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COUNTY OF IMPERIAL

DEPARTMENT OF PUBLIC WORKS

155 S. 11th Street
El Centro, CA
92243

Tel: (442) 265-1818
Fax: (442) 265-1858

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COUNTY OF IMPERIAL PUBLIC WORKS
Imperial County McCabe Cove Road, East Villa Road, Villa Lane-Variou
Roadways Rehabilitation County Project No. 6862, 6865 and 6866.

ADDENDUM NO. 1

February 11, 2025

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. **Attachment A – Sales Tax Condition** is hereby made part of the Contract Documents and specifications to the same extent as if originally included therein. All other Sales Tax Conditions, as specified in the contract documents, shall remain in full force and effect.

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

Acknowledgement of Addendum No. 1

The prime consultant is responsible for advising any and all subcontractors of this change. Each prime consultant must acknowledge receipt of this addendum in the noted space below. 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: _____

ADDENDUM NO. 1 -ATTACHMENT A

1.3. Sales Tax Condition.

- 1.3.1.** Sales Tax Condition: The permittee is required to have a Construction Site Permit reflecting the project site address, ensuring all eligible sales tax payments are allocated to the County of Imperial, Jurisdictional Code 13998. The permittee will provide the County of Imperial with a copy of the CDTFA account number and sub-permit for its contractor and subcontractors (if any) related to the job site. The permittee shall provide written verification to the County Executive Office that the necessary sales and use tax permits have been obtained prior to the issuance of any grading permits.

- 1.3.2.** Construction/Material Budget: Prior to a grading permit, the permittee will provide the County Executive Office with a construction materials budget, an official construction materials budget, or a detailed budget outlining the construction and materials cost for the processing facility on permittee letterhead.

- 1.3.3.** County of Imperial will require that all qualifying contractors and subcontractors exercise their option to obtain a California Department of Tax and Fee Administration (CDTFA) sub-permit for the jobsite and allocate all eligible use tax payments to Imperial County and LTA.

- 1.3.4.** Prior to commencement of any construction activity at the Project Site, County of Imperial shall require that the contractor or subcontractor provide County with a copy of their CDTFA account number and sub-permit. County of Imperial shall either cause its construction contractor to treat the Project in accordance with California Sales and Use Tax Regulation 1521(b)(2)(B), California Sales and Use Tax Regulation 1521(c)(13)(B), and California Sales and Use Tax Regulation 1826(b) for sales and use tax purposes, or form a “Buying Company” as defined in the California Sales and Use Tax Regulation 1699(h). County of Imperial may adopt an alternate methodology to accomplish this goal if such methodology is approved by the County’s Executive Officer, which approval shall not be unreasonably withheld or delayed, prior to issuance of any building permit.

- 1.3.5.** No later than forty-five (45) days after the due date for filing sales and use tax returns for each calendar quarter, occurring after the commencement of any construction activity on-site through and including the first anniversary of commercial operating date (“COD”), Contractor shall report to County

of Imperial, the total amount of sales and use taxes related to the Project that are allocated to the County, and reported on County of Imperial's, general contractor's and subcontractors' applicable California sales and use tax returns.

1.3.6. Guarantee Amounts. Prior to the issuance of any building permit for the Project, Contractor shall provide County with a guarantee of the minimum sales and use taxes (based on a total construction and materials budget for the Project) that will be received by County and LTA under existing applicable sales and use tax laws. Contractor warrants that the sales/use tax guarantee amounts to be provided to County as mandated in this paragraph shall be true and accurate estimates of the projected sales and use taxes that will be generated for this Project. Contractor shall provide County with evidence of the projected sales/use taxes for the Project, including but not limited to sales tax receipts, and executed or anticipated engineering contracts, procurement contracts, and construction contracts. If the Parties are unable to agree upon a guarantee amount, then the dispute shall be referred to an independent accountant mutually acceptable to both Parties. The costs for such nonbinding mediation shall be borne by Contractor. Contractor warrants that the sales/use tax guarantee amounts to be provided to County as mandated in this paragraph will incorporate any and all sales/use tax exemptions that Contractor and/or its subcontractors intend to utilize, and that such exemptions will be disclosed to County fully and in good faith prior to the issuance of any building permit for this Project. Contractor understands and acknowledges that the sales/use tax guarantee amounts to be provided to County as mandated by this paragraph are a part of the consideration to be received by County in return for entering into this Agreement, and further understands and acknowledges that County would not enter into this Agreement but for said guarantee from Contractor. In the event that County and / or LTA receives less than the amount of sales / use taxes guaranteed pursuant to this paragraph, then Contractor shall pay, as and when provided below, to County or LTA as applicable, the amount of the applicable shortfall.

1.3.7. Adjustments to Guarantee Amounts.

- (a)** The amount of sales and use tax anticipated to be generated is based on the projected construction materials. Additional construction materials beyond the original contract now projected will require the sales / use tax guarantee amounts to be adjusted.
- (b)** To the extent of any reduction in the size of the Project as the result of any final ruling, stipulated judgment, or settlement, the sales / use tax guarantee amounts mandated under paragraph D shall be reduced pro rata based on the size of such reduction. To the extent of any reduction in the size of the Project as the result of any final ruling, stipulated judgment, or settlement, in accordance with

Section V.C below, the not-to-exceed amounts set forth in Section III.B shall be reduced pro rata based on the size of such reduction.

- 1.3.8.** The complete amount due to County for the Project must be received within one (1) year after Project Closeout/Completion for this Project. If, within one (1) year after issuance of the final Certificate of Occupancy, the sales and use taxes received by the County are less than the amount guaranteed for that portion of the project, Contractor shall pay the difference to the County.
- 1.3.9.** Payments to County and LTA as a result of a shortfall shall be due within thirty days of County of Imperial's receipt of written notice of shortfall from the County. Payments received by County after the ninetieth (90th) day following County of Imperial's receipt of notice shall be deemed late. County of Imperial hereby agrees to pay interest at the rate of six percent (6%) per annum of the payment due for any payment received by County beyond the due date. Said interest shall be included with the late payment. The obligation to pay interest shall be stayed when such amounts are disputed in good faith, so long as Contractor submits the payments "under written protest." Upon determination of dispute, such interest may be assessed if it is determined that the dispute was not made in good faith.
- 1.3.10.** In the event that Contractor repowers or replaces the equipment onsite, each Site shall be designated as the "Point of Sale" so as to create an additional local tax-funding source for the County of Imperial.