

County of Imperial
Department of Planning & Development Services (ICPDS)

PROJECT MANUAL

IMPERIAL CENTER INFRASTRUCTURE PROJECT PHASE TWO COUNTY PROJECT NO. # 2009 - I.C.02 June 15, 2010



EDA GRANT NO. 07-79-73003

Requested by:

Jurg Heuberger, AICP
Director of Planning & Development Services

Department of Planning & Development Services
801 Main Street
El Centro, CA 92243
Phone: (760) 482-4236
Fax: (760) 353-8338

Contact Person(s): Jurg Heuberger, AICP, Planning & Development Serv. Director
Phone (760) 482-4310, jurgheuberger@co.imperial.ca.us

Mike Cameron, Project Manager
Phone (760) 996-9651

	<u>Date</u>	<u>Time</u>	<u>Location</u>
Bid Due:	August 9, 2010	12:00 Noon	Clerk of the Board 940 Main Street, Suite 209 El Centro, CA 92243
Bid Opening:	August 9, 2010	3:00 PM	County Board Room 940 Main Street, Suite 211 El Centro, CA 92243

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Notice: The term "County" as used herein shall mean Imperial County Planning & Development Services Department (ICPDS) unless otherwise shown!

NOTICE TO CONTRACTOR CALLING FOR BIDS

NOTICE IS HEREBY GIVEN that the COUNTY OF IMPERIAL, California, acting by and through its Board of Supervisors (hereinafter referred to as "COUNTY"), will receive up to, but not later than 12:00 p.m. (Noon) on August 9, 2010, sealed bids for the award of a contract for the proposed project:

IMPERIAL CENTER INFRASTRUCTURE PROJECT PHASE TWO COUNTY PROJECT NO. 2009 – I.C. 02

The Contractor shall possess a California Contractors License, Class A, at the time this contract is awarded. Bids shall be received in the office of the Clerk of the Board of Supervisors, 940 Main Street, Suite 209, El Centro, California 92243, and shall be opened publicly and read aloud at the County Board Room, 940 Main Street, Suite 211, El Centro, CA 92243 on August 9, 2010 at 3:00 p.m. It is tentatively planned that a contract will be considered and may be awarded on August 17, 2010 by Board of Supervisors.

Each bid package must conform and be responsive to the contract documents. Bid sets will be available starting on June 24, 2010 at Planning & Development Services, 801 Main Street, El Centro, CA, 92243, Phone (760) 482-4236, Monday through Friday 8:00 AM - 5:00 PM (PST) for a hardcopy set. Those desiring to pick up bid sets shall call (760) 482-4237 or (760) 482-4337 to reserve a copy of bid documents to ensure the availability.

A fifty dollar (\$50) non-refundable fee for each hard-copy bid package set of the contract documents is required.

Only those firms who have purchased the bid documents will be mailed any addendums that may be issued for this project prior to the bid opening date.

Each bid shall be accompanied by the bid security referred to in the contract documents and the list of proposed subcontractors in the form of a certified or cashier check or a bid bond for ten percent (10%) of the maximum bid amount being proposed.

In contracts involving expenditure in excess of ten thousand dollars (\$10,000), the successful bidder shall file a payment bond in a penal sum at least equal to the full contract value as awarded. The bond shall be approved by COUNTY and shall be in the form set forth in the contract documents. The successful bidder shall also file a performance bond in a penal sum at least equal to the full contract value as awarded.

A performance and payment bond must be filed for contracts involving expenditure in excess of twenty-five thousand dollars (\$25,000), and may be required for contracts involving smaller expenditures at the option of COUNTY.

A Contractor's and subcontractor's Pre-Bid Conference will be held on [July 15, 2010 at 10:00 a.m. at the Imperial County Planning & Development Services Department \(ICPDS\) conference room.](#)

**Planning & Development Services
801 Main Street
El Centro, CA 92243**

**Contact Person(s): Jurg Heuberger, AICP, Planning & Development Services Director
Mike Cameron, Project Manager
Telephone No: (760) 482-4236**

Attendance at the Pre-Bid Conference is Non-Mandatory but strongly encouraged.

COUNTY reserves the right to reject any or all bids or to waive any irregularities or informalities in any bids or in the bidding.

COUNTY hereby affirms and notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated on the grounds of race, sex, color, or national origin in consideration for an award.

Pursuant to Section 1773 of the Labor Code, the general prevailing rate of wages in the County in which the work is to be done has been determined by the Director of the California Department of Industrial Relations and are on file and available from the Clerk of the Board of Supervisors located at the County Administration Center, 940 Main Street, El Centro, CA 92243.

The Director of Industrial Relations has determined the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the contract which will be awarded to the successful bidder.

Contractor shall submit two copies of statement of compliance, public work payroll reporting form and training fund contributions for contractor and all sub-contractors. Payroll information shall be submitted monthly.

Use the following internet access URL:

<http://www.dir.ca.gov/dlsr/PWD/>

It shall be mandatory upon the Contractor to whom the contract is awarded, and upon any subcontractor under it, to pay not less than the said specified rates to all workers employed by them in the execution of the contract.

This contract also includes funding from an EDA – American Recovery and Reinvestment Act (ARRA) grant which will require reporting and compliance with said grant specifications. A copy of EDA contract provisions is attached hereto.

No bidder may withdraw its bid for a period of ninety (90) days after the date set for the opening of bids.

An on-site construction yard for contractor and sub-contractors to use has been permitted and will be located on the north east corner of HWY 111 and Heber Road upon Imperial Center projects. Contractor must provide space, utilities and an office trailer for the county project manager.

A CALTRANS, Imperial Irrigation District and County Public Works encroachment permits have been applied for and should be available by start of construction.

Contractor is advised that the job may be commenced at one of several starting locations and contractor shall plan to work at any location. If a hold-up for permitting is encountered, there can be no delay Contractor shall notify project manager of any expected or anticipated delays at the earliest known time.

Contractor is put on notice that certain locations of the project may require "dewatering" in advance of construction. All dewatering is the full responsibility of contractor and no change orders will be allowed for this work.

Contractor shall start and perform the dewatering, water and sewer lines at approximately the same time. Dewatering must be started at the earliest possible time.

Contractor is advised that due to Federal funding being included, all steel products used in the job must be USA-made and proof will be required.

Contractor is advised that this project involves both the County (ICPDS) and HPUD. As such County is the primary contact and all communication shall be with County. HPUD engineer will perform all inspections of utilities and Contractor must comply with HPUD inspections. County Public Works will inspect the drainage system and all work within road right-of-way, but not utilities.

Contractor must co-coordinate all inspections with County/project manager, HPUD Engineer and County Public Works Department. Project engineer (DD & E) will perform, at no cost to contractor, all surveying, grade staking and grade check required for the job. Contractor is to co-coordinate this work and schedule with DD & E.

Contractor as part of the Bid due August 9, 2010 shall provide a construction schedule noting the critical path and dates.

Monies withheld by the owner to ensure performance under the contract may be released in accordance with Public Contract Code Section 22300 and these contract documents.

All required shoring, shoring plans, and engineering for shoring shall be provided by contractor and shall comply with OSHA regulations and all applicable permits.

Bids shall be for Phase Two. See sheet No. 1 of plans for Phase Two scope of work

CLERK OF THE BOARD OF SUPERVISORS
Imperial County, California

Date M.O. #

Approved for Construction

Jurg Heuberger, AICP Date
Director of Planning & Development Services

INFORMATION FOR BIDDERS

1. Preparation of Bid Form. COUNTY invites bids on the form attached to be submitted at such time and place as is stated in the form *Notice to Contractors Calling for Bids*. All blanks in the bid form must be appropriately completed, and all prices must be stated in both words and figures. All bids must be submitted in sealed envelopes bearing on the outside the name of the bidder, the bidder's address, and the name of the project for which the bid is submitted. It is the sole responsibility of the bidder to see that the bid is received by COUNTY prior to the date and time specified for opening bids. Any bid received after the scheduled closing time for receipt of bids will be returned to the bidder unopened.

2. Bid Security. Each bid shall be accompanied by a certified or cashier's check payable to COUNTY, or a satisfactory bid bond in favor of COUNTY executed by the bidder as principal and a satisfactory surety company as surety, in an amount not less than ten percent (10%) of the maximum amount of the bid. The check or bid bond shall be given as guarantee that the bidder shall execute the contract if it be awarded to it in conformity with the contract documents and shall provide the surety bond or bonds as specified therein within ten (10) days after notification of the award of the contract to the bidder.

3. Signature. The bid must be signed in the name of the bidder and must bear the signature in longhand of the person or persons duly authorized to sign the bid.

4. Modifications. Changes in or additions to the bid form, recapitulations of the work bid upon, alternative proposals, or any other modification of the bid form which is not specifically called for in the contract documents may result in COUNTY's rejection of the bid as not being responsive to the invitation to bid. No oral or telephonic modification may be considered.

Any proposed modifications of a bidder's bid must be in writing and received by COUNTY prior to the date and time specified for opening bids.

5. Erasures. The bid submitted must not contain any erasures, inter-lineations, or other corrections unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction and the surname, or surnames of the person or persons signing the bid.

6. Examination of Site and Contract Documents. Each bidder shall visit the site of the proposed work and fully acquaint itself with the conditions relating to the construction and labor so that it may fully understand the facilities, difficulties and restrictions attending the execution of the work under the contract. Bidders shall thoroughly examine and be familiar with the drawings and specifications. The failure or omission of any bidder to receive or examine any contract documents, form, instrument, addendum or other document, or to visit the site and acquaint itself with conditions there existing, shall in no way relieve any bidder from obligations with respect to its bid or to the contract. The submission of a bid shall be taken as *prima facie* evidence of compliance with this section.

7. Withdrawal of Bids. Any bidder may withdraw its bid either personally, by written request, or by telegraphic request confirmed in the manner specified above at any time prior to the scheduled closing time for receipt of bids.

8. Relief from Mistake in Bid. The attention of bidders is called to Public Contracts Code sections 5100 to 5104, particularly the requirements of section 5103 which requires that grounds for relief from a mistaken bid require written notice to the public entity within five (5) working days after the opening of the bids of mistake and such notice shall detail how the mistake occurred. Please note that a bidder shall not be relieved of its bid unless the elements of Public Contract Code § 5103 are met and the written consent of COUNTY is obtained and/or by order of a court of competent jurisdiction.

9. Agreements and Bonds. The agreement form which the successful bidder, as Contractor, will be required to execute, and the forms and amounts of the surety bonds which it will be required to furnish at the time of execution of the agreements, are included in the contract documents and should be carefully examined by the bidder. The required number of executed copies of the *Agreement*, the *Performance Bond*, and the *Payment Bond* for County Projects is as specified in the *Special Conditions*.

10. Interpretation of Plans and Documents. If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of the drawings, specifications or other contract documents, or finds discrepancies in or omissions from the drawings and specifications, he or she shall submit to COUNTY a written request for an interpretation or correction thereof no less than ten (10) days prior to the bid opening. The person submitting the request will be responsible for its prompt delivery. Any interpretations or correction of the contract documents will be made only by addendum duly issued, and a copy of such addendum will be mailed or delivered to each person receiving a set of the contract documents. No oral interpretation of any provision in the contract documents will be made to any bidder. The interpretation of Plans and documents upon bid award shall be addressed in accordance with Article 2 of the "General Conditions."

11. Bidders Interested in More Than One Bid. No person, firm or corporation shall be allowed to make, or file, or be interested in more than one bid for the same work unless alternate bids are specifically called for. A person, firm or corporation that has submitted a sub-proposal to a bidder, or that has quoted prices of materials to a bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other bidders or make a prime proposal.

12. Award of Contract. COUNTY reserves the right to reject any or all bids, or to waive any irregularities or informalities in any bids or in the bidding. The award of the contract, if made by COUNTY, will be to the lowest responsible bidder therefore. Award of the contract may be **August 17, 2010** after the opening of the bids, and an Agreement shall be presented to the successful bidder at that time. Successful bidder shall then have ten (10) days to execute the Agreement and provide all payment and performance bonds required for this project.

13. Alternates. If alternate bids are called for, the contract may be awarded at the election of the governing board to the lowest responsible bidder on the base bid, or on the base bid and any alternate or combination of alternates.

14. Evidence of Responsibility. Each bidder shall submit satisfactory evidence showing the bidder's financial resources, its construction experience, and its organization available for the performance of the contract in a form as requested by COUNTY.

14.1 The bidder shall submit complete name, address and phone listings, (including fax), and contact person at bidder's company, provide a complete list of all personnel, sub-Contractors, and other agencies that will be assigned to this project and the responsibility that each will have.

14.2 The bidder shall submit a list of company's area of general experience, specialty areas of expertise, history of performance and capabilities and company's experience with projects of this type and size of construction for Government Agencies.

15. Listing Subcontractors. Each bidder shall submit with its sealed bid a list of the proposed subcontractors on this project as required by the Subletting and Subcontracting Fair Practices Act (Pub. Cont. Code, § 4100, et seq.). Forms for this purpose are furnished with the contract documents.

16. Workers Compensation. In accordance with the provisions of Labor Code Section 3700 *et. seq.* Contractor shall secure the payment of compensation to its employees. Contractor shall sign and file with COUNTY the following certificates prior to performing the work under this contract: "I am aware of the provisions of section 3700 of Labor Code which require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." The form of such certificate is included as a part of the contract documents.

17. Substitution of Security. Monies withheld by COUNTY to ensure performance under contract may be released in accordance with Public Contracts Code, Section 22300, or as specified in the contract documents.

18. Contractor's Pre-Bid Conference.

18.1 A Pre-Bid Conference will be held on July 15, 2010 at 10:00 a.m. at:

**Planning & Development Services Department
801 Main Street
El Centro, CA 92243**

Contact Person: Jurg Heuberger, AICP, Planning & Development Services Director

Phone (760) 482-4310, jurgheuberger@co.imperial.ca.us

Mike Cameron, Project Manager

Phone (760) 482-4236

18.2 Attendance at the Pre-Bid Conference is **non-mandatory but strongly encouraged**.

18.3 In accordance with Paragraph 10 of the Information for Bidders, any questions to be presented at the Pre-Bid Conference must be in writing and received by COUNTY from General Contractor or subcontractor submitting a Bid on or before **July 8, 2010** in the Planning & Development Services office located at 801 Main Street, El Centro, California, 92243. Answers for these questions will be provided in writing to all at the Pre-Bid Conference. Verbal questions will be allowed at the Pre-Bid conference but will be answered in writing by the County.

19. Calendar of Events.

19.1	Bid packages available	<u>June 24, 2010</u>
19.2	Pre-Bid Conference	<u>July 15, 2010</u> <u>10:00 a.m.</u>
19.3	Return of Written Plans, Document Questions and Substitution Requests	<u>July 8, 2010</u>
19.4	Bid package, inclusive of completed bid forms, and bid bond required to be submitted hereunder must be received by COUNTY on or before at: Clerk of the Board 940 Main Street, Suite 209 El Centro, CA 92243 Phone: (760) 482- 4220	<u>August 9, 2010</u> <u>12:00 p.m.</u>
19.5	Bid Opening in Board Chambers, 940 Main Street	<u>August 9, 2010</u> <u>3:00 p.m.</u>
19.6	Board of Supervisors review and consideration of award on approximately	<u>August 17, 2010</u>
19.7	Execution of Contract (approximately) Submit bonds and insurance certifications	<u>September 7, 2010</u>
19.8	Pre-Construction Meeting	<u>September 9, 2010</u>
19.9	Notice to proceed	<u>September 13, 2010</u>
19.10	Mandatory Commencement of construction on or before	<u>September 20, 2010</u>
19.11	Completion of construction on (approximately) 210 Calendar days from commencement.	<u>April 18, 2011</u>

BID FORM

TO: Acting by and through its Board of Supervisors, hereinafter called COUNTY.

1. Pursuant to and in compliance with your *Notice to Contractors Calling for Bids* and the other documents relating thereto, the undersigned bidder, having familiarized itself with the terms of the contract, the local conditions affecting the performance of the contract, and the cost of the work at the place where the work is to be done, and with the drawings and specifications and other contract documents, hereby proposes and agrees to perform, within the time stipulated by the contract, including all of its component parts and everything required to be performed, and to provide and furnish any and all of the labor, materials, tools, expendable equipment and all utility and transportation services necessary to perform the contract and complete it in a workmanlike manner, all of the work required in connection with the

**IMPERIAL CENTER INFRASTRUCTURE PROJECT
PHASE TWO
COUNTY PROJECT NO. 2009 – I.C. 02**

All in strict conformity with the drawings and specifications and other contract documents, including addenda nos. ____, ____, ____, ____, ____ and ____ on file at the office of Planning & Development Services, for the total sum of (\$_____) _____ Dollars hereinafter called the *Base Bid Price*.

Deductive Bid Item One:

Deduct from the Base Bid all surface and sub-surface improvements along Abatti Road, from STA. 6+35.13 to STA. 14+67.94 as shown on plans (except the storm drain) for the deductive sum of (\$_____) _____ Dollars.

County reserves the right to make the award on any combination of base bid plus any deductive bid items as County determines to be in its best interest.

Warning- If an addendum or addenda have been issued by the Department and not noted above as being received by the bidder, this proposal may be rejected.

1. COUNTY reserves the right to make award or any combination of base bid process plus deductive bid items as COUNTY determines to be in its best interest.

2. It is understood that COUNTY reserves the right to reject this bid and that this bid shall remain open and not be withdrawn for the period specified in the Notice to Contractors Calling for Bids.

3. The required bid security is hereto attached, as Exhibit "D"

4. The required list of proposed subcontractors is attached hereto, as Exhibit "B".

5. It is understood and agreed that if written notice of the acceptance of this bid is mailed, telegraphed or delivered to the undersigned after the opening of the bid, and within the time this bid is required to remain open, or at any time thereafter before this bid is withdrawn, the

undersigned will execute and deliver to COUNTY a contract in the form attached hereto in accordance with the bid as accepted, and that it will also furnish and deliver to COUNTY the Performance Bond and Payment Bond for the Project as specified, all within ten (10) days after receipt of notification of award, and that the work under the contract shall be commenced by the undersigned bidder, if awarded the Contractor, on the date to be stated in COUNTY's Notice to Contractors to Proceed, and shall be completed by the Contractor in the time specified in the contract documents.

6. Notice of acceptance or requests for additional information should be addressed to the undersigned at the address identified in Paragraph 8 below.

7. Print/type the names of all persons interested in the foregoing proposal as principals in the space provided below: _____

(IMPORTANT NOTICE: If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer and manager thereof; if a co-partnership, state true name of firm, also names of all individual co-partners composing firm; if bidder or other interested person is an individual, state first and last names in full.)

8. Licensed in accordance with act providing for the registration of Contractors, License No. _____; Classification (s) _____ Expiration Date _____ Gross annual receipts for the firm _____ Years in business _____ /age of firm _____.

9. By my signature on this proposal I certify, under penalty or perjury under the laws of the State of California, that the foregoing questionnaire and statements of Public Contract Code Sections 10162, 10232 and 10285.1 are true and correct and that the bidder has complied with the requirements of Section 8103 of the Fair Employment and Housing Commission Regulations (Chapter 5, Title 2 of the California Administrative Code). By my signature on this proposal I further certify, under penalty or perjury under the laws of the State of California and the United States of America, that the Noncollusion Affidavit required by Title 23 United States Code, section 112 and Public Contract Code Section 7106; and the Title 49 Code of Federal Regulations, Part 29 Debarment and Suspension Certification are true and correct.

Date: _____

Proper Name of Bidder (Type or Print)

By: _____
(Signature of bidder)

(Print/type signator's name)

(Print/type title)

NOTE: If bidder is a corporation, the legal name of the corporation shall be set forth above, together with the signatures of authorized officers or agents, and the document shall bear the corporate seal; if bidder is a partnership, the true name of the firm shall be set forth above, together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if bidder is an individual, his/her signature shall be placed above.

Business Address _____

Place of Residence: _____

Telephone: _____

Fax Number: _____

E-Mail Address: _____

**NONCOLLUSION AFFIDAVIT TO BE EXECUTED
BY BIDDER AND SUBMITTED WITH BID
(Exhibit "A")**

State of California

County of Imperial

_____ [name of individual], being first duly sworn, deposes and says that he or she is _____ [title of individual] of _____ [name of business] the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Signature

PORTION OF WORK SUBCONTRACTOR WILL DO	SUBCONTRACTOR	LOCATION & PLACE OF BUSINESS & TELEPHONE	LICENSE NUMBER CLASIFICATION

NAME OF SUPPLIER	ADDRESS & TELEPHONE	TYPE OF MATERIAL

(Proper Name of Bidder)

By: _____

(Signature of bidder)

(Print/type signator's name)

(Print/type title)

PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE (Exhibit "C")

In accordance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the bidder, any officer of the bidder, or any employee of the bidder who has a proprietary interest in the bidder, ever been disqualified, removed or otherwise prevented from bidding on, or completing a federal, state or local government project because of a violation of law or a safety regulation?

Yes _____ No _____

If the answer is yes, explain the circumstances in the following space.

PUBLIC CONTRACT SECTION 10232 STATEMENT

In accordance with Public Contract Code Section 10232, the Contractor hereby states, under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

TITLE 23, UNITED STATES CODE, SECTION 112 NON-COLLUSION AFFIDAVIT

In accordance with Title 23, United States Code, Section 112, the bidder hereby states under penalty of perjury, that he has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract.

Note: The above Statement questionnaire, and Non-Collusion Affidavit are part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute Signature of this Statement, Questionnaire, and Non-Collusion Affidavit.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT

In accordance with Public Contract Code Section 10285.1 (Chapter 376, Stat. 1985). The bidder hereby declares under penalty of perjury under the laws of the State of California that the bidder has _____, has not _____ been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1

NOTE: THE BIDDER MUST PLACE A CHECK MARK AFTER "HAS" or "HAS NOT" IN ONE OF THE BLANK SPACES PROVIDED.

THE ABOVE STATEMENT IS PART OF THE PROPOSAL. SIGNING THIS PROPOSAL ON THE SIGNATURE PORTION THEREOF SHALL ALSO CONSTITUTE SIGNATURE OF THIS STATEMENT.

BIDDERS ARE CAUTIONED THAT MAKING A FALSE CERTIFICATION MAY SUBJECT THE CERTIFIER TO CRIMINAL PROSECUTION.

**CONTRACTOR'S CERTIFICATE
REGARDING WORKERS COMPENSATION
(Exhibit "C")**

Labor Code section 3700 in relevant part provides:

"Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations a *Certificate of Consent to Self-Insure*, either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to be self-insured and to pay any compensation that may become due to his or her employees."

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract.

(Proper Name of Bidder)

By: _____
(Signature of bidder)

(Print/type signator's name)

(Print/type title)

(In accordance with Article 5 (commencing at §1860), Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.)

BID BOND
(Exhibit "D")

KNOW ALL MEN BY THESE PRESENTS, that we _____ as Principal, and _____ as Surety, are held and firmly bound unto the _____ County, hereinafter called COUNTY, in the penal sum of TEN PERCENT (10%) OF THE TOTAL AMOUNT OF THE BID of the Principal submitted to COUNTY for the work described below for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying bid dated _____, 20 _____, for

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NOW, THEREFORE, if the Principal shall not withdraw said bid within the period specified therein after the opening of the same, or, if no period be specified, within sixty (60) days after said opening, and if the Principal is awarded the contract, and shall within the period specified therefore, or, if no period be specified, within five (5) days after the prescribed forms are presented to it for signature, enter into the written contract with COUNTY in accordance with the bid as accepted and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract and for the payment for labor and materials used for the performance of the contract, or in the event of the withdrawal of said bid within the period specified or the failure to enter into such contract and give such bonds within the time specified, if the Principal shall pay COUNTY the difference between the amount specified in said bid and the amount for which COUNTY may procure the required work and/or supplies, if the latter amount be in excess of the former; together with all costs incurred by COUNTY in again calling for bids, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alterations or addition to the terms of the contract on the call for bids, or to the work to be performed thereunder, or the specifications accompanying the same, shall in anywise affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said contract or the call for bids, or to the work, or to the specifications.

In the event suit is brought upon this bond by COUNTY and judgment is recovered, Surety shall pay all costs incurred by COUNTY in such suit, including reasonable attorneys' fees to be fixed by the Court.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this _____ day of _____, 20 _____, the name and corporate seal of each corporate party being hereto affixed, and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal)

(Proper Name of Principal)

By:

(Signature)

(Print/type signator's name)

(Print/type title)

(Corporate Seal)

(Proper Name of Surety)

By:

(Signature)

(Print/type signator's name)

(Print/type title)

(Attached Attorney-In-Fact Certificate)

AGREEMENT (Exhibit "E")

THIS AGREEMENT ("Agreement"), made the _____ day of _____ in the County of Imperial, State of California, by and between, hereinafter called COUNTY, and _____, hereinafter called Contractor.

WITNESSETH that COUNTY and Contractor, for the considerations stated herein, agree as follows;

Article 1 - SCOPE OF WORK. Contractor shall perform, within the time stipulated, the contract as herein defined, and shall provide all labor, materials, tools, utility services and transportation to complete in a workmanlike manner all of the work required in connection with the following titled project:

IMPERIAL CENTER INFRASTRUCTURE PROJECT PHASE TWO COUNTY PROJECT NO. 2009 – I.C. 02

in strict compliance with the contract documents as specified in Article 4 below.

Article 2 - TIME FOR COMPLETION. The work shall be commenced on the date stated in COUNTY's *Notice to Proceed*, as provided in Section A of the *Special Conditions*, and as specified therein, shall be completed within two hundred ten (210) calendar days from and after the date stated in such notice.

Article 3 - CONTRACT PRICE. COUNTY shall pay to Contractor as full consideration for the faithful performance of the contract, subject to any additions or deductions as provided in the contract documents, for the sum of (\$ _____), said sum being the total amount of the following amounts stipulated in the proposal (Identify Base Bid price less selected deductive alternative bid items, if any):

Article 4 - COMPONENT PARTS OF THE AGREEMENT. This Agreement consists of the following documents, all of which are component parts of this Agreement as if herein set out in full or attached hereto:

Notice to Contractors Calling for Bids
Information for Bidders
Bid, as accepted
Noncollusion Affidavit
Designation of Subcontractors
Public Contract Statement
Contractor's Certificate of Workers Compensation
Agreement
Performance Bond
Payment Bond for Public Works

General Conditions and Special Conditions
Specifications
Addenda (See attached list) page 66
Drawings (See attached list) page 66

All of the above named contract documents are intended to be complementary. Work required by one of the above named contract documents and not by others shall be done as if required by all.

IN WITNESS WHEREOF, the *Agreement* has been duly executed by the above named parties on the day and year first above written.

CONTRACTOR:

COUNTY:

By:

License No: _____

Chairman, Board of Supervisors

By:

Authorized Officers or Agents

(Print/type name)

(Print/type title)

Contractors are required by law to be licensed and regulated by the Contractor's State License Board. Any questions concerning a Contractor may be referred to the registrar of the Board whose address is:

Contractor's State License Board
1020 No. Street
Sacramento, California 95814

Approved as to Form:

MICHAEL L. ROOD
COUNTY COUNSEL for the
County of Imperial

**PERFORMANCE BOND
(Exhibit "F")**

KNOW ALL MEN BY THESE PRESENTS: that

WHEREAS, the County of Imperial (hereinafter designated as "COUNTY") by resolution passed _____, 20 _____, has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows:

**IMPERIAL CENTER INFRASTRUCTURE PROJECT
PHASE TWO
COUNTY PROJECT NO. 2009 – I.C. 02**

WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract,

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto COUNTY in the penal sum of _____ Dollars (\$ _____), lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the above-bound Principal, and its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform the covenants, conditions and agreements in the said contract and any alteration thereof made by therein provided, on its or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless COUNTY, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force a virtue.

And Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work, or to the specifications.

In the event suit is brought upon this bond by COUNTY and judgment is recovered, Surety shall pay all costs incurred by COUNTY in such suit, including reasonable attorneys' fees, to be fixed by the Court.

IN WITNESS WHEREOF, this instrument has been duly executed by Principal and Surety above-named, on the _____ day of _____, 20____.

(Attached Attorney-In-Fact Certificate)

(Principal)

By:

(Signature of Principal)

(Print/type signator's name)

(Print/type title)

(Surety)

By:

(Signature of Attorney-in-Fact)

(Print/type signator's name)

(Print/type title)

**PAYMENT BOND FOR PUBLIC WORKS
(Exhibit "G")**

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the County of Imperial (hereinafter designated as "COUNTY") by resolution passed _____, 20_____, has awarded to _____ (hereinafter designated as "Principal"), a contract for the work described as follows:

**IMPERIAL CENTER INFRASTRUCTURE PROJECT
PHASE TWO
COUNTY PROJECT NO. 2009 – I.C. 02**

WHEREAS, said Principal is required by Chapter 5 (commencing at § 3225) and Chapter 7 (commencing at § 3247). Title 15, Part 4, Division 3 of the California Civil Code to furnish a bond in connection with said contract;

NOW, THEREFORE, we, the Principal, and _____ as Surety, are held and firmly bound unto COUNTY in the penal sum of _____ Dollars (\$_____), lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THE OBLIGATION IS SUCH that if said Principal, and its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named in section 3181 of the California Civil Code amounts due under the Unemployment Insurance Code with respect to work labor performed under the contract, or for any amount required to be deducted, withheld and paid over to the Franchise Tax Board from the wages of employees of the Contractor and his subcontractors pursuant to California Unemployment Insurance Code Section 13020, et seq., with respect to such work and labor, the Surety will pay for the same, in an amount not exceeding the sum hereinabove specified, and also, in case suit is brought upon this bond, reasonable attorneys' fees to be fixed by the Court.

This bond shall insure to the benefit of any of the persons named in section 3181 of the California Civil Code, so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to or of any contract, plans specifications, or agreement pertaining or relating to any scheme or work of improvements hereinabove described or pertaining or relating to the furnishing of labor, materials or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to

any scheme or work of improvement hereinabove described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond, and that this bond be construed most strongly against Surety and in favor of all persons for whose benefit such bond is given and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the COUNTY and Contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in section 3110 or section 3112 of the California Civil Code, and has not been paid the full amount of his or her claim, and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF this instrument has been duly executed by the Principal and Surety above-named, on the _____ day of _____, 20 _____.

(Name of Principal)

(Print/type name of Surety)

(Signature of Surety)

(Print/type title signator's name)

(Print/type signator's title)

By:

Attorney-in-Fact

(Print/type name)

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GENERAL CONDITIONS

Article 1. DEFINITIONS

- (a) COUNTY and Contractor are those mentioned as such in the Agreement. They are treated throughout the Agreement as if they are of singular number and neuter gender.
- (b) Subcontractor, as used herein, includes those having direct contract with Contractor and one who furnishes material work to a special design according to plans and specifications of this work, but does not include one who merely furnishes material not so worked.
- (c) Surety is the person, firm or corporation that executes as surety the *Contractor's Performance Bond and Payment Bond for the Public Works*.
- (d) Provide shall include "provide complete in place," that is, "furnish and install."
- (e) As Shown, As Indicated, As Detailed, refer to drawings accompanying these specifications.
- (f) Work of the Contractor or subcontractor includes labor or materials, or both.

Article 2. DRAWINGS AND SPECIFICATIONS

Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intention of documents is to include all labor and materials, equipment and transportation necessary for the proper execution of work. Materials or work described in words which so apply have a well-known technical or trade meaning, and shall be deemed to refer to such recognized standards.

Interpretations. Figured dimensions on drawings shall govern, but work not dimensioned shall be as directed. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Large-scale details shall take precedence over smaller scaled drawings as to shape and details of construction. Specifications shall govern as to materials, workmanship and installation procedures. Drawings and specifications are intended to be fully cooperative and to agree. However, if Contractor observes that drawings and specifications are in conflict, it shall promptly notify the Architect in writing, and any necessary changes shall be adjusted as provided in the contract for changes in work.

Misunderstanding of drawings and specifications shall be clarified by the Architect, whose decision shall be final.

Standards, Rules, and Regulations referred to are recognized printed standards, and shall be considered as one and a part of these specifications within limits specified.

Article 3. COPIES FURNISHED

Contractor will be furnished, free of charge, copies of drawings and specifications as set forth in *Special Conditions*. Additional copies may be obtained at cost of reproduction.

Article 4. OWNERSHIP OF DRAWINGS

All drawings, specifications and copies thereof furnished by COUNTY are its property. They are not to be used on other work, and, with exception of signed contract sets, are to be returned to COUNTY on request at completion of work.

Article 5. DETAIL DRAWINGS AND INSTRUCTIONS

(a) In case of ambiguity, conflict, or lack of information, Architect/Engineer shall furnish with reasonable promptness additional instructions, by means of drawings or otherwise, necessary for proper execution of work. All such drawings and instructions shall be consistent with contract documents, true developments thereof, and reasonably inferable therefrom.

(b) Work shall be executed in conformity therewith, and Contractor shall do no work without proper drawings and instructions.

Article 6. TIME FOR COMPLETION AND DAMAGES FOR DELAY

(a) The Parties recognize that time is of the essence of the Agreement and that COUNTY will suffer financial loss if the Work is not completed by the date set forth in paragraph 19.9 of the Information to Bidders section of this Agreement. The Parties also recognize the delays, expense and difficulties involved with proving in a legal proceeding the actual loss suffered by COUNTY if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Parties agree that as damages for delay (but not as a penalty), Contractor shall pay COUNTY the sum of two hundred fifty dollars (\$250) for each calendar day the Work remains uncompleted after the time specified in this article or any written extension, whichever is later. Contractor agrees that the damages are not manifestly unreasonable under the circumstances and agree that such sum is not intended as a penalty against Contractor.

Article 7. PROGRESS SCHEDULE

Immediately after being awarded contract, Contractor shall prepare an estimated progress schedule (using the Critical Path Method ("CPM") through a software program selected by COUNTY but at Contractor's sole expense) and submit the schedule for COUNTY's approval. Schedule shall indicate graphically the beginning and completion dates of all phases of construction. An updated progress schedule shall be submitted to COUNTY on a monthly basis.

Article 8. CONTRACT SECURITY

Unless otherwise specified, Contractor shall furnish a surety bond in an amount equal to one hundred percent (100%) of the contract price as security for faithful performance of this contract, and shall furnish a separate bond in an amount equal to one hundred percent (100%) of the contract price as security for payment of

persons performing labor and furnishing materials in connection with this contract. Aforesaid bonds shall be in form set forth in these contract documents. Upon request of Contractor, COUNTY will consider and accept multiple sureties on such bonds. COUNTY may reject at its discretion any bond issued by a surety that to COUNTY's satisfaction does not have a sufficient bond rating or history as a surety in the State of California to assure adequate security to COUNTY for the default of Contractor.

Article 9. ASSIGNMENT

Contractor shall not assign this contract or any part thereof without prior written consent of COUNTY. Any assignment of money due to or to become due under this contract shall be subject to a prior lien for services rendered or material supplied for performance of work called for under said contract in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure, Public Contract Code and/or the Government Code.

Article 10. PROHIBITED INTERESTS

No official of COUNTY who is authorized in such capacity and on behalf of COUNTY to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving, any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction or project shall become directly or indirectly interested financially in this contract or in any part thereof. No officer, employee, architect, attorney, engineer or inspector of or for COUNTY who is authorized in such capacity and on behalf of COUNTY to exercise any executive, supervisory or other similar functions in connection with construction of project shall become directly or indirectly interested financially in this contract or in any part thereof.

Article 11. SEPARATE CONTRACTS

COUNTY reserves the right to let other contracts in connection with this work. Contractor shall afford other Contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly connect and coordinates its work with theirs.

If any part of Contractor's work depends for proper execution or results upon work of any other Contractor, the Contractor shall inspect and promptly report to Architect/Engineer any defects in such work that render it unsuitable for such proper execution and results. Contractor's failure so to inspect and report shall constitute its acceptance of other Contractor's work as fit and proper for reception of Contractor's work, except as to defects which may develop in other Contractor's work after execution of Contractor's work.

To insure proper execution of its subsequent work, Contractor shall measure and inspect work already in place, and shall at once report to Architect any discrepancy between executed work and contract documents.

Contractor shall ascertain to its own satisfaction the scope of the project and nature of any other contracts that have been or may be awarded by COUNTY in

prosecution of the project to the end that Contractor may perform its contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of project. Contractor shall not cause any unnecessary hindrance or delay to any other Contractor working on project. If simultaneous execution of any contract for the project is likely to cause interference with performance of some other contract or contracts, COUNTY shall decide which Contractor shall cease work temporarily and which Contractor shall continue or whether work can be coordinated so that Contractors may proceed simultaneously. COUNTY shall not be responsible for any damages suffered or extra costs incurred by Contractor resulting directly or indirectly from award or performance or attempted performance of any other contract or contracts on project, or caused by any decision or omission of COUNTY respecting the order of precedence in performance of contracts.

Article 12. SUBCONTRACTING

(a) Contractor agrees to bind every subcontractor by terms of the contract as far as such terms are applicable to subcontractor's work. If Contractor shall subcontract any part of this contract, Contractor shall be as fully responsible to COUNTY for acts and omissions of Contractor's subcontractor and of persons either directly or indirectly employed by Contractor's subcontractor as it is for acts and omissions of persons directly employed by itself. Nothing contained in the contract documents shall create any contractual relation between any subcontractor and COUNTY.

(b) COUNTY's consent to or approval of any subcontractor under this contract shall not in any way relieve Contractor of its obligations under this contract, and no such consent or approval shall be deemed to waive any provision of this contract.

(c) Substitution or addition of subcontractors shall be permitted only as authorized by California Public Contract Code sections 4100, et seq.

(d) Contractor represents and warrants that it and its subcontractors are not ineligible to work for COUNTY due to violations of Labor Code Sections 1777.1 and 1777.7.

Article 13. DEFAULTS & REMEDIES

(a) Default. In the event that (i) Contractor files a petition requesting relief under any bankruptcy act, or is adjudged as bankrupt, or makes a general assignment for the benefit of creditors or has a receiver appointed on account of its insolvency, or (ii) Contractor refuses or is unable, for whatever reason, to supply enough properly skilled workers or proper materials to complete the Project, or (iii) Contractor fails to follow the directions of COUNTY, or (iv) Contractor fails to make prompt payment to its subcontractors and suppliers for materials or labor supplied or permits any lien to be imposed upon all or any portion of the Project, or (v) Contractor disregards any laws or orders of any public or private authority having jurisdiction over the Work or the Project, or (vi) Contractor fails to perform in accordance with any of the terms of this Agreement or breaches any provision of this Agreement, COUNTY may give notice of such failure or breach to Contractor, identifying the failure or breach of this Agreement. Should any such failure or breach continue for twenty-four (24) hours after delivery of notice without a good faith effort on the part of Contractor to commence all necessary corrective action, or should such a breach continue despite

Contractor's efforts for forty-eight (48) hours, then at that time such failure shall be deemed a default by Contractor under this Agreement and COUNTY shall have all rights and remedies available at law or in equity, including the right to terminate this Agreement. Without limiting its rights and remedies, COUNTY may then proceed as follows:

(1) Without terminating this Agreement or the obligations of Contractor hereunder as to all of the Work required to be performed or furnished by Contractor pursuant to this Agreement, COUNTY may require Contractor, at Contractor's expense, to cure such default(s) as may exist in the performance of Contractor's obligations hereunder within forty-eight (48) hours after such default(s) has/have occurred including but not limited to repairing, replacing and correcting material or Work determined by COUNTY to be defective or not complying with the requirements of this Agreement. Should Contractor fail to timely repair, replace and/or correct non-complying or defective materials and workmanship or otherwise cure its default(s) hereunder, and in the case of emergencies in which case COUNTY may act immediately if Contractor is not available or is not responding, and without further notice, COUNTY may make required repairs, replacements and other corrections or otherwise remedy the default by Contractor pursuant to Paragraph (2) below.

(2) Without terminating this Agreement or the obligations of Contractor hereunder as to all of the Work required to be performed or furnished by Contractor pursuant to this Agreement, COUNTY may engage another contractor to perform such portion of Contractor's Work required pursuant to this Agreement or furnish any materials or other items required hereunder as COUNTY in its sole discretion may deem necessary to avoid delay in the progress of the Work, and in connection therewith, COUNTY may perform such Work or any portion thereof itself or have the same performed by others and COUNTY may procure all necessary materials, equipment or other items required for the continued progress of such Work. The costs incurred by COUNTY as a result of engaging another Contractor shall be deducted from the compensation payable pursuant to this Agreement and if COUNTY's costs exceed or may reasonably be anticipated to exceed the balance of the compensation due to Contractor for such work, such excess, or anticipated excess, shall be immediately due and owing from Contractor to COUNTY and may be withheld from any funds due to Contractor pursuant to this Agreement or any other agreement.

(3) COUNTY may terminate Contractor's right to perform upon written notice and COUNTY shall then have the option of completing the Work or any portion thereof by exercise of its interest under the performance bond issued in favor by Contractor, or having such Work in whole or in part be completed by others for Contractor's account. A calculation shall take place at the conclusion of the Project wherein to the degree the sum of COUNTY's costs and any amounts paid to complete the Project exceed the compensation payable pursuant to this Agreement, then any such excess shall be immediately due and owing from Contractor to COUNTY.

(b) Damages. Contractor shall be liable for all damages suffered by COUNTY by reason of Contractor's default in any provision of this Agreement and the exercise of COUNTY of its option to terminate this Agreement shall not release Contractor of such liability. Contractor shall have no right to receive any further payment after a default has occurred until such time as the Work to be performed by Contractor pursuant hereto has been completed and accepted by COUNTY and damages suffered by COUNTY, if any, ascertained. Damages shall include by way of illustration, but not of exclusion, COUNTY's costs of completing the Work which exceeds the compensation payable pursuant to this Agreement, other general, liquidated, special or consequential damages, attorney fees and costs.

(c) Actions After Default. Should COUNTY exercise any of its options, remedies or rights granted pursuant to the terms of this Agreement in the event of a default by Contractor, COUNTY at its sole election may, but shall not be obligated to, use any materials, supplies, tools or equipment on the work site which belong to CONTRACTOR to complete the Work required to be completed by Contractor, whether such work is completed by COUNTY or by others, and Contractor agrees that it shall not remove such materials, supplies, tools and equipment from the work site unless directed in writing by COUNTY to do so.

(d) Limit on Force Majeure Damages. Contractor shall not be responsible for repairing or restoring damage to work caused by an act of God, provided that the work damaged is built in accordance with accepted and applicable building standards and the plans and specifications of COUNTY. In the event of such damage, COUNTY may, at its option, elect to terminate this Agreement. For purposes of this Agreement, an "act of God" shall be defined as an earthquake in excess of 3.5 on the Richter scale and a tidal wave.

(e) Resolution of Claims of Three Hundred Seventy-Five Thousand Dollars (\$375,000) or Less. For claims of three hundred seventy-five thousand dollars (\$375,000) or less, COUNTY and Contractor agree to follow and comply with the mediation, arbitration, claim, civil action procedure and trial de novo provisions set forth in California Public Contracts Code §§20104, 20104.2 and 20104.4.

(f) No Limitation of Rights. The options and rights granted to COUNTY herein shall not be deemed as limitations upon the other rights and remedies of COUNTY in the event of a failure of performance or breach by Contractor, and COUNTY shall be entitled to exercise the rights and remedies hereinabove specified and all other rights and remedies which may be provided in this Agreement or by law or in equity, either cumulatively or consecutively, and in such order as COUNTY in its sole discretion shall determine.

Article 14. WARRANTIES

(a) One Year Warranty. Contractor agrees to provide a one-year warranty for all of its work and component parts and guarantees that all work shall be performed in a professional and workman-like manner and be free from defects. Contractor

guarantees to timely correct all work performed by it under this Agreement which COUNTY determines to be defective in design, material and/or workmanship within a period of one (1) year from the date of the completion of the Work. The warranties set forth in this Agreement shall be in addition to, and not in lieu of, all other statutory and case law warranties and obligations of Contractor. Contractor expressly agrees that all warranties made by Contractor, all obligations under this Agreement and all remedies for breach of such warranties shall survive this Agreement in the event it is terminated or expires for any reason prior to the running of the full warranty periods listed above.

(b) Materials. All materials furnished by Contractor shall be new, manufactured during the current year, of first quality and carrying full manufacturer's warranty. Contractor shall be responsible for any expiration of manufacturer or other warranties of material or equipment being supplied for this Agreement. Contractor guarantees that all warranties of material and equipment shall become effective when the project is accepted by COUNTY's Board of Supervisors, not at time of installation by Contractor.

(c) Manufacturers' Warranty Information. Contractor agrees to promptly provide such information and maintenance recommendations to COUNTY at the inception

of Contractor's work to the extent such information is reasonably available. In the event of failure of Contractor to comply with above-mentioned conditions within one (1) week after being notified in writing, COUNTY is hereby authorized to proceed to have defects repaired and made good at expense of Contractor, who hereby agrees to pay costs and charges therefore immediately on demand.

Article 15. NOTICES AND REPORTS

(a) All notices and reports under this Agreement shall be in writing and may be given by personal delivery or by mailing by certified mail, addressed as follows:

COUNTY
Director: Jurg Heuberger, ICPDS Director
Planning & Development Services
801 Main Street
El Centro, CA 92243

CONTRACTOR
TC Construction Co. Inc.
Attention:
Austin Cameron, Secretary
10540 Prospect Ave
Santee, CA 92071

With Copies to:

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

And:

Imperial County Department of Human
Resources and Risk Management

Attention: Director
940 West Main Street, Suite 101
El Centro, CA 92243

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

Article 16. WORKERS

(a) Contractor shall at all times enforce strict discipline and good order among its employees, and shall not employ on work any unfit person or anyone not skilled in work assigned to that person.

(b) Any person in the employ of the Contractor whom COUNTY may deem incompetent or unfit shall be dismissed from work, and shall not again be employed on it except with written consent of COUNTY.

Article 17. PREVAILING WAGE AND PAYROLL RECORDS

(a) Contractor agrees to comply with §§1775 and 1776 of the California Labor Code and the Construction Wage and Hour Division, U.S. Department of Labor (copies attached) and relating to the payment of prevailing wage and the maintenance of certified payroll records and to make the certified payroll records available for inspection at all reasonable hours at Contractor's principal office. The higher of the two wages lists shall prevail. The responsibility for compliance with these provisions is fixed with Contractor. Contractor understands and agrees that it shall, as a penalty to COUNTY, forfeit specific monetary fines for each worker paid less than the prevailing wage rates as determined by the Labor Commissioner for the work or craft in which the worker is employed for any Work done pursuant to this Agreement.

(b) Notwithstanding paragraph (a), Contractor is not liable for any penalties pursuant to paragraph (a) when a subcontractor on the Project fails to pay its workers the general prevailing rate of per diem wages unless:

(1) Contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers; or

(2) Contractor fails to comply with all of the following requirements:

(A) The contract executed between Contractor and the subcontractor for the performance of Work on the Project shall include a copy of the provisions of California Labor Code §§1771, 1775, 1776, 1777.5, 1813 and 1815; and

(B) Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor; and

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

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

Article 18. APPRENTICES

(a) Contractor agrees to comply with Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code relating to the employment of apprentices and to provide COUNTY with copies of any contract award information and verified statements of the journeyman and apprentice hours performed pursuant to this Agreement as required by §1777.5(e). The responsibility for compliance with these provisions is fixed with Contractor for all apprenticeable occupations, where journeymen in the craft are employed on the public work, in a ratio of not less than one (1) apprentice for each five (5) journeymen (unless an exemption is granted in accordance with §1777.5) and Contractor and its subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public work solely on the ground of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in California Labor Code §3077. Only apprentices, as defined in California Labor Code §3077, who are in training under apprenticeship standards and who have signed written apprentice agreements will be employed on public works in apprenticeable occupations. This section shall not be enforced if the not-to-exceed amount of this Agreement is less than thirty thousand dollars (\$30,000).

(b) If the Project falls within the jurisdiction of California Labor Code §1777.5, COUNTY shall, within five (5) days of the award, send a copy of the award to the Division of Apprenticeship Standards. In addition, COUNTY shall notify the Division of Apprenticeship Standards of a finding of any discrepancy regarding the ratio of apprentices to journeymen within five (5) days of the finding.

Article 19. HOURS OF WORK

Contractor agrees to comply with §§1810 through 1815 of the California Labor Code and, when applicable, the Contract Work Hours and Safety Standards Act (40 USC §327 et seq.; 29 CFR Part 5) which provide that Contractor's workers and its subcontractor's workers may not be required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar

week. Further, work performed by employees of Contractor or its subcontractor in excess of eight (8) hours per day, and forty (40) hours during any one (1) week, shall be compensated for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay. The responsibility for compliance with these provisions is fixed with Contractor. Contractor understands and agrees that it shall, as a penalty to COUNTY, forfeit specific monetary fines to COUNTY should Contractor or its subcontractors fail to comply with the provisions contained within this paragraph.

Article 20. INSURANCE COVERAGES

(a) Contractor hereby agrees at its own cost and expense to procure and maintain, during the entire term of this Agreement and any extended term therefore, insurance in a sum acceptable to COUNTY and adequate to cover potential liabilities arising in connection with the performance of this Agreement and in any event not less than the minimum limit set forth as follows:

<u>Insurance</u>	<u>Minimum Limit</u>
Risk of Loss	\$1,000,000.00
Worker’s Compensation, Coverage A	Statutory
Employers Liability, Coverage B	\$1,000,000.00
Commercial General Liability Including Contractual Liability, Operations, Products and Completed Operations):	
Personal/Bodily Injury	\$5 Million/\$10 Million
Property Damage	\$5 Million/\$10 Million
Commercial Automobile Liability	\$1,000,000.00
(owned, hired & non-owned vehicles)	
Personal/Bodily Injury & Property Damage	
Unemployment Insurance	*
Disability Insurance	*
Liability Insurance	*

***County is not responsible for mandating amount of insurance. Amounts are the sole responsibility of the Contractor.**

Article 21. SPECIAL INSURANCE REQUIREMENTS

(a) All insurance required under Article 20 shall:

- (1) Be procured from an insurer authorized to do business in California.
- (2) Be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be in excess of Contractor’s insurance coverage and shall not contribute to it.
- (3) Name COUNTY as an additional insured on all policies, except Workers’ Compensation, and provide that COUNTY may recover for any loss suffered by COUNTY by reason of Contractor’s negligence.
- (4) State that it is primary insurance and regards COUNTY as an additional insured and contains a cross-liability or severability of interest

clause.

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

(b) Additional Insurance Requirements.

(1) Complete copies of certificates of insurance for all required coverages including additional insured endorsements and 30-day notice of cancellation clause endorsements shall be attached hereto as Exhibit C and incorporated herein as though fully set forth.

(2) COUNTY is to be notified immediately of all insurance claims. COUNTY is also to be notified if any aggregate insurance limit is exceeded.

(c) Nothing in this, or any other provision of this Agreement, shall be construed to preclude Contractor from obtaining and maintaining any additional insurance policies in addition to those required pursuant to this Agreement.

Article 22. INSURANCE ENDORSEMENTS, CLAUSES & INFORMATION

(a) The comprehensive/commercial general liability insurance shall contain a provision of endorsements stating that such insurance:

(1) Includes contractual liability.

(2) Does not contain a "pro rata" provision which looks to limit the insurer's liability to the total proportion that its policy limits bear to the total coverage available to the insured.

(3) Does not contain an "excess only" clause which requires the exhaustion of other insurance prior to providing coverage.

(4) Does not contain an "escape clause" which extinguishes the insurer's liability if the loss is covered by other insurance.

(5) Includes COUNTY, architect and the construction manager as an additional insured.

(6) States that it is primary insurance and regards COUNTY as an additional insured and contains a cross-liability or severability of interest clause.

(7) Does not contain any exclusion as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to by insurers as the "XCU Hazards."

(b) Certificates and insurance policies shall include the following clause; "This policy shall not be canceled or reduced in required limits of liability or amount of

insurance until notice has been mailed to COUNTY stating date of cancellation or reduction. Date of cancellation may not be less than thirty (30) days after date of mailing notice."

(c) Certificates of insurance shall state, in particular, those insured, extent of insurance, location and operation to which insurance applies, expiration date, and cancellation and reduction notice.

Article 23. PROOF OF INSURANCE

Contractor shall not commence work nor shall it allow any subcontractor to commence work under this Agreement until Contractor has obtained all required insurance, certificates and endorsements, including but not limited to, Additional Insured Endorsements and 30 days Notice of Cancellation Clause endorsements have been delivered in duplicate to and approved by COUNTY. The above referenced insurance documents must be received by COUNTY on or before the effective date of this Agreement and shall be sent to the following addresses:

(i) County of Imperial
Risk Management Department
940 Main Street, Ste 101
El Centro, CA. 92243

and

(ii) Department of Planning & Development Services
Attn: Director of Planning & Development Services
801 Main Street
El Centro, CA 92243

Article 24. CHOICE OF LAW

The laws of the State of California shall govern this Agreement. This Agreement is made and entered into in Imperial County, California. Any action brought by either Party with respect to this Agreement shall be brought in a court of competent jurisdiction within said County.

Article 25. PERMITS AND LICENSES

Permits and licenses necessary for prosecution of work shall be secured and paid for by Contractor, unless otherwise specified.

Article 26. EASEMENTS

Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by COUNTY, unless otherwise specified.

Article 27. SURVEYS

Surveys to determine location of property lines and corners will be supplied by COUNTY. Surveys to determine locations of construction, grading and site work shall be provided by Contractor.

Article 28. EXCISE TAXES

If under federal excise tax law any transaction hereunder constitutes a sale on which

a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, COUNTY, upon request, will execute a certificate of exemption which will certify: (a) that COUNTY is a political subdivision of the state for the purpose of such exemption; and (b) that the sale is for the exclusive use of COUNTY. No excise tax for such materials shall be included in any bid price.

Article 29. PATENTS AND ROYALTIES

Contractor shall hold and save COUNTY and its officers, agents and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article or appliance manufactured or used in the performance of this contract, including its use by COUNTY, unless otherwise specifically stipulated in the contract documents.

Article 30. MATERIALS

Except as otherwise specifically stated in this contract, Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this contract within the specified time.

Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality.

Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work, and shall be stored properly and protected as required. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or work under this contract. No material, supplies or equipment for work under this contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest herein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies and equipment installed or incorporated in work, and agrees upon completion of all work to deliver premises, together with all improvements and appurtenances constructed or placed thereon by Contractor, to COUNTY free from any claims, liens or charges. Contractor further agrees that neither Contractor nor any person, firm or corporation furnishing materials or labor for any work covered by this contract shall have any right to lien upon premises or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivisions title to which is commonly retained by utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise COUNTY as to owner thereof. Nothing contained in this Article, however, shall defeat or impair the right of persons furnishing material or labor under any bond given by Contractor for their protection or any rights under any law permitting such persons to look to funds due Contractor in hands of COUNTY, and this provision shall be inserted in all subcontracts and material contracts, and notice of its provisions shall be given to all

persons furnishing material for work when no formal contract is entered into for such material.

See Comprehensive Specifications for material requirements.

Article 31. SUBSTITUTIONS

Whenever specifications for any material, product, thing, service, or process is indicated or specified by grade, patent or propriety name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of material, product, thing, service, or process desired, and shall be deemed to be followed by the words “or equal”, and Contractor may, unless otherwise stated, offer any material, product, thing, service or process which shall be equal or better in every respect to that so indicated or specified. If the material, product, thing, service, or process offered by Contractor is not, in the opinion of COUNTY and Architect/Engineer, equal or better in every respect to that specified, then Contractor shall furnish the material, product, thing, service, or process specified. The burden of proof as to equality of any material, product, thing, service, or process shall rest with Contractor. Contractor shall only be authorized to substitute any designated material, product, thing, service or process required under this contract if such request, together with substantiating data for substitution of an “or equal” item is timely submitted in accordance with the Calendar of Events set forth under section 19.3 of the “INFORMATION FOR BIDDERS” form and approval thereof is authorized in writing by COUNTY within the time frame set forth under Public Contract Code section 4104.5(a). Notwithstanding, in the event CONTRACTOR discovers after the stated substitution request filing deadline that a designated material, product, thing, service or process is no longer available and/or the use of the same is necessary to complete the project, CONTRACTOR may within thirty (35) days after award of the contract submit a “late substitution request”, together with substantiating data for substitution of an “or equal” item for COUNTY’s review and consideration. However, COUNTY shall have the sole discretion in granting such a late substitution request and shall not be required to accept the same even if the material, product, thing, service or process is equal or better in every respect.

It should be emphasized that a Contractor’s request to substitute an “equal” material, product, thing or service for one designated in the contract specifications and/or COUNTY’s subsequent written approval thereof, shall not in any way authorize an extension of time for performance of this contract. Moreover, in event Contractor furnishes a material, product, thing or service that is more expensive than that specified, the difference in cost of such material, product, thing, service or process, so furnished shall be borne solely by Contractor.

Article 32. SHOP DRAWINGS

Contractor shall check and verify all field measurements, and shall submit with such promptness as to cause no delay in Contractor’s own work or in that of any other Contractor three (3) copies, checked and approved by Contractor, of all shop or

setting drawings, schedules and materials lists required for the work of various trades. Architect/Engineer shall check and approve within ten (10) working days such schedules and drawings only for conformance with design concept of project, and compliance with information given in contract documents. Contractor shall make any corrections required by Architect/Engineer; file with Architect/Engineer three (3) corrected copies, and furnish such other copies as may be needed for construction. Architect/Engineer's approval of such drawings or schedules shall not relieve Contractor from responsibility for deviations from drawings or specifications unless Contractor has in writing called Architect/Engineer's attention to such deviations at time of submission and secured Architect/Engineer's written approval, nor shall it relieve Contractor from responsibility for errors in shop drawings or schedule.

Article 33. SAMPLES

Contractor shall furnish for approval, within ten (10) days following award of contract, all samples as required in specifications together with catalogs and supporting data required by Architect/Engineer. This provision shall not authorize any extension of time for performance of this contract. Architect/Engineer will check and approve such samples, within five (5) working days from receipt of same, only for conformance with design concept of work and for compliance with information given in contract documents. Work shall be in accordance with approved samples.

Article 34. COST BREAKDOWN AND PERIODICAL ESTIMATES

Contractor shall furnish on forms provided by COUNTY:

- (a) Within ten (10) days of award of contract, a detailed estimate giving complete breakdown of contract price.
- (b) A periodical itemized estimate of work done for purpose of making partial payments thereon.
- (c) Within ten (10) days of request by COUNTY, a schedule of estimated monthly payments which shall be due Contractor under the contract.

Values employed in making up any of these schedules will be used only for determining basis of partial payments, and will not be considered as fixing a basis for additions to or deductions from contract price.

Article 35. PAYMENTS

- (a) Each month, within fifteen (15) days after receipt of approved periodical estimate for partial payment, there shall be paid to Contractor a sum equal to ninety percent (90%) of value of work performed up to last day of previous month, less aggregate of previous payments. Monthly payments shall be made only on basis of monthly estimates which shall be prepared by Contractor on a form approved by COUNTY and filed before the fifth (5th) day of month during which payment is to be made. Work completed as estimated shall be an estimate only, and no inaccuracy

or error in said estimate shall operate to release Contractor or any bondsman from damages arising from such work or from enforcing each and every provision of this contract, and COUNTY shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning work, or any portion thereof given by COUNTY or Architect, shall remain uncomplished with. The final payment of ten percent (10%) of the value of work done under this contract, if unencumbered, shall be made thirty-five (35) days after acceptance of work by COUNTY. Acceptance will be made only by action of the Board of Supervisors in session. Acceptance by Contractor of said final payment shall constitute a waiver of all claims against COUNTY arising from this contract. At any time after fifty percent (50%) of the work has been completed, if COUNTY, by action of its governing body, finds that satisfactory progress is being made, COUNTY may make any of the remaining payments in full on actual work completed or may withhold any amount up to ten percent (10%) thereof as COUNTY may find appropriate based on the Contractor's progress.

(b) Contractor may elect to substitute or execute an escrow agreement (in the form prescribed by the Public Contracts Code) in place of retained funds held by COUNTY pursuant to Public Contract Code Section 22300.

(c) COUNTY shall pay interest at the legal rate set forth in Code of Civil Procedure 685.010 in the event payment is not made within thirty (30) days of an undisputed properly submitted request.

Article 36. PAYMENT WITHHELD

In addition to amount which COUNTY may retain under article entitled "Payments," COUNTY may withhold a sufficient amount of amounts of any payment or payments otherwise due to Contractor, as in COUNTY's judgment may be necessary to cover:

(a) Payments which may be past due and payable for just claims against Contractor or any subcontractors for labor or materials furnished in and about the performance of work on the project under this contract.

(b) Defective work not remedied.

(c) Failure of Contractor to make proper payments to subcontractors or for material or labor.

(d) Completion of contract, if there exists a reasonable doubt that contract can be completed for balance then unpaid.

(e) Damage to another Contractor.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

COUNTY may apply such withheld amount to payment of such claims or obligations at COUNTY's discretion. In so doing, COUNTY shall be deemed the agent of Contractor, and any payment so made by COUNTY shall be considered as a

payment made under contract by COUNTY to Contractor, and COUNTY shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. COUNTY will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

Article 37. CHANGES AND EXTRA WORK

All change orders shall be subject to the Public Contract Code, including but not limited to Sections 20137 and 20142, et seq.

(a) Change Orders. Contractor shall make no changes to the Work to be performed pursuant to this Agreement, including but not limited to additions, deletions, modifications or substitutions, nor shall Contractor perform any extra work (collectively, "Change Order Work") without the prior written consent of COUNTY. If Contractor encounters conditions it considers different from those described in the Comprehensive Plan Specifications, Contractor may request a change order in conformance with COUNTY's standard procedure ("Change Order"). If COUNTY approves the request, Contractor will execute a Change Order and Contractor's execution of the Change Order shall confirm approval thereof. COUNTY may order additional work, and Contractor shall perform such changes in the Work as directed by COUNTY in any Change Order prepared by Contractor. COUNTY's rights to eliminate portions of the Work or to initiate a Change Order shall not be limited in any way. The Change Order shall be in writing and shall include:

(A) Any and all supporting documents and drawings depicting the source and location of the desired change, and explain in detail the field conditions and reasons for the requested change;

(B) Any change or adjustment to the compensation set forth in this Agreement in Article 3 as a result of changes in the Work based on a lump sum or time and material basis, as may be directed by COUNTY; and

(C) Any request for adjustments to time for completion of the Project.

(b) Payment for Change Order Work. Contractor shall not be entitled to receive any compensation for work, labor, materials or changes of any kind, regardless of whether ordered by COUNTY or any of its representatives, unless a Change Order has been submitted in writing and approved prior to the commencement of any Change Order Work as described above. If the changes are required by any inspecting governmental agencies or utility companies, or are otherwise required to comply with any codes, laws, rules or regulations, including those set forth in this Agreement, then Contractor shall not be entitled to any increases in the compensation set forth in this Agreement at Article 3 or other compensation as a result of the changes.

(c) Disputed Change Order Work. Any dispute concerning the performance of such Change Order Work or the amount of compensation to be paid to Contractor by COUNTY shall not affect Contractor's obligation to perform such Change Order Work. Contractor agrees that it shall timely complete all Change Order Work even if there

shall be a dispute between Contractor and COUNTY over the amount or scope of the Change Order Work. Contractor shall have the right to be compensated for any undisputed Change Order Work amounts as determined to be undisputed in COUNTY's sole discretion.

(d) Authorized Representative. No Change Order shall be valid or binding against COUNTY unless such Change Order has been executed by COUNTY's designated representative, who is the Director of Planning & Development Services. COUNTY shall notify Contractor in writing if the designated representative is changed. The authority to execute a Change Order on this project shall not exceed the amount allowed by law pursuant to Government Code sections 20137-20142 *et seq.*

Article 38. DEDUCTIONS FOR UNCORRECTED WORK

If COUNTY deems it inexpedient to correct work injured or done not in accordance with contract, an equitable deduction from contract price shall be made therefore.

Article 39. PAYMENTS BY CONTRACTOR

Contractor shall pay:

(a) For all transportation and utility services not later than the twentieth (20th) day of the calendar month following that in which such services are rendered;

(b) For all materials, tools and other expendable equipment to the extent of ninety percent (90%) of cost thereof, not later than the twentieth (20th) day of the calendar month following that in which such materials, tools and equipment are delivered at site of project and balance of cost thereof not later than the thirtieth (30th) day following completion of that part of the work in or on which such materials, tools and equipment are incorporated or used; and

(c) To each of Contractor's subcontractors, not later than the fifth (5th) day following each payment to Contractor; the respective amounts allowed Contractor on account of work performed by respective subcontractor to the extent of such subcontractor's interest therein.

Article 40. CONTRACTOR'S SUPERVISION

Unless personally present on premises where work is being done, Contractor shall keep on the work, during its progress, a competent superintendent satisfactory to COUNTY. Superintendent shall not be changed except with consent of COUNTY unless superintendent proves to be unsatisfactory to Contractor and ceases to be in his employ. Superintendent shall represent Contractor in Contractor's absence, and all directions given to superintendent shall be as binding as if given to Contractor. Other directions shall be so confirmed in written request in each case.

Contractor shall give efficient supervision to work, using Contractor's best skill and attention. Contractor shall carefully study and compare all drawings, specifications and other instructions, and shall at once report to Architect/Engineer any error, inconsistency or omission which Contractor may discover.

Article 41. INSPECTOR'S FIELD OFFICE

Contractor shall provide for use of inspector a temporary office of not less than seventy-five (75) square feet of floor area to be located as directed by inspector and to be maintained until removal is authorized by COUNTY. Office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key, type walk or padlock hasp.

A table satisfactory for study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, local telephone service, and adequate heat and cooling for the field office until authorized removal.

Article 42. DOCUMENTS ON WORK

Contractor shall keep one copy of all contract documents, including addenda and change orders which are a part of contract documents, on job at all times. Said documents shall be kept in good order and available to Architect/Engineer representatives. Contractor shall be acquainted with and comply with all California Administrative Code provisions relating to this project, including, but not limited to, Title 19.

Article 43. UTILITIES AND RELOCATION

(a) All utilities, including, but not limited to, electricity, water, gas and telephone used on work, shall be furnished and paid for by Contractor. Contractor shall furnish and install necessary temporary distribution systems, including meters if necessary, from distribution points to points on site where utility is necessary to carry on the work. Upon completion of work, Contractor shall remove all temporary systems.

If contract is for addition to existing facility, Contractor may, with written permission of COUNTY, use COUNTY's existing utilities by making prearranged payments to COUNTY for utilities used by Contractor for construction.

(b) Contractor shall not be assessed damages for delay in completion of the project when such delay was caused by the failure of the awarding authority of this contract or the owner of the utility to provide for removal or relocation of the existing main or trunkline utility facilities; however, when the Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify the awarding authority and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunkline utility facilities, or to provide for its removal or relocation.

In accordance with section 4215 of the Government Code, if the Contractor, while performing the contract, discovers any existing main or trunkline utility facilities not identified by the public agency in the contract plans or specifications, Contractor shall immediately notify the public agency and utility in writing. The public utility, where they are the owner, shall have the sole discretion to perform repairs or relocation work at a reasonable price. The Contractor shall be compensated for the

costs of locating and repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specification with reasonable accuracy and for equipment on the project necessarily idled during such work. Such compensation shall be in accordance with the extra work provisions set out at Article 37 hereof.

Article 44. SANITARY FACILITIES

Contractor shall provide a sanitary, temporary toilet building as directed by the Architect/Engineer for the use of all workers. The building shall be maintained in a sanitary condition at all times, and shall be left at the site until removal is directed by the Architect/Engineer.

Article 45. TRENCHES

(a) Trenching Requirements – Four Feet (4') Below the Surface. In the event the Project involves digging trenches or other excavations that extend deeper than four feet (4') below the surface, Contractor shall:

(1). Promptly, and before the following conditions are disturbed, notify COUNTY, in writing, of any:

A. Material that Contractor believes may be material that is hazardous waste, as defined in Health & Safety Code §25117, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law;

B. Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids; and

C. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement.

(2) In response to any written notice generated pursuant to paragraph (a) above, COUNTY shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a change order under the procedures described in paragraph 37 of the General Conditions.

(3) In the event that a dispute arises between COUNTY and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Work, Contractor shall not be excused from any scheduled completion date provided for by this Agreement, but shall proceed with all Work to be performed under this Agreement. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Parties.

(b) Trenching Requirements – Project in Excess of Twenty-Five Thousand Dollars (\$25,000) and Five Feet (5') Below the Surface. For projects involving both an estimated expenditure in excess of twenty-five thousand dollars (\$25,000) and the

excavation of any trench five feet (5') or more in depth, Contractor shall submit a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench. The plan must be accepted by COUNTY (or by a registered civil or structural engineer, employed by COUNTY, to whom authority to accept has been delegated) in advance of excavation. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. Nothing in this paragraph shall allow Contractor to use a shoring, sloping, or protective system less effective than that required by California Construction Safety Orders. Further, nothing in this paragraph shall be construed to impose tort liability on COUNTY or any of its employees.

Article 46. PROTECTION OF WORK AND PROPERTY

Contractor shall be responsible for all damages to persons or property that occur as a result of Contractor's fault or negligence in connection with the prosecution of this contract, and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by COUNTY. All work shall be solely at Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and contract documents. Contractor shall take all necessary precautions for safety of employees on the work, and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on; about or adjacent to premises where work is being performed. Contractor shall erect and properly maintain, at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, lights and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of its organization on the work, whose duty shall be prevention of accidents. Name and position of person so designated shall be reported to COUNTY by Contractor.

In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from Architect or COUNTY, is hereby permitted to act, at Contractor's discretion, to prevent such threatened loss or injury, and Contractor shall so act, without appeal, if so authorized or instructed by Architect or COUNTY. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.

Contractor shall provide such heat, covering and enclosures as are necessary to protect all work, materials, equipment, appliances and tools against damage by weather conditions.

Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, adjoining property and structures, and to avoid damage thereto, and repair any damage thereto caused by construction operations.

Contractor shall:

Enclose working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience to juveniles and COUNTY Staff in their regular activities. (This subsection applies to new construction on

existing sites.)

Provide substantial barricades around any shrubs or trees indicated to be preserved.

Deliver materials to building area over route designated by Architect.

When directed by COUNTY, take preventative measures to eliminate objectionable dust.

Confine Contractor's apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits or directions of Architect, and shall not unreasonably encumber premises with materials, and enforce all instructions of COUNTY and Architect regarding signs, advertising, fires, danger signals, barricades and smoking, and require that all persons employed on work comply with all regulations while on construction site. Hazardous materials of any kind are not allowed on site, without prior written approval from COUNTY.

Take care to prevent disturbing or covering any survey markers, monuments or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer at no cost to COUNTY.

Article 47. LAY OUT AND FIELD ENGINEERING

All field engineering required for laying out Contractor's work and establishing grades for earthwork operations shall be furnished by Contractor at Contractor's expenses. Such work shall be done by a qualified civil engineer approved by Architect/Engineer. Any required "As-Built" drawings of site development shall be prepared by the approved civil engineer.

Article 48. CUTTING AND PATCHING

Contractor shall do all cutting, fitting or patching of work as required to make its several parts come together properly and fit it to receive or received by work of other Contractors showing upon, or reasonably implied by, the drawings and specifications for the completed structure, and Contractor shall make good after them as Architect/Engineer may direct. Contractor shall not endanger any work by cutting, excavating or otherwise altering work, and shall not cut or alter work of any other Contractor save with consent of Architect/Engineer.

Article 49. CLEANING UP

Contractor at all times shall keep premises free from debris such as waste, rubbish and excess materials and equipment caused by work; debris shall be removed from premises. Contractor shall not leave debris under, in or about the premises. Upon completion of work, Contractor shall clean any areas where debris has collected. Contractor shall remove temporary fencing, barricades and any temporary facilities from site.

Article 50. CORRECTION OF WORK

Contractor shall promptly remove from premises all work determined by COUNTY as failing to conform to contract, whether incorporated or not. Contractor shall promptly replace and re-execute his own work to comply with contract documents without additional expense to COUNTY, and shall bear the expense of making good all work of

other Contractors destroyed or damaged by such removal or replacement.

If Contractor does not remove such work and materials within a reasonable time, fixed by written notice, COUNTY may remove the work and materials and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) days' time thereafter, COUNTY may liquidate such work and materials upon private sale, and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

Article 51. ACCESS TO WORK

COUNTY and its representative shall at all times have access to work wherever it is in preparation or progress. Contractor shall provide safe and proper facilities for such access so that COUNTY's representative may perform their functions under contract.

Article 52. OCCUPANCY

COUNTY reserves the right to occupy buildings at any time before completion, and such occupancy shall not constitute final acceptance of any part of work covered by this contract.

Article 53. COUNTY'S INSPECTOR

An inspector, construction manager or both, employed by COUNTY or by HPUD, may be assigned to oversee the work.

All work shall be under observation of said inspector or construction manager. Such personnel shall have free access to any or all parts of work at any time. Contractor shall furnish inspector or construction manager reasonable facilities for obtaining such information as may be necessary to keep inspector or construction manager fully informed respecting progress and manner of work and character of materials. Inspection of work shall not relieve Contractor from any obligation to fulfill Contractor's contract. Inspector or construction manager shall have authority to stop work whenever provisions of contract documents are not being complied with, and Contractor shall instruct Contractor's employees accordingly.

Article 54. TESTS AND INSPECTIONS

If contract, COUNTY's instructions, laws, ordinances or any public authority require any work to be specially tested or approved, Contractor shall give notice in accordance with such authority of its readiness for observation or inspection at least two (2) working days prior to being tested or covered up. If inspection is by authority other than COUNTY, Contractor shall inform COUNTY of the date fixed for such inspection. Required certificates of inspection shall be secured by Contractor. Observations by COUNTY shall be promptly made, and where practicable, at source of supply. If any work should be covered up without approval or consent of COUNTY, it must, if required by COUNTY, be uncovered for examination and satisfactorily reconstruction at Contractor's expenses in compliance with contract. Costs of tests of any material found to be not in compliance with contract shall be paid for by Contractor.

See Comprehensive Specifications for materials to be tested.

Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency or COUNTY's representative, and not by Contractor.

Contractor shall notify COUNTY a sufficient time in advance of manufacture of materials to be supplied by Contractor under contract which must by terms of contract be tested, in order that COUNTY may arrange for testing of same at source of supply. Any materials shipped by Contractor from source of supply prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated in work without prior approval of COUNTY and subsequent testing and inspection.

Re-examination of questioned work may be ordered by COUNTY, and, if so ordered, work must be uncovered by Contractor. If such work be found in accordance with contract documents, COUNTY shall pay costs of re-examination and replacement. If such work be found not in accordance with contract documents, Contractor shall pay such costs.

Article 55. SOILS INVESTIGATION REPORT

When a soils investigation report obtained from test holes in site is available, such report shall not be part of this contract. Any information obtained from such report or any information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only and is not guaranteed, and does not form a part of the contract. Contractor is required to make a visual examination of site, and must make whatever tests Contractor deems appropriate to determine underground condition of soil. Contractor agrees that it will make no claim against COUNTY for damages in the event that, during progress of the work, Contractor encounters subsurface or latent conditions at site materially differing from those shown on drawings or indicated in specifications, or for unknown conditions of an unusual nature which differ materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in plans and specifications.

Article 56. ARCHITECT/ENGINEER'S AND CONSTRUCTION MANAGER'S STATUS

The construction manager shall be COUNTY's representative during the construction period, and shall observe the progress and quality of the work on behalf of COUNTY. The construction manager shall have the authority to act on behalf of COUNTY only to the extent expressly provided in the contract documents. The construction manager shall have authority to stop work whenever such stoppage may be necessary in construction manager's reasonable opinion to insure the proper execution of the contracts.

The Architect/Engineer shall be, in the first instance, the judge of compliance with the design intent of the contract documents.

Article 57. INDEMNITIES

(a) Contractor agrees to the fullest extent permitted by law to indemnify, defend,

protect and hold COUNTY and its representatives, officers, directors, designees, employees, agents, successors and assigns harmless from any and all claims, expenses, liabilities, causes of action, demands, losses, penalties, attorneys fees and costs, in law or equity, of every kind and nature whatsoever arising out of or in connection with Contractor's negligent acts and omissions or willful misconduct under this Agreement ("Claims"), whether or not arising from the passive negligence of COUNTY, but does not include Claims that are finally determined to be the result of the sole negligence or willful misconduct of COUNTY.

(b) Contractor agrees to defend with counsel acceptable to COUNTY, indemnify and hold COUNTY harmless from all Claims, including but not limited to:

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

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

(3) Penalties imposed upon account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute caused by the negligent action or inaction, or willful misconduct of Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable;

(4) Infringement of any patent rights which may be brought against COUNTY arising out of Contractor's work;

(5) Any violation or infraction by Contractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees; and

(6) Any breach by Contractor of the terms, requirements or covenants of this Agreement.

(c) The indemnification provisions of Paragraphs 57 (b) (1) through 57(b) (6) above shall extend to Claims occurring after this Agreement is terminated, as well as while it is in force.

Article 58. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein, and the contract shall be read and enforced as though it were included herein, and if, through mistake or otherwise,

any such provision is not inserted, or is not correctly inserted, then upon application of either party, the contract shall forthwith be physically amended to make such insertion or correction.

Article 59. LABOR - EMPLOYMENT SAFETY

Contractor shall maintain emergency first aid treatment for Contractor's employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C.A. 651, et seq.).

Article 60. NOTICE OF TAXABLE POSSESSORY INTEREST

The terms of this document may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.

Article 61. ASSIGNMENT OF UNFAIR BUSINESS PRACTICES CLAIMS (CLAYTON ACT AND CARTWRIGHT ACT)

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

Contractor or subcontractor offers and agrees to assign to COUNTY all rights, title and interest in and all causes of action it may have under section 4 of the Clayton Act (15 USC 15) or under the Cartwright Act, chapter 2 (commencing with § 16700) of part 2 of division 7 of the Business and Professions Code, arising from the purchase of goods, or services.

Article 62. SUBSTITUTION OF SECURITY

Upon Contractor's request, COUNTY will make payment of funds withheld from progress payments to ensure performance under the contract pursuant to the requirements of California Public Contracts Code, section 22300, if the Contractor deposits in escrow with COUNTY, or with a bank acceptable to COUNTY, securities eligible for investment under Government Code section 16430 or bank savings and loan certificates of deposit, subject to the following conditions:

- (a) Contractor shall bear the expense of COUNTY and the escrow agent, and COUNTY and the bank, in connection with the escrow deposit made.
- (b) Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amount of retention to be paid to the Contractor pursuant to this Article.
- (c) Contractor shall enter into an escrow agreement satisfactory to COUNTY, which agreement shall include provisions governing, inter alia:
 - (1) the amount of securities to be deposited,
 - (2) the providing of powers of attorney or other documents

- (3) necessary for the transfer of the securities to be deposited, conversion of cash to provide funds to meet defaults by Contractor including, but not limited to, termination of Contractor's control over the work, stop notice filed pursuant to law, assessment of liquidated damages, or other amounts to be kept or retained under the provisions of the contract,
 - (4) decrease in value of securities on deposit,
 - (5) the termination of the escrow upon completion of the contract.
- (d) Contractor shall obtain the written consent of the surety to such agreement.

Article 63. NON-DISCRIMINATION AND DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

(a) During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over forty (40)), marital status and denial of family care leave. Contractor and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code §12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The applicable regulations of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794 (a)) are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform Work under this Agreement.

(b) Contractor and its subcontractors shall reference and abide by the guidance and Disadvantaged Business Enterprise specifications contained in the California Department of Transportation's Local Programs Procedures 06-01 (which has been approved and released at <http://www.dot.ca.gov/hq/> Local Programs/) when working pursuant to this Agreement.

Article 64. SPECIAL CONDITIONS

(a) The work shall be commenced on the date stated in COUNTY's *Notice to the Contractor to Proceed* (which date will be not greater than ten (10) consecutive calendar days from and after the date of execution of the contract), and shall be completed within one hundred eighty days (180) consecutive calendar days from and after the date stated in such notice. (See Article 2 of *Agreement*)

(b) The number of copies of drawings and specifications to be furnished to

Contractor free of charge, per Article 3 of the *General Conditions* is eight (8).

(c) The number of executed copies of the *Agreement*, the *Performance Bond*, and the *Payment Bond* for the *Public Works* required is six (6).

Article 65. CONTRACT CONSTRUCTION

This contract has been reviewed by legal counsel for both COUNTY and Contractor, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this contract and/or any and all amendments thereto.

Article 66. COGNIZANCE OF VIOLATIONS BY COUNTY

(a) Contractor understands and agrees that COUNTY shall take cognizance of violations of Chapter 1 of Part 7 of Division 2 of the California Labor Code committed in the course of the execution of this Agreement, and shall promptly report any suspected violations to the Labor Commissioner.

(b) If COUNTY determines as a result of its own investigation that there has been a violation of Chapter 1 of Part 7 of Division 2 of the California Labor Code and withholds payment to Contractor, the procedures in California Labor Code §1771.6 shall be followed.

(c) COUNTY may bring an action in a court of competent jurisdiction to recover from Contractor the difference between the wages actually paid to an employee and the wages that were required to be paid to an employee pursuant to Chapter 1 of Part 7 of Division 2 of the California Labor Code, any penalties required to be paid pursuant to Chapter 1 of Part 7 of Division 2 of the California Labor Code, and costs and attorney's fees related to the action, if either of the following is true:

(1) COUNTY previously affirmatively represented to Contractor in writing, in the call for bids, or otherwise, that the Work was not a "public work," as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code; or

(2) COUNTY received actual written notice from the Department of Industrial Relations that the Work is a "public work," as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code, and failed to disclose that information to Contractor before the bid opening or award.

Article 67. LABOR STANDARDS COMPLIANCE REQUIREMENTS

(a) It is Contractor's responsibility to provide all labor compliance documentation from its subcontractors completely and accurately in a timely manner. Contractor is responsible to review promptly and then forward on all required documentation to COUNTY per the time schedules in the Labor Compliance Handout. Included with the Labor Compliance Handout, COUNTY will provide training, documentation requirements, forms, etc., at the preconstruction conference or at a time designated by COUNTY.

(b) In the event, during the review process of labor compliance documentation from COUNTY's labor compliance monitor, inaccurate, missing or

incomplete information was provided, the labor compliance monitor will request from Contractor the items, revisions and documentation needed. The cost of this additional labor compliance enforcement shall be borne by Contractor.

Article 68. CONFLICT OF INTEREST AND GRATUITIES

(a) Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further agrees that in the performance of this Agreement, no person having any such interest shall be employed.

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

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

(d) In the event this Agreement is terminated as provided herein, COUNTY shall be entitled (1) to pursue the same remedies against Contractor as it could pursue in the event of a breach of the Agreement by Contractor, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by COUNTY) which shall be not less than three (3) nor more than ten (10) times the costs incurred by Contractor in providing any such gratuities to any such officer, employee or agent.

Article 69. FEDERAL CONTRACT REQUIREMENTS

(a) Signage Requirements.

(1) Project Identity Signage. Contractor is required to provide and install the required project identity signage as detailed in the Plans and Specifications, in the size and at the location indicated by the Director of Public Works or his/her designee, and to maintain the signage in good condition for the duration of the Project. The signage may not be removed until the Notice of Completion is recorded or by written direction of the Director of Public Works or his/her designee.

(2) Required Employee Signage and Posters. Contractor is required to provide and install the Federal and State required employee posters and the required material pertaining to the required labor standards provisions are posted (including, but not limited to, WH-1321, OSHA 3165

and OFCCP-English, EFCCP-Spanish) at the worksite in a prominent and accessible place.

(3) Section 3 Compliant Signage. If required by COUNTY, Contractor is directed to provide and install the "Offer for Employment" signage as detailed in the Plans and Specifications in the size and at the location indicated by the Director of Public Works or his/her designee and to maintain the signage in good condition for the duration of the Project. The signage may not be removed until the Notice of Completion is recorded or by written direction of the Director of Public Works or his/her designee.

(b) Housing And Urban Development Act Compliance. When applicable, Contractor agrees to comply with Section 3 of the Housing and Urban Development Act of 1968 (42 U.S.C. 3601 *et seq.*) which provides that to the greatest extent feasible, Contractor shall provide job training, employment and contracting opportunities for low- or very-low income residents in connection with the Project. The responsibility for compliance with these provisions is fixed with Contractor.

(c) Copeland "Anti-Kickback" Act Compliance. When applicable, Contractor agrees to comply with the Copeland Act ([18 USC §874](#) and [40 USC §276c](#); [29 CFR Part 3](#)) which precludes Contractor and its subcontractors from in any way inducing an employee to give up any part of the compensation to which he or she is entitled under his or her contract of employment. Contractor and its subcontractors shall submit a weekly statement of the wages paid to each employee performing on covered work during the preceding payroll period. Contractor understands and agrees that should Contractor its subcontractors induce an employee working on a covered contract to give up any part of the compensation to which he or she is entitled, the inducing party may be subject to a five thousand dollar (\$5,000) fine, or imprisonment for up to five (5) years, or both. Contractor also understands and agrees that willful falsification of the statement of compliance may subject the employer to civil or criminal prosecution and may be cause for contract termination or debarment. The responsibility for compliance with these provisions is fixed with Contractor.

(d) Fair Labor Standards Act Compliance. When applicable, Contractor agrees to comply with the Fair Labor Standards Act of 1938 as amended (29 U.S.C. 201 *et seq.*) which establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting full-time and part-time workers on the Project. The responsibility for compliance with these provisions is fixed with Contractor.

(e) Certification Regarding Debarment, Suspension and Other Responsibility Matters. When applicable, Contractor agrees to execute a certification regarding debarment, suspension and other responsibility matters. The responsibility for compliance with this provision is fixed with Contractor.

(f) Federal Equal Employment Opportunity Construction Contract Specifications. When applicable, Contractor agrees to incorporate the notice set forth in paragraph (d) of 41 C.F.R. 60-4.2 relating to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications." The responsibility for compliance with this provision is fixed with Contractor.

(g) Clean Air Act and the Federal Water Pollution Control Act. When applicable, Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*), Presidential Executive Order 11738 and Environmental Protection Agency regulations set forth at 40 C.F.R. Part 15. Contractor understands and agrees that violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency. The responsibility for compliance with these provisions is fixed with Contractor.

(h) Prohibition on the Use of Federal Funds for Lobbying. When applicable, Contractor shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient. The responsibility for compliance with this provision is fixed with Contractor.

(i) Federal Employment Eligibility Verification. Contractor shall verify name, date of birth and social security number, along with immigration information for non-citizens in order to verify the identity and employment eligibility of both citizen and non-citizen new hires. The responsibility for compliance with this provision is fixed with Contractor.

(j) The Civil Rights, HCD and Age Discrimination Act Assurances. During the performance of this Agreement, Contractor assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits or be subjected to discrimination based on race, color, national origin, gender, age or handicap, under any program or activity funded by this Agreement, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, and the Age Discrimination Act of 1975, and all implementing regulations. The responsibility for compliance with these provisions is fixed with Contractor.

(k) Standard Equal Opportunity Clause.

(1) Contractor hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

“During the performance of this contract, the Contractor agrees as follows:

“1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or disabilities. 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, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection 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.

“2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or disabilities.

“3. The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers’ representatives of the Contractor’s commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

“4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

“5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its 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.

“6. In the event of the Contractor’s noncompliance with the discrimination clauses of this contract or with any of the said rules, 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 or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other

sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

“7. The Contractor will include the portion of the sentence immediately preceding paragraph “1” and the provisions of paragraphs “1” through “7” in every contract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 504 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each contractor or vendor. The Contractor will take such action with respect to any contract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a contractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.”

(2) Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally- assisted construction work; provided that if Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the Agreement.

(3) Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Department and HUD and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency’s primary responsibility for securing compliance.

(4) Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally-assisted construction contracts, pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Contractor agrees that if it fails or refuses to comply with these undertakings, COUNTY may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this funding commitment (contract, loan, grant, insurance, guarantee); refrain

from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Contractor; and refer the case to the Department of Justice for appropriate legal proceedings.

Article 70. MISCELLANEOUS

(a) Entire Agreement. This Agreement contains the entire agreement between COUNTY and Contractor relating to the transactions contemplated hereby and supersedes all prior or contemporaneous agreements, understandings, provisions, negotiations, representations, or statements, either written or verbal.

(b) Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Contractor without the prior written consent of COUNTY.

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

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

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

(f) Gender and Interpretation of Terms and Provisions. As used in this Agreement and whenever required by the context thereof, each number, both singular and plural, shall include all numbers, and each gender shall include a gender. Contractor as used in this Agreement or in any other document referred to in or made a part of this Agreement shall likewise include singular and the plural, a corporation, a partnership, individual, firm or person acting in any fiduciary capacity as executor, administrator, trustee or in any other representative capacity or any other entity. All covenants herein contained on the part of Contractor shall be joint and several if more than one person, firm or entity executes this Agreement.

(g) Waiver. No waiver of any breach or of any of the covenants or conditions of this Agreement shall be construed to be a waiver of any other breach or to be consent to any further or succeeding breach of the same or any other covenant or condition.

(h) Attorneys' Fees and Costs. If either Party herein brings an action to enforce the terms thereof or to declare rights hereunder, the prevailing Party in any such action, on trial or appeal, shall be entitled to reasonable attorneys' fees as fixed by the court and actual costs to be paid by the losing Party.

(i) Authority.

(1) Each individual executing this Agreement on behalf of Contractor represents and warrants that:

(A) He/She is duly authorized to execute and deliver this Agreement on behalf of Contractor;

(B) Such execution and delivery is in accordance with the terms of the Articles of Incorporation or Partnership, any by-laws or Resolutions of Contractor and;

(C) This Agreement is binding upon Contractor in accordance with its terms.

(2) Contractor shall deliver to COUNTY evidence acceptable to COUNTY of the foregoing within thirty days of execution of this Agreement.

(j) Counterparts. This Agreement may be executed in counterparts.

(k) Review of Agreement Terms. This Agreement has been reviewed and revised by legal counsel for both COUNTY and Contractor, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of the same or any subsequent amendments thereto.

COMPREHENSIVE SPECIFICATIONS

Refer to general and construction notes on plans for comprehensive specifications and requirements for materials.

Note:

All provisions of the attached U.S. Department of Commerce Economic

Development Administration, Exhibit 5, EDA Contracting Provisions for Construction Projects, Pages 1-23, must be complied with by all contractors. See Exhibit A-1.

DEWATERING:

Add to the General Notes and Requirements for Phase Two, the attached Exhibit A-2, specification pages 1 through 5.

ENCROACHMENT PERMITS:

The required encroachment permits from the Imperial Irrigation District Water Division, Imperial County Public Works and CalTrans for the installation of the sanitary sewer, domestic water and storm water pipelines have been applied for by the Developer.

GENERAL CONDITIONS, ARTICLE 17, PREVAILING WAGES:

Add the list of prevailing wage rates as determined by the California Labor Commissioner and the Construction Wage and Hour Division, U.S. Department of Labor, copies attached. Exhibit A-3 and A-4. Note the higher of the two shall prevail.

EDA requires that certification regarding Lobbying, Restrictions on Lobbying, Requirements for Affirmative Action to Ensure Equal Employment Opportunity, and U.S. Department of Commerce American Recover and Reinvestments Act Award Terms, be added to the General Conditions of the project manual. Copies of these documents are attached as Exhibit A-5, A-6 and A-7.

UNIT PRICING:

Contractor shall submit with bid an itemized schedule of values for this project.

IID UTILITY CROSSING DETAIL:

IID drawing No. L-3086 and No. 12F-6855 attached as Exhibit A-8.

EXHIBIT A-9 EDA SIGN REQUIREMENTS