

EXHIBIT 2

SAMPLE Agreement

1 **AGREEMENT FOR PROFESSIONAL SERVICES**

2 **[CONSULTANT’S NAME]**

3 THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”), made and entered into
4 effective the ____ day of _____, 2023, by and between the COUNTY OF IMPERIAL, a political
5 subdivision of the State of California, through the Imperial County Airport (“COUNTY”) and
6 **[CONSULTANT’S NAME]**, a _____ corporation authorized to do business in California
7 (“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 professional services for COUNTY; and

11 **WHEREAS**, COUNTY published a request for qualifications and CONSULTANT responded to
12 that request for qualifications; and

13 **WHEREAS**, in compliance with Federal Aviation Administration rules and regulations, the source
14 selection committee reviewed, evaluated and selected CONSULTANT’s proposal to perform the necessary
15 work; and

16 **WHEREAS**, COUNTY wishes to engage CONSULTANT for performance of such services as are
17 provided for herein and CONSULTANT is willing to accept such engagement;

18 **NOW, THEREFORE**, COUNTY and CONSULTANT have and hereby agree to the following:

19 **1. DEFINITIONS.**

20 **1.1.** “Request for Qualifications” or “RFQ” shall mean the document entitled, “Airport
21 Consulting–On-call Aviation Planning Services” dated the ____ day of _____, 2023
22 which includes the advertisement, general provisions, special provisions, technical
23 specifications, contract drawings, special notices, addendums, exhibits, and attachments.
24 The Request for Qualifications is attached hereto as **Exhibit “A”** and incorporated herein
25 as though fully set forth.

26 **1.2.** “Proposal” shall mean CONSULTANT’s document entitled, “Airport Consulting On-
27 Call Aviation Architecture, Engineering, and Construction Inspection Services,” dated
28 the ____ day of _____, 2023 and submitted to the Clerk of the Board. The Proposal

1 is attached hereto as **Exhibit “B”** and incorporated herein as though fully set forth.

2 **2. CONTRACT COORDINATION.**

3 **2.1.** The Airport Manager or his/her designee shall be the representative of COUNTY for all
4 purposes under this Agreement. The Airport Manager or his/her designee is hereby
5 designated as the Contract Manager for COUNTY. He/she shall supervise the progress
6 and execution of this Agreement.

7 **2.2.** CONSULTANT shall assign a single Contract Manager to have overall responsibility for
8 the progress and execution of this Agreement. Should circumstances or conditions
9 subsequent to the execution of this Agreement require a substitute Contract Manager for any
10 reason, the Contract Manager’s designee shall be subject to the prior written acceptance and
11 approval of COUNTY’s Contract Manager.

12 **3. SCOPE OF WORK TO BE PERFORMED BY CONSULTANT.**

13 **3.1.** Upon receiving a Task Order from COUNTY, CONSULTANT shall provide project
14 specific professional airport consulting services related to planning and feasibilities studies.
15 The Task Order shall include a detailed scope of work, timelines, compensation for that
16 project according to the current rates (which may increase annually) and any other relevant
17 provisions deemed necessary by COUNTY for performance of work. CONSULTANT’s
18 rates shall be fair and reasonable. No project specific services shall be done without receipt
19 of an executed Task Order. In no event will any charges be allowed or paid on projects that
20 have not been assigned in this manner.

21 **3.2.** The County Executive Officer may approve Task Orders in an amount of up to One Hundred
22 Thousand Dollars (\$100,000), subject to review by County Counsel. Any Task Order
23 exceeding \$100,000 must be approved by the Board of Supervisors prior to CONSULTANT
24 commencing work

25 **3.3.** CONSULTANT shall perform such other tasks necessary and proper for the full
26 performance of the obligations assumed by CONSULTANT hereunder.

27 **3.4.** CONSULTANT shall make every effort to reduce costs in ways such as minimizing
28 redundant efforts, application of value engineering, and incorporating common or like work

1 products when possible.

2 **3.5.** CONSULTANT shall comply with all terms, conditions and requirements of the Proposal,
3 the RFP and this Agreement.

4 **3.6.** CONSULTANT shall perform such other tasks as necessary and proper for the full
5 performance of the obligations assumed by CONSULTANT hereunder per the Task Order.

6 **3.7.** CONSULTANT shall:

7 **3.7.1.** Procure all permits and licenses, pay all charges and fees, and give all notices that
8 may be necessary and incidental to the due and lawful prosecution of the services to
9 be performed by CONSULTANT under this Agreement; and

10 **3.7.2.** Keep itself fully informed of all existing and proposed federal, state and local laws,
11 ordinances, regulations, orders and decrees which may affect those engaged or
12 employed under this Agreement; and

13 **3.7.3.** At all times observe and comply with, and cause all of its employees to observe and
14 comply with all of said laws, ordinances, regulations, orders and decrees mentioned
15 above; and

16 **3.7.4.** Immediately report to COUNTY's Contract Manager in writing any discrepancy or
17 inconsistency it discovers in said laws, ordinances, regulation, orders and decrees
18 mentioned above in relation to any plans, drawings, specifications or provisions of
19 this Agreement.

20 **4. REPRESENTATIONS BY CONSULTANT.**

21 **4.1.** CONSULTANT understands and agrees that COUNTY has limited knowledge in the
22 multiple areas specified in the Proposal. CONSULTANT has represented itself to be an
23 expert in these fields and understands that COUNTY is relying upon such representation.

24 **4.2.** CONSULTANT represents that it is a lawful entity possessing all required licensees and
25 authorities to do business in the State of California and perform all aspects of this
26 Agreement.

27 **4.3.** CONSULTANT represents that the people executing this Agreement on behalf of
28 CONSULTANT have authority of CONSULTANT to sign this Agreement and bind

1 CONSULTANT to the performance of all duties and obligations assumed by
2 CONSULTANT herein.

3 **4.4.** CONSULTANT represents that any employee, contractor and/or agent who will be
4 performing any of the duties and obligations of CONSULTANT herein possess all required
5 licenses and authorities, as well as the experience and training to perform such tasks.

6 **4.5.** CONSULTANT represents that the allegations contained in the Proposal are true and
7 correct.

8 **4.6.** CONSULTANT understands that COUNTY considers the representations made herein to
9 be material and would not enter into this Agreement with CONSULTANT if such
10 representations were not made.

11 **4.7.** CONSULTANT understands and agrees not to discuss this Agreement or work performed
12 pursuant to this Agreement with anyone not a party to this Agreement without the prior
13 permission of COUNTY. CONSULTANT further agrees to immediately advise COUNTY
14 of any contacts or inquiries made by anyone not a party to this Agreement with respect to
15 work performed pursuant to this Agreement.

16 **4.8.** Prior to accepting any work under this Agreement, CONSULTANT shall perform a due
17 diligence review of its files and advise COUNTY of any conflict or potential conflict
18 CONSULTANT may have with respect to the work requested.

19 **4.9.** CONSULTANT understands and agrees that in the course of performance of this Agreement
20 CONSULTANT may be provided with information or data considered by the owner or the
21 COUNTY to be confidential. CONSULTANT shall take all necessary steps to maintain
22 such confidentiality including but not limited to restricting the dissemination of all material
23 received to those required to have such data in order for CONSULTANT to perform under
24 this Agreement.

25 **4.10.** CONSULTANT represents that the services provided herein shall be performed in a
26 professional and lawful manner.

27 **4.11.** CONSULTANT represents and warrants that it has not been engaged by, nor will it be
28 engaged by and owes no duty of performance to any other person or entity that would

1 constitute a conflict. For breach or violation of this warranty, COUNTY shall amongst
2 other remedies at law, have the right to terminate this Agreement without liability, or at
3 its sole discretion, deduct from the Agreement price or consideration, or otherwise
4 recover the full amount of such fee, commission, percentage brokerage fee, gift or
5 contingent fee paid or received from another entity or person.

6 **4.12.** CONSULTANT shall perform pursuant to this Agreement in accordance with and in full
7 compliance with all applicable Federal, State and local laws, rules, regulations, policies
8 and procedures, regardless of whether they are expressly set forth in this Agreement. It
9 is understood that in the event COUNTY is investigated or audited by any State or Federal
10 governmental agency, or any other recognized investigative/auditing entity,
11 CONSULTANT shall fully cooperate with such agencies' reasonable and lawful request
12 for information.

13 **5. TERM OF AGREEMENT.**

14 This Agreement shall commence on the date first written above and shall remain in effect until
15 the services provided as outlined in Section 3 have been completed, unless otherwise terminated as
16 provided for in this Agreement.

17 **6. COMPENSATION.**

18 **6.1.** COUNTY hereby agrees to pay CONSULTANT on a monthly basis based on
19 documented invoices consistent with the requirements set forth in Section 8 of this
20 Agreement, provided to the COUNTY by CONSULTANT.

21 **6.2.** If approved by COUNTY through a Task Order as set forth in Section 3 of this Agreement,
22 CONSULTANT shall be paid for services pursuant to the rate schedule set forth in the Task
23 Order.

24 **6.3.** Only with prior, written authorization from COUNTY shall CONSULTANT receive
25 payment for expenses. To receive payment for such expenses, CONSULTANT must submit
26 expense reports and receipts to the satisfaction of COUNTY. In no event shall
27 CONSULTANT receive payment for expenses other than non-overhead items directly
28 related to the services performed, such as, but not limited to, transportation, subsistence,

1 reproduction of documents, computer costs, and all purchases which become property of
2 COUNTY.

3 **7. PAYMENT.**

4 COUNTY shall pay CONSULTANT for completed and approved services upon presentation and
5 approval of documented itemized invoices.

6 **8. METHOD OF PAYMENT.**

7 **8.1.** CONSULTANT shall at any time prior to the fifteenth (15th) day of any month, submit to
8 COUNTY's Airport Manager, or his/her designee, a complete and accurate monthly invoices
9 and progress reports for compensation for services performed. The invoice shall be in a
10 format approved by COUNTY. CONSULTANT shall only invoice for services completed,
11 unless otherwise agreed by COUNTY. CONSUTLANT shall also prepare the forms
12 required for payment under the state of California and/or Federal project grant application
13 requirements as directed by COUNTY. COUNTY shall make no payment prior to the claims
14 being approved in writing by the Airport Manager or his/her designee.

15 **8.2.** After determining that the claim is a proper payment request, the Airport Manager, or
16 his/her designee, shall submit to COUNTY's Auditor/Controller undisputed and properly
17 submitted invoices approved for payment within ten (10) days following the date the
18 claim was submitted to his/her Department.

19 **8.3.** CONSULTANT may expect to receive payment within a reasonable time thereafter and
20 in any event in the normal course of business within thirty (30) days after the undisputed
21 and properly submitted invoices is submitted.

22 **8.4.** Any claim determined to be an improper payment request shall be returned to
23 CONSULTANT as soon as practicable, but not later than seven (7) days, after receipt with
24 a written explanation as to why the claim is an improper request for payment.

25 **8.5.** In order for prompt payment to be made by COUNTY pursuant to California Public Contract
26 Code § 20104.50, CONSULTANT must properly fill out all written invoices for
27 compensation for services performed.

28 **8.6.** COUNTY shall pay interest at the legal rate set forth in California Code of Civil Procedure

1 § 685.010 in the event payment is not made within thirty (30) days of an undisputed properly
2 submitted request.

3 **9. INDEMNIFICATION.**

4 **9.1.** CONSULTANT agrees to the fullest extent permitted by law to indemnify, defend,
5 protect and hold COUNTY and its representatives, officers, directors, designees,
6 employees, agents, successors and assigns harmless from any and all claims, expenses,
7 liabilities, causes of action, demands, losses, penalties, attorneys' fees and costs, in law
8 or equity, of every kind and nature whatsoever arising out of or in connection with
9 CONSULTANT's negligent acts and omissions or willful misconduct under this
10 Agreement ("Claims"), whether or not arising from the passive negligence of COUNTY,
11 but does not include Claims that are finally determined to be the result of the sole
12 negligence or willful misconduct of COUNTY.

13 **9.2.** CONSULTANT agrees to defend with counsel acceptable to COUNTY, indemnify and
14 hold COUNTY harmless from all Claims, including but not limited to:

15 **9.2.1.** Personal injury, including but not limited to bodily injury, emotional injury,
16 sickness or disease or death to persons including but not limited to COUNTY's
17 representatives, officers, directors, designees, employees, agents, successors and
18 assigns, subcontractors and other third parties and/or damage to property of
19 anyone (including loss of use thereof) arising out of CONSULTANT's negligent
20 performance of, or willful misconduct surrounding, any of the terms contained in
21 this Agreement, or anyone directly or indirectly employed by CONSULTANT or
22 anyone for whose acts CONSULTANT may be liable;

23 **9.2.2.** Liability arising from injuries to CONSULTANT and/or any of
24 CONSULTANT's employees or agents arising out of CONSULTANT's
25 negligent performance of, or willful misconduct surrounding, any of the terms
26 contained in this Agreement, or anyone directly or indirectly employed by
27 CONSULTANT or anyone for whose acts CONSULTANT may be liable;

28 ////

- 1 **10.1.** CONSULTANT is not an employee or agent of COUNTY and is only responsible for the
2 requirements and results specified by this Agreement.
- 3 **10.2.** 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 **10.3.** 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 **10.4.** 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 the
14 Social Security Old Age Pension Program, Social Security Disability Program, or any
15 other type of pension, annuity, or disability program required or provided by any Federal,
16 State or local law or regulation.
- 17 **10.5.** CONSULTANT shall not be entitled to participate in, or receive any benefit from, or
18 make any claim against any COUNTY fringe benefit program, including, but not limited
19 to, COUNTY's pension plan, medical and health care plan, dental plan, life insurance
20 plan, or any other type of benefit program, plan, or coverage designated for, provided to,
21 or offered to COUNTY's employee.
- 22 **10.6.** COUNTY shall not withhold or pay, on behalf of CONSULTANT, any Federal, State, or
23 local tax, including, but not limited to, any personal income tax, owed by
24 CONSULTANT.
- 25 **10.7.** CONSULTANT is, and at all times during the term of this Agreement shall represent and
26 conduct itself as, an independent CONSULTANT, not an employee of COUNTY.
- 27 **10.8.** CONSULTANT shall not have the authority, express or implied, to act on behalf of, bind
28 or obligate COUNTY in any way without the written consent of COUNTY.

1 **11. INSURANCE.**

2 **11.1. INSURANCE REQUIREMENTS:**

3 **11.2.** CONSULTANT hereby agrees, at its sole cost and expense, to obtain and maintain in full
4 force during the entire Term of this Agreement (or extended term thereof) the following
5 types of insurance as detailed below:

6 **11.3. Commercial General Liability.** Coverage in a minimum amount of one million dollars
7 (\$1,000,000) combined single limit to any one person, and two million dollars
8 (\$2,000,000) aggregate for any one accident, including personal injury, death, and
9 property damage.

10 **11.4. Professional Liability.** Errors and Omissions coverage in a minimum amount of ONE
11 million dollars (\$1,000,000) per person, per occurrence.

12 **11.5. Automobile Liability.** Coverage in a minimum amount of one million dollars
13 (\$1,000,000), including owned, non-owned, and hired vehicles.

14 **11.6. Workers' Compensation.**

15 **11.7.** Coverage, if applicable, in full compliance with California statutory requirements, for all
16 employees of CONSULTANT.

17 **11.8.** Prior to the commencement of work, CONSULTANT shall sign and file with COUNTY
18 the following certification: "I am aware of the provisions of California Labor Code
19 §§3700 et seq. which require every employer to be insured against liability for workers'
20 compensation or to undertake self-insurance in accordance with the provisions of that
21 code, and I will comply with such provisions before commencing the performance of the
22 work of this contract."

23 **11.9.** This certification is included in this Agreement and signature of the Agreement shall
24 constitute signing and filing of the certificate.

25 **11.10.** CONSULTANT understands and agrees that any and all employees, regardless of hire
26 date, shall be covered by Workers' Compensation pursuant to statutory requirements
27 prior to beginning work on the Project.

28 **11.11.** Workers' Compensation coverage shall not be required if CONSULTANT does not, at

1 any time, have any employees during the term of this Agreement, and any extension
2 thereof.

3 **11.12.** If CONSULTANT does not have any employees, initial here _____.

4 **11.13.** Should this status change, CONSULTANT shall immediately notify COUNTY in writing
5 and comply with the insurance requirements above.

6 **11.14.** Employers Liability.

7 **11.15.** Coverage, if applicable, in the minimum amount of one million dollars (\$1,000,000) per
8 accident for bodily injury and disease.

9 **11.16.** Employer's Liability coverage shall not be required if CONSULTANT does not, at any
10 time, have any employees during the term of this Agreement, and any extension thereof.

11 **11.17.** If CONSULTANT does not have any employees, initial here _____.

12 **11.18.** Should this status change, CONSULTANT shall immediately notify COUNTY in writing
13 and comply with the insurance requirements above.

14 **11.19. SPECIAL INSURANCE REQUIREMENTS:** All insurance required shall:

15 **11.19.1.** Be procured from California admitted insurers (licensed to do business in
16 California) with a current rating by Best's Key Rating Guide, acceptable to
17 COUNTY. A rating of at least A-VII shall be acceptable to COUNTY; lesser
18 ratings must be approved in writing by COUNTY.

19 **11.19.2.** Be primary coverage with respect to COUNTY, and any insurance or self-
20 insurance maintained by COUNTY shall be in excess of CONSULTANT's
21 insurance coverage and shall not contribute to CONSULTANT's coverage.

22 **11.19.3.** Name COUNTY as an additional insured on all policies, except Workers'
23 Compensation, and provide that COUNTY may recover for any loss suffered by
24 COUNTY by reason of CONSULTANT's negligence.

25 **11.19.4.** State that it is primary insurance and regards COUNTY as an additional
26 insured and contains a cross-liability or severability of interest clause.

27 **11.19.5.** Not be canceled, non-renewed or reduced in scope of coverage until after
28 thirty (30) days written notice has been given to COUNTY. However,

1 CONSULTANT may not terminate such coverage until it provides COUNTY
2 with proof that equal or better insurance has been secured and is in place.
3 Cancellation or change without the prior written consent of COUNTY shall, at the
4 option of COUNTY, be grounds for termination of this Agreement.

5 **11.19.6.** If this Agreement remains in effect more than one (1) year from the date
6 of its original execution, COUNTY may, at its sole discretion, require an increase
7 in the amount of liability insurance to the level then customary in similar
8 COUNTY Agreements by giving sixty (60) days notice to CONSULTANT.

9 **11.20. ADDITIONAL INSURANCE REQUIREMENTS:**

10 **11.20.1.** COUNTY is to be notified immediately of all insurance claims.
11 COUNTY is also to be notified if any aggregate insurance limit is exceeded.

12 **11.20.2.** The comprehensive or commercial general liability shall contain a
13 provision of endorsements stating that such insurance:

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

1 **11.21. Deposit of Insurance Policy.** Promptly on issuance, reissuance, or renewal of any insurance
2 policy required by this Agreement, CONSULTANT shall, if requested by COUNTY, cause
3 to be given to COUNTY satisfactory evidence that insurance policy premiums have been paid
4 together with a duplicate copy of the policy or a certificate evidencing the policy and executed
5 by the insurance company issuing the policy or its authorized agent.

6 **11.22. Certificates of Insurance.** Complete copies of certificates of insurance for all required
7 coverages including additional insured endorsements shall be attached hereto as **Exhibit**
8 **“C”** and incorporated herein as though fully set forth.

9 **11.23. Additional Insurance.** Nothing in this, or any other provision of this Agreement, shall
10 be construed to preclude CONSULTANT from obtaining and maintaining any additional
11 insurance policies in addition to those required pursuant to this Agreement.

12 **12. WORKERS' COMPENSATION CERTIFICATION:**

13 **12.1.** Prior to the commencement of work, CONSULTANT shall sign and file with COUNTY
14 the following certification: “I am aware of the provisions of California Labor Code §§
15 3700 *et seq.* which require every employer to be insured against liability for workers’
16 compensation or to undertake self-insurance in accordance with the provisions of that
17 code, and I will comply with such provisions before commencing the performance of the
18 work of this contract.”

19 **12.2.** This certification is included in this Agreement and signature of the Agreement shall
20 constitute signing and filing of the certificate.

21 **12.3.** CONSULTANT understands and agrees that any and all employees, regardless of hire
22 date, shall be covered by Workers’ Compensation pursuant to statutory requirements
23 prior to beginning work on the Project.

24 **12.4.** If CONSULTANT has no employees, initial here: _____.

25
26 **13. TERMINATION.**

27 **13.1. Termination for Convenience: CONSTRUCTION:**

1 **13.1.1.** COUNTY may terminate this Agreement, in whole or in part, at any time by
2 providing written notice to CONSULTANT. Such action may be without cause
3 and without prejudice to any other right or remedy of COUNTY. Upon receipt of
4 a written notice of termination, except as explicitly directed by COUNTY,
5 CONSULTANT shall immediately proceed with the following obligations
6 regardless of any delay in determining or adjusting amounts due under this
7 Section:

- 8 **(a)** Discontinue work as specified in the written notice;
- 9 **(b)** Terminate all subcontracts to the extent they relate to the work terminated
10 under the notice;
- 11 **(c)** Discontinue services except as directed by the written notice;
- 12 **(d)** Complete performance of the work not terminated by the notice; and
- 13 **(e)** Take action as directed by COUNTY to protect and preserve property and
14 work related to this Agreement that COUNTY will take possession.

15 **13.1.2.** COUNTY agrees to pay CONSULTANT for:

- 16 **(a)** Completed and acceptable services executed in accordance with the
17 contract documents prior to the effective date of termination;
- 18 **(b)** Documented expenses sustained prior to the effective date of termination
19 in performing services as required by the contract documents in
20 connection with uncompleted services;
- 21 **(c)** Reasonable and substantiated claims, costs and damages incurred in
22 settlement of terminated contracts with, if applicable, CONSULTANT's
23 Subcontractor; and
- 24 **(d)** Reasonable and substantiated expenses to CONSULTANT directly
25 attributable to COUNTY's termination action.

26 **13.1.3.** COUNTY will not pay CONSULTANT for loss of anticipated profits or revenue
27 or other economic loss arising out of or resulting from COUNTY's termination
28 action.

1 date of the termination action. The rights and remedies in this clause are in addition to
2 any other rights and remedies provided by law or under this Agreement.

3 **(a) Termination by COUNTY:** County may terminate this Agreement for cause in
4 whole or in part, for the failure of the CONSULTANT to:

- 5 1. Perform the services within the time specified in this contract or by COUNTY's
6 approved extension;
- 7 2. Make adequate progress so as to endanger satisfactory performance of the Project;
8 or
- 9 3. Fulfill the obligations of the Agreement that are essential to the completion of the
10 Project.

11 Upon receipt of the notice of termination, the CONSULTANT must immediately
12 discontinue all services affected unless the notice directs otherwise. Upon termination of
13 the Agreement, the CONSULTANT must deliver to the COUNTY all data, surveys,
14 models, drawings, specifications, reports, maps, photographs, estimates, summaries, and
15 other documents and materials prepared by the Engineer under this contract, whether
16 complete or partially complete.

17 COUNTY agrees to make just and equitable compensation to the CONSULTANT for
18 satisfactory work completed up through the date the CONSULTANT receives the
19 termination notice. Compensation will not include anticipated profit on non-performed
20 services.

21 COUNTY further agrees to hold CONSULTANT harmless for errors or omissions in
22 documents that are incomplete as a result of the termination action under this clause.

23 If, after finalization of the termination action, the COUNTY determines the
24 CONSULTANT was not in default of the Agreement, the rights and obligations of the
25 parties shall be the same as if the COUNTY issued the Termination for the convenience
26 of the COUNTY.

27 **(b) Termination by CONSULTANT:** The CONSULTANT may terminate this
28 Agreement for cause in whole or in part, if the COUNTY:

- 1 1. Defaults on its obligations under this Agreement;
- 2 2. Fails to make payment to the CONSULTANT in accordance with the terms of
- 3 this Agreement;
- 4 3. Suspends the project for more than 180 days due to reasons beyond the control of
- 5 CONSULTANT.

6 Upon receipt of a notice of termination from the CONSULTANT, COUNTY agrees to
7 cooperate with CONSULTANT for the purpose of terminating the Agreement or portion
8 thereof by mutual consent. If COUNTY and CONSULTANT cannot reach a mutual
9 agreement on the termination settlement, the CONSULTANT may, without prejudice to
10 any rights and remedies it may have, proceed with terminating all or parts of this
11 Agreement based upon the COUNTY's breach of contract.

12 In the event of termination due to COUNTY's breach the CONSULTANT is entitled to
13 invoice COUNTY and to receive full payment for all services performed or furnished in
14 accordance with this Agreement and all justified reimbursable expenses incurred by
15 CONSULTANT through the effective date of termination action. COUNTY agrees to
16 hold CONSULTANT harmless for errors or omissions in documents that are incomplete
17 as a result of the termination action under this clause.

18 **14. GENERAL CIVIL RIGHTS PROVISIONS.**

19 In all its activities within the scope of its airport program, the Consultant agrees to comply
20 with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of
21 Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the
22 grounds of race, color, national origin (including limited English proficiency), creed, sex,
23 (including sexual orientation and gender identity), age, or disability be excluded from
24 participating in any activity conducted with or benefitting from Federal Assistance.
25

26 This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.
27

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1 **15. ACCESS TO RECORDS AND REPORTS.**

2 CONSULTANT represents and warrants that it shall maintain books, records, documents, reports
3 and other materials developed under this Agreement as follows:

4 **15.1.** CONSULTANT agrees to use and maintain a cost accounting system acceptable to
5 COUNTY, the Federal Aviation Administration, and the Comptroller of the United States.

6 **15.2.** CONSULTANT shall hold and possess as the property of COUNTY all papers, books,
7 files, correspondence and other records of all kinds which at any time shall come into its
8 possession or under its control relating only to services performed by CONSULTANT
9 under this Agreement for a minimum period of five (5) years, or for any longer period
10 required by law, from the date said papers came into the possession of CONSULTANT
11 pursuant to this Agreement.

12 **15.3.** Any records or documents required to be maintained by CONSULTANT pursuant to this
13 Agreement shall be made available to COUNTY, the Federal Aviation Administration, and
14 the Comptroller of the United States, or any of their duly authorized representatives, for
15 inspection or audit, at any time during CONSULTANT’s regular business hours. Copies
16 of such documents shall, at no cost to COUNTY, be provided to COUNTY for inspection
17 at CONSULTANT’s address indicated for receipt of notices under this Agreement.

18 **15.4.** CONSULTANT shall surrender all papers maintained by CONSULTANT pursuant to
19 this Section within thirty (30) days of termination of this Agreement.

20 **16. NONDISCRIMINATION.**

21 **16.1. Federal Nondiscrimination Requirements.**

22 **16.1.1. Compliance with List of Pertinent Nondiscrimination Acts and Authorities.**

23 CONSULTANT agrees to abide by the following nondiscrimination provisions
24 listed in this Paragraph. For the purposes of this Paragraph, the terms
25 “CONSULTANT” and “you” shall refer to CONSULTANT, and the term
26 “contract” shall refer to this Agreement:

27 *“During the performance of this contract, the Contractor, for itself,
28 its assignees, and successors in interest (hereinafter referred to as*

1 the “contractor”) agrees to comply with the following non-
2 discrimination statutes and authorities; including but not limited to:

- 3 • Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et
4 seq., 78 stat. 252), (prohibits discrimination on the basis of race,
5 color, national origin);
- 6 • 49 CFR part 21 (Non-discrimination In Federally-Assisted
7 Programs of The Department of Transportation—Effectuation
8 of Title VI of The Civil Rights Act of 1964);
- 9 • The Uniform Relocation Assistance and Real Property
10 Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits
11 unfair treatment of persons displaced or whose property has
12 been acquired because of Federal or Federal-aid programs and
13 projects);
- 14 • Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794
15 et seq.), as amended, (prohibits discrimination on the basis of
16 disability); and 49 CFR part 27;
- 17 • The Age Discrimination Act of 1975, as amended, (42 U.S.C. §
18 6101 et seq.), (prohibits discrimination on the basis of age);
- 19 • Airport and Airway Improvement Act of 1982, (49 USC § 471,
20 Section 47123), as amended, (prohibits discrimination based on
21 race, creed, color, national origin, or sex);
- 22 • The Civil Rights Restoration Act of 1987, (PL 100-209),
23 (Broadened the scope, coverage and applicability of Title VI of
24 the Civil Rights Act of 1964, The Age Discrimination Act of 1975
25 and Section 504 of the Rehabilitation Act of 1973, by expanding
26 the definition of the terms “programs or activities” to include
27 all of the programs or activities of the Federal-aid recipients,
28 sub-recipients and Contractor’s, whether such programs or
activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990,
which prohibit discrimination on the basis of disability in the
operation of public entities, public and private transportation
systems, places of public accommodation, and certain testing
entities (42 U.S.C. §§ 12131 – 12189) as implemented by
Department of Transportation regulations at 49 CFR parts 37
and 38;
- The Federal Aviation Administration’s Non-discrimination
statute (49 U.S.C. § 47123) (prohibits discrimination on the
basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address
Environmental Justice in Minority Populations and Low-Income
Populations, which ensures non-discrimination against minority
populations by discouraging programs, policies, and activities

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4. **Information and Reports:** *The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.*

5. **Sanctions for Noncompliance:** *In the event of a Contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:*

- a. *Withholding payments to the Contractor under the contract until the Contractor complies; and/or*
- b. *Cancelling, terminating, or suspending a contract, in whole or in part.*

6. **Incorporation of Provisions:** *The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States."*

16.1.3. General Civil Rights Provisions. CONSULTANT agrees to abide by the following general civil rights provisions listed in this Paragraph. For the purposes of this Paragraph, the term "CONSULTANT" shall refer to CONSULTANT and the term "contract" shall refer to this Agreement:

"The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person

1 shall, on the grounds of race, creed, color, national origin, sex, age,
2 or disability be excluded from participating in any activity
3 conducted with or benefiting from Federal assistance.

4 This provision binds the Contractor and sub
5 tier Contractor's from the bid solicitation period through the
6 completion of the contract. This provision is in addition to that
7 required of Title VI of the Civil Rights Act of 1964."

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10 **16.2. California Nondiscrimination Requirements.**

11 **16.2.1.** During the performance of this Agreement, CONSULTANT and its
12 subcontractors shall not unlawfully discriminate, harass or allow harassment
13 against any employee or applicant for employment because of:

- 14 (a) Age (forty [40] and over);
- 15 (b) Ancestry;
- 16 (c) Color;
- 17 (d) Religious creed, including religious dress and grooming practices;
- 18 (e) Denial of family and medical care leave;
- 19 (f) Disability; both mental and physical, including HIV and AIDS;
- 20 (g) Marital status;
- 21 (h) Medical condition, including cancer and genetic characteristics;
- 22 (i) Genetic information;
- 23 (j) Military and veteran status;
- 24 (k) National origin, including language use restrictions;
- 25 (l) Race;
- 26 (m) Sex, which includes pregnancy, childbirth, breastfeeding, and medical
27 conditions related to pregnancy, childbirth, or breastfeeding;
- 28 (n) Gender, gender identity, and gender expression; or
- (o) Sexual orientation.

16.2.2. CONSULTANT and its subcontractors shall ensure that the evaluation and
treatment of their employees and applicants for employment are free from such
discrimination and harassment.

1 **16.2.3.** CONSULTANT and its subcontractors shall comply with the provisions of the
2 Fair Employment and Housing Act (Gov. Code §§ 12990 (a-f) *et seq.*) and the
3 applicable regulations promulgated thereunder (California Code of Regulations,
4 Title 2, §§ 7285 *et seq.*).

5 **16.2.4.** The applicable regulations of the Fair Employment and Housing Commission
6 implementing Government Code § 12990 (a-f), set forth in Chapter 5 of Division
7 4 of Title 2 of the California Code of Regulations, are incorporated into this
8 Agreement by reference and made a part hereof as if set forth in full.

9 **16.2.5.** The applicable regulations of Section 504 of the Rehabilitation Act of 1973 (29
10 U.S.C. § 794 (a)) are incorporated into this Agreement by reference and made a
11 part hereof as if set forth in full.

12 **16.2.6.** CONSULTANT and its subcontractors shall give written notice of their
13 obligations under this Subsection to labor organizations with which they have a
14 collective bargaining or other agreement.

15 **16.2.7.** CONSULTANT shall include the nondiscrimination and compliance provisions
16 of this Subsection in all subcontracts to perform Work under this Agreement.

17 **17. DISADVANTAGED BUSINESS ENTERPRISES.**

18 **17.1.** CONSULTANT and its subcontractors shall reference and abide by the guidance and
19 Disadvantaged Business Enterprise (“DBE”) specifications contained in the California
20 Department of Transportation’s Local Programs Procedures 06-01 (which has been
21 approved and released at (<http://www.dot.ca.gov/hq/LocalPrograms/>) when working
22 pursuant to this Agreement.

23 **17.2.** CONSULTANT represents and warrants that it is has fully read the applicable DBE
24 requirements pertaining to this Project and has fully and accurately completed any and
25 all required DBE forms.

26 **17.3.** CONSULTANT represents and warrants that it will comply with all applicable DBE
27 requirements for this Project.

28 **17.4.** CONSULTANT shall comply with the applicable DBE provisions attached hereto as

1 **Exhibit “D”** and incorporated by this reference as though fully set forth herein.

2 **17.5.** If any state or federal funds are withheld from COUNTY or not reimbursed to COUNTY
3 due to CONSULTANT’s failure to either comply with the DBE requirements set forth in
4 the RFP and this Agreement, or to meet the mandatory DBE goals as determined by
5 COUNTY, Caltrans, the Federal Highway Administration, and/or any other state or
6 federal agency contributing funds to the Project, then CONSULTANT shall fully
7 reimburse COUNTY the amount of funding lost. COUNTY reserves the right to deduct
8 any such loss in funding from the amount of compensation due to CONSULTANT under
9 this Agreement.

10 **17.6.** In addition to the above, CONSULTANT’s failure to comply with DBE
11 requirements/goals shall subject it to such sanctions as are permitted by law, which may
12 include, but shall not be limited to the following:

13 **17.6.1.** Termination of this Agreement;

14 **17.6.2.** Withholding monthly progress payments;

15 **17.6.3.** Compensatory, special, incidental, liquidated and other damages; and/or

16 **17.6.4.** Designation of CONSULTANT as “non-responsible,” and disqualification from
17 bidding on future public works projects advertised by COUNTY.

18 **18. FEDERAL EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS.**

19 **18.1. General Equal Opportunity Requirements.** If this Agreement, or any subcontract
20 made pursuant to this Agreement, should exceed ten thousand dollars (\$10,000), then
21 CONSULTANT shall comply with the following Equal Opportunity provisions. For the
22 purposes of this subsection, the term “CONSULTANT” shall refer to CONSULTANT,
23 and the term “contract” shall refer to this Agreement:

24 *“During the performance of this contract, the CONSULTANT agrees as*
25 *follows:*

26 *(1) The CONSULTANT will not discriminate against any employee or*
27 *applicant for employment because of race, color, religion, sex, or*
28 *national origin. The Contractor will take affirmative action to ensure*
 that applicants are employed, and that employees are treated during
 employment without regard to their race, color, religion, sex, sexual
 orientation, gender identify or national origin. Such action shall

1 include, but not be limited to the following: employment, upgrading,
2 demotion, or transfer; recruitment or recruitment advertising; layoff or
3 termination; rates of pay or other forms of compensation; and selection
4 for training, including apprenticeship. The Contractor agrees to post in
conspicuous places, available to employees and applicants for
employment, notices to be provided setting forth the provisions of this
nondiscrimination clause.

5 (2) The Contractor will, in all solicitations or advertisements for employees
6 placed by or on behalf of the Contractor, state that all qualified
7 applicants will receive considerations for employment without regard
to race, color, religion, sex, sexual orientation, gender identity, or
national origin.

8 (3) The contractor will not discharge or in any manner discriminate against
9 any employee or applicant for employment because such employee or
10 applicant has inquired about, discussed, or disclosed the compensation
11 of the employee or applicant or another employee or applicant. This
12 provision shall not apply in instances in which an employee who has
13 access to the compensation information of other employees or
14 applicants as a part of such employee's essential job functions discloses
15 the compensation of such other employees or applicants to individuals
who do not otherwise have access to such information, unless such
disclosure is in response to a formal complaint or charge, in furtherance
of an investigation, proceeding, hearing, or action, including an
investigation conducted by the employer, or is consistent with the
contractor's duty to furnish information.

16 (4) The Contractor will send to each labor union or representative of
17 workers with which he has a collective bargaining agreement or other
18 contract or understanding, a notice to be provided advising the said
19 labor union or workers' representatives of the Contractor's
commitments under this section 202 of Executive Order 11246 of
September 24, 1965, and shall post copies of the notice in conspicuous
places available to employees and applicants for employment.

20 (5) The Contractor will comply with all provisions of Executive Order
21 11246 of September 24, 1965, and of the rules, regulations, and relevant
orders of the Secretary of Labor.

22 (6) The Contractor will furnish all information and reports required by
23 Executive Order 11246 of September 24, 1965, and by rules,
24 regulations, and orders of the Secretary of Labor, or pursuant thereto,
25 and will permit access to his books, records, and accounts by the
administering agency and the Secretary of Labor for purposes of
investigation to ascertain compliance with such rules, regulations, and
orders.

26 (7) In the event of the Contractor's noncompliance with the
27 nondiscrimination clauses of this contract or with any such rules,
28 regulations, or orders, this contract may be canceled, terminated, or
suspended in whole or in part and the Contractor may be declared
ineligible for further Government contracts in accordance with

1 *procedures authorized in Executive Order 11246 of September 24,*
2 *1965, and such other sanctions may be imposed and remedies invoked*
3 *as provided in Executive Order 11246 of September 24, 1965, or by rule,*
4 *regulation, or order of the Secretary of Labor, or as otherwise provided*
5 *by law.*

6 *(8) The Contractor will include the provisions of paragraphs (1) through*
7 *(8) in every subcontract or purchase order unless exempted by rules,*
8 *regulations, or orders of the Secretary of Labor issued pursuant to*
9 *section 204 of Executive Order 11246 of September 24, 1965, so that*
10 *such provisions will be binding upon each subcontractor or vendor. The*
11 *Contractor will take such action with respect to any subcontract or*
12 *purchase order as may be directed by the Secretary of Labor as a means*
13 *of enforcing such provisions, including sanctions for noncompliance:*
14 *Provided, however, that in the event the Contractor becomes involved*
15 *in, or is threatened with, litigation with a subcontractor or vendor as a*
16 *result of such direction, the Contractor may request the United States*
17 *to enter into such litigation to protect the interests of the United States.”*

18 **18.2. Prohibition of Segregated Facilities.**

19 **18.2.1.** CONSULTANT agrees that it does not and will not maintain or provide for its
20 employees any segregated facilities at any of its establishments, and that it does
21 not and will not permit its employees to perform their services at any location
22 under its control where segregated facilities are maintained. CONSULTANT
23 agrees that a breach of this clause is a violation of the Equal Opportunity clause
24 in this Agreement.

25 **18.2.2.** “Segregated facilities,” as used in this Subsection, means any waiting rooms,
26 work areas, rest rooms and wash rooms, restaurants and other eating areas, time
27 clocks, locker rooms and other storage or dressing areas, parking lots, drinking
28 fountains, recreation or entertainment areas, transportation, and housing facilities
provided for employees, that are segregated by explicit directive or are in fact
segregated on the basis of race, color, religion, sex, or national origin because of
written or oral policies or employee custom. The term does not include separate
or single-user rest rooms or necessary dressing or sleeping areas provided to
assure privacy between the sexes.

18.2.3. CONSULTANT shall include these provisions in every subcontract and purchase
order that is subject to the Equal Opportunity clause of this Agreement.

1 **19. FEDERAL FAIR LABOR STANDARDS ACT COMPLIANCE (FEDERAL MINIMUM**
2 **WAGE).**

3 **19.1.** This Agreement, and any subcontract made pursuant to this Agreement, shall incorporate
4 by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act
5 (“FLSA”), with the same force and effect as if given in full text. The FLSA sets minimum
6 wage, overtime pay, recordkeeping, and child labor standards for full and part time
7 workers.

8 **19.2.** CONSULTANT has full responsibility to monitor compliance to the referenced statute
9 or regulation. CONSULTANT must address any claims or disputes that arise from this
10 requirement directly with the U.S. Department of Labor – Wage and Hour Division.

11 **20. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS.**

12 **20.1 Overtime Requirements.**

13 No contractor or subcontractor contracting for any part of the contract work which may require
14 or involve the employment of laborers or mechanics shall require or permit any such laborer or
15 mechanic, including watchmen and guards, in any workweek in which he or she is employed on
16 such work to work in excess of forty hours in such workweek unless such laborer or mechanic
17 receives compensation at a rate not less than one and one-half times the basic rate of pay for all
18 hours worked in excess of forty hours in such workweek.

19 **20.2 Violation: Liability for Unpaid Wages; Liquidated Damages.**

20 In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor
21 and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such
22 Contractor and subcontractor shall be liable to the United States (in the case of work done under
23 the contract for the District of Columbia or a territory, to such District or to such territory), for
24 liquidated damages. Such liquidated damages shall be computed with respect to each individual
25 laborer or mechanic, including watchmen and guards, employed in violation of the clause set
26 forth in paragraph (1) of this clause, in the sum of \$29.00 for each calendar day on which such
27 individual was required or permitted to work in excess of the standard workweek of forty hours
28 without payment of the overtime wages required by the clause set forth in paragraph (1) of this

1 clause.

2 20.3 Withholding for Unpaid Wages and Liquidated Damages.

3 The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon
4 written request of an authorized representative of the Department of Labor withhold or cause to
5 be withheld, from any moneys payable on account of work performed by the Consultant, or any
6 federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which
7 is held by the same prime contractor or Consultant, such sums as may be determined to be
8 necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and
9 liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

10 20.4 Subcontractors

11 The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs
12 (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower
13 tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor
14 or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

15
16 **21. DAVIS-BACON ACT REQUIREMENTS.**

17 If this Agreement, or any subcontract made pursuant to this Agreement, has created situations
18 where the services provided by CONSULTANT includes tasks that meet the definition of construction,
19 alteration or repair as defined in 29 CFR Part 5 and, should exceed two thousand dollars (\$2,000) and
20 be funded, either in whole or in part, through the Federal Aviation Administration's Airport
21 Improvement Program, then CONSULTANT shall comply with the following Davis-Bacon Act
22 provisions. For the purposes of this section, the term "CONSULTANT" shall refer to CONSULTANT,
23 the term "contracting officer" shall refer to COUNTY's Contract Manager or his/her designee, the terms
24 "sponsor" and "owner" shall refer to COUNTY, and the term "contract" shall refer to this Agreement:

25 "1. *Minimum Wages*

- 26 (i) *All laborers and mechanics employed or working upon the site of the work will be*
27 *paid unconditionally and not less often than once a week, and without subsequent*
28 *deduction or rebate on any account (except such payroll deductions as are*
permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the
full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due

1 at time of payment computed at rates not less than those contained in the wage
2 determination of the Secretary of Labor which is attached hereto and made a part
3 hereof, regardless of any contractual relationship which may be alleged to exist
4 between the Contractor and such laborers and mechanics.

5 Contributions made or costs reasonably anticipated for bona fide fringe benefits
6 under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics
7 are considered wages paid to such laborers or mechanics, subject to the provisions
8 of paragraph (1)(iv) of this section; also, regular contributions made or costs
9 incurred for more than a weekly period (but not less often than quarterly) under
10 plans, funds, or programs which cover the particular weekly period, are deemed to
11 be constructively made or incurred during such weekly period. Such laborers and
12 mechanics shall be paid the appropriate wage rate and fringe benefits on the wage
13 determination for the classification of work actually performed, without regard to
14 skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics
15 performing work in more than one classification may be compensated at the rate
16 specified for each classification for the time actually worked therein: Provided, that
17 the employer's payroll records accurately set forth the time spent in each
18 classification in which work is performed. The wage determination (including any
19 additional classification and wage rates conformed under (1)(ii) of this section)
20 and the Davis-Bacon poster (WH-1321) shall be posted at all times by the
21 Contractor and its subcontractors at the site of the work in a prominent and
22 accessible place where it can easily be seen by the workers.

23 (ii)

24 (A) The contracting officer shall require that any class of laborers or mechanics,
25 including helpers, which is not listed in the wage determination and which is to
26 be employed under the contract shall be classified in conformance with the
27 wage determination. The contracting officer shall approve an additional
28 classification and wage rate and fringe benefits therefore only when the
following criteria have been met:

(1) The work to be performed by the classification requested is not performed
by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a
reasonable relationship to the wage rates contained in the wage
determination.

(B) If the Contractor and the laborers and mechanics to be employed in the
classification (if known), or their representatives, and the contracting officer
agree on the classification and wage rate (including the amount designated for
fringe benefits where appropriate), a report of the action taken shall be sent by
the contracting officer to the Administrator of the Wage and Hour Division,
Employment Standards Administration, U.S. Department of Labor,
Washington, D.C. 20210. The Administrator, or an authorized representative,
will approve, modify, or disapprove every additional classification action
within 30 days of receipt and so advise the contracting officer or will notify the
contracting officer within the 30-day period that additional time is necessary.

1 (C) In the event the Contractor, the laborers or mechanics to be employed in the
2 classification or their representatives, and the contracting officer do not agree
3 on the proposed classification and wage rate (including the amount designated
4 for fringe benefits where appropriate), the contracting officer shall refer the
5 questions, including the views of all interested parties and the recommendation
6 of the contracting officer, to the Administrator for determination. The
7 Administrator, or an authorized representative, will issue a determination
8 within 30 days of receipt and so advise the contracting officer or will notify the
9 contracting officer within the 30-day period that additional time is necessary.

6 (D) The wage rate (including fringe benefits where appropriate) determined
7 pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to
8 all workers performing work in the classification under this contract from the
9 first day on which work is performed in the classification.

9 (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers
10 or mechanics includes a fringe benefit which is not expressed as an hourly rate, the
11 Contractor shall either pay the benefit as stated in the wage determination or shall
12 pay another bona fide fringe benefit or an hourly cash equivalent thereof.

11 (iv) If the Contractor does not make payments to a trustee or other third person, the
12 Contractor may consider as part of the wages of any laborer or mechanic the
13 amount of any costs reasonably anticipated in providing bona fide fringe benefits
14 under a plan or program, Provided, That the Secretary of Labor has found, upon
15 the written request of the Contractor, that the applicable standards of the Davis-
16 Bacon Act have been met. The Secretary of Labor may require the Contractor to
17 set aside in a separate account assets for the meeting of obligations under the plan
18 or program.

16 2 Withholding.

17 The Federal Aviation Administration or the sponsor shall upon its own action or upon
18 written request of an authorized representative of the Department of Labor withhold
19 or cause to be withheld from the Contractor under this contract or any other Federal
20 contract with the same prime Contractor, or any other Federally-assisted contract
21 subject to Davis-Bacon prevailing wage requirements, which is held by the same prime
22 Contractor, so much of the accrued payments or advances as may be considered
23 necessary to pay laborers and mechanics, including apprentices, trainees, and helpers,
24 employed by the Contractor or any subcontractor the full amount of wages required by
25 the contract. In the event of failure to pay any laborer or mechanic, including any
26 apprentice, trainee, or helper, employed or working on the site of work, all or part of
27 the wages required by the contract, the Federal Aviation Administration may, after
28 written notice to the Contractor, sponsor, applicant, or owner, take such action as may
be necessary to cause the suspension of any further payment, advance, or guarantee of
funds until such violations have ceased.

25 3. Payrolls and basic records.

26 (i) Payrolls and basic records relating thereto shall be maintained by the Contractor
27 during the course of the work and preserved for a period of three years thereafter
28 for all laborers and mechanics working at the site of the work. Such records shall
contain the name, address, and social security number of each such worker, his or
her correct classification, hourly rates of wages paid (including rates of
contributions or costs anticipated for bona fide fringe benefits or cash equivalents

1 thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act), daily and
2 weekly number of hours worked, deductions made and actual wages paid.
3 Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the
4 wages of any laborer or mechanic include the amount of any costs reasonably
5 anticipated in providing benefits under a plan or program described in section
6 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which
7 show that the commitment to provide such benefits is enforceable, that the plan or
8 program is financially responsible, and that the plan or program has been
9 communicated in writing to the laborers or mechanics affected, and records which
10 show the costs anticipated or the actual costs incurred in providing such benefits.
11 Contractor's employing apprentices or trainees under approved programs shall
12 maintain written evidence of the registration of apprenticeship programs and
13 certification of trainee programs, the registration of the apprentices and trainees,
14 and the ratios and wage rates prescribed in the applicable programs.

9 (ii)

10 (A) The Contractor shall submit weekly for each week in which any contract work
11 is performed a copy of all payrolls to the Federal Aviation Administration if the
12 agency is a party to the contract, but if the agency is not such a party, the
13 Contractor will submit the payrolls to the applicant, sponsor, or owner, as the
14 case may be, for transmission to the Federal Aviation Administration. The
15 payrolls submitted shall set out accurately and completely all of the information
16 required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social
17 security numbers and home addresses shall not be included on weekly
18 transmittals. Instead the payrolls shall only need to include an individually
19 identifying number for each employee (e.g. , the last four digits of the
20 employee's social security number). The required weekly payroll information
21 may be submitted in any form desired. Optional Form WH-347 is available for
22 this purpose from the Wage and Hour Division Web site at
23 <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The
24 prime Contractor is responsible for the submission of copies of payrolls by all
25 subcontractors. Contractor's and subcontractors shall maintain the full social
26 security number and current address of each covered worker, and shall provide
27 them upon request to the Federal Aviation Administration if the agency is a
28 party to the contract, but if the agency is not such a party, the Contractor will
29 submit them to the applicant, sponsor, or owner, as the case may be, for
30 transmission to the Federal Aviation Administration, the Contractor, or the
31 Wage and Hour Division of the Department of Labor for purposes of an
32 investigation or audit of compliance with prevailing wage requirements. It is
33 not a violation of this section for a prime Contractor to require a subcontractor
34 to provide addresses and social security numbers to the prime Contractor for
35 its own records, without weekly submission to the sponsoring government
36 agency (or the applicant, sponsor, or owner).

37 (B) Each payroll submitted shall be accompanied by a "Statement of Compliance,"
38 signed by the Contractor or subcontractor or his or her agent who pays or
39 supervises the payment of the persons employed under the contract and shall
40 certify the following:

41 (1) That the payroll for the payroll period contains the information required to
42 be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is
43 being maintained under 29 CFR § 5.5 (a)(3)(i) and that such information is
44 correct and complete;

1 (2) That each laborer and mechanic (including each helper, apprentice and
2 trainee) employed on the contract during the payroll period has been paid
3 the full weekly wages earned, without rebate, either directly or indirectly,
4 and that no deductions have been made either directly or indirectly from
5 the full wages earned, other than permissible deductions as set forth in
6 Regulations 29 CFR Part 3;

7 (3) That each laborer or mechanic has been paid not less than the applicable
8 wage rates and fringe benefits or cash equivalents for the classification of
9 work performed, as specified in the applicable wage determination
10 incorporated into the contract.

11 (C) The weekly submission of a properly executed certification set forth on the
12 reverse side of Optional Form WH-347 shall satisfy the requirement for
13 submission of the "Statement of Compliance" required by paragraph (3)(ii)(B)
14 of this section.

15 (D) The falsification of any of the above certifications may subject the
16 CONSULTANT or subcontractor to civil or criminal prosecution under Section
17 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

18 (iii) The Contractor or subcontractor shall make the records required under paragraph
19 (3)(i) of this section available for inspection, copying or transcription by authorized
20 representatives of the sponsor, the Federal Aviation Administration or the
21 Department of Labor, and shall permit such representatives to interview employees
22 during working hours on the job. If the Contractor or subcontractor fails to submit
23 the required records or to make them available, the Federal agency may, after
24 written notice to the Contractor, sponsor, applicant or owner, take such action as
25 may be necessary to cause the suspension of any further payment, advance, or
26 guarantee of funds. Furthermore, failure to submit the required records upon
27 request or to make such records available may be grounds for debarment action
28 pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the

1 wage determination for the work actually performed. Where a Contractor is
2 performing construction on a project in a locality other than that in which its
3 program is registered, the ratios and wage rates (expressed in percentages of the
4 journeyman's hourly rate) specified in the Contractor's or subcontractor's
5 registered program shall be observed. Every apprentice must be paid at not less
6 than the rate specified in the registered program for the apprentice's level of
7 progress, expressed as a percentage of the journeymen hourly rate specified in the
8 applicable wage determination. Apprentices shall be paid fringe benefits in
9 accordance with the provisions of the apprenticeship program. If the
10 apprenticeship program does not specify fringe benefits, apprentices must be paid
11 the full amount of fringe benefits listed on the wage determination for the applicable
12 classification. If the Administrator determines that a different practice prevails for
13 the applicable apprentice classification, fringes shall be paid in accordance with
14 that determination. In the event the Bureau of Apprenticeship and Training, or a
15 State Apprenticeship Agency recognized by the Bureau, withdraws approval of an
16 apprenticeship program, the Contractor will no longer be permitted to utilize
17 apprentices at less than the applicable predetermined rate for the work performed
18 until an acceptable program is approved.

11 (ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work
12 at less than the predetermined rate for the work performed unless they are
13 employed pursuant to and individually registered in a program which has received
14 prior approval, evidenced by formal certification by the U.S. Department of Labor,
15 Employment and Training Administration. The ratio of trainees to journeymen on
16 the job site shall not be greater than permitted under the plan approved by the
17 Employment and Training Administration. Every trainee must be paid at not less
18 than the rate specified in the approved program for the trainee's level of progress,
19 expressed as a percentage of the journeyman hourly rate specified in the applicable
20 wage determination. Trainees shall be paid fringe benefits in accordance with the
21 provisions of the trainee program. If the trainee program does not mention fringe
22 benefits, trainees shall be paid the full amount of fringe benefits listed on the wage
23 determination unless the Administrator of the Wage and Hour Division determines
24 that there is an apprenticeship program associated with the corresponding
25 journeyman wage rate on the wage determination which provides for less than full
26 fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate
27 that is not registered and participating in a training plan approved by the
28 Employment and Training Administration shall be paid not less than the applicable
wage rate on the wage determination for the classification of work actually
performed. In addition, any trainee performing work on the job site in excess of the
ratio permitted under the registered program shall be paid not less than the
applicable wage rate on the wage determination for the work actually performed.
In the event the Employment and Training Administration withdraws approval of a
training program, the Contractor will no longer be permitted to utilize trainees at
less than the applicable predetermined rate for the work performed until an
acceptable program is approved.

25 (iii) *Equal Employment Opportunity.* The utilization of apprentices, trainees and
26 journeymen under this part shall be in conformity with the equal employment
27 opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part
28 30.

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1 5. *Compliance with Copeland Act Requirements.*

2 *The Contractor shall comply with the requirements of 29 CFR Part 3, which are*
3 *incorporated by reference in this contract.*

4 6. *Subcontracts.*

5 *The Contractor or subcontractor shall insert in any subcontracts the clauses contained*
6 *in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation*
7 *Administration may by appropriate instructions require, and also a clause requiring*
8 *the subcontractors to include these clauses in any lower tier subcontracts. The prime*
9 *Contractor shall be responsible for the compliance by any subcontractor or lower tier*
10 *subcontractor with all the contract clauses in 29 CFR Part 5.5.*

11 7. *Contract Termination: Debarment.*

12 *A breach of the contract clauses in paragraph 1 through 10 of this section may be*
13 *grounds for termination of the contract, and for debarment as a Contractor and a*
14 *subcontractor as provided in 29 CFR 5.12.*

15 8. *Compliance With Davis-Bacon and Related Act Requirements.*

16 *All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29*
17 *CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.*

18 9. *Disputes Concerning Labor Standards.*

19 *Disputes arising out of the labor standards provisions of this contract shall not be*
20 *subject to the general disputes clause of this contract. Such disputes shall be resolved*
21 *in accordance with the procedures of the Department of Labor set forth in 29 CFR*
22 *Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between*
23 *the Contractor (or any of its subcontractors) and the contracting agency, the U.S.*
24 *Department of Labor, or the employees or their representatives.*

25 10. *Certification of Eligibility.*

26 (i) *By entering into this contract, the Contractor certifies that neither it (nor he or she)*
27 *nor any person or firm who has an interest in the Contractor's firm is a person or*
28 *firm ineligible to be awarded Government contracts by virtue of section 3(a) of the*
Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) *No part of this contract shall be subcontracted to any person or firm ineligible for*
award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act
or 29 CFR 5.12(a)(1).

(iii) *The penalty for making false statements is prescribed in the U.S. Criminal Code,*
18 U.S.C. 1001."

22. **CALIFORNIA PREVAILING WAGE, REGISTRATION, APPRENTICESHIP, AND**
OTHER REQUIREMENTS.

22.1. If CONSULTANT's services is found to include tasks that meet the definition of

1 construction, alteration or repair as defined in 29 CFR Part 5 CONSULTANT and its
2 subcontractors shall pay all workers employed on the Project the higher of either the rates
3 determined by the Director of the California Department of Industrial Relations (“DIR”)
4 or, when applicable, the Davis-Bacon Federal wage rates as supplemented by the
5 Department of Labor regulations.

6 **22.1.1.** The Davis-Bacon Federal wage rates are attached to the RFP.

7 **22.1.2.** Copies of the State prevailing rate of per diem wages are on file with the
8 Department of Industrial Relations, Division of Apprenticeship Standards, 445
9 Golden Gate Avenue, San Francisco, California, and at COUNTY’s Office of the
10 Clerk of the Board of Supervisors and Department of Public Works, and are
11 available to CONSULTANT and any other interested party upon request.

12 **22.1.3.** CONSULTANT shall post the prevailing rate of per diem wages to be posted at
13 the Project site.

14 **22.2. Mandatory Registration with the Department of Industrial Relations – NEW**
15 **REQUIREMENTS PURSUANT TO SB 854.**

16 **22.2.1.** CONSULTANT and its subcontractors shall register with the DIR and pay all
17 applicable fees as set forth in the California Labor Code § 1725.5.

18 **22.2.2.** CONSULTANT and its subcontractors acknowledge that they shall not be listed
19 on any bid proposal for a public works project (submitted on or after March 1,
20 2015) unless registered with the DIR pursuant to California Labor Code
21 § 1725.5. The requirements of this section shall apply unless one of the limited
22 exceptions provided under California Labor Code § 1771.1(a) applies.

23 **22.2.3.** CONSULTANT and its subcontractors acknowledge that they shall not be
24 awarded any contract for public work on a public works project (awarded on or
25 after April 1, 2015) unless registered with the DIR pursuant to California Labor
26 Code § 1725.5.

27 **22.2.4.** The Project described herein is subject to compliance monitoring and enforcement
28 with the DIR.

1 **22.4.1.** CONSULTANT agrees to comply with §§ 1775 and 1776 of the California Labor
2 Code relating to the payment of prevailing wage and the maintenance of certified
3 payroll records and to make the certified payroll records available for inspection
4 at all reasonable hours at CONSULTANT’s principal office. The responsibility
5 for compliance with these provisions is fixed with CONSULTANT.
6 CONSULTANT understands and agrees that it shall, as a penalty to COUNTY,
7 forfeit specific monetary fines for each worker paid less than the prevailing wage
8 rates as determined by the Labor Commissioner for the work or craft in which the
9 worker is employed for any Work done pursuant to this Agreement.

10 **22.4.2.** Prevailing Wage Compliance For those Projects subject to DIR Monitoring and
11 Enforcement. CONSULTANT has reviewed and agrees to comply with any
12 applicable provisions for those Projects subject to DIR Monitoring and Enforcement
13 of prevailing wages. COUNTY hereby notifies CONSULTANT that
14 CONSULTANT is responsible for complying with the requirements of Senate Bill
15 854 (SB854) regarding certified payroll record reporting. Further information
16 concerning the requirements of SB854 is available on the DIR website located at:
17 <http://www.dir.ca.gov/Public-Works/PublicWorksEnforcement.html>.

18 **22.4.3.** CONSULTANT shall be liable for penalties pursuant to this section when a
19 subcontractor on the Project fails to pay its workers the general prevailing rate of
20 per diem wages and any of the following conditions are met:

- 21 **(a)** CONSULTANT had knowledge of that failure of the subcontractor to pay
22 the specified prevailing rate of wages to those workers; or
23 **(b)** CONSULTANT fails to comply with the following requirement: The
24 contract executed between CONSULTANT and the subcontractor for the
25 performance of Work on the Project shall include a copy of the provisions
26 of California Labor Code §§ 1771, 1775, 1776, 1777.5, 1813 and 1815;
27 and
28 **(c)** CONSULTANT fails to comply with the following requirement:

1 CONSULTANT shall monitor the payment of the specified general
2 prevailing rate of per diem wages by the subcontractor to the employees,
3 by periodic review of the certified payroll records of the subcontractor;
4 and

5 (d) Upon becoming aware of the failure of the subcontractor to pay his or her
6 workers the specified prevailing rate of wages, CONSULTANT shall
7 diligently take corrective action to halt or rectify the failure, including, but
8 not limited to, retaining sufficient funds due the subcontractor for work
9 performed on the public works project; and

10 (e) Prior to making final payment to the subcontractor for Work performed
11 on the Project, CONSULTANT shall obtain an affidavit signed under
12 penalty of perjury from the subcontractor that the subcontractor has paid
13 the specified general prevailing rate of per diem wages to his or her
14 employees on the Project and any amounts due pursuant to California
15 Labor Code § 1813.

16 **22.5. Work Day and Work Week Requirements.**

17 **22.5.1.** CONSULTANT agrees to comply with §§ 1810 through 1815 of the California
18 Labor Code and, when applicable, sections 103 and 107 of the Contract Work
19 Hours and Safety Standards Act, 40 U.S.C. §§ 3700 *et seq.*, as supplemented by
20 the Department of Labor regulations, which provide that CONSULTANT's
21 workers and its subcontractor's workers may not be required or permitted to work
22 more than eight (8) hours in any one (1) calendar day and forty (40) hours in any
23 one (1) calendar week.

24 **22.5.2.** Work performed by employees of CONSULTANT or its subcontractor in excess
25 of eight (8) hours per day, and forty (40) hours during any one (1) week, shall be
26 compensated for all hours worked in excess of eight (8) hours per day at not less
27 than one and one-half (1½) times the basic rate of pay.

28 **22.5.3.** The responsibility for compliance with these provisions is fixed with

1 CONSULTANT. CONSULTANT understands and agrees that it shall, as a
2 penalty to COUNTY, forfeit specific monetary fines to COUNTY should
3 CONSULTANT or its subcontractors fail to comply with the provisions contained
4 within this Subsection.

5 **22.6. Apprenticeship Requirements.**

6 **22.6.1.** CONSULTANT agrees to comply with §§ 1777.5, 1777.6 and 1777.7 of the
7 California Labor Code relating to the employment of apprentices and to provide
8 COUNTY with copies of any contract award information and verified statements
9 of the journeyman and apprentice hours performed pursuant to this Agreement as
10 required by § 1777.5(e).

11 **22.6.2.** The responsibility for compliance with these provisions is fixed with
12 CONSULTANT for all apprenticeable occupations, where journeymen in the
13 craft are employed on the public work, in a ratio of not less than one (1) apprentice
14 for each five (5) journeymen (unless an exemption is granted in accordance with
15 § 1777.5) and CONSULTANT and its subcontractors shall not discriminate
16 among otherwise qualified employees as indentured apprentices on any public
17 work solely on the ground of race, religious creed, color, national origin, ancestry,
18 sex, or age, except as provided in California Labor Code
19 § 3077.

20 **22.6.3.** Only apprentices, as defined in California Labor Code § 3077, who are in training
21 under apprenticeship standards and who have signed written apprentice
22 agreements will be employed on public works in apprenticeable occupations.
23 This section shall not be enforced if the not-to-exceed amount of this Agreement
24 set forth and/or incorporated in the “COMPENSATION” paragraph is less than
25 thirty thousand dollars (\$30,000).

26 **22.6.4.** If the Project falls within the jurisdiction of California Labor Code § 1777.5,
27 COUNTY shall, within five (5) days of the award, send a copy of the award to the
28 Division of Apprenticeship Standards. In addition, COUNTY shall notify the

1 Division of Apprenticeship Standards of a finding of any discrepancy regarding
2 the ratio of apprentices to journeymen within five (5) days of the finding.

3 **22.7. Labor Standards Compliance Requirements.**

4 **22.7.1.** It is CONSULTANT's responsibility to provide all labor compliance
5 documentation from its subcontractors completely and accurately in a timely
6 manner. CONSULTANT is responsible to review promptly and then forward on
7 all required documentation to COUNTY per the time schedules in the Labor
8 Compliance Handout. Included with the Labor Compliance Handout, COUNTY
9 will provide training, documentation requirements, forms, etc., at the
10 preconstruction conference or at a time designated by COUNTY.

11 In the event, during the review process of labor compliance documentation from
12 COUNTY's labor compliance monitor, inaccurate, missing or incomplete
13 information was provided, the labor compliance monitor will request from
14 CONSULTANT the items, revisions and documentation needed. The cost of this
15 additional labor compliance enforcement shall be borne by CONSULTANT.

16 **23. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE).**

17 All contracts and subcontracts that result from this solicitation incorporate by reference the
18 provisions of 29 CFR part 201 et seq, the Federal Fair Labor Standards Act (FLSA), with the
19 same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay,
20 recordkeeping, and child labor standards for full and part-time workers.

21 The Consultant has full responsibility to monitor compliance to the referenced statute or
22 regulation. The Consultant must address any claims or disputes that arise from this requirement
23 directly with the U. S. Department of Labor – Wage and Hour Division.

24 **24. CONFLICT OF INTEREST AND GRATUITIES.**

25 **24.1.** CONSULTANT agrees that it presently has no interest and shall not acquire any interest,
26 direct or indirect, which could conflict in any manner or degree with the performance of
27 services required to be performed under this Agreement. CONSULTANT further agrees
28 that in the performance of this Agreement, no person having any such interest shall be

1 employed.

2 **24.2.** CONSULTANT agrees to designate such person or persons who have responsibility for
3 carrying out the services under this Agreement and that such person or persons as may be
4 designated shall take any and all actions necessary to comply with COUNTY's Conflict
5 of Interest Code adopted pursuant to California Government Code § 81000 to the extent
6 required thereunder.

7 **24.3.** If it is found, after notice and hearing by COUNTY, that gratuities (in the form of
8 entertainment., gifts, or otherwise) were offered or given by CONSULTANT, or any
9 agent or representative of CONSULTANT, to any officer, employee or agent of
10 COUNTY with a view toward securing a contract or securing favorable treatment with
11 respect to the awarding or amending or the making of any determinations with respect to
12 the performance of this Agreement, COUNTY may, by written notice to
13 CONSULTANT, terminate the right of CONSULTANT to proceed under this Agreement
14 and/or may pursue such other rights and remedies provided by law or under this
15 Agreement.

16 **24.4.** In the event this Agreement is terminated as provided herein, COUNTY shall be entitled
17 to:

18 **24.4.1.** Pursue the same remedies against CONSULTANT as it could pursue in the event
19 of a breach of the Agreement by CONSULTANT; and

20 **24.4.2.** As a penalty in addition to any other damages to which it may be entitled by law,
21 to exemplary damages in an amount (as determined by COUNTY) which shall be
22 not less than three (3) nor more than ten (10) times the costs incurred by
23 CONSULTANT in providing any such gratuities to any such officer, employee or
24 agent.

25 **25. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 COMPLIANCE.**

26 This Agreement, and any subcontract made pursuant to this Agreement, shall incorporate by
27 reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text.
28 CONSULTANT must provide a work environment that is free from recognized hazards that may cause

1 death or serious physical harm to the employee. CONSULTANT retains full responsibility to monitor
2 its compliance and their subcontractor's compliance with the applicable requirements of the
3 Occupational Safety and Health Act of 1970 (20 CFR Part 1910). CONSULTANT must address any
4 claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor
5 Occupational Safety and Health Administration.

6 **26. VETERAN'S PREFERENCE.**

7 In the employment of labor (excluding executive, administrative, and supervisory positions),
8 CONSULTANT and all sub-tier CONSULTANTS must give preference to covered veterans as defined
9 within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans,
10 Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns
11 (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies
12 when there are covered veterans readily available and qualified to perform the work to which the
13 employment relates.

14 **27. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL**
15 **EMPLOYMENT OPPORTUNITY**

- 16 1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the
17 "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set
18 forth herein.
- 19 2. The goals and timetables for minority and female participation, expressed in percentage terms
20 for the Contractor's aggregate workforce in each trade on all construction work in the covered
21 area, as follows:

22 **Timetables**

23 Goals for minority participation for each trade: 18.2%

24 Goals for female participation in each trade: 6.9%

25 These goals are applicable to all of the Contractor's construction work (whether or not it is
26 Federal or federally assisted) performed in the covered area. If the Contractor performs
27 construction work in a geographical area located outside of the covered area, it shall apply the
28 goals established for such geographical area where the work is actually performed. With regard

1 to the second area, the Contractor also is subject to the goals for both its federally involved and
2 nonfederally involved construction.

3 The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4
4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action
5 obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the
6 goals. The hours of minority and female employment and training must be substantially uniform
7 throughout the length of the contract, and in each trade, and the Contractor shall make a good
8 faith effort to employ minorities and women evenly on each of its projects. The transfer of
9 minority or female employees or trainees from Contractor to Contractor or from project to project
10 for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the
11 Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be
12 measured against the total work hours performed.

13 3. The Contractor shall provide written notification to the Director of the Office of Federal
14 Contract Compliance Programs (OFCCP) within 10 working days of award of any
15 construction subcontract in excess of \$10,000 at any tier for construction work under the
16 contract resulting from solicitation. The notification shall list the name, address, and
17 telephone number of the subcontractor; employer identification number of the subcontractor;
18 estimated dollar amount of the subcontract; estimated starting and completion dates of the
19 subcontract; and geographical area in which the subcontract is to be performed.

20 4. As used in this notice and in the contract resulting from this solicitation, the "covered area"
21 is Imperial County, California.

22 **28. COPELAND "ANTI-KICKBACK" ACT COMPLIANCE.**

23 If this Agreement, or any subcontract made pursuant to this Agreement has created situations
24 where the services provided by CONSULTANT includes tasks that meet the definition of construction,
25 alteration or repair as defined in 29 CFR Part 5 and should exceed two thousand dollars (\$2,000), then
26 CONSULTANT shall comply with the following provision. For the purposes of this Section, the term
27 "CONSULTANT" shall refer to CONSULTANT, and the term "Owner" shall refer to COUNTY:

28 *"Contractor must comply with the requirements of the Copeland "Anti-Kickback" Act (18*

1 U.S.C. 874 and 40 U.S.C. 3145), as supplemented by Department of Labor regulation 29
2 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means,
3 any person employed on the project to give up any part of the compensation to which the
4 employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a
5 weekly statement on the wages paid to each employee performing on covered work during
6 the prior week. Owner must report any violations of the Act to the Federal Aviation
7 Administration.”

8 **29. DISTRACTED DRIVING.**

9 If this Agreement, or any subcontract made pursuant to this Agreement, should exceed three
10 thousand five hundred dollars (\$3,500) and be funded, either in whole or in part, through the Federal
11 Aviation Administration’s Airport Improvement Program, then CONSULTANT shall comply with the
12 following provisions:

13 **29.1.** In accordance with Executive Order 13513, “Federal Leadership on Reducing Text
14 Messaging While Driving” (10/1/2009) and DOT Order 3902.10 “Text Messaging While
15 Driving” (12/30/2009), the Federal Aviation Administration encourages recipients of
16 Federal grant funds to adopt and enforce safety policies that decrease crashes by
17 distracted drivers, including policies to ban text messaging while driving when
18 performing work related to a grant or sub-grant. In support of this initiative, COUNTY
19 encourages CONSULTANT to promote policies and initiatives for its employees and
20 other work personnel that decrease crashes by distracted drivers, including policies that
21 ban text messaging while driving motor vehicles while performing work activities
22 associated with the Project.

23 **29.2.** CONSULTANT shall include the substance of this clause in all subcontracts exceeding
24 three thousand five hundred dollars (\$3,500) and involve driving a motor vehicle in
25 performance of work activities associated with the Project.

26 **30. ENERGY CONSERVATION REQUIREMENTS.**

27 If this Agreement, or any subcontract made pursuant to this Agreement, should be funded, either
28 in whole or in part, through the Federal Aviation Administration’s Airport Improvement Program, then
CONSULTANT shall comply with the following provisions:

30.1. CONSULTANT agrees to comply with mandatory standards and policies relating to
energy efficiency as contained in the state energy conservation plan issued in compliance

1 with the Energy Policy and Conservation Act (42 U.S.C. 6201*et seq.*)

2 **30.2.** CONSULTANT shall include this requirement in all subcontracts.

3 **31. PROCUREMENT OF RECOVERED MATERIALS.**

4 If this Agreement, or any subcontract made pursuant to this Agreement include procurement of
5 a product that exceeds ten thousand dollars (\$10,000), then CONSULTANT shall comply with the
6 following provisions:

7 **31.1.** CONSULTANT and any and all subcontractors agree to comply with Section 6002 of the
8 Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act,
9 and the regulatory provisions of 40 CFR Part 247. In the performance of this Agreement
10 and to the extent practicable, CONSULTANT and subcontractors are to make use of
11 products containing the highest percentage of recovered materials for items designated by
12 the Environmental Protection Agency (“EPA”) under 40 CFR Part 247 whenever:

13 **31.1.1.** The Agreement requires procurement of ten thousand dollars (\$10,000) or more
14 of a designated item during the fiscal year; or,

15 **31.1.2.** The Agreement has procured ten thousand dollars (\$10,000) or more of a
16 designated item using Federal funding during the previous fiscal year.

17 **31.2.** The list of EPA-designated items is available at:

18 www.epa.gov/epawaste/conserva/tools/cpg/products/.

19 **31.3.** Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated
20 products if the CONSULTANT can demonstrate the item is:

21 **31.3.1.** Not reasonably available within a timeframe providing for compliance with the
22 contract performance schedule;

23 **31.3.2.** Fails to meet reasonable contract performance requirements; or

24 **31.3.3.** Is only available at an unreasonable price.

25 **32. RIGHT TO INVENTIONS.**

26 **32.1.** Should this Agreement, or any subcontract made pursuant to this Agreement, include the
27 performance of experimental, developmental, or research work, then COUNTY and the
28 Federal Government shall have the rights to said work as established under 37 CFR part

1 401, Rights to Inventions Made by Non-Profit Organizations and Small Business Firms
2 under Government Grants, Contracts, and Cooperative Agreements.

3 **32.2.** This Agreement incorporates by reference the patent and inventions rights as specified
4 within 37 CFR § 401.14.

5 **32.3.** CONSULTANT must include this requirement in all sub-tier contracts involving
6 experimental, developmental, or research work.

7 **33. SEISMIC SAFETY.**

8 CONSULTANT agrees to ensure that all work performed under this Agreement, including work
9 performed by subcontractors, conforms to a building code standard that provides a level of seismic safety
10 substantially equivalent to standards established by the National Earthquake Hazards Reduction Program
11 (“NEHRP”). Local building codes that model their code after the current version of the International
12 Building Code (“IBC”) meet the NEHRP equivalency level for seismic safety.

13 **34. ELIGIBILITY OF CONSULTANT AND SUBCONTRACTORS.**

14 **34.1. Federal Debarment and Suspension.** If this Agreement, or any subcontract made
15 pursuant to this Agreement, should exceed twenty-five thousand dollars (\$25,000), then
16 CONSULTANT shall comply with the following provisions:

17 **34.1.1.** CONSULTANT certifies that neither it nor its principals are presently debarred
18 or suspended by any Federal department or agency from participation in this
19 Agreement.

20 **34.1.2.** CONSULTANT understands and agrees that CONSULTANT has a duty to verify
21 that all subcontractors conducting work under this Agreement or any subcontract
22 are not presently barred or otherwise disqualified from participation in this
23 Project. CONSULTANT shall accomplish this by:

24 **(a)** Checking the System for Award Management website at:
25 <http://www.sam.gov>;

26 **(b)** Collecting a certification statement; and

27 **(c)** Inserting a clause or condition in the subcontract.

28 **34.1.3.** If the FAA later determines that a subcontractor failed to disclose to

1 CONSULTANT that it was excluded or disqualified at the time it entered the
2 subcontract, the FAA may pursue any available remedies, including suspension
3 and debarment of the non-compliant subcontractor.

4 **34.2. California Eligibility.** CONSULTANT represents and warrants that it and its
5 subcontractors are not ineligible to work for COUNTY due to violations of Labor Code
6 §§ 1777.1 and 1777.7.

7 **35. CERTIFICATION OF OFFEROR/BIDDER REGARDING TAX DELINQUENCY AND**
8 **FELONY CONVICTIONS.**

9 The applicant must complete the following two certification statements. The applicant must
10 indicate its current status as it relates to tax delinquency and felony conviction by inserting a
11 checkmark (✓) in the space following the applicable response. The applicant agrees that, if
12 awarded a contract resulting from this solicitation, it will incorporate this provision for
13 certification in all lower tier subcontracts.

14 **Certifications**

- 15 1) The applicant represents that it is () is not () a corporation that has any unpaid
16 Federal Tax liability that has been assessed, for which all judicial and administrative
17 remedies have been exhausted or have lapsed, and that is not being paid in a timely
18 manner pursuant to an agreement with the authority responsible for collecting the tax
19 liability.
- 20 2) The applicant represents that it is () is not () a corporation that was convicted of a
21 criminal violation under any Federal Law within the preceding 24 months.

22 **Note**

23 If an applicant responds in the affirmative to either of the above representations, the applicant is
24 ineligible to receive an award unless the Sponsor has received notification from the agency suspension
25 and debarment official (SDO) that the SDO has considered suspension or debarment and determined that
26 further action is not required to protect the Government's interests. The applicant therefore must provide
27 information to the owner about its tax liability or conviction to the owner, who will then notify the FAA
28 Airports District Office, which will notify the agency's SDO to facilitate completion of the required

1 considerations before award decisions are made.

2 **Term Definitions**

3 Felony conviction: Felony conviction means a conviction within the preceding twenty four (24)
4 months of a felony criminal conviction violation under any Federal law and includes conviction of an
5 offense that is classified as a felony under 18 USC § 3559.

6 **Tax Delinquency:** A tax delinquency is any unpaid Federal tax liability that has been assessed,
7 for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not
8 being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the
9 tax liability.

10 **36. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT.**

11 If this Agreement, or any subcontract made pursuant to this Agreement, should exceed one
12 hundred fifty thousand dollars (\$150,000), then CONSULTANT shall comply with the following
13 provisions:

14 **36.1.** CONSULTANT agrees to comply with all applicable standards, orders, and regulations
15 issued pursuant to the Clean Air Act (42 U.S.C. §§ 740-7671q) and the Federal Water
16 Pollution Control Act as amended (33 U.S.C. §§ 1251-1387).

17 **36.2.** CONSULTANT agrees to report any violation to COUNTY immediately upon discovery.
18 COUNTY shall notify the EPA and the Federal Aviation Administration of such
19 violation.

20 **36.3.** CONSULTANT must include these requirements in all subcontracts that exceed one
21 hundred fifty thousand dollars (\$150,000).

22 **37. FAA BUY AMERICAN PREFERENCE.**

23 The Consultant certifies that its bid/offer is in compliance with 49 USC §50101, BABA and other
24 related Made in America Laws¹, U.S. states, guidance, and FAA policies, which provide that
25 Federal funds may not be obligated unless all iron, steel and manufactured goods used in AIP
26

27 ¹ Per executive Order 14005 “Made in America Laws” means all statutes, regulations, rules, and Executive Orders relating
28 to federal financial assistance awards or federal procurement, including those that refer to “Buy America” or “Buy
American,” that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced
in the United States, including iron, steel, and manufactured products offered in the United States.

1 funded projects are produced in the United States, unless the Federal Aviation Administration
2 has issued a waiver for the product; the product is listed as an Excepted Article, Material or
3 Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide
4 Buy American Waivers Issued list.

5 The bidder or offeror must complete and submit the certification of compliance with FAA's Buy
6 American Preference, BABA and Made in America laws included herein with their bid or offer.
7 The Airport Sponsor/Owner will reject as nonresponsive any bid or offer that does not include a
8 completed Certification of compliance with FAA's Buy American Preference and BABA.

9 The bidder or offeror certifies that all constructions materials, defined to mean an article,
10 material, or supply other than an item of primarily iron or steel; a manufactured product; cement
11 and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents
12 or additives that are or consist primarily of; non-ferrous metals; plastic and polymer-based
13 products (including polyvinylchloride, composite building materials, and polymers used in fiber
14 optic cables); glass (including optic glass); lumber; or drywall used in the project are
15 manufactured in the U.S.

16 **38. CERTIFICAITON REGARDING DOMESTIC PREFERENCES FOR**
17 **PROCUREMENTS**

18 The Bidder or Offeror certifies by signing and submitting this bid or proposal that, to the greatest
19 extent practicable, the Bidder or Offeror has provided a preference for the purchase, acquisition,
20 or use of goods, products, or materials produced in the United States (including but not limited
21 to, iron, aluminum, steel, cement, and other manufactured products) in compliance with CFR §
22 200.322.

23 **39. PROHIBITION ON THE USE OF FEDERAL FUNDS FOR LOBBYING.**

24 If this Agreement, or any subcontract made pursuant to this Agreement, should exceed one
25 hundred thousand dollars (\$100,000), then CONSULTANT shall comply with the following provisions.
26 For the purposes of this Section, the terms "Bidder" or "Offeror" shall refer to CONSULTANT, and the
27 terms "bid" or "proposal" shall refer to this Agreement:

28 *"The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best*

of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any

person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

40. TRADE RESTRICTION CERTIFICATION.

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

- 1) Is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) Has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U. S. Firms as published by USTR; and,
- 3) Has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

1 This certification concerns a matter within the jurisdiction of an agency of the United States of
2 America and the making of false, fictitious or fraudulent certification may render the maker
3 subject to prosecution under Title 18 USC §1001.

4 The Offeror/Contractor must provide immediate written notice to the Owner if the
5 Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when
6 submitted or has become erroneous by reason of changed circumstances. The Contractor must
7 require subcontractors provide immediate written notice to the Contractor if at any time it learns
8 that its certification was erroneous by reason of changed circumstances.

9 Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance
10 with 49 CFR § 30.17, no contract shall be awarded to an Offeror or subcontractor:

- 11 1) who is owned or controlled by one or more citizens or nationals of a foreign country included
12 on the list of countries that discriminate against U.S> Firms published by the USTR; or
- 13 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a
14 foreign country on such USTR list; or
- 15 3) who incorporates in the public works project any product of a foreign country on such USTR
16 list.

17 Nothing contained in the foregoing shall be construed to require establishment of a system of
18 records in order to render, in good faith, the certification required by this provision. The
19 knowledge and information of a contractor is not required to exceed that which is normally
20 possessed by a prudent person in the ordinary course of business dealings.

21 The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate
22 this provision for certification without modification in all lower tier subcontracts. The Contractor
23 may rely on the certification of a prospective subcontractor that is not a firm from a foreign
24 county included on the list of countries that discriminate against U.S. firms as published by
25 USTR, unless the Offeror has knowledge that the certification is erroneous.

26 This certification is a material representation of fact upon which reliance was placed when
27 making an award. If it is later determined that the Contractor or subcontractor knowingly
28 rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct

1 through the Owner cancellation of the contract or subcontract for default at no cost to the Owner
2 or the FAA.

3 **41. FEDERAL EMPLOYMENT ELIGIBILITY VERIFICATION.**

4 CONSULTANT shall verify name, date of birth and social security number, along with
5 immigration information for non-citizens in order to verify the identity and employment eligibility of
6 both citizen and non-citizen new hires. The responsibility for compliance with this provision is fixed
7 with CONSULTANT.

8 **42. ASSIGNMENT OF UNFAIR BUSINESS PRACTICES CLAIMS (CLAYTON ACT AND**
9 **CARTWRIGHT ACT).**

10 CONSULTANT and its subcontractors offer and agree to assign to COUNTY all rights, title and
11 interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C.
12 § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the
13 Business and Professions Code), arising from purchases of goods, services or materials pursuant to this
14 Agreement. This assignment shall be made and become effective at the time COUNTY tenders final
15 payment to CONSULTANT, without further acknowledgment by the Parties.

16 **43. NON-COLLUSION.**

17 CONSULTANT agrees he/she has executed and submitted with the Bid a Non-Collusion
18 Affidavit that complies with Cal. Public Contract Code § 7106, included in **Exhibit “A”** and
19 incorporated herein.

20 **44. BREACH OF CONTRACT TERMS.**

21 Any violation or breach of terms of this contract on the part of the Consultant or its subcontractors
22 may result in the suspension or termination of this contract or such other action that may be
23 necessary to enforce the rights of the parties of this agreement.

24 Owner will provide Consultant written notice that describes the nature of the breach and
25 corrective actions the Consultant must undertake in order to avoid termination of the contract.

26 Owner reserves the right to withhold payments to contractor until such time the Contractor
27 corrects the breach or the Owner elects to terminate the contract. The Owner’s notice will
28 identify a specific date by which the Consultant must correct the breach. Owner may proceed

1 with termination of the contract of the Consultant fails to correct the breach by the deadline
2 indicated in the Owner's notice.

3 The Duties and obligations imposed by the contract documents and the rights and remedies
4 available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and
5 remedies otherwise imposed or available by law.

6 **45. NOTICES AND REPORTS.**

7 **45.1.** All notices and reports under this Agreement shall be in writing and may be given by
8 personal delivery or by mailing by certified mail, addressed as follows:

9
10 COUNTY
Imperial County Airports
11 Attention: Airport Manager
1099 Airport Rd.
12 Imperial, CA 92251

CONSULTANT
[CONSULTANT'S NAME]

13 with copies to:

14 Imperial County Executive Office
15 Attention: County Executive Officer
940 West Main Street, Suite 208
16 El Centro, CA 92243

17 and:

18 Imperial County Department of Human
19 Resources and Risk Management
Attention: Director
20 940 West Main Street, Suite 101
21 El Centro, CA 92243

22 **45.2.** Notices and reports under this Agreement may be given by personal delivery or by mailing
23 by certified mail at such other address as either Party may designate in a notice to the other
24 Party given in such manner. Any notice given by mail shall be considered given when
25 deposited in the United States Mail, postage prepaid, addressed as provided herein.

26 **46. ENTIRE AGREEMENT.**

27 This Agreement contains the entire agreement between COUNTY and CONSULTANT relating to
28 the transactions contemplated hereby and supersedes all prior or contemporaneous agreements,

1 understandings, provisions, negotiations, representations, or statements, either written or verbal.

2 **47. ASSIGNMENT.**

3 Neither this Agreement nor any duties or obligations hereunder shall be assignable by
4 CONSULTANT without the prior written consent of COUNTY.

5 **48. MODIFICATION.**

6 No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless
7 the same is in writing and signed by the Party against whom the enforcement of such modification, waiver,
8 amendment, discharge, or change is or may be sought.

9 **49. CAPTIONS.**

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

12 **50. PARTIAL INVALIDITY.**

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

16 **51. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.**

17 Words and expressions in the masculine gender include the feminine and neuter genders. Words
18 and expressions in the singular include the plural and words and expressions in the plural include the
19 singular. CONSULTANT as used in this Agreement or in any other document referred to in or made a part
20 of this Agreement shall likewise include both singular and the plural, a corporation, a partnership, individual,
21 firm or person acting in any fiduciary capacity as executor, administrator, trustee or in any other
22 representative capacity or any other entity. All covenants herein contained on the part of CONSULTANT
23 shall be joint and several if more than one person, firm or entity executes the Agreement.

24 **52. WAIVER.**

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

28 **53. CHOICE OF LAW.**

1 **53.1.** The laws of the United States and the State of California shall govern this Agreement. In
2 situations where State and Federal law are found to conflict, the Federal law shall prevail.

3 **53.2.** This Agreement is made and entered into in Imperial County, California. Any action
4 brought by either Party with respect to this Agreement shall be brought in the United States
5 District Court in and for the Southern District of California (Federal Court) or the Superior
6 Court of the State of California, in and for the County of Imperial (State Court).

7 **54. AUTHORITY.**

8 **54.1.** Each individual executing this Agreement on behalf of CONSULTANT represents and
9 warrants that:

10 **54.1.1.** He/She is duly authorized to execute and deliver this Agreement on behalf of
11 CONSULTANT;

12 **54.1.2.** Such execution and delivery is in accordance with the terms of the Articles of
13 Incorporation or Partnership, any by-laws or Resolutions of CONSULTANT and;

14 **54.1.3.** This Agreement is binding upon CONSULTANT in accordance with its terms.

15 **54.2.** CONSULTANT shall deliver to COUNTY evidence acceptable to COUNTY of the
16 foregoing within thirty (30) days of execution of this Agreement.

17 **55. COUNTERPARTS.**

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

21 **56. TIMING.**

22 The Parties agree that time is of the essence in this Agreement.

23 **57. REVIEW OF AGREEMENT TERMS.**

24 This Agreement has been reviewed and revised by legal counsel for both COUNTY and
25 CONSULTANT, and no presumption or rule that ambiguities shall be construed against the drafting Party
26 shall apply to the interpretation or enforcement of the same or any subsequent amendments thereto.

27 ////

28 ////

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

3
4 **County of Imperial**

[CONSULTANT'S NAME]

5
6 By: _____
7 Ryan E. Kelley, Chairman
8 Imperial County Board of Supervisors

By: _____
Authorized Signor

9
10 **ATTEST:**

11
12 By: _____
13 Blanca Acosta,
14 Clerk of the Board of Supervisors

15
16 **APPROVED AS TO FORM:**
17 Eric Havens,
18 County Counsel

19
20 By: _____
21 Andrew Briseno,
22 Deputy County Counsel