACTOR the items, revisions and documentation needed. The cost of this  
28 additional labor compliance enforcement shall be borne by CONTRACTOR.

1 **20. INELIGIBILITY.**

2 **20.1.** CONTRACTOR represents and warrants that it and its subcontractors are not ineligible  
3 to work for COUNTY due to violations of Labor Code §§1777.1 and 1777.7.

4 **20.2.** If CONTRACTOR is deemed ineligible to perform work on public works projects  
5 pursuant to Labor Code Sections 1777.1 or 1777.7, then CONTRACTOR shall be  
6 prohibited from bidding on, being awarded an agreement for, or performing work as a  
7 subcontractor on this Project, or any other public works project within the state of  
8 California.

9 **21. SIGNAGE REQUIREMENTS.**

10 **21.1. Project Identity Signage.** CONTRACTOR is required to provide and install the required  
11 project identity signage as detailed in the Plans and Specifications, in the size and at the  
12 location indicated by the Director of Public Works or his/her designee, and to maintain  
13 the signage in good condition for the duration of the Project. The signage may not be  
14 removed until the Notice of Completion is recorded or by written direction of the Director  
15 of Public Works or his/her designee.

16 **21.2. Required Employee Signage and Posters.** CONTRACTOR is required to provide and  
17 install the Federal and State required employee posters and the required material  
18 pertaining to the required labor standards provisions are posted (including, but not limited  
19 to, WH-1321, OSHA 3165 and OFCCP-English, EFCCP-Spanish) at the worksite in a  
20 prominent and accessible place.

21 **21.3. Section 3 Compliant Signage.** If required by COUNTY, CONTRACTOR is directed to  
22 provide and install the “Offer for Employment” signage as detailed in the Plans and  
23 Specifications in the size and at the location indicated by the Director of Public Works or  
24 his/her designee and to maintain the signage in good condition for the duration of the  
25 Project. The signage may not be removed until the Notice of Completion is recorded or  
26 by written direction of the Director of Public Works or his/her designee.

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

28 **22.1.** CONTRACTOR agrees that it presently has no interest and shall not acquire any interest,

1 direct or indirect, which could conflict in any manner or degree with the performance of  
2 services required to be performed under this Agreement. CONTRACTOR further agrees  
3 that in the performance of this Agreement, no person having any such interest shall be  
4 employed.

5 **22.2.** CONTRACTOR agrees to designate such person or persons who have responsibility for  
6 carrying out the services under this Agreement and that such person or persons as may be  
7 designated shall take any and all actions necessary to comply with COUNTY's Conflict  
8 of Interest Code adopted pursuant to California Government Code §81000 to the extent  
9 required thereunder.

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

19 **22.4.** In the event this Agreement is terminated as provided herein, COUNTY shall be entitled  
20 to:

21 **22.4.1.** Pursue the same remedies against CONTRACTOR as it could pursue in the event  
22 of a breach of the Agreement by CONTRACTOR; and

23 **22.4.2.** As a penalty in addition to any other damages to which it may be entitled by law,  
24 to exemplary damages in an amount (as determined by COUNTY) which shall be  
25 not less than three (3) nor more than ten (10) times the costs incurred by  
26 CONTRACTOR in providing any such gratuities to any such officer, employee  
27 or agent.

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

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

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

7           When applicable, CONTRACTOR agrees to comply with the Copeland Act  
8 (*18 USC §874* and *40 USC §276c; 29 C.F.R. Part 3*) which precludes CONTRACTOR and its  
9 subcontractors from in any way inducing an employee to give up any part of the compensation to which  
10 he or she is entitled under his or her contract of employment. CONTRACTOR and its subcontractors  
11 shall submit a weekly statement of the wages paid to each employee performing on covered work during  
12 the preceding payroll period. CONTRACTOR understands and agrees that should CONTRACTOR its  
13 subcontractors induce an employee working on a covered contract to give up any part of the  
14 compensation to which he or she is entitled, the inducing party may be subject to a five thousand dollar  
15 (\$5,000) fine, or imprisonment for up to five (5) years, or both. CONTRACTOR also understands and  
16 agrees that willful falsification of the statement of compliance may subject the employer to civil or  
17 criminal prosecution and may be cause for contract termination or debarment. The responsibility for  
18 compliance with these provisions is fixed with CONTRACTOR.

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

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

24 **26. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER**  
25 **RESPONSIBILITY MATTERS.**

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



1 **27. FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT**  
2 **SPECIFICATIONS.**

3 When applicable, CONTRACTOR agrees to incorporate the notice set forth in paragraph (d) of  
4 41 C.F.R. 60-4.2 relating to the “Equal Opportunity Clause” and the “Standard Federal Equal  
5 Employment Specifications.” The responsibility for compliance with this provision is fixed with  
6 CONTRACTOR.

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

8 When applicable, CONTRACTOR agrees to comply with all applicable standards, orders or  
9 regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), the Federal Water Pollution  
10 Control Act as amended (33 U.S.C. 1251 et seq.), Presidential Executive Order 11738 and  
11 Environmental Protection Agency regulations set forth at 40 C.F.R. Part 15. CONTRACTOR  
12 understands and agrees that violations shall be reported to the Federal awarding agency and the Regional  
13 Office of the Environmental Protection Agency. The responsibility for compliance with these provisions  
14 is fixed with CONTRACTOR.

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

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

24 **30. FEDERAL EMPLOYMENT ELIGIBILITY VERIFICATION.**

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

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

2 **31.1.** During the performance of this Agreement, CONTRACTOR assures that no otherwise  
3 qualified person shall be excluded from participation or employment, denied program  
4 benefits or be subjected to discrimination based on race, color, national origin, gender,  
5 age or handicap, under any program or activity funded by this Agreement, as required by  
6 Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community  
7 Development Act of 1974, as amended, and the Age Discrimination Act of 1975, and all  
8 implementing regulations. The responsibility for compliance with these provisions is  
9 fixed with CONTRACTOR.

10 **31.2.** CONTRACTOR and its subcontractors shall not discriminate on the basis of race, color,  
11 national origin, or sex in the performance of this Agreement. CONTRACTOR shall carry  
12 out the applicable requirements of 49 C.F.R. Chapter 26 in the award and administration  
13 of Department of Transportation assisted contracts. Failure by CONTRACTOR to carry  
14 out these requirements is a material breach of this Agreement, which may result in the  
15 termination of this Agreement, or such other remedy as COUNTY deems appropriate.  
16 CONTRACTOR shall include the nondiscrimination and compliance provisions of this  
17 Paragraph in all subcontracts to perform Work under this Agreement.

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

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

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



1 regulations, and orders of the Secretary of Labor, or pursuant thereto, and  
2 will permit access to his books, records, and accounts by the contracting  
3 agency and the Secretary of Labor for purposes of investigation to ascertain  
4 compliance with such rules, regulations, and orders.

5 (6) *In the event of the contractor's non-compliance with the nondiscrimination*  
6 *clauses of this contract or with any of such rules, regulations, or orders,*  
7 *this contract may be canceled, terminated or suspended in whole or in part*  
8 *and the contractor may be declared ineligible for further Government*  
9 *contracts in accordance with procedures authorized in Executive Order*  
10 *11246 of September 24, 1965, and such other sanctions may be imposed*  
11 *and remedies invoked as provided in Executive Order 11246 of September*  
12 *24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as*  
13 *otherwise provided by law.*

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

26 **32.2.** CONTRACTOR further agrees that it will be bound by the above equal opportunity  
27 clause with respect to its own employment practices when it participates in federally-  
28 assisted construction work; provided that if CONTRACTOR so participating is a State or

1 local government, the above equal opportunity clause is not applicable to any agency,  
2 instrumentality, or subdivision of such government which does not participate in work on  
3 or under the Agreement.

4 **32.3.** CONTRACTOR agrees that it will assist and cooperate actively with the administering  
5 agency and the Secretary of Labor in obtaining the compliance of Contractors and  
6 subcontractors with the equal opportunity clause and the rules, regulations, and relevant  
7 orders of the Secretary of Labor, that it will furnish the Department and HUD and the  
8 Secretary of Labor such information as they may require for the supervision of such  
9 compliance, and that it will otherwise assist the administering agency in the discharge of  
10 the agency's primary responsibility for securing compliance.

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

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

26 CONTRACTOR shall comply with the following provisions regarding the assignment of claims  
27 arising from either the Clayton Act or the Cartwright. For the purposes of this Section, the term  
28 "contractor" shall refer to CONTRACTOR, the term "awarding body" shall refer to COUNTY, and the

1 term “public works contract” shall refer to this Agreement:

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

11 **34. NON-COLLUSION.**

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

14 **35. NOTICES AND REPORTS.**

15 **35.1.** All notices and reports under this Agreement shall be in writing and may be given by  
16 personal delivery or by mailing by certified mail, addressed as follows:

17 COUNTY

18 Imperial County Department of Public Works  
19 Attention: Director  
155 South Eleventh Street  
El Centro, CA 92243

CONTRACTOR

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

20 with copies to:

21 Imperial County Executive Office  
22 Attention: County Executive Officer  
23 940 West Main Street, Suite 208  
El Centro, CA 92243

24 and:

25 Imperial County Department of Human  
26 Resources and Risk Management  
27 Attention: Director  
28 940 West Main Street, Suite 101  
El Centro, CA 92243

1           **35.2.** Notices and reports under this Agreement may be given by personal delivery or by  
2           mailing by certified mail at such other address as either Party may designate in a notice  
3           to the other Party given in such manner. Any notice given by mail shall be considered  
4           given when deposited in the United States Mail, postage prepaid, addressed as provided  
5           herein.

6   **36.    ENTIRE AGREEMENT.**

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

10   **37.    ASSIGNMENT.**

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

13   **38.    MODIFICATION.**

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

17   **39.    CAPTIONS.**

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

20   **40.    PARTIAL INVALIDITY.**

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

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

25           Words and expressions in the masculine gender include the feminine and neuter genders. Words  
26           and expressions in the singular include the plural and words and expressions in the plural include the  
27           singular. CONTRACTOR as used in this Agreement or in any other document referred to in or made a  
28           part of this Agreement shall likewise include both singular and the plural, a corporation, a partnership,

1 individual, firm or person acting in any fiduciary capacity as executor, administrator, trustee or in any  
2 other representative capacity or any other entity. All covenants herein contained on the part of  
3 CONTRACTOR shall be joint and several if more than one person, firm or entity executes the  
4 Agreement.

5 **42. WAIVER.**

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

9 **43. CHOICE OF LAW.**

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

13 **44. AUTHORITY.**

14 **44.1.** Each individual executing this Agreement on behalf of CONTRACTOR represents and  
15 warrants that:

16 **44.1.1.** He/She is duly authorized to execute and deliver this Agreement on behalf of  
17 CONTRACTOR;

18 **44.1.2.** Such execution and delivery is in accordance with the terms of the Articles of  
19 Incorporation or Partnership, any by-laws or Resolutions of CONTRACTOR and;

20 **44.1.3.** This Agreement is binding upon CONTRACTOR in accordance with its terms.

21 **44.2.** CONTRACTOR shall deliver to COUNTY evidence acceptable to COUNTY of the  
22 foregoing within thirty days of execution of this Agreement.

23 **45. COUNTERPARTS.**

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

28 **46. TIMING.**



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

2 **47. REVIEW OF AGREEMENT TERMS.**

3 **47.1.** Each Party has had the opportunity to receive independent legal advice from its attorneys  
4 with respect to the advisability of making the representations, warranties, covenants and  
5 agreements provided for herein, and with respect to the advisability of executing this  
6 Agreement.

7 **47.2.** Each Party represents and warrants to and covenants with the other Party that:

8 **47.2.1.** This Agreement in its reduction to final written form is a result of extensive good  
9 faith negotiations between the Parties and/or their respective legal counsel; and

10 **47.2.2.** The Parties and/or their legal counsel have carefully reviewed and examined this  
11 Agreement for execution by said Parties.

12 **47.3.** Any statute or rule of construction that ambiguities are to be resolved against the drafting  
13 party shall not be employed in the interpretation of this Agreement.

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

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

18 **48.1.** Pertinent Nondiscrimination Authorities:

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

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

26 (c) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits  
27 discrimination on the basis of sex);

28 (d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as

- 1 amended, (prohibits discrimination on the basis of disability); and 49 CFR Part  
2 27;
- 3 (e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.),  
4 (prohibits discrimination on the basis of age);
- 5 (f) Airport and Airway Improvement Act of 1982, 949 U.S.C. § 4 71, Section 4  
6 7123), as amended, (prohibits discrimination based on race, creed, color,  
7 national origin, or sex);
- 8 (g) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope,  
9 coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age  
10 Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by  
11 expanding the definition of the terms “programs or activities” to include all the  
12 programs or activities of the Federal-aid recipients, subrecipients and contractors,  
13 whether such programs or activities are Federally funded or not);
- 14 (h) Titles II and III of the Americans with Disabilities Act, which prohibit  
15 discrimination on the basis of disability in the operation of public entities, public  
16 and private transportation systems, places of public accommodation, and certain  
17 testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of  
18 Transportation regulations at 49 C.F.R. parts 37 and 38;
- 19 (i) The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. §  
20 47123) (prohibits discrimination on the basis of race, color, national origin, and  
21 sex);
- 22 (j) Executive Order 12898, Federal Actions to Address Environmental Justice in  
23 Minority Populations and Low-Income Populations, which ensures  
24 discrimination against minority populations by discouraging programs, policies,  
25 and activities with disproportionately high and adverse human health or environmental  
26 effects on minority and low-income populations;
- 27 (k) Executive Order 13166, Improving Access to Services for persons with Limited  
28 English Proficiency, and resulting agency guidance, national origin

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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);

- (1) 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).

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

3 **County of Imperial**

<<Business Entity Name>>

4  
5 By: \_\_\_\_\_  
6 Luis A. Plancarte, Chairman  
7 Imperial County Board of Supervisors

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

8 **ATTEST:**

9  
10 By: \_\_\_\_\_  
11 Blanca Acosta,  
12 Clerk of the Board of Supervisors

13 **APPROVED AS TO FORM:**

14 Eric R. Havens,  
15 County Counsel

16  
17 By: \_\_\_\_\_  
18 Mistelle Abdelmagied,  
19 Assistant County Counsel

## MINIMUM INSURANCE AMOUNTS

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

### Insurance Minimum Amounts \*

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

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

\*Minimums subject to additional review after Consultant is selected.