



**REQUEST FOR PROPOSALS  
ARCHIVIST CONSULTANT SERVICES  
FOR ONSTIE RECORDS MANAGEMENT AND DIGITIZATION  
COUNTY PROJECT NO. 7341RFQ**

Prepared By:

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Administrative Analyst I

**Deadline for Submissions: Thursday, May 7, 2026 at 4:00 p.m.**

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

PROPOSAL MUST BE SUBMITTED BY 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.

April 20, 2026

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## I. PURPOSE AND BACKGROUND

The County of Imperial Department of Public Works (Department) maintains a large volume of records, including historical documents, engineering plans, maps, photographs, and other materials critical to the operation and documentation of public infrastructure. Many of these records exist in both physical and digital formats across multiple divisions, resulting in inconsistencies in organization, accessibility, and long term preservation.

As recordkeeping requirements continue to evolve, the Department must ensure compliance with applicable regulations, including the California Public Records Act and California Government Code Section 26202, which establishes retention requirements for public records. Additionally, the need to preserve historically significant documents and improve access to information has become increasingly important for operational efficiency and public transparency.

Currently, the Department lacks a standardized, centralized archival and digital filing system to effectively manage these records. As a result, staff may encounter challenges in locating documents, responding to public records requests, and ensuring proper retention and disposition of materials.

To address these needs, the County is seeking professional archivist consultant services to assess existing records, develop a compliant records retention schedule, and establish a structured archival and digital records management system. The Consultant will also provide recommendations for digitization standards and staff training to support long-term implementation and sustainability of the system.

The County of Imperial Department of Public Works is requesting proposals from qualified consultants to provide professional archivist services. Qualified entities are invited to submit proposals in accordance with this Request for Proposals (RFP). The Department intends to procure professional archival services to organize, catalog, digitize, and preserve an extensive collection of historical records onsite at the Department office located at 155 S. 11<sup>th</sup> Street, El Centro, CA, 92243.

The contract will become effective upon approval by the Imperial County Board of Supervisors for the duration of one year with the option to renew up to four – one year extensions for a total of five years. Any such extensions shall be determined by the Department and approved through supplemental agreement modifications/amendments contingent upon ongoing need, satisfactory performance, and availability of funding.

### Proposed Schedule of Events

Issue Request for Quotations	April 20, 2026
Final Date for Questions	April 29, 2026
Quotation Due	May 7, 2026
Consultant Selection	June 2026
County Awards Contract	July/ August 2026

## II. SCOPE OF WORK

The successful Consultant shall assess, develop, and implement a comprehensive records management and archival system for the Imperial County Department of Public Works. The Consultant shall evaluate existing records, establish standardized filing and retention procedures, and provide recommendations for digitization and long term preservation.

**All work to be performed shall be completed at the County of Imperial Department of Public Works office located at 155 S 11<sup>th</sup> Street, El Centro CA 92243.**

The scope of work is to perform the following tasks to assist the County in establishing an organized and compliant records management system..

Services and tasks to be provided by consultant include, but are not limited to:

1. **Archival Assessment:** Conduct a comprehensive inventory and evaluation of existing records across all divisions, including physical documents, plans, maps, photographs, and digital files (e.g., CAD and GIS data), to identify organizational gaps and preservation needs.
2. **Records Organization and Classification:** Develop a standardized classification and filing structure to ensure consistency, accessibility, and efficient retrieval of records across the Department.
3. **Retention Schedule Development:** Prepare or update a records retention schedule in compliance with California Government Code Section 26202 and other applicable regulations; including identification of records requiring long term or permanent preservation.
4. **Digitization:** Develop recommendations and standards for digitizing physical records, including file naming conventions, metadata requirements indexing methods, and preferred formats for electronic storage, prepare documents for scanning, and securely process imaging/scanning of Department files.
  - a. All records shall remain onsite at County facilities at all times. Consultant shall perform all sorting and scanning at designated County location(s). Removal, transport, of offsite storage of materials is strictly prohibited.
  - b. Document preparation shall include but not be limited to smoothing dog-eared corners, repairing torn edges, flattening rolled plan-sets, removing binding material (e.g. staples, clips, fasteners, etc) and sticky notes, bound documents are to be disassembled and scanned
  - c. All scanned documents are to be in proper orientation to be viewed without image rotation and capture high-quality digital images following best practices
  - d. Double-sided pages are to be scanned in sequence and the image of the reverse side of the page is to follow the front side of the page when viewing the images
  - e. Blank pages shall be eliminated
5. **Digital Archiving Framework:** Coordinate and conduct the establishment of a centralized digital filing system, including guidance on software, database structure, and/or integration with existing systems, as applicable.
6. **Staff Training:** Provide training to Department staff on new records management procedures, digital filing protocols, and best practices for handling public records requests.
7. **Documentation and Deliverables:** Prepare and submit all required deliverables, including an archival assessment report, finalized records retention schedule, metadata schema, and a final report outlining recommendations and implementation guidance.
8. **Coordination and Communication:** Coordinate with the Department of Public Works staff and other County departments, as necessary, to obtain relevant information and ensure successful implementation of the records management system.

The selected consultant shall be responsible for evaluating project requirements and providing written recommendations for scanning and digitization equipment necessary for the Scope of Work. Recommendations shall include, at a minimum, equipment specifications, performance requirements, and justification based on anticipated document types, volumes, and projection needs. Ancillary equipment needed for this scope of work shall be procured directly by the Department. Consultant shall not be responsible for purchasing equipment unless expressly authorized in writing by the Department.

### **III. RESPONSIBILITIES OF THE COUNTY**

The County will provide direction, provide management oversight, and conduct administrative arrangements.

The County will pay an agreed upon amount normally within 30 days after receipt of an invoice.

The County will provide a dedicated workplace facility.

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.

Any required capital expenditures or unexpected failures will be the responsibility of the County. Respondent shall identify and request all necessary chemicals, materials, and equipment necessary to successfully operate the systems and notify the County for payment. Laboratory and analytical costs shall be borne by the County. The County shall pay for the costs for these items with prior approval.

## **IV. PROPOSAL CONTENT**

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

### General Requirements

Provide a cover letter.

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 project. Provide a statement that the offer is valid for at least a ninety (90) day period.

Provide the name(s) of the primary and/or alternate individuals authorized to respond to this RFP. Include titles, addresses, e-mail, and phone number. Include contact details on person who will be authorized to execute a contract with the County of Imperial if your firm is successful.

The Consultant is representing itself as a qualified professional in archiving services. 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.

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.

### Table of Contents

Include a table of contents with identification of each section and page number.

### Summary of Qualifications and Experience

State whether the consultant (or firm) is local, regional, national or international.

Identify the owner(s) of the firm and legal status (sole proprietor, corporation, etc.)

Identify the qualifications and résumés of all individuals who will be performing services under this contract.

Summarize specific experience and qualifications for similar and related projects. Provide detailed knowledge and experience in working on projects that require adherence to the federal, state, and local regulatory agencies. Describe the services previously performed. List at least 3 references with contact information (including email).

### Analysis of Effort/Methodology

Describe the approach for how the work will be performed. The proposal shall indicate any specific techniques or methodology to be utilized.

The proposal shall include a sample project timeline with specific tasks envisioned for scope of work.

Indicate what participation, data and products will be requested from the County.

Indicate deliverables to be provided and when.

### Cost and Fees

Consultants shall submit cost proposals in a separate file properly labeled "Cost Proposal [Consultant Name]" consisting solely of **fully burdened hourly billing rates for all personnel classifications** anticipated to perform services under this RFP. No unit pricing, lump sum pricing, or alternative pricing structures are required. The contract will be for a not-to-exceed amount of \$100,000.00 annually.

## **V. EVALUATION OF PROPOSALS**

Sample evaluation criteria for proposals are attached (Exhibit B). The County will utilize a one-step selection process.

The Evaluations Committee will determine if qualifications are met in reviewing the proposals. 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 for each system separately and may not correlate to a number 1, number 2, or even number 3 ranked consultant. The County reserves the right to reject any and all proposals submitted and/or request additional information for clarification.

## **VI. QUESTIONS AND QUOTATION SUBMISSION**

This RFQ is being posted on the Department's Projects Out to Bid webpage located at: <https://publicworks.imperialcounty.org/projects-out-to-bid/> and the County's PlanetBids portal located at: <https://vendors.planetbids.com/portal/64020/portal-home>. Prospective consultants must be registered with PlanetBids to access RFQ documents.. To register, please use the following link: <https://vendors.planetbids.com/portal/64020/portal-home>

Clarification desired by a respondent relating to definition or interpretation shall be requested using the PlanetBids Q & A section no later 4:00 p.m. on Wednesday April 29, 2026.

Oral explanation or instructions shall not be considered binding on behalf of the County.

Any modifications to this solicitation will be issued by the County as a written addendum posted to the Projects Out to Bid webpage and County PlanetBids portal.

Proposals for this project must be submitted using the "Place Bid" button on the RFQ's posting on PlanetBids no later than 4:00 P.M. on Thursday, May 7, 2026.

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

The County reserves the right to amend, withdraw, and cancel this Request for Proposal. The County also reserves the right to reject all responses to this Request for Proposal at any time prior to issuing a contract. All submissions shall be reviewed to verify that Consultant has met the minimum requirements as stated within this Request for Proposal. Submissions that do not follow the rules, do not meet minimum content and quality standards will be rejected as non-responsive.

# EXHIBIT “A”

**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.

<b><u>Insurance</u></b>	<b><u>Minimum Limit*</u></b>
Professional Liability (Errors and Omissions)	Insurance appropriate to the Contractor’s profession, with limit no less than <b>\$1,000,000</b> per occurrence or claim, <b>\$1,000,000</b> 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 <b>\$1,000,000</b> 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 <b>\$3,000,000</b> 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 <b>\$1,000,000</b> 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.

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       **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 (15<sup>th</sup>) 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

1 thirty (30) days after the claim is submitted.

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

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

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

9 **12.1.** CONSULTANT shall maintain books, records, documents, reports and other materials  
10 developed under this Agreement as follows:

11 **12.2.** CONSULTANT shall maintain all ledgers, books of accounts, invoices, vouchers,  
12 canceled checks, and other records relating to CONSULTANT's charges for services or  
13 expenditures and disbursements charged to COUNTY for a minimum period of three  
14 (3) years, or for any longer period required by law, from the date of final payment to  
15 CONSULTANT pursuant to this Agreement.

16 **12.3.** CONSULTANT shall maintain all reports, documents, and records, which demonstrate  
17 performance under this Agreement for a minimum period of five (5) years, or for any  
18 longer period required by law, from the date of termination or completion of this  
19 Agreement.

20 **12.4.** Any records or documents required to be maintained by CONSULTANT pursuant to  
21 this Agreement shall be made available to COUNTY for inspection or audit at any time  
22 during 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 **13. SUSPENSION OF AGREEMENT.**

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

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

3 **14. TERMINATION.**

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

12 **15. INSPECTION.**

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

18 **16. OWNERSHIP OF MATERIALS.**

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

24 **17. INTEREST OF CONSULTANT.**

25 **17.1.** CONSULTANT covenants that it presently has no interest, and shall not acquire any  
26 interest, direct or indirect, financial or otherwise, which would conflict in any manner or  
27 degree with the performance of the services hereunder.

28 **17.2.** CONSULTANT covenants that, in the performance of this Agreement, no sub-

1 contractor or person having such an interest shall be employed.

2 **17.3.** CONSULTANT certifies that no one who has or will have any financial interest under  
3 this Agreement is an officer or employee of COUNTY.

4 **18. INDEMNIFICATION.**

5 **18.1.** CONSULTANT agrees to the fullest extent permitted by law to indemnify, defend,  
6 protect and hold COUNTY and its representatives, officers, directors, designees,  
7 employees, successors and assigns harmless from any and all claims, expenses,  
8 liabilities, losses, causes of actions, demands, losses, penalties, attorneys' fees and  
9 costs, in law or equity, of every kind and nature whatsoever arising out of or in  
10 connection with CONSULTANT's negligent acts and omissions or willful misconduct  
11 under this Agreement ("Claims"), whether or not arising from the passive negligence of  
12 COUNTY, but does not include Claims that are the result of the negligence or willful  
13 misconduct of COUNTY.

14 **18.2.** CONSULTANT agrees to defend with counsel acceptable to COUNTY, indemnify and  
15 hold COUNTY harmless from all Claims, including but not limited to:

16 **18.2.1.** Personal injury, including but not limited to bodily injury, emotional injury,  
17 sickness or disease or death to persons including but not limited to COUNTY's  
18 representatives, officers, directors, designees, employees, agents, successors and  
19 assigns, subcontractors and other third parties and/or damage to property of  
20 anyone (including loss of use thereof) arising out of CONSULTANT's negligent  
21 performance of, or willful misconduct surrounding, any of the terms contained  
22 in this Agreement, or anyone directly or indirectly employed by  
23 CONSULTANT or anyone for whose acts CONSULTANT may be liable;

24 **18.2.2.** Liability arising from injuries to CONSULTANT and/or any of  
25 CONSULTANT's employees or agents arising out of CONSULTANT's  
26 negligent performance of, or willful misconduct surrounding, any of the terms  
27 contained in this Agreement, or anyone directly or indirectly employed by  
28 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-  
19                          Works/PublicWorksEnforcement.html](http://www.dir.ca.gov/Public-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

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

4 **24.5.** The applicable regulations of §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794  
5 (a)) are incorporated into this Agreement by reference and made a part hereof as if set  
6 forth in full.

7 **24.6.** CONSULTANT and its subconsultants shall give written notice of their obligations  
8 under this clause to labor organizations with which they have a collective bargaining or  
9 other agreement.

10 **24.7.** CONSULTANT shall include the nondiscrimination and compliance provisions of this  
11 clause in all subcontracts to perform work under this Agreement.

12 **25. DISADVANTAGED BUSINESS ENTITY COMPLIANCE.**

13 **25.1.** CONSULTANT represents and warrants that is has fully read the applicable  
14 Disadvantaged Business Enterprise (“DBE”) requirements pertaining to this Project and  
15 has fully and accurately completed any and all required DBE forms.

16 **25.2.** CONSULTANT represents and warrants that it will comply with all applicable DBE  
17 requirements for this Project.

18 **25.3.** CONSULTANT shall comply with the applicable DBE provisions attached hereto as  
19 **Exhibit “D”** and incorporated by this reference as though fully set forth herein.

20 **25.4.** If any state or federal funds are withheld from COUNTY or not reimbursed to  
21 COUNTY due to CONSULTANT’s failure to either comply with the DBE  
22 requirements set forth in the RFP and this Agreement, or to meet the mandatory DBE  
23 goals as determined by COUNTY, Caltrans, the Federal Highway Administration,  
24 and/or any other state or federal agency contributing funds to the Project, then  
25 CONSULTANT shall fully reimburse COUNTY the amount of funding lost. COUNTY  
26 reserves the right to deduct any such loss in funding from the amount of compensation  
27 due to CONSULTANT under this Agreement.

28 **25.5.** In addition to the above, CONSULTANT’s failure to comply with DBE

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

3 **25.5.1.** Termination of this Agreement;

4 **25.5.2.** Withholding monthly progress payments;

5 **25.5.3.** Compensatory, special, incidental, liquidated and other damages; and/or

6 **25.5.4.** Designation of CONSULTANT as “nonresponsible,” and disqualification from  
7 bidding on future public works projects advertised by COUNTY.

8 **26. NOTICES AND REPORTS.**

9 **26.1.** Any notice and reports under this Agreement shall be in writing and may be given by  
10 personal delivery or by mailing by certified mail, addressed as follows:

<p>11 <b>COUNTY</b>  12 Director of Public Works  13 RE: County Project No. «Project_Number»  14 «Project_Number»  15 155 South 11th Street  16 El Centro, CA 92243</p>	<p><b>CONSULTANT</b>  «Consultant_Business_Name»  RE: County Project No.  «Consultant_Street_Address»  «Consultant_City_State»</p>
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15 County of Imperial  
16 Clerk of the Board of Supervisors  
17 RE: County Project No. «Project\_Number»  
18 940 W. Main Street, Suite 209  
19 El Centro, CA 92243

20 **26.2.** Notice shall be deemed to have been delivered only upon receipt by the Party, seventy-  
21 two (72) hours after deposit in the United States mail or twenty-four (24) hours after  
22 deposit with an overnight carrier.

23 **26.3.** The addressees and addresses for purposes of this Section may be changed to any other  
24 addressee and address by giving written notice of such change. Unless and until written  
25 notice of change of addressee and/or address is delivered in the manner provided in this  
26 Section, the addressee and address set forth in this Agreement shall continue in effect  
27 for all purposes hereunder.

28 **27. ENTIRE AGREEMENT.**

This Agreement contains the entire Agreement between COUNTY and CONSULTANT

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

4 **28. MODIFICATION.**

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

7 **29. CAPTIONS.**

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

10 **30. PARTIAL INVALIDITY.**

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

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

15 **31.1.** As used in this Agreement and whenever required by the context thereof, each number,  
16 both singular and plural, shall include all numbers, and each gender shall include a  
17 gender.

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

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

25 **32. WAIVER.**

26 No waiver of any breach or of any of the covenants or conditions of this Agreement shall be  
27 construed to be a waiver of any other breach or to be a consent to any further or succeeding breach of  
28 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 Michael W. Kelley, Chairman  
24 Imperial County Board of Supervisors

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

25 **ATTEST:**

26  
27 \_\_\_\_\_  
28 Blanca Acosta, Clerk of the Board,  
County of Imperial, State of California

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**APPROVED AS TO FORM:**

Katherine Turner,  
County Counsel

By: \_\_\_\_\_  
«CC\_Attorney»,  
«CC\_Attorney\_Title»

SAMPLE

**EXHIBIT “A” – “REQUEST FOR PROPOSAL”**

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**EXHIBIT “B” – “PROPOSAL”**

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SAMPLE

**EXHIBIT “C” – “CERTIFICATES OF INSURANCE”**

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SAMPLE

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

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

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

13 C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate  
14 in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or  
15 subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the  
16 performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR, Part  
17 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to  
18 carry out these requirements is a material breach of this contract, which may result in the termination  
19 of this contract or such other remedy as LOCAL AGENCY deems appropriate.

20 D. Any subcontract entered into as a result of this contract shall contain all of the provisions of  
21 this section.  
22

23 E. A DBE firm may be terminated only with prior written approval from LOCAL AGENCY and  
24 only for the reasons specified in 49 CFR 26.53(f). Prior to requesting LOCAL AGENCY consent for  
25 the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).  
26

27 F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution  
28 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  
22 J. If applicable, upon completion of the Contract, a summary of these records shall be prepared  
23 and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise  
24 (DBE) and First-Tier Subcontractors" CEM-2402F (Exhibit 17-F, of the LAPM), certified correct by  
25 CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract  
26 Administrator with the final invoice. Failure to provide the summary of DBE payments with the final  
27 invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from  
28 payment until the form is submitted. The amount will be returned to CONSULTANT when a

## EXHIBIT “B”

