



REQUEST FOR PROPOSALS

ON CALL, AS NEEDED, ARCHITECTURAL SERVICES COUNTY PROJECT NO. 6685PWS

Requested by:

John A. Gay, PE
Director of Public Works

Prepared By:

Alfonso Varela
Administrative Analyst II

Deadline for Submissions: Monday, January 19, 2026 by 4:00 P.M

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

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

SPECIAL NOTICE No. 1

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)	http://www.dir.ca.gov/Public-Works/PublicWorks.html
SB 854 Fact Sheet	http://www.dir.ca.gov/Public-Works/PublicWorksSB854.html
Senate Bill 854 Compliance	http://www.dir.ca.gov/Public-Works/SB854.html
Public Works Contractor (PWC) Registration	https://efiling.dir.ca.gov/PWCR/
Classifications and Minimum Labor Rates	http://www.dir.ca.gov/OPRL/Pwd/

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EXHIBIT(S)

A. PROPOSAL EVALUATION

B. SAMPLE CONSULTANT AGREEMENT AND INSURANCE REQUIREMENTS

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

I. PURPOSE AND BACKGROUND:

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

The purpose of the Request for Proposals (RFP) is to provide ICDPW with the ability to obtain assistance quickly during peak workload periods, staffing shortages, and when expedited/fast track support is needed to satisfy the Department's scheduling and needs. The County of Imperial will award multiple on-call contracts to qualifying firms for Architectural Services. *The term of the as needed, on call agreements shall be for one (1) year, with the option to renew for up to (4) additional one-year terms. Unless otherwise terminated by ICDPW, upon expiration of the initial year, the agreement shall automatically renew for successive one (1) year terms for four (4) one year periods for a total of five (5) years.*

Consultant hourly billing rates proposed at the time of award shall remain in effect for the initial one-year term of the Agreement. Any proposed adjustment to hourly rates for subsequent renewal periods shall require prior written approval from the Director of Public Works, or designee, before such rates may take effect. Increased rates shall not be applied or invoiced without ICDPW approval, and any unauthorized rate increase shall constitute a material breach of the Agreement and may be grounds for termination.

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

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

Compensation for the as needed, on call, agreement shall be handled through task orders after consideration of price quotes from consultants and will be financed through project specific sources.

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

II. PROJECT POSTING AND SCHEDULING:

As Needed, On Call, Architectural Services

This RFP is being distributed electronically through the County of Imperial PlanetBids Procurement Portal at the following address: <https://vendors.planetbids.com/portal/64020/portal-home>. Consultants wishing to submit a proposal in response to this RFP must be registered on PlanetBids in order to access documents, submit questions, and upload proposals and cost estimates. Instructions for registration are available on the portal.

All solicitation documents, addenda, and official notifications will be posted on this portal. Consultants must be registered with PlanetBids to download documents and receive notifications of updates. The portal will serve as the official medium of communication for this solicitation. Prospective firms are responsible for monitoring the portal for any addenda or amendments prior to submission.

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

EVENT	DATE
Issue Request for Proposal	Monday November 24, 2025
Last Day for Request(s) for Clarification <i>must be submitted in writing</i>	Monday December 22, 2025 by 4:00pm
Proposal Due	Friday January 19, 2026 by 4:00pm
Consultant Selection	Mar 2026/ Apr 2026
Agreement for Services	Mar 2026/ Apr 2026

III: SCOPE OF WORK

Imperial County Department of Public Works is seeking proposals from qualified individuals, firms, and/or consultants who demonstrate experience in the services being requested. Please note, all schedule of fees must be uploaded as a separate file under the designated “Cost Proposal” section of the PlanetBids portal. Do not include cost information within the main proposal upload.

The selected firm(s) will provide as needed, on-call professional architectural services that include but are not limited to those mentioned herein. The County will assign work to any of the firms as is deemed necessary and appropriate by the County. All Service Providers and sub-consultant(s), employees or agents thereof, performing work per agreements awarded under this RFP, must have at all times throughout the duration of their performance of the work, all appropriate, valid license(s) required under law to provide the work being performed. If the possession of any license(s) including, without limitation, a valid California architect’s license, is required under law for the performance of the work, the Service Provider must ensure that the work will either be performed by an appropriately licensed individual or under the direct supervision of an appropriately licensed individual. No sub-consultants shall be utilized without prior authorization by County.

The scope of services requested under agreements awarded under this RFP include professional services of an architectural nature as well as incidental services that members of those professions and those in their

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employ may logically or justifiably perform, such as hiring a trade to perform investigation or destructive testing under their direction.

Meeting participation and coordination, inclusive of design and construction phases.

- Attend pre-design, 30%, 60%, 90%, and pre-construction meetings and as-needed construction troubleshooting (maximum of three (3) meetings per this contract). Additional meetings shall be addressed at an hourly rate as submitted in the Fee Schedule as required by this proposal and as part of the contract period.
- Coordinate meetings with County staff and/or multiple non-County jurisdictions.
- Prepare and distribute meeting minutes during the design phase.

Prepare Plans, Specifications, Scope of Work, Estimates, Relevant Design Reports and Other Services.

- Obtain approval of all required permits, City, County, Public/Private Utility Companies, State and Federal. The permit process is a critical component of each task assigned and the familiarity with the various jurisdictions' (located in the County of Imperial) requirements under Building and Safety in order to accomplish the securing of the necessary permits is a prime factor in the successful completion of each task assignment.
- Design services for all individual projects as assigned, including construction and post construction design services. Assist the County in obtaining all required permits.
- Provide quality control.
- Perform cost estimates for assigned task.
- Construction Services - Review RFI (request for information), submittals, change orders and shop drawings.
- Provide addenda(s) as necessary.
- Maintain good record keeping.
- Provide a schedule of each task that includes overall design schedule and construction.
- Schedule owner meetings as necessary during design.
- Provide architectural service recommendations to County staff members.
- Maintain communication as required with County staff and other consultants.
- Other duties as required by County staff

Additional services as required may include the following:

As Needed, On Call, Architectural Services

- Planning Research: Review, synthesize, update and/or supplement as required completed facilities master plans and/or programs.
- Site analysis and consultation: Perform site analyses, including parking, traffic, zoning, on and off disadvantaged firms, where possible, in their contracting with procurement activities with the County of Imperial.
- Architectural design services: Provide architectural, structural, civil, mechanical, electrical, plumbing, security, acoustical, interior design, lighting, data/telecommunications, graphics, and related services which may be required in connection with planning, design and execution of building renovation projects. Special services may be requested as warranted by specific projects, including but not limited to, planning; vibration control; physical and electronic security design; parking structure design; parking lot planning and control.
- Code analysis: Conduct and/or participate in building, planning, access and historical code analyses and reviews of existing facilities
- Site planning and landscape architecture: Provide all services required to design, specify and coordinate site design, including grading, utilities, parking lots, driveways, hardscape, landscape, lighting and irrigation.
- Project Reviews: Participate in peer and constructability reviews of projects
- Support Services / Feasibility: To construct or de-construct (investigative and destructive testing) as necessary for exploratory analysis to refine design criteria and scope of work. Hire necessary trades at prevailing wages to the extent applicable. Work may also include, but is not limited to: water testing, load tests, seismic engineering, equipment testing, etc.

In addition to the services described above, the selected firm(s) may also be requested to provide assistance with grant writing, funding application support, and project and/or program management activities related to engineering projects. These services will be provided on an as-needed basis and may include the preparation of technical documentation for grant submittals, coordination with funding agencies, schedule and budget tracking, and support of County staff in overall program delivery.

All such work above shall be in accordance with all applicable local, state and federal standards and guidelines.

Work tasks may include state, federal, and/or locally funded projects. For work on federally projects all Federal Aid provisions and requirement shall be adhered to.

For any third party review and plan checking of County prepared and/or consultant prepared projects, the Consultant shall certify in writing that the design is in substantial compliance with applicable local, state and federal requirements. For such plan reviews, ultimate responsibility for errors and/or omissions of plans and specifications shall be the primary consultant's responsibility.

For design work prepared under the direction of the Consultant, all responsibility for errors and/or omissions and responsible charge over the design of the project as defined in Section 6703 of the Business and Professions Code shall remain with the Consultant, and any plan check of project drawings and

specifications by the County is confined to a review only and does not relieve the Consultant of his/her responsibilities for the project design.

All tracings, plans, specifications, and maps prepared or obtained under the terms of the Agreement with County shall be delivered to and become the property of the County, and basic survey notes, sketches, charts, computations, and other data prepared or obtained under such Agreement, if not required to be provided, shall be made available upon request to the County without restriction or limitation on their use.

IV. ASSIGNMENT OF WORK

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

For each project for which services will be requested, the County will issue a Task Order to one or more firms under the on call agreement and request a proposal which must include project understanding and the appropriate lump sum fixed fee rate for the completion of the project. The proposal shall include the proposed methodology/protocols to be used, a breakdown of the hours to be spent per task by staff classification, milestones used to mark the consultant's accomplishments and points of payment authorization and the amount of time needed to perform the work from the time the notice to proceed is received by the consultant.

The consultant will have a prescribed number of working days, indicated in the task order, to submit the requested proposal. Failure to submit the proposal in the prescribed time may constitute grounds for having the proposal rejected and another firm under the on call agreement assigned the task. The County will review the proposal and make the decision of award based on qualifications for the task as well as overall cost.

Time frames for the consultant to complete tasks or achieve task milestones shall be negotiated on a task-by-task basis. Milestones and tasks defined for this contract are used to mark the consultant's accomplishments and as a guide for payment authorization. Any delays in the submitted schedule of work must be pre-authorized by authorized Public Works staff.

At the conclusion of the task, the selected firm shall submit to the County a project completion file containing all required information, forms, certifications, communications, and related documentation. A digital version of the project file shall also be submitted on a Universal Serial Bus (USB) flash drive containing all required documentation in portable document format (PDF) as well as any modifiable document used (.docx files, etc.). The complete project file must be submitted before final payment and retention can be released.

V. RESPONSIBILITY OF COUNTY

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

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

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

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

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

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

VI. PROPOSAL CONTENT AND FORMAT

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

1. General Requirements

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

2. Table of Contents

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

3. Summary of Qualifications and Experience

- a. State whether the firm is local, regional, national or international.
- b. Identify the owner(s) of the firm and legal status (sole proprietor, corporation, etc.)
- c. Give the location of the office from which work is anticipated to be done and the number of employees of the company.
- d. Identify the qualifications and resumes of all individuals who will be associated with this service. Include professional registrations and affiliations.
- e. Summarize specific experiences and qualification for similar and related projects, both federally funded and locally funded. Describe the services previously performed such as studies, reports, etc. List at least three (3) references with telephone numbers and email contact addresses (if available).

4. Analysis of Effort/Methodology

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

5. Cost/Fees and Invoicing

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

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

Rate Adjustments:

Hourly billing rates submitted with the proposal shall remain fixed for the initial contract term. Any request for annual rate increases for subsequent renewal periods must be submitted at least thirty (30) days prior to the start of the renewal term or prior to first invoice after the revised

- rates take place, whichever occurs first, and shall require prior written approval from the Director of Public Works, or designee. No increased rates may be applied or invoiced without written County approval. Unauthorized application of increased rates shall constitute a material breach of the Agreement and may result in termination.
- b. Submit itemized hourly fee schedule for additional services beyond the scope of work.
 - c. Invoicing will be submitted to the County on a per task completed basis. Milestone payments will be observed and it will be the responsibility of the selected consultant to propose the completed task milestone payment schedule. The schedule submitted will be a recommendation to the County. The County will then evaluate and discuss with the consultant if any modifications are required.

Insurance Requirements

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

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

VII. PROPOSAL EVALUATION

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

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

The proposals shall be evaluated by a selection committee, who will determine if proposal objectives are met, and whose evaluation may include interviews of the top five (5) ranked firms submitting qualifying packages. Once the proposals are reviewed and the qualifications considered, recommendations will then be submitted to the County Board of Supervisors for final selection.

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

VIII. PROPOSAL SUBMITTAL

Proposals must be submitted through PlanetBids by selecting the “Place eBid” button on the RFP’s posting on PlanetBids no later than Monday, January 19, 2026 at 04:00 pm. The County will not consider proposals received after the specified time and date. Any Amendment submitted after the deadline will be treated as a new proposal and will not be accepted.

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.

Note: Late proposals will not be considered.

IX. CONSULTING AGREEMENT AND INSURANCE REQUIREMENTS

A sample agreement is attached for review as Exhibit B.

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

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

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

X. CLOSING ITEMS

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

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.

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.

Any modification to this solicitation will be issued by the County as a written addendum through the PlanetBids portal.

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

XI. QUESTIONS AND CONTACT INFORMATION

As Needed, On Call, Architectural Services

All clarification or interpretation requests regarding this RFP shall be submitted through the PlanetBids Q&A section at <https://vendors.planetbids.com/portal/64020/portal-home> , no later than 04: 00 pm on December 22, 2025. Oral explanations or instructions shall not be considered binding on behalf of the County.

No oral questions will be taken or responded to except for administrative clarifications.

Contact: Alfonso Varela - Administrative Analyst II
 alfonsovarela@co.imperial.ca.us (for proposal questions)
 442-265-1818 (for administrative questions ONLY)

EXHIBIT A



PROPOSAL EVALUATION FORM

IMPERIAL COUNTY DEPARTMENT OF PUBLIC WORKS
REQUEST FOR PROPOSALS FOR ON CALL, AS NEEDED, ARCHITECTURAL
SERVICES; COUNTY PROJECT NO. 6685PWS

Prepared November 24, 2025

EVALUATOR: _____

RESPONDENT: _____

DATE: _____

RATING POINTS:

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

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

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

Comments:

EXHIBIT B

1 **AGREEMENT FOR SERVICES**

2 «Consultant_Business_Name»

3 THIS AGREEMENT FOR SERVICES (“Agreement”), made and entered into effective the
4 _____ day of _____, 2017, by and between the County of Imperial, a political subdivision of
5 the State of California, by and through its Department of Public Works (“COUNTY”) and
6 «Consultant_Business_Name», a «Consultant_Business_Type» licensed to do business within the state
7 of California (“CONSULTANT”) (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
3 COUNTY for all purposes under this Agreement. The Director of Public Works or
4 his/her designee is hereby designated as the Contract Manager for COUNTY. He/she
5 shall supervise the 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."** In the event of a conflict amongst this
14 Agreement, the RFP, and the Proposal, the RFP shall take precedence over the Proposal and this
15 Agreement shall take precedence over both.

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

17 **5.1.** CONSULTANT shall comply with all terms, conditions and requirements of the Proposal
18 and this Agreement.

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

25 **5.3.** CONSULTANT shall:

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

1 5.3.2. Keep itself fully informed of all existing and proposed federal, state and local laws,
2 ordinances, regulations, orders and decrees which may affect those engaged or
3 employed under this Agreement;

4 5.3.3. At all times observe and comply with, and cause all of its employees to observe
5 and comply with all of said laws, ordinances, regulations, orders and decrees
6 mentioned above; and

7 5.3.4. Immediately report to COUNTY's Contract Manager in writing any discrepancy
8 or inconsistency it discovers in said laws, ordinances, regulations, orders and
9 decrees mentioned above in relation to any plans, drawings, specifications or
10 provisions of this Agreement.

11 **6. REPRESENTATIONS BY CONSULTANT.**

12 6.1. CONSULTANT understands and agrees that COUNTY has limited knowledge in the
13 multiple areas specified in the Proposal. CONSULTANT has represented itself to be an
14 expert in these fields and understands that COUNTY is relying upon such representation.

15 6.2. CONSULTANT represents and warrants that it is a lawful entity possessing all required
16 licenses and authorities to do business in the State of California and perform all aspects
17 of this Agreement.

18 6.3. CONSULTANT shall not commence any work under this Agreement or provide any
19 other services, or materials, in connection therewith until CONSULTANT has received
20 written authorization from COUNTY's Contract manager to do so.

21 6.4. CONSULTANT represents and warrants that the people executing this Agreement on
22 behalf of CONSULTANT have the authority of CONSULTANT to sign this Agreement
23 and bind CONSULTANT to the performance of all duties and obligations assumed by
24 CONSULTANT herein.

25 6.5. CONSULTANT represents and warrants that any employee, contractor and/or agent who
26 will be performing any of the duties and obligations of CONSULTANT herein possess all
27 required licenses and authorities, as well as the experience and training, to perform such
28 tasks.

- 1 **6.6.** CONSULTANT represents and warrants that the allegations contained in the Proposal are
2 true and correct.
- 3 **6.7.** CONSULTANT understands and agrees not to discuss this Agreement or work
4 performed pursuant to this Agreement with anyone not a party to this Agreement
5 without the prior permission of COUNTY. CONSULTANT further agrees to
6 immediately advise COUNTY of any contacts or inquiries made by anyone not a party
7 to this Agreement with respect to work performed pursuant to this Agreement.
- 8 **6.8.** Prior to accepting any work under this Agreement, CONSULTANT shall perform a due
9 diligence review of its files and advise COUNTY of any conflict or potential conflict
10 CONSULTANT may have with respect to the work requested.
- 11 **6.9.** CONSULTANT understands and agrees that in the course of performance of this
12 Agreement CONSULTANT may be provided with information or data considered by
13 the owner or the COUNTY to be confidential. COUNTY shall clearly identify such
14 information and/or data as confidential. CONSULTANT shall take all necessary steps
15 necessary to maintain such confidentiality including but not limited to restricting the
16 dissemination of all material received to those required to have such data in order for
17 CONSULTANT to perform under this Agreement.
- 18 **6.10.** CONSULTANT represents that the personnel dedicated to this project as identified in
19 CONSULTANT's Proposal, will be the people to perform the tasks identified therein.
20 CONSULTANT will not substitute other personnel or engage any contractors to work
21 on any tasks identified herein without prior written notice to COUNTY.
- 22 **6.11.** CONSULTANT understands that COUNTY considers the representations made herein
23 to be material and would not enter into this Agreement with CONSULTANT if such
24 representations were not made.

25 7. **TERM OF AGREEMENT.**

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

1 **8. COMPENSATION.**

2 **8.1.** The total compensation payable under this Agreement shall not exceed
3 «Cost_of_Original_Contract», unless otherwise previously agreed to in writing by
4 COUNTY.

5 **8.2.** The fee for any additional services required by COUNTY will be computed either on a
6 negotiated lump sum basis or upon actual hours and expenses incurred by
7 CONSULTANT and based on CONSULTANT's current standard rates as set forth in
8 the Proposal. Additional services or costs will not be paid without a prior written
9 agreement between the Parties.

10 **8.3.** Except as provided under Paragraphs 8.1 and 8.2, COUNTY shall not be responsible to
11 pay CONSULTANT any compensation, out of pocket expenses, fees, reimbursement of
12 expenses or other remuneration.

13 **9. PAYMENT.**

14 **9.1.** CONSULTANT shall bill COUNTY on a time and material basis as set forth in **Exhibit**
15 **“B.”** COUNTY shall pay CONSULTANT for completed and approved services upon
16 presentation of its itemized billing.

17 **9.2.** COUNTY shall have the right to retain five percent (5%) of the total of amount of each
18 invoice, not to exceed five percent (5%) of the total compensation amount of the
19 completed project. “Completion of the Project” is when the work to be performed has
20 been completed in accordance with this Agreement, as determined by COUNTY, and all
21 subcontractors, if any, have been paid in full by CONSULTANT. Upon completion of the
22 Project CONSULTANT shall bill COUNTY the retention for payment by COUNTY.

23 **10. METHOD OF PAYMENT.**

24 CONSULTANT shall at any time prior to the fifteenth (15th) day of any month, submit to
25 COUNTY a written claim for compensation for services performed. The claim shall be in a format
26 approved by COUNTY. No payment shall be made by COUNTY prior to the claims being approved in
27 writing by COUNTY's Contract Manager or his/her designee. CONSULTANT may expect to receive
28 payment within a reasonable time thereafter and in any event in the normal course of business within

thirty (30) days after the claim is submitted.

11. TIME FOR COMPLETION OF THE WORK.

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

12. MAINTENANCE AND ACCESS OF BOOKS AND RECORDS.

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

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

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

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

13. SUSPENSION OF AGREEMENT.

COUNTY's Contract Manager shall have the authority to suspend this Agreement, in whole or in part, for such period as deemed necessary due to unfavorable conditions or to the failure on the part

of CONSULTANT to perform any provision of this Agreement. CONSULTANT will be paid the compensation due and payable to the date of suspension.

14. TERMINATION.

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

15. INSPECTION.

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

16. OWNERSHIP OF MATERIALS.

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

17. INTEREST OF CONSULTANT.

17.1. CONSULTANT covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder.

17.2. CONSULTANT covenants that, in the performance of this Agreement, no sub-

contractor or person having such an interest shall be employed.

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

18. INDEMNIFICATION.

18.1. CONSULTANT agrees to the fullest extent permitted by law to indemnify, defend, protect and hold COUNTY and its representatives, officers, directors, designees, employees, successors and assigns harmless from any and all claims, expenses, liabilities, losses, causes of actions, demands, losses, penalties, attorneys' fees and costs, in law or equity, of every kind and nature whatsoever arising out of or in connection with CONSULTANT's negligent acts and omissions or willful misconduct under this Agreement ("Claims"), whether or not arising from the passive negligence of COUNTY, but does not include Claims that are the result of the negligence or willful misconduct of COUNTY.

18.2. CONSULTANT agrees to defend with counsel acceptable to COUNTY, indemnify and hold COUNTY harmless from all Claims, including but not limited to:

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

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

1 **18.2.3.** Penalties imposed upon account of the violation of any law, order, citation, rule,
2 regulation, standard, ordinance or statute caused by the negligent action or
3 inaction, or willful misconduct of CONSULTANT or anyone directly or
4 indirectly employed by CONSULTANT or anyone for whose acts
5 CONSULTANT may be liable, including but not limited to:

6 **(a)** Any loss of funding, penalties, fees, or other costs resulting from
7 CONSULTANT's failure to adhere to Disadvantaged Business
8 Enterprise requirements and/or goals, as determined by COUNTY or
9 such other lawful entity in charge of monitoring Disadvantaged Business
10 Enterprise compliance;

11 **(a)** Any loss of funding, penalties, fees, or other costs resulting from
12 CONSULTANT's failure to adhere to prevailing wage requirements, as
13 determined by COUNTY, the California Department of Industrial
14 Relations, or such other lawful entity in charge of monitoring prevailing
15 wage compliance;

16 **18.2.4.** Infringement of any patent rights which may be brought against COUNTY
17 arising out of CONSULTANT's work;

18 **18.2.5.** Any violation or infraction by CONSULTANT of any law, order, citation, rule,
19 regulation, standard, ordinance or statute in any way relating to the occupational
20 health or safety of employees; and

21 **18.2.6.** Any breach by CONSULTANT of the terms, requirements or covenants of this
22 Agreement.

23 **18.3.** These indemnification provisions shall extend to Claims occurring after this Agreement
24 is terminated, as well as while it is in force.

25 **19. INDEPENDENT CONTRACTOR.**

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

- 1 **19.1.** CONSULTANT is not an employee or agent of COUNTY and is only responsible for
2 the requirements and results specified by this Agreement or any other agreement.
- 3 **19.2.** CONSULTANT shall be responsible to COUNTY only for the requirements and results
4 specified by this Agreement and except as specifically provided in this Agreement, shall
5 not be subject to COUNTY's control with respect to the physical actions or activities of
6 CONSULTANT in fulfillment of the requirements of this Agreement.
- 7 **19.3.** CONSULTANT is not, and shall not be, entitled to receive from, or through, COUNTY,
8 and COUNTY shall not provide, or be obligated to provide, CONSULTANT with
9 Workers' Compensation coverage or any other type of employment or worker insurance
10 or benefit coverage required or provided by any Federal, State or local law or regulation
11 for, or normally afforded to, an employee of COUNTY.
- 12 **19.4.** CONSULTANT shall not be entitled to have COUNTY withhold or pay, and COUNTY
13 shall not withhold or pay, on behalf of CONSULTANT, any tax or money relating to
14 the Social Security Old Age Pension Program, Social Security Disability Program, or
15 any other type of pension, annuity, or disability program required or provided by any
16 federal, State or local law or regulation.
- 17 **19.5.** CONSULTANT shall not be entitled to participate in, nor receive any benefit from, or
18 make any claim against any COUNTY fringe program, including, but not limited to,
19 COUNTY's pension plan, medical and health care plan, dental plan, life insurance plan,
20 or any other type of benefit program, plan, or coverage designated for, provided to, or
21 offered to COUNTY's employees.
- 22 **19.6.** COUNTY shall not withhold or pay, on behalf of CONSULTANT, any Federal, State,
23 or local tax, including, but not limited to, any personal income tax, owed by
24 CONSULTANT.
- 25 **19.7.** CONSULTANT is, and at all times during the term of this Agreement, shall represent
26 and conduct itself as an independent contractor, not as an employee of COUNTY.
- 27 **19.8.** CONSULTANT shall not have the authority, express or implied, to act on behalf of,
28 bind or obligate COUNTY in any way without the written consent of COUNTY.

1 **20. INSURANCE.**

2 **20.1.** CONSULTANT hereby agrees at its own cost and expense to procure and maintain,
3 during the entire term of this Agreement and any extended term therefore, insurance in
4 a sum acceptable to COUNTY and adequate to cover potential liabilities arising in
5 connection with the performance of this Agreement and in any event not less than the
6 minimum limit set forth in the "Minimum Insurance Amounts" attachment to RFP
7 **(Exhibit "A")** which are incorporated as if set forth fully herein.

8 **20.2. Special Insurance Requirements.** All insurance required shall:

9 **20.2.1.** Be procured from California admitted insurers (licensed to do business in
10 California) with a current rating by Best's Key Rating Guide, acceptable to
11 COUNTY. A rating of at least A-VII shall be acceptable to COUNTY; lesser
12 ratings must be approved in writing by COUNTY.

13 **20.2.2.** Be primary coverage as respects COUNTY and any insurance or self-insurance
14 maintained by COUNTY shall be in excess of CONSULTANT's insurance
15 coverage and shall not contribute to it.

16 **20.2.3.** Name The Imperial County Department of Public Works and the County of
17 Imperial and their officers, employees, and volunteers as additional insured on
18 all policies, except Workers' Compensation insurance and Errors & Omissions
19 insurance, and provide that COUNTY may recover for any loss suffered by
20 COUNTY due to CONSULTANT's negligence.

21 **20.2.4.** State that it is primary insurance and regards COUNTY as an additional insured
22 and contains a cross-liability or severability of interest clause.

23 **20.2.5.** Not be canceled, non-renewed or reduced in scope of coverage until after thirty
24 (30) days written notice has been given to COUNTY. CONSULTANT may not
25 terminate such coverage until it provides COUNTY with proof that equal or
26 better insurance has been secured and is in place. Cancellation or change
27 without prior written consent of COUNTY shall, at the option of COUNTY, be
28 grounds for termination of this Agreement.

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

5 **20.3. Additional Insurance Requirements.**

6 **20.3.1.** COUNTY is to be notified immediately of all insurance claims. COUNTY is
7 also to be notified if any aggregate insurance limit is exceeded.

8 **20.3.2.** The comprehensive or commercial general liability shall contain a provision of
9 endorsements stating that such insurance:

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

25 **20.4. Deposit of Insurance Policy.** Promptly on issuance, reissuance, or renewal of any
26 insurance policy required by this Agreement, CONSULTANT shall, if requested by
27 COUNTY, provide COUNTY satisfactory evidence that insurance policy premiums
28 have been paid together with a duplicate copy of the policy or a certificate evidencing

1 the policy and executed by the insurance company issuing the policy or its authorized
2 agent.

3 **20.5. Certificates of Insurance.** CONSULTANT agrees to provide COUNTY with the
4 following insurance documents on or before the effective date of this Agreement:

5 **20.5.1.** Complete copies of certificates of insurance for all required coverages including
6 additional insured endorsements shall be attached hereto as **Exhibit “C”** and
7 incorporated herein.

8 **20.5.2.** The documents enumerated in this Paragraph shall be sent to the following:

9 County of Imperial
10 Risk Management Department
11 RE: County Project No. «Project_Number»
12 940 Main Street, Suite 101
13 El Centro, CA 92243

14 County of Imperial
15 Department of Public Works
16 RE: County Project No. «Project_Number»
17 155 South 11th Street
18 El Centro, CA 92243

19 **20.6. Additional Insurance.** Nothing in this, or any other provision of this Agreement, shall
20 be construed to preclude CONSULTANT from obtaining and maintaining any
21 additional insurance policies in addition to those required pursuant to this Agreement.

22 **21. PREVAILING WAGE.**

23 **21.1.** CONSULTANT acknowledges that any work that qualifies as a “public work” within
24 the meaning of California Labor Code section 1720 shall cause CONSULTANT, and its
25 sub-consultants, to comply with the provisions of California Labor Code sections 1775
26 et seq.

27 **21.2.** When applicable, copies of the prevailing rate of per diem wages shall be on file at
28 COUNTY’s Department of Public Works and available to CONSULTANT and any
other 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
3 Labor Code section 1776 regarding retention and inspection of payroll records
4 and noncompliance penalties; and

5 **21.3.2.** CONSULTANT has reviewed and agrees to comply with the provisions of
6 Labor 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
8 Labor 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
10 Labor Code section 1813 regarding forfeiture for violations of the maximum
11 hours per day and per week provisions contained in the same chapter.

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

20 **22. WORKERS' COMPENSATION CERTIFICATION.**

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

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

1 **22.3.** CONSULTANT understands and agrees that any and all employees, regardless of hire
2 date, shall be covered by Workers' Compensation pursuant to statutory requirements
3 prior to beginning work on the Project.

4 **22.4.** If CONSULTANT has no employees, initial here: _____.

5 **23. ASSIGNMENT.**

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

9 **24. NON-DISCRIMINATION.**

10 **24.1.** During the performance of this Agreement, CONSULTANT 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 CONSULTANT 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 **24.2.** CONSULTANT and its subcontractors shall not discriminate on the basis of race, color,
19 national origin, or sex in the performance of this Agreement. CONSULTANT shall
20 carry out applicable requirements of 49 CFR 26 in the award and administration of
21 DOT-assisted contracts. Failure by CONSULTANT to carry out these requirements is a
22 material breach of this Agreement, which may result in the termination of this
23 Agreement, or such other remedy as COUNTY deems appropriate.

24 **24.3.** CONSULTANT and its subcontractors shall comply with the provisions of the Fair
25 Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable
26 regulations promulgated thereunder (California Code of Regulations, Title 2, §7285 et
27 seq.).

28 **24.4.** The applicable regulations of the Fair Employment and Housing Commission

implementing Government Code §12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

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

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

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

25. **DISADVANTAGED BUSINESS ENTITY COMPLIANCE.**

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

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

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

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

25.5. In addition to the above, CONSULTANT’s failure to comply with DBE

requirements/goals shall subject it to such sanctions as are permitted by law, which may include, but shall not be limited to the following:

25.5.1. Termination of this Agreement;

25.5.2. Withholding monthly progress payments;

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

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

26. NOTICES AND REPORTS.

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

COUNTY

Director of Public Works

RE: County Project No. «Project_Number»

«Project_Number»

155 South 11th Street

El Centro, CA 92243

County of Imperial

Clerk of the Board of Supervisors

RE: County Project No. «Project_Number»

940 W. Main Street, Suite 209

El Centro, CA 92243

CONSULTANT

«Consultant_Business_Name»

RE: County Project No.

«Consultant_Street_Address»

«Consultant_City_State»

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

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

27. ENTIRE AGREEMENT.

This Agreement contains the entire Agreement between COUNTY and CONSULTANT

relating to the transactions contemplated hereby and supersedes all prior or contemporaneous agreements, understandings, provisions, negotiations, representations, or statements, either written or oral.

28. MODIFICATION.

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

29. CAPTIONS.

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

30. PARTIAL INVALIDITY.

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

31. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.

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

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

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

32. WAIVER.

No waiver of any breach or of any of the covenants or conditions of this Agreement shall be construed to be a waiver of any other breach or to be a consent to any further or succeeding breach of the 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
3 made and entered into in Imperial County, California. Any action brought by either party with respect
4 to this 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
12 and;

13 **34.1.3.** This Agreement is binding upon CONSULTANT accordance with its terms.

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

16 **35. COUNTERPARTS.**

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

21 **36. REVIEW OF AGREEMENT TERMS.**

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

26 **36.2.** Each Party represents and warrants to and covenants with the other Party that:

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

1 and

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

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

6 **37. NON-APPROPRIATION.**

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

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

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

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

19
20 **County of Imperial**

«Consultant_Business_Name»

21
22 By: _____
23 John Hawk, Chairman
24 Imperial County Board of Supervisors

By: _____
«Consultant_Name_for_Signature»

25 **ATTEST:**

26
27 _____
28 Cynthia Medina, Clerk of the Board,
County of Imperial, State of California

APPROVED AS TO FORM:

MISTELLE ABDELMAGIED,
ASSISTANT COUNTY COUNSEL

By: _____
«CC_Attorney»,
«CC_Attorney_Title»

SAMPLE

EXHIBIT “A” – “REQUEST FOR PROPOSAL”

SAMPLE

EXHIBIT “B” – “PROPOSAL”

SAMPLE

EXHIBIT “C” – “CERTIFICATES OF INSURANCE”

SAMPLE

EXHIBIT “D” – “DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION”

A. This contract is subject to 49 CFR, Part 26 entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.” Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. The goal for DBE participation for this contract is _____%. If applicable, participation by DBE consultant or subconsultants shall be in accordance with information contained in the form entitled, “Consultant Proposal DBE Commitment” (Exhibit 10-O1, of the LAPM), or in the form entitled, “Consultant Contract DBE Information” (Exhibit 10-O2, of the LAPM), attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as LOCAL AGENCY deems appropriate.

D. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.

E. A DBE firm may be terminated only with prior written approval from LOCAL AGENCY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting LOCAL AGENCY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).

F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing,

1 and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect
2 to materials and supplies used on the contract, for negotiating price, determining quality and quantity,
3 ordering the material, and installing (where applicable) and paying for the material itself. To
4 determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry
5 practices, whether the amount the firm is to be paid under the, contract is commensurate with the work
6 it is actually performing, and other relevant factors.

7 G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a
8 transaction, contract, or project through which funds are passed in order to obtain the appearance of
9 DBE participation. In determining whether a DBE is such an extra participant, examine similar
10 transactions, particularly those in which DBEs do not participate.

11 H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the
12 total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work
13 of the contract than would be expected on the basis of normal industry practice for the type of work
14 involved, it will be presumed that it is not performing a CUF.

15 I. CONSULTANT shall maintain records of materials purchased or supplied from all
16 subcontracts entered into with certified DBEs. The records shall show the name and business address
17 of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of
18 tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE
19 prime consultants shall also show the date of work performed by their own forces along with the
20 corresponding dollar value of the work.

21 J. If applicable, upon completion of the Contract, a summary of these records shall be prepared
22 and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise
23 (DBE) and First-Tier Subcontractors" CEM-2402F (Exhibit 17-F, of the LAPM), certified correct by
24 CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract
25 Administrator with the final invoice. Failure to provide the summary of DBE payments with the final
26 invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from
27 payment until the form is submitted. The amount will be returned to CONSULTANT when a
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satisfactory “Final Report-Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors” form is submitted to the Contract Administrator.

K. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY’s Contract Administrator within 30 days.

INSURANCE COVERAGE AND LIMITS:

Liability coverage shall be at least as broad as Insurance Services Office (ISO) CGL Policy CG 00 01. No modifications or endorsements are allowed that would reduce, limit, restrict, or exclude coverage under the standard unmodified ISO CGL policy coverages.

<u>Insurance</u>	<u>Minimum Limit*</u>
Professional Liability (Errors and Omissions)	Insurance appropriate to the Contractor's profession, with limit no less than \$1,000,000 per occurrence or claim, \$1,000,000 aggregate.
Workers Compensation, Coverage A	as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
Employers Liability, Coverage B	\$1,000,000
Commercial General Liability (including Contractual Liability):	Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$3,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
Comprehensive Automobile Liability (owned, hired & non-owned vehicles) Bodily Injury & Property Damage	ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

ADDITIONAL ENDORSEMENT REQUIRED:

1. Waiver of Subrogation (Rights of Recovery) endorsement of Workers' Compensation
2. Additional Insured Endorsement for "ongoing operations" at least as broad as ISO CG 2010 Scheduled form, or Automatic form CG 2038.
3. Additional Insured Endorsement for "completed operations" at least as broad as ISO CG 2037 Scheduled form, or Automatic form CG 2040.
4. Primary & non-contributory coverage (at least as broad as ISO CG 20 01)

Special Risks or Circumstances

The COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.