



Public Works works for the Public

COUNTY OF IMPERIAL

DEPARTMENT OF PUBLIC WORKS

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El Centro, CA
92243

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COUNTY OF IMPERIAL PUBLIC WORKS

Request for Proposals: Program Management (PM), Construction Management (CM) and Support Services County of Imperial Behavioral Health (BH) Services New Adult Residential Substance Use Disorder (SUD) Treatment Facility located at 1319 S. Clark Road, El Centro, CA 92243 County Project No. SR7024BH

ADDENDUM NO. 3

July 17, 2024

This *ADDENDUM* is hereby made part of the Contract Documents and specifications to the same extent as if originally included therein, and shall be signed by the Bidder and included with the proposal.

1. The deadline to submit proposals has been extended to Thursday, August 1, 2024 via the County's PlanetBids Portal at <https://vendors.planetbids.com/portal/64020/portal-home>. Proposals received at the Imperial County Department of Public Works site will not be accepted.
2. Exhibit F Sample Consultant Agreement for Services has been replaced with the Sample Professional Services Agreement attached to this Addendum.

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

Acknowledgement of Addendum No. 3

The general contractor is responsible for advising any and all subcontractors of this change. Each bidder must acknowledge receipt of this addendum in the noted space below and where indicated on the Bidder's Proposal Section of the Special Provisions. This Addendum must be attached to the proposal.

License No: _____

Print or Type Company Name: _____

Print or Type Authorized Name: _____

Authorized Signature of Contractor: _____

Date Signed: _____

1 **AGREEMENT FOR SERVICES**

2 **«Consultant_Business_Name»**

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

8 **RECITALS**

9 **WHEREAS**, COUNTY desires to retain a qualified individual, firm or business entity to provide
10 **«Contract_Services»** for **«Project_Name»**; County Project No. **«Project_Number»** (“Project”); and

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

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

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

18 **1. INCORPORATION OF RECITALS.**

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

21 **2. DEFINITIONS.**

22 **2.1** “Request for Proposal” or “RFP” shall mean that document that describes the Project and
23 project requirements to prospective bidders entitled, “**«Name_of_RFP»**,” dated
24 **«Date_of_RFP»**. The Request for Proposal is attached hereto as **Exhibit “A”** and
25 incorporated herein by this reference.

26 **2.2** “Proposal” shall mean CONSULTANT’s document entitled, “**«Name_of_Proposal»**,”
27 dated **«Date_of_Proposal»** and submitted to COUNTY’s Department of Public Works.
28 The Proposal is attached hereto as **Exhibit “B”** and incorporated herein this by reference.

1 **3. CONTRACT COORDINATION.**

2 **3.1** The Director of Public Works or his/her designee shall be the representative of COUNTY
3 for all purposes under this Agreement. The Director of Public Works or his/her designee is
4 hereby designated as the Contract Manager for COUNTY. He/she shall supervise the
5 progress and execution of this Agreement.

6 **3.2** CONSULTANT shall assign a single Contract Manager to have overall responsibility for
7 the progress and execution of this Agreement. Should circumstances or conditions
8 subsequent to the execution of this Agreement require a substitute Contract Manager for
9 any reason, the Contract Manager designee shall be subject to the prior written acceptance
10 and approval of COUNTY's Contract Manager.

11 **4. DESCRIPTION OF WORK.**

12 CONSULTANT shall provide all materials and labor to perform this Agreement consistent with
13 the RFP and the Proposal, as set forth in **Exhibits "A" and "B."**

14 **5. WORK TO BE PERFORMED BY CONSULTANT.**

15 **5.1** CONSULTANT shall comply with all terms, conditions and requirements of this
16 Agreement including all documents incorporated in Section 39.

17 **5.2** CONSULTANT shall perform such other tasks as necessary and proper for the full
18 performance of the obligations assumed by CONSULTANT hereunder; including but not
19 limited to any additional work or change orders agreed upon pursuant to written
20 authorization as described in Paragraph 6.3, and as contemplated under Sections 13, 14,
21 and 28. Proposed additional work or change order requests, when applicable, will be
22 attached and incorporated herein under **Exhibit "B"** (as "B-1," "B-2," etc.).

23 **5.3** CONSULTANT shall:

24 **5.3.1** Procure all permits and licenses, pay all charges and fees, and give all notices that
25 may be necessary and incidental to the due and lawful prosecution of the services
26 to be performed by CONSULTANT under this agreement;

27 **5.3.2** Keep itself fully informed of all existing and proposed federal, state and local laws,
28 ordinances, regulations, orders and decrees which may affect those engaged or

1 employed under this Agreement;

2 **5.3.3** At all times observe and comply with, and cause all of its employees to observe and
3 comply with all applicable ordinances, regulations, orders and decrees mentioned
4 above;

5 **5.3.4** Fully cooperate with State or Federal governmental agencies, or any other
6 recognized investigative/auditing entity's, reasonable and lawful request for
7 information related to any investigation or audit of the COUNTY; and

8 **5.3.5** Immediately report to COUNTY's Contract Manager in writing any discrepancy or
9 inconsistency it discovers in said laws, ordinances, regulations, orders and decrees
10 mentioned above in relation to the work performed and any plans, drawings,
11 specifications or provisions of this Agreement.

12 **6. REPRESENTATIONS BY CONSULTANT.**

13 **6.1** CONSULTANT understands and agrees that COUNTY has limited knowledge in the
14 multiple areas specified in the Proposal. CONSULTANT has represented itself to be an
15 expert in these fields and understands that COUNTY is relying upon such representation.

16 **6.2** CONSULTANT represents and warrants that it is a lawful entity possessing all required
17 licenses and authorities to do business in the State of California and perform all aspects of
18 this Agreement.

19 **6.3** CONSULTANT shall not commence any work under this Agreement or provide any other
20 services, or materials, in connection therewith until CONSULTANT has received written
21 authorization from COUNTY's Contract manager to do so.

22 **6.4** CONSULTANT represents and warrants that any employee, contractor, subcontractor
23 and/or agent who will be performing any of the duties and obligations of CONSULTANT
24 herein possess all required licenses and authorities, as well as the experience and training,
25 to perform such tasks.

26 **6.5** CONSULTANT represents and warrants that the representations contained in the Proposal
27 are true and correct.

28 **6.6** CONSULTANT understands and agrees not to discuss this Agreement or work performed

1 pursuant to this Agreement with anyone not a party to this Agreement without the prior
2 permission of COUNTY. CONSULTANT further agrees to immediately advise COUNTY
3 of any contacts or inquiries made by anyone not a party to this Agreement with respect to
4 work performed pursuant to this Agreement.

5 **6.7** Prior to accepting any work under this Agreement, CONSULTANT shall perform a due
6 diligence review of its files and advise COUNTY of any conflict of interest or potential
7 conflict of interest CONSULTANT may have with respect to the work requested.

8 **6.8** CONSULTANT understands and agrees that in the course of performance of this
9 Agreement CONSULTANT may be provided with information or data considered by the
10 owner or the COUNTY to be confidential. COUNTY shall clearly identify such
11 information and/or data as confidential. CONSULTANT shall take all necessary steps
12 necessary to maintain such confidentiality including but not limited to restricting the
13 dissemination of all material received to those required to have such data in order for
14 CONSULTANT to perform under this Agreement.

15 **6.9** CONSULTANT represents that the personnel dedicated to this project as identified in
16 CONSULTANT's Proposal, will be the people to perform the tasks identified therein.
17 CONSULTANT will not substitute other personnel or engage any contractors to work on
18 any tasks identified herein without prior written notice to COUNTY.

19 **6.10** CONSULTANT understands that COUNTY considers the representations made herein to
20 be material and would not enter into this Agreement with CONSULTANT if such
21 representations were not made.

22 **7. TERM OF AGREEMENT.**

23 This Agreement shall commence on the date first written above and shall remain in effect until the
24 services provided as outlined in Section 4, ("DESCRIPTION OF WORK"), have been completed, unless
25 otherwise terminated as provided for in this Agreement.

26 **8. COMPENSATION.**

27 **8.1** The total compensation payable under this Agreement shall not exceed
28 «Cost_of_Original_Contract», unless otherwise previously agreed to in writing by

COUNTY.

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

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

9. PAYMENT.

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

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

10. METHOD OF PAYMENT.

10.1 CONSULTANT shall at any time prior to the fifth (5th) day of any month, submit to the Contract Manager or his/her designee, a complete and accurate written claim for compensation for services performed. The claim shall be in a format approved by COUNTY. No payment shall be made by COUNTY prior to the claims being approved in writing by COUNTY's Contract Manager or his/her designee. Any claim determined to be an improper payment request shall be returned to CONSULTANT as soon as practicable, but not later than seven (7) days, after receipt with a written explanation as to why the claim is an improper request for payment. CONSULTANT may expect to receive payment within a reasonable time

1 thereafter and in any event in the normal course of business within thirty (30) days after the
2 claim is submitted.

3 **11. TIME FOR COMPLETION OF THE WORK.**

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

9 **12. MAINTENANCE AND ACCESS OF BOOKS AND RECORDS.**

10 **12.1** CONSULTANT shall retain all papers, books, files, correspondence, reports, documents,
11 and any other records (collectively, "Records") relating to services performed by
12 CONSULTANT under this Agreement as follows:

13 **12.2** CONSULTANT shall retain all Records relating to CONSULTANT's charges for services
14 or expenditures and disbursements charged to COUNTY for a minimum period of three
15 (3) years, or for any longer period required by law, from the date of final payment to
16 CONSULTANT pursuant to this Agreement.

17 **12.3** CONSULTANT shall retain all Records relating to services performed by CONSULTANT
18 under this Agreement for a minimum period of five (5) years, or for any longer period
19 required by law, from the date of termination or completion of this Agreement.

20 **12.4** Any records or documents required to be retained by CONSULTANT pursuant to this
21 Agreement shall be made available to COUNTY for inspection or audit at any time during
22 CONSULTANT's regular business hours provided that COUNTY provides
23 CONSULTANT with seven (7) days advanced written or e-mail notice. Copies of such
24 documents shall, at no cost to COUNTY, be provided to COUNTY for inspection at
25 CONSULTANT's address indicated for receipt of notices under this Agreement.

26 **12.5** CONSULTANT shall return all Records retained by CONSULTANT pursuant to this
27 Section 12 within thirty (30) days of termination of this Agreement.
28

1 **13. SUSPENSION OF AGREEMENT.**

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

6 **14. TERMINATION.**

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

15 **15. INSPECTION.**

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

21 **16. OWNERSHIP OF MATERIALS.**

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

27 **17. INTEREST OF CONSULTANT.**

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

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

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

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

7 **18. INDEMNIFICATION.**

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

17 **18.2** In accordance with the limits required by California Civil Code § 2782.8, if applicable,
18 CONSULTANT agrees to defend with counsel acceptable to COUNTY, indemnify and
19 hold COUNTY harmless from all Claims, including but not limited to:

20 **18.2.1** Personal injury, including but not limited to bodily injury, emotional injury,
21 sickness or disease or death to persons including but not limited to COUNTY's
22 representatives, officers, directors, designees, employees, agents, successors and
23 assigns, subcontractors and other third parties and/or damage to property of anyone
24 (including loss of use thereof) arising out of, pertaining to, or relating to
25 CONSULTANT's negligent or reckless performance of, or willful misconduct
26 surrounding, any of the terms contained in this Agreement, or anyone directly or
27 indirectly employed by CONSULTANT or anyone for whose acts CONSULTANT
28 may be liable;

1 **18.2.2** Liability arising from injuries to CONSULTANT and/or any of CONSULTANT's
2 employees or agents arising out of, pertaining to, or relating to CONSULTANT's
3 negligent or reckless performance of, or willful misconduct surrounding, any of the
4 terms contained in this Agreement, or anyone directly or indirectly employed by
5 CONSULTANT or anyone for whose acts CONSULTANT may be liable;

6 **18.2.3** Penalties imposed upon account of the violation of any law, order, citation, rule,
7 regulation, standard, ordinance or statute caused by the negligent or reckless action
8 or inaction, or willful misconduct of CONSULTANT or anyone directly or
9 indirectly employed by CONSULTANT or anyone for whose acts CONSULTANT
10 may be liable, including but not limited to:

11 (a) Any loss of funding, penalties, fees, or other costs resulting from
12 CONSULTANT's failure to adhere to Disadvantaged Business Enterprise
13 requirements and/or goals, as determined by COUNTY or such other lawful
14 entity in charge of monitoring Disadvantaged Business Enterprise
15 compliance;

16 (b) Any loss of funding, penalties, fees, or other costs resulting from
17 CONSULTANT's failure to adhere to prevailing wage requirements, as
18 determined by COUNTY, the California Department of Industrial
19 Relations, or such other lawful entity in charge of monitoring prevailing
20 wage compliance;

21 **18.2.4** Infringement of any patent rights which may be brought against COUNTY arising
22 out of CONSULTANT's work;

23 **18.2.5** Any violation or infraction by CONSULTANT of any law, order, citation, rule,
24 regulation, standard, ordinance or statute in any way relating to the occupational
25 health or safety of employees; and

26 **18.2.6** Any breach by CONSULTANT of the terms, requirements or covenants of this
27 Agreement.

28 **18.3** These indemnification provisions shall extend to Claims occurring after this Agreement is

1 terminated, as well as while it is in force.

2 **19. INDEPENDENT CONTRACTOR.**

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

5 **19.1** CONSULTANT is not an employee or agent of COUNTY and is only responsible for the
6 requirements and results specified by this Agreement or any other agreement.

7 **19.2** CONSULTANT shall be responsible to COUNTY only for the requirements and results
8 specified by this Agreement and except as specifically provided in this Agreement, shall
9 not be subject to COUNTY's control with respect to the physical actions or activities of
10 CONSULTANT in fulfillment of the requirements of this Agreement.

11 **19.3** CONSULTANT is not, and shall not be, entitled to receive from, or through, COUNTY,
12 and COUNTY shall not provide, or be obligated to provide, CONSULTANT with
13 Workers' Compensation coverage or any other type of employment or worker insurance or
14 benefit coverage required or provided by any Federal, State or local law or regulation for,
15 or normally afforded to, an employee of COUNTY.

16 **19.4** CONSULTANT shall not be entitled to have COUNTY withhold or pay, and COUNTY
17 shall not withhold or pay, on behalf of CONSULTANT, any tax or money relating to the
18 Social Security Old Age Pension Program, Social Security Disability Program, or any other
19 type of pension, annuity, or disability program required or provided by any federal, State
20 or local law or regulation.

21 **19.5** CONSULTANT shall not be entitled to participate in, nor receive any benefit from, or
22 make any claim against any COUNTY fringe program, including, but not limited to,
23 COUNTY's pension plan, medical and health care plan, dental plan, life insurance plan, or
24 any other type of benefit program, plan, or coverage designated for, provided to, or offered
25 to COUNTY's employees.

26 **19.6** COUNTY shall not withhold or pay, on behalf of CONSULTANT, any Federal, State, or
27 local tax, including, but not limited to, any personal income tax, owed by CONSULTANT.

28 **19.7** CONSULTANT is, and at all times during the term of this Agreement, shall represent

1 and conduct itself as an independent contractor, not as an employee of COUNTY.

2 **19.8** CONSULTANT shall not have the authority, express or implied, to act on behalf of, bind
3 or obligate COUNTY in any way without the written consent of COUNTY.

4 **20. INSURANCE.**

5 **20.1** CONSULTANT hereby agrees at its own cost and expense to procure and maintain, during
6 the entire term of this Agreement and any extended term therefore, insurance in a sum
7 acceptable to COUNTY and adequate to cover potential liabilities arising in connection
8 with the performance of this Agreement and in any event not less than the minimum limit
9 set forth in the "Minimum Insurance Amounts" attachment to RFP (**Exhibit "A"**) which
10 are incorporated as if set forth fully herein.

11 **20.2 Special Insurance Requirements.** All insurance required shall:

12 **20.2.1** Be procured from California admitted insurers (licensed to do business in
13 California) with a current rating by Best's Key Rating Guide, acceptable to
14 COUNTY. A rating of at least A-VII shall be acceptable to COUNTY; lesser
15 ratings must be approved in writing by COUNTY.

16 **20.2.2** Be primary coverage as respects COUNTY and any insurance or self-insurance
17 maintained by COUNTY shall be in excess of CONSULTANT's insurance
18 coverage and shall not contribute to it.

19 **20.2.3** Name The Imperial County Department of Public Works and the County of
20 Imperial and their officers, employees, and volunteers as additional insured on all
21 policies, except Workers' Compensation insurance and Errors & Omissions
22 insurance, and provide that COUNTY may recover for any loss suffered by
23 COUNTY due to CONSULTANT's negligence.

24 **20.2.4** State that it is primary insurance and regards COUNTY as an additional insured
25 and contains a cross-liability or severability of interest clause.

26 **20.2.5** Not be canceled, non-renewed or reduced in scope of coverage until after thirty (30)
27 days written notice has been given to COUNTY. CONSULTANT may not
28 terminate such coverage until it provides COUNTY with proof that equal or better

1 insurance has been secured and is in place. Cancellation or change without prior
2 written consent of COUNTY shall, at the option of COUNTY, be grounds for
3 termination of this Agreement.

4 **20.2.6** If this Agreement remains in effect more than one (1) year from the date of its
5 original execution, COUNTY may, at its sole discretion, require an increase to
6 liability insurance to the level then customary in similar COUNTY Agreements by
7 giving sixty (60) days notice to CONSULTANT.

8 **20.3** Additional Insurance Requirements.

9 **20.3.1** COUNTY is to be notified immediately of all insurance claims. COUNTY is also
10 to be notified if any aggregate insurance limit is exceeded.

11 **20.3.2** The comprehensive or commercial general liability shall contain a provision of
12 endorsements stating that such insurance:

- 13 (a) Includes contractual liability;
- 14 (b) Does not contain any exclusions as to loss or damage to property caused by
15 explosion or resulting from collapse of buildings or structures or damage to
16 property underground, commonly referred to by insurers as the "XCU
17 Hazards;"
- 18 (c) Does not contain a "pro rata" provision which looks to limit the insurer's
19 liability to the total proportion that its policy limits bear to the total coverage
20 available to the insured;
- 21 (d) Does not contain an "excess only" clause which require the exhaustion of
22 other insurance prior to providing coverage;
- 23 (e) Does not contain an "escape clause" which extinguishes the insurer's
24 liability if the loss is covered by other insurance;
- 25 (f) Includes COUNTY as an additional insured.
- 26 (g) States that it is primary insurance and regards COUNTY as an additional
27 insured and contains a cross-liability or severability of interest clause.

28 **20.4** Deposit of Insurance Policy. Promptly on issuance, reissuance, or renewal of any insurance

1 policy required by this Agreement, CONSULTANT shall, if requested by COUNTY,
2 provide COUNTY satisfactory evidence that insurance policy premiums have been paid
3 together with a duplicate copy of the policy or a certificate evidencing the policy and
4 executed by the insurance company issuing the policy or its authorized agent.

5 **20.5** Certificates of Insurance. CONSULTANT agrees to provide COUNTY with the following
6 insurance documents on or before the effective date of this Agreement:

7 **20.5.1** Complete copies of certificates of insurance for all required coverages including
8 additional insured endorsements shall be attached hereto as **Exhibit “C”** and
9 incorporated herein.

10 **20.5.2** The documents enumerated in this Paragraph shall be sent to the following:

11 x County of Imperial
12 Risk Management Department
13 Re: County Project No. <<Project_Number>>
14 940 Main Street, Suite 101
15 El Centro, CA 92243

16 County of Imperial
17 Department of Public Works
18 Re: County Project No. <<Project_Number>>
19 155 South 11th Street
20 El Centro, CA 92243

21 **20.6** Additional Insurance. Nothing in this, or any other provision of this Agreement, shall be
22 construed to preclude CONSULTANT from obtaining and maintaining any additional
23 insurance policies in addition to those required pursuant to this Agreement.

24 **21. PREVAILING WAGE.**

25 **21.1** CONSULTANT acknowledges that any work that qualifies as a “public work” within the
26 meaning of California Labor Code section 1720 shall cause CONSULTANT, and its sub-
27 consultants, to comply with the provisions of California Labor Code sections 1775 et seq.

28 **21.2** When applicable, copies of the prevailing rate of per diem wages shall be on file at
COUNTY’s Department of Public Works and/or Clerk of the Board of Supervisors, and
available to any interested party upon request. CONSULTANT shall post copies of the
prevailing wage rate of per diem wages at the Project site.

1 **21.3** CONSULTANT hereby acknowledges and stipulates to the following:

2 **21.3.1** CONSULTANT has reviewed and agrees to comply with the provisions of Labor
3 Code section 1776 regarding retention and inspection of payroll records and
4 noncompliance penalties; and

5 **21.3.2** CONSULTANT has reviewed and agrees to comply with the provisions of Labor
6 Code section 1777.5 regarding employment of registered apprentices; and

7 **21.3.3** CONSULTANT has reviewed and agrees to comply with the provisions of Labor
8 Code section 1810 regarding the legal day's work; and

9 **21.3.4** CONSULTANT has reviewed and agrees to comply with the provisions of Labor
10 Code section 1813 regarding forfeiture for violations of the maximum hours per
11 day and per week provisions contained in the same chapter.

12 **21.3.5** CONSULTANT has reviewed and agrees to comply with any applicable provisions
13 for those Projects subject to Department of Industrial Relations (DIR) Monitoring
14 and Enforcement of prevailing wages. COUNTY hereby notifies CONSULTANT
15 that CONSULTANT is responsible for complying with the requirements of Senate
16 Bill 854 (SB854) regarding certified payroll record reporting. Further information
17 concerning the requirements of SB854 is available on the DIR website located at:
18 <http://www.dir.ca.gov/Public-Works/PublicWorksEnforcement.html>.

19 **22. WORKERS' COMPENSATION CERTIFICATION.**

20 **22.1** Prior to the commencement of work, CONSULTANT shall sign and file with COUNTY
21 the following certification: "I am aware of the provisions of California Labor Code §§3700
22 et seq. which require every employer to be insured against liability for workers'
23 compensation or to undertake self-insurance in accordance with the provisions of that code,
24 and I will comply with such provisions before commencing the performance of the work
25 of this contract."

26 **22.2** This certification is included in this Agreement and signature of the Agreement shall
27 constitute signing and filing of the certificate.

28 **22.3** CONSULTANT understands and agrees that any and all employees, regardless of hire date,

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

3 **22.4** If CONSULTANT has no employees, initial here:

4 **23. ASSIGNMENT AND SUBCONTRACTING.**

5 Neither this Agreement nor any duties or obligations hereunder shall be assignable by
6 CONSULTANT without the prior written consent of COUNTY. CONSULTANT may employ other
7 specialists or subcontractors to perform services as required with prior approval by COUNTY.
8 CONSULTANT agrees to bind every subcontractor or specialist to the terms of this Agreement as far as
9 such terms are applicable to the portion(s) of work to be completed by the subcontractor or specialist.
10 CONSULTANT shall be fully responsible to COUNTY for acts or omissions of any subcontractor or
11 specialist employed by CONSULTANT in connection with this Agreement.

12 **24. NON-DISCRIMINATION.**

13 **24.1** During the performance of this Agreement, CONSULTANT and its subcontractors shall
14 not unlawfully discriminate, harass or allow harassment against any employee or applicant
15 for employment because of sex, race, color, ancestry, religious creed, national origin,
16 physical disability (including HIV and AIDS), mental disability, medical condition
17 (cancer), age (over forty (40)), marital status and denial of family care leave.
18 CONSULTANT and its subcontractors shall insure that the evaluation and treatment of
19 their employees and applicants for employment are free from such discrimination and
20 harassment.

21 **24.2** CONSULTANT and its subcontractors shall not discriminate on the basis of race, color,
22 national origin, or sex in the performance of this Agreement. CONSULTANT shall carry
23 out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted
24 contracts. Failure by CONSULTANT to carry out these requirements is a material breach
25 of this Agreement, which may result in the termination of this Agreement, or such other
26 remedy as COUNTY deems appropriate.

27 **24.3** CONSULTANT and its subcontractors shall comply with the provisions of the Fair
28 Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable

1 regulations promulgated thereunder (California Code of Regulations, Title 2, §7285 et
2 seq.).

3 **24.4** The applicable regulations of the Fair Employment and Housing Commission
4 implementing Government Code §12990 (a-f), set forth in Chapter 5 of Division 4 of Title
5 2 of the California Code of Regulations, are incorporated into this Agreement by reference
6 and made a part hereof as if set forth in full.

7 **24.5** The applicable regulations of §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794 (a))
8 are incorporated into this Agreement by reference and made a part hereof as if set forth in
9 full.

10 **24.6** CONSULTANT and its subconsultants shall give written notice of their obligations under
11 this clause to labor organizations with which they have a collective bargaining or other
12 agreement.

13 **24.7** CONSULTANT shall include the nondiscrimination and compliance provisions of this
14 clause in all subcontracts to perform work under this Agreement.

15 **25. DISADVANTAGED BUSINESS ENTITY COMPLIANCE.**

16 **25.1** When applicable, CONSULTANT represents and warrants that it has fully read the
17 applicable Disadvantaged Business Enterprise (“DBE”) requirements pertaining to this
18 Project and has fully and accurately completed any and all required DBE forms.

19 **25.2** CONSULTANT represents and warrants that it will comply with all applicable DBE
20 requirements for this Project.

21 **25.3** CONSULTANT shall comply with any applicable DBE provisions attached hereto as
22 **Exhibit “D”** and incorporated by this reference as though fully set forth herein.

23 **25.4** If any state or federal funds are withheld from COUNTY or not reimbursed to COUNTY
24 due to CONSULTANT’s failure to either comply with the DBE requirements set forth in
25 the RFP and this Agreement, or to meet the mandatory DBE goals as determined by
26 COUNTY, Caltrans, the Federal Highway Administration, and/or any other state or federal
27 agency contributing funds to the Project, then CONSULTANT shall fully reimburse
28 COUNTY the amount of funding lost. COUNTY reserves the right to deduct any such loss

in funding from the amount of compensation due to CONSULTANT under this Agreement.

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

25.5.1 Termination of this Agreement;

25.5.2 Withholding monthly progress payments;

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

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

26. NOTICES AND REPORTS.

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

COUNTY

CONSULTANT

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

<<Consultant_Business_Name>>
Re: Imperial County Project No.
<<Project_Number>>
<<Consultant_Street_Address>>
<<Consultant_City_State>>

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

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

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

1 **27. AGREEMENT.**

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

5 **28. MODIFICATION.**

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

8 **29. CAPTIONS.**

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

11 **30. PARTIAL INVALIDITY.**

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

15 **31. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.**

16 **31.1** As used in this Agreement and whenever required by the context thereof, each number,
17 both singular and plural, shall include all numbers, and each gender shall include a gender.

18 **31.2** CONSULTANT as used in this Agreement or in any other document referred to in or made
19 a part of this Agreement shall likewise include the singular and the plural, a corporation, a
20 partnership, individual, firm or person acting in any fiduciary capacity as executor,
21 administrator, trustee or in any other representative capacity or any other entity.

22 **31.3** All covenants herein contained on the part of CONSULTANT shall be joint and several if
23 more than one person, firm or entity executes the Agreement.

24 **32. WAIVER.**

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

1 **33. CHOICE OF LAW.**

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

5 **34. AUTHORITY.**

6 **34.1** Each individual executing this Agreement on behalf of CONSULTANT represents and
7 warrants that:

8 **34.1.1** He/She is duly authorized to execute and deliver this Agreement on behalf of
9 CONSULTANT;

10 **34.1.2** Such execution and delivery is in accordance with the terms of the Articles of
11 Incorporation or Partnership, any by-laws or Resolutions of CONSULTANT and;

12 **34.1.3.** This Agreement is binding upon CONSULTANT accordance with its terms.

13 **34.2.** CONSULTANT shall deliver to COUNTY evidence acceptable to COUNTY
14 of the foregoing within thirty (30) days of execution of this Agreement.

15 **35. COUNTERPARTS.**

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

20 **36. REVIEW OF AGREEMENT TERMS.**

21 **36.1** Each Party has had the opportunity to receive independent legal advice from its attorneys
22 with respect to the advisability of making the representations, warranties, covenants and
23 agreements provided for herein, and with respect to the advisability of executing this
24 Agreement.

25 **36.2** Each Party represents and warrants to and covenants with the other Party that:

26 **36.2.1** This Agreement in its reduction to final written form is a result of extensive good
27 faith negotiations between the Parties and/or their respective legal counsel; and

28 **36.2.2** The Parties and/or their legal counsel have carefully reviewed and examined this

1 Agreement for execution by said Parties.

2 **36.3** Any statute or rule of construction that ambiguities are to be resolved against the drafting
3 party shall not be employed in the interpretation of this Agreement.

4 **37. NON-APPROPRIATION.**

5 **37.1** All obligations of COUNTY are subject to appropriation of resources by various federal,
6 State, and local agencies, including but not limited to the U.S. Department of
7 Transportation (“DOT”) and the California Department of Transportation (“Caltrans”).

8 **37.2** This Agreement is valid and enforceable only if sufficient funds are made available to
9 COUNTY for the purposes of this Project. In addition, this Agreement is subject to any
10 additional restrictions, limitations, conditions, or any statute enacted by Congress, State
11 Legislature, or COUNTY, and any regulations prescribed therefrom, that may affect the
12 provisions, terms, or funding of this Agreement.

13 **37.3** If sufficient funds for the Project are not appropriated, this Agreement may be amended or
14 terminated in order to reflect said reduction in funding.

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

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

19 **38.1** Pertinent Nondiscrimination Authorities:

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

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

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

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

- 1 (k) Executive Order 13166, Improving Access to Services for persons with
2 Limited English Proficiency, and resulting agency guidance, national origin
3 discrimination includes discrimination because of limited English
4 proficiency (LEP). To ensure compliance with Title VI, you must take
5 reasonable steps to ensure that LEP persons have meaningful access to your
6 programs (70 Fed. Reg. at 74087 to 74100);
- 7 (l) Title IX of the Education Amendment of 1972, as amended, which prohibits
8 you from discriminating because of sex in education programs or activities
9 (20 U.S.C. 1681 et seq).

10 **39. INCORPORATION OF GENERAL TERMS AND EXHIBITS.**

11 The following provisions are hereby incorporated into this Agreement as though set forth in their
12 entirety herein. In the event of any conflict or inconsistency among these documents, the order of
13 precedence shall be:

- 14 (a) This Agreement for Services
15 (b) Exhibit V, California BHCIP Funding Addendum
16 (c) General Conditions;
17 (d) Any Change Order issued in compliance with this Agreement
18 (e) Exhibit II, General Notes
19 (f) Exhibit III, Construction Drawings
20 (g) Exhibit A, Request for Proposals
21 (h) Exhibit IV, Copies of Certificates of Insurance
22 (i) Exhibit D, DBE Requirements
23 (j) Exhibit B, Contractor's Proposal
24
25
26
27
28

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

3
4 **County of Imperial**

«CONSULTANT_BUSINESS_NAME»

5
6 By: _____
7 Michael W. Kelly, Chairman
8 Imperial County Board of Supervisors

By: _____
«Consultant_Name_for_Signature»

9
10 **ATTEST:**

11
12 Blanca Acosta, Clerk of the Board,
13 County of Imperial, State of California

14 **APPROVED AS TO FORM:**

15 Adam G. Crook,
16 County Counsel

17
18 By: _____
19 «CC_Attorney»,
20 «CC_Attorney_Title»