

Request for Proposals (RFP)

Design Engineering Services for Niland Sidewalk Improvements; County Project No.7363

Requested by:

David Dale, PE, PLS
Director of Public Works

Prepared By:

Jessica Carrillo, Administrative Analyst I

Deadline for Submissions: July 30, 2026, 3:00 PM

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

RFP Issued on July 15, 2026

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.

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EXHIBITS

A – Location Map

B – Sample Proposal Evaluation Form

C – Sample Consultant Agreement and Insurance Requirements*

****No changes shall be made to consultant agreement.***

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.

Application and renewal are completed online with a non-refundable fee of \$300. 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	https://www.dir.ca.gov/public-works/PublicWorksSB854.html
Senate Bill 854 Important Information for Awarding Bodies	http://www.dir.ca.gov/Public-Works/SB854.html
Public Works Contractor (PWC) Registration	https://www.dir.ca.gov/public-works/contractor-registration.html
Director's General Prevailing Wage Determinations	http://www.dir.ca.gov/OPRL/Pwd/

Request for Proposal (RFP) for Design Engineering Services for Niland Sidewalk Improvements; County Project No. 7363

July 15, 2026

I. PURPOSE AND BACKGROUND

The community of Niland contains significant gaps in the existing pedestrian network that limit pedestrian accessibility, connectivity, and safety. Existing gravel and unpaved areas, missing sidewalks, and deteriorated pedestrian facilities create barriers for residents traveling to schools, transit stops, employment centers, and other community destinations. The proposed project will improve pedestrian mobility and accessibility through the construction of sidewalks, curb and gutter, driveways, cross gutters, Americans with Disabilities Act (ADA)-compliant curb ramps, in-fill pavement, and high-visibility continental crosswalks.

The Department of Public Works (DPW) has prepared the Niland Sidewalk Improvements, County Project No. 7363, to improve pedestrian safety and accessibility within the community of Niland. The project is located approximately four (4) miles north of the City of Calipatria and approximately 4.5 miles east of the Salton Sea. The project corridor is directly east adjacent to State Route 111. Proposed improvements include the construction of sidewalks, curb and gutter, driveways, ADA-compliant curb ramps, cross gutters, in-fill pavement, and high-visibility continental crosswalks along First Street (south side) from State Route 111 to International Avenue, Isis Avenue (west side) from First Street to Main Street, Isis Avenue from Third Street to Fourth Street, Third Street (north side) from State Route 111 to International Avenue, and Fourth Street (north side) from State Route 111 to Isis Avenue.

The proposed project will construct approximately 3,700 linear feet (0.70 miles) of new sidewalks where none currently exist and install thirteen (13) high-visibility continental crosswalks at five (5) intersections, including ten (10) new crosswalks and replacement of three (3) existing degraded crosswalks. The proposed improvements are consistent with the goals of the Imperial County Active Transportation Plan (2019), Imperial County Pedestrian Management Plan, and Imperial County Safe Routes to School Regional Master Plan, which identify the need to improve pedestrian conditions for people of all ages and abilities. The project will improve access to schools, transit stops, employment centers, and other community destinations by closing significant pedestrian facility gaps and enhancing pedestrian connectivity throughout the community of Niland.

Funding for construction activities will be provided through the Congestion Mitigation and Air Quality (CMAQ) Improvement Program, with local County funds providing the required local funding match. The estimated construction cost for the project is \$1,478,626.

The purpose of this Request for Proposals (RFP) is to obtain professional design services ensuring that the project is designed and completed in full compliance with all applicable local, state, and federal regulations, including those associated with CMAQ funding. An important objective is to maintain a high standard of engineering quality through documentation and cost-effective project delivery.

Qualified entities are invited to submit written proposals for project consideration in accordance with this request. These services will be conducted under a contract with the County of Imperial, hereinafter referred to as the "County," and the consultant entity, hereinafter referred to as the "Consultant." The

contracts 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 1775.

II. PROJECT POSTING AND SCHEDULING

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.

Proposed Schedule of Events

Issue Request for Proposal	July 15, 2026
Deadline for Questions	July 23, 2026
Proposals due	July 30 , 2026
Consultant Selection	September 2026
County Awards Contract	October 2026
Notice to Proceed	October 2026

III. SCOPE OF WORK

The successful firm will provide comprehensive design engineering services, surveying, right-of-way research and coordination with property owners, Caltrans, Imperial Irrigation District, and other affected utility companies for the permitting, development of plans, specifications, and cost estimates for this project. The successful firm will comply with current Caltrans Standard Specifications and Standard Plans to be incorporated into County boilerplate special provisions and the latest California Manual on Uniform Traffic Control Devices (CA MUTCD). In addition, the successful firm shall ensure compliance with the latest edition of the Standard Specifications for Public Works Construction (Greenbook) for asphalt concrete and other applicable construction materials. Work requiring coordination and permitting with the Caltrans, Imperial Irrigation District and other utility agencies shall be completed using the required standards of the respective agencies and incorporated into the County's boilerplate special provisions.

These services will be required from the date of award of the project through completion. Consultant shall provide a dedicated full-time person or persons, as needed, to provide engineering services for this specific project. The Engineer in responsible charge shall be a California licensed Civil Engineer.

The successful firm shall coordinate utility relocation, if necessary, through applications, agreements, and permits with the Imperial Irrigation District and other affected utility companies. The successful firm shall coordinate environmental clearance and prepare any corresponding environmental documents and supporting reports required for the project.

TASK 1- Existing Documentation, Kick Off Meeting

- Review existing photographs, plans, right-of-way information, utility information, project documents, and prior reports provided by the County.
- Review available drainage studies, previous improvement plans, and other existing documentation applicable to the project for design reference and consideration of how proposed project improvements can be incorporated.
- Compile all available utility record information, including pothole information (if available), utility as-built drawings, and records from wet and dry utility companies and agencies (i.e., Imperial Irrigation District, telecommunications providers, gas companies, and other affected utilities). Meet and coordinate with utility companies and agencies, as required, to determine project requirements.
- Participate in a field review meeting with the County, if required.
- Coordinate and conduct the project kick-off meeting with the County to review project goals, scope, schedule, and deliverables.
- Introduce key project staff and review the responsibilities of both the County and the Consultant.
- Compile available as-built plans for previous roadway and sidewalk improvements within the project area.

TASK 2- Initiate Project Design

- Ongoing scheduling and project schedule monitoring.
- Prepare plans and specifications for the project in compliance with the Engineering Design Guidelines Manual for the Preparation and Checking of Street Improvement, Drainage, and Grading Plans within Imperial County.
- Analyze existing plans, reports, correspondence, and available project information.
- Conduct an Aerial Deposited Lead (ADL) investigation in accordance with Caltrans requirements for projects involving soil disturbance within existing roadway rights-of-way. Sampling, testing, and reporting shall be incorporated into the project environmental documentation and plans, as appropriate.
- Prepare all documents and supporting calculations, including but not limited to Plans, Specifications, and Estimates (PS&E); environmental permits; drainage, sedimentation, demolition, and erosion control plans; Storm Water Pollution Prevention Plan (SWPPP); traffic control plans; contract special provisions; detailed construction schedule; detailed quantity and cost estimate; and horizontal and vertical control information for construction staking.
- Prepare a drainage study and report documenting existing drainage conditions and post-construction drainage associated with the proposed curb, gutter, sidewalk, driveway, and in-fill pavement improvements. The report shall recommend any feasible improvements necessary to

address drainage concerns identified during the design process.

- Complete a right-of-way assessment to identify property boundaries. Prepare a summary of any private encroachments within County road rights-of-way and prepare Permit to Enter and Construct and/or Right-of-Entry documents, if required.
- Plan drawings shall include, at a minimum, demolition plans, plan and profile sheets (1" = 40' maximum), sidewalk, curb and gutter, driveway, cross gutter, in-fill pavement, erosion and sedimentation control plans, survey control, traffic control plans and details, utility relocation sheets (if required), and applicable construction details.
- Coordinate with utility companies and regulatory agencies having jurisdiction over the project, including the Imperial Irrigation District.
- Prepare all supporting reports, calculations, and project documentation.
- Provide quantity calculations and detailed construction cost estimates.
- Address review comments provided by the County, Imperial County Planning and Development Services, the Imperial Irrigation District, and other reviewing agencies.
- Provide bid and construction support services during the advertising phase, including responses to Requests for Information (RFIs) and preparation of addenda, if required.
- Coordinate meetings, prepare meeting agendas and minutes, and follow up on project action items with the County and affected agencies.

TASK 3- Permits, Utility and Right of Way Coordination

- Provide the County with recommendations regarding utility conflicts and determine prior rights, where possible, using available records.
- Perform potholing of existing underground utilities, if required, to verify horizontal and vertical utility locations. Findings shall be incorporated into the project design to minimize utility conflicts during construction.
- Complete and submit utility applications and permits in coordination with the County. Applications may require submission of construction plans and supporting documentation.
- Obtain permits and approvals from agencies having jurisdiction over the project, including the Caltrans, Imperial Irrigation District and other affected utility agencies, as required.

TASK 4- Draft Deliverables

- Submit draft documents for County review. Submittals shall include all items prepared under Task 2.
- Provide three (3) hard copies and one (1) USB thumb drive containing the draft documents.
- Attend meetings with the County to present draft documents and receive review comments.
- Revise draft documents to incorporate County review comments and prepare subsequent draft submittals.
- Draft deliverables shall consist of approximately 30 percent, 75 percent, and 95 percent design completion for three anticipated review cycles.
- The 30 percent design submittal shall include available topographic information, preliminary plan sheets, identification of the proposed work limits, preliminary drainage recommendations, preliminary right-of-way assessment, and identification of utility conflicts.
- Consultant shall anticipate County review comments within thirty (30) days of each draft submittal.

TASK 5- Final Documents Deliverables -100%

- Upon approval from the County and applicable reviewing agencies, the County shall notify the Consultant to prepare final project deliverables. Original documents and required copies shall be provided as identified in this Request for Proposals.
- Throughout the course of the project, the Consultant shall maintain orderly project files. All tracings, plans, specifications, maps, survey notes, calculations, reports, and supporting data prepared or obtained under the Agreement shall become the property of the County and shall be made available upon request without restriction.
- At the conclusion of the project, the Consultant shall submit a complete project file containing all required reports, calculations, certifications, correspondence, permits, plans, specifications, estimates, environmental documentation, and other information pertaining to the project.

The report shall be clearly labeled as follows:

**County of Imperial
Department of Public Works
Request for Proposals for
Design Engineering Services for Niland Sidewalk Improvements; County Project No. 7363**

The project file shall serve as the official record of the project. In addition, an electronic copy of the complete project record shall be provided in Portable Document Format (PDF) on one (1) USB thumb drive. Submission of the complete project file shall be required prior to release of final payment and retention.

IV. RESPONSIBILITIES OF THE COUNTY

1. This RFP is being conducted in accordance with the "One Step RFP" as per Chapter 10, "Consultant Selection", of the Caltrans Local Assistance Procedures Manual.
2. The County will direct the development of the project, provide management oversight, and conduct administrative arrangements only.
3. The County will pay an agreed upon amount normally within 30 days after receipt of an invoice. County will retain 5% of each invoice until completion of project. Completion of project is when a Notice of Completion is recorded by the County Clerk/Recorder for the construction acceptance by the County.
4. The County will not provide dedicated workspace facilities, but upon request will provide a conference room for meetings with the Department and the Contractor.
5. 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.

V. PROPOSAL CONTENT AND INFORMATION

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

General Requirements

1. Provide a cover letter.
2. 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.
3. Provide the name(s) of the primary and/or alternate individuals authorized to respond to this RFP. Include titles, addresses, e-mail, and phone numbers.
4. The Consultant is representing itself as a qualified professional in Civil Engineering. 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, is not required to select any of the recommendations or comments.
5. 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.
6. 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.

Table of Contents

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

Summary of Qualifications and Experience

1. State whether the firm is local, regional, national or international.
2. Identify the owner(s) of the firm and legal status (sole proprietor, corporation, etc.)
3. Give the location of the office from which work is anticipated to be done and the number of employees of the company.
4. Identify the qualifications and resumes of all individuals who will be associated with this service. Include professional registrations and affiliations.
5. Summarize specific experiences and qualifications 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).

Analysis of Effort/Methodology

1. Describe the approach for how the work will be performed. The proposal shall indicate any specific techniques or methodology to be utilized.
2. The proposal shall include a sample project timeline with specific tasks envisioned for this project, including staffing.
3. Indicate what participation, data and products will be requested from the County.
4. Indicate deliverables to be provided and when.

Cost and Fees

One firm will be selected for this project. Cost proposal must be submitted at the time of proposal submittal. Consultant shall upload a separate file clearly labeled “[Consultant Name] Cost Proposal for [County Project No.]”. Please note that the selected firm will need to submit invoices that are itemized and broken down by project numbers, consistent with the County’s requirement to track each project’s expenditures separately due to grant contract requirements.

The cost proposals shall take into account the following:

1. Develop costs and fees for the services requested. Submit a not to exceed fee proposal based on anticipated fully burdened hourly rates.
2. When preparing cost and fees consider the scope of work involving project kick off and review of available documentation, material submittals, project documentation and prepare a lump sum fixed fee breakdown based on anticipated staff and hours. 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. As much as possible, a fixed fee lump sum breakdown by phase of the construction based on billable hours is desirable for preconstruction and post construction.
3. Breakdown shall include preconstruction services and construction services (Request for information/clarification). No subcontractors shall be utilized without prior authorization by the County and modification to submitted subcontractor’s list.
4. Firm may submit their own format of the cost proposal.

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.

VI. EVALUATION OF PROPOSALS

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

The County will utilize a one-step selection process as noted in Caltrans Local Assistance Procedures Manual (LAPM) Chapter 10 – Consultant Selection Process.

Proposals will be reviewed by an evaluation committee. The evaluation committee's assessment and recommendations shall be forwarded to the Director of Public Works for review. The County reserves the right to negotiate the price with the highest ranked proposer and if agreement on the terms is not possible, the County may opt to go with the next highest ranked proposer (LAPM Chapter 10).

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

Please take note that the County reserves the right to reject any and all proposals submitted and/or request additional information for clarification.

VII. QUESTIONS AND PROPOSAL SUBMISSION

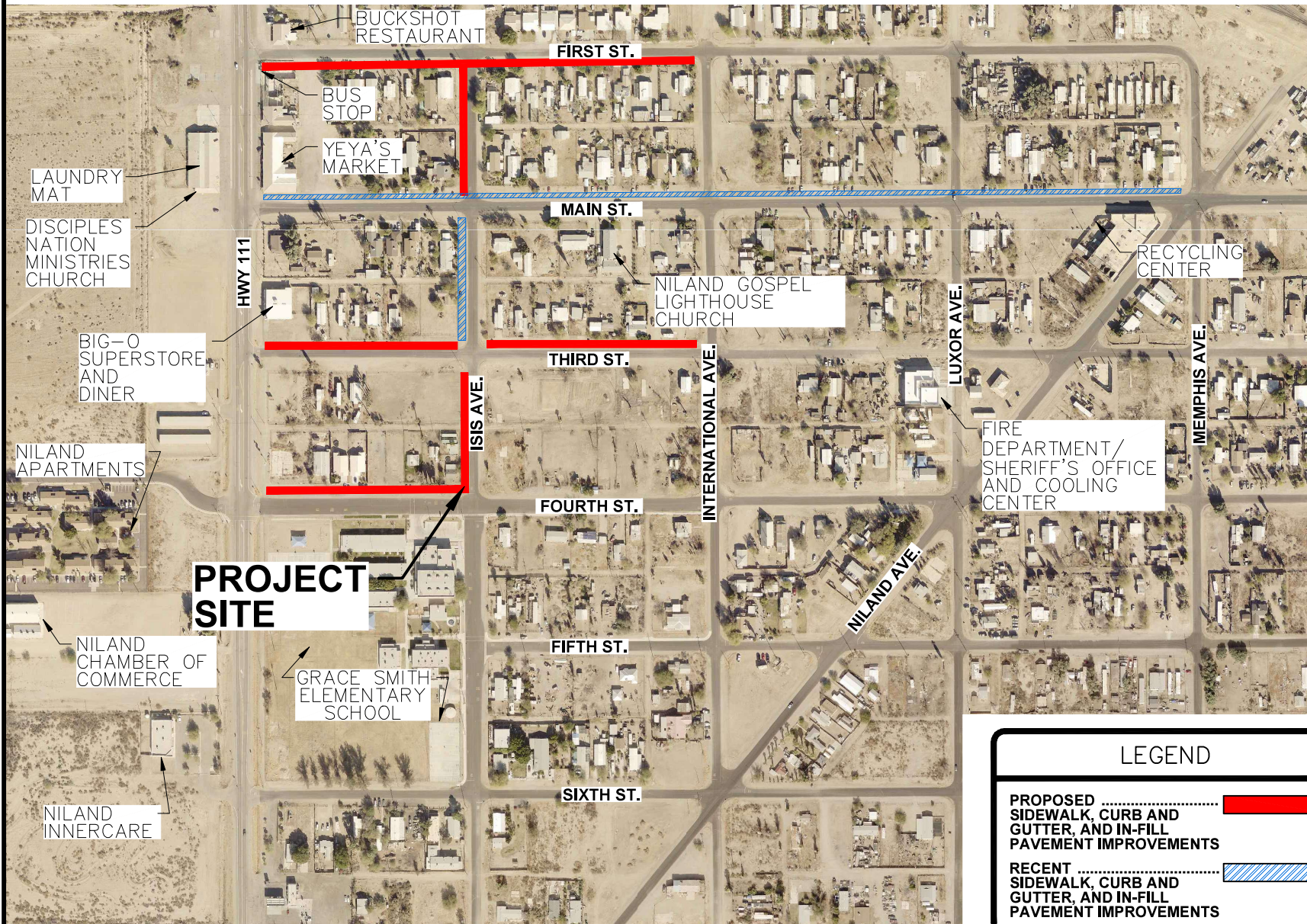
All clarification or interpretation requests regarding this RFP shall be submitted through the PlanetBids Q&A section at <https://vendors.planetbids.com/portal/64020/portal-home>, no later than 03:00 pm on July 23, 2026. Oral explanations or instructions shall not be considered binding on behalf of the County.

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

Proposals must be submitted through PlanetBids by selecting the "Place eBid" button on the RFP's posting on PlanetBids no later than Thursday, July 30, 2026 at 03:00 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.

Exhibit A – Location Map



**IMPERIAL COUNTY
PUBLIC WORKS DEPARTMENT
EL CENTRO, CALIFORNIA**

LOCATION MAP
NILAND COMMUNITY SIDEWALK
IMPROVEMENTS ON VARIOUS ROADS

DRAWN:
JA

DATE:
5/15/23

Exhibit B – Sample Proposal Evaluation Form



PROPOSAL EVALUATION FORM

DESIGN ENGINEERING SERVICES FOR NILAND SIDEWALK IMPROVEMENTS; COUNTY PROJECT NO. 7363

PREPARED JULY 15, 2026

DATE: _____
EVALUATOR: _____
RESPONDENT: _____

RATING POINTS:

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

CRITERIA	WEIGHT FACTOR	X	RATING	=	WEIGHTED RATING
A. Technical Approach	(0.35)				
• Responsiveness & understanding of work to be done (ie. Scope of work)	(0.25)		_____		_____
• Specific experience with similar design services	(0.10)		_____		_____
B. Project Management	(0.30)				
• Capacity to perform the scope of work And the ability to conclude in a timely manner	(0.20)		_____		_____
• Quality of staff based on recent experience	(0.10)		_____		_____
C. References	(0.05)		_____		_____
D. Familiarity	(0.25)				
• Familiarity and/or specific experience with Local and state project procedures	(0.25)		_____		_____
E. Cost Proposal	(0.05)				
• Overall quality of proposal, including Qualifications and thoroughness	(0.05)		_____		_____

Total Score _____

Comments:

Exhibit C - Sample Consultant Agreement and Minimum Insurance Requirements

**No changes shall be made to consultant agreement.*

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;

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

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

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

6. REPRESENTATIONS BY CONSULTANT.

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

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

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

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

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

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:

GEOFFREY P. HOLBROOK,
COUNTY COUNSEL

By: _____
Mistelle Abdelmagied,
Assistant County Counsel

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
28

1 satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier
2 Subcontractors" form is submitted to the Contract Administrator.

3 K. If a DBE subconsultant is decertified during the life of the contract, the decertified
4 subconsultant shall notify CONSULTANT in writing with the date of decertification. If a
5 subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify
6 CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL
7 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.