



## **ADDENDUM NUMBER #2**

Dated January 24, 2022

### **PATAGONIA REGIONAL FLOOD CONTROL PROJECT (SANTA CRUZ COUNTY, ARIZONA)**

**SOQ Number # S-21-09-C008**

**Enclosed is Addendum #2**

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**Signature Page Must Be Included in SOQ Submittal**

**Acknowledgement of Receipt:**

Signature of Authorized Agent: \_\_\_\_\_

Print Name/Title: \_\_\_\_\_ Date: \_\_\_\_\_

Firm's Name: \_\_\_\_\_

## **Addendum #2 Overview**

This Addendum #2 includes clarifications to additional questions received prior to the January <sup>21<sup>st</sup></sup>, 2022 deadline for the Patagonia Regional Flood Control Project SOQ No. S-21-09-CO08, and the sample Santa Cruz County Professional Services Contract. **Note that the sample contract is provided for reference only. The terms and conditions are subject to change to reflect the final Scope of Services.**

### **January 21<sup>st</sup>, 2022 received Questions and Answers**

#### **Question 1**

Will Santa Cruz County provide a copy of the Professional Services Contract please? To complete the certification form (Attachment 1) we will need a copy of the contract to review please.

**Answer:** Yes. It is included as part of this Addendum #2.

#### **Question 2**

Per the addenda, it states the new Contract Services Representative is Leonard Fontes. Does that mean reference forms and submittals should be sent to Leonard or still directed to John Hays?

**Answer:** All submittals should still be sent to John Hays. I am only addressing concerns during his absence.

#### **Question 3**

Are we permitted to reach out to the County prior to the due date to confirm receipt of the reference forms?

**Answer:** Yes.

## SAMPLE PROFESSIONAL SERVICES CONTRACT

<b>SANTA CRUZ COUNTY PUBLIC WORKS DEPARTMENT</b>	
<b>PROJECT:</b> <Project Name>	
<b>CONSULTANT:</b> <Consultant Name> <Consultant Address> <City, State, Zip>	
<b>AMOUNT:</b> <\$Dollar Amount>	
<b>FUNDING:</b> <Funding>	
	<b>(Stamp Here)</b>

### CONSULTANT SERVICES CONTRACT

This contract is entered into between Santa Cruz County, a political body of the State of Arizona, hereinafter referred to as "COUNTY," and <CONSULTANT>, hereinafter referred to as "CONSULTANT," both of which are collectively referred to as the "PARTIES."

#### WITNESSETH

**WHEREAS**, COUNTY requires the services of a CONSULTANT registered in the State of Arizona and qualified to provide Professional Services for the <Project Name>; and,

**WHEREAS**, CONSULTANT is qualified and willing to provide such services; and

**WHEREAS**, based on CONSULTANT'S representations in response to Santa Cruz County SOQ No. S-\_\_\_\_\_, CONSULTANT was determined to be the most qualified for this Project, and

**WHEREAS**, CONSULTANT has proposed to perform the work at a price acceptable to COUNTY.

**NOW, THEREFORE**, in consideration of the foregoing recitals and other valuable and good consideration the PARTIES agree as follows:

#### **ARTICLE 1 – TERM AND EXTENSION/RENEWAL/CHANGES**

This Contract as approved by the Board of Supervisors commences on <BOS Approval date> and terminates on <Termination Date> unless sooner terminated or further extended pursuant to the provisions of this Contract.

COUNTY has the option to extend the Contract termination date for project completion. Any modification or extension of the Contract termination date will be by formal written amendment executed by the PARTIES. The Procurement Director or the COUNTY Board of Supervisors, as required by the Santa Cruz County Procurement Code, must approve change orders to the Contract or the Scope of Services before CONSULTANT performs the work authorized by the change order.

#### **ARTICLE 2 – SCOPE OF SERVICES**

CONSULTANT agrees to provide Professional Services for the <Project Name> for the COUNTY as described in **EXHIBIT A—SCOPE OF WORK** (1 page), attached hereto.

**ARTICLE 3 – COMPENSATION AND PAYMENT**

In consideration of the services specified in this Contract, COUNTY agrees to pay CONSULTANT in an amount not to exceed < Dollar Estimate From CONSULTANT>. CONSULTANT’S fees are as stated in **EXHIBIT B—CONSULTANT FEE PROPOSAL** <(# of Pages)>, attached hereto. Hourly rates and all other rates included under this Contract will remain fixed throughout the term of the Contract. COUNTY may consider adjustments to rates in connection with any extensions of the Contract term.

Unless otherwise agreed, CONSULTANT will submit invoices monthly. All invoices shall be accompanied by a narrative description of the work performed, time accounting information, and an allocation of all direct costs, including reimbursable costs and SUB-CONSULTANT charges, of the tasks identified in the invoice. The time accounting information must show the identity of each worker and the number of hours he/she worked each day. SUB-CONSULTANT charges will be supported by appropriate documentation with each separate invoice submitted.

For the period of record retention required under Article 22, COUNTY reserves the right to question any payment made under this article and to require reimbursement therefor by setoff or otherwise for payments determined to be improper or contrary to the Contract or law.

CONSULTANT will not perform work in excess of the Contract Amount without prior authorization by an amendment executed by COUNTY. Work performed in excess of the Contract Amount without prior authorization by amendment is performed at CONSULTANT’S own risk.

**ARTICLE 4 – INSURANCE**

Consultant and sub-consultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees or sub-consultants.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The County in no way warrants that the minimum limits contained herein are sufficient to protect the Consultant from liabilities that might arise out of the performance of the work under this Contract by the Consultant, his agents, representatives, employees, or sub-consultants. Consultant is free to purchase such additional insurance as may be determined necessary.

4.1 Minimum Scope and Limits of Insurance: CONSULTANT will procure and maintain, until all of their obligations have been discharged, coverage with limits of liability not less than those stated below.

4.1.1 Commercial General Liability (CGL) – Occurrence Form: Policy shall include bodily injury, property damage, broad form contractual liability, and XCU coverage.

- General Aggregate \$2,000,000
- Products—Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

Policy shall be endorsed to include the following additional insured language: *“The County of Santa Cruz shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Consultant.”* Prospective



- *Estimated Project Construction Cost of over \$25,000,000*
  - Structural, civil, mechanical, plumbing, electrical engineers will carry:
    - Each Claim                   \$2,000,000
    - Annual Aggregate       \$2,000,000
- *Estimated Project Construction Cost of over \$25,000,000*
  - All other registered consultants not listed in “Estimated Project Construction Costs of over \$25,000,000” above will carry:
    - Each Claim                   \$1,000,000
    - Annual Aggregate       \$1,000,000

4.2 Additional Insurance Requirements: The policies shall include, or be endorsed to include, the following provisions:

- 4.2.1 On insurance policies where the County of Santa Cruz is named as an additional insured, the County of Santa Cruz shall be an additional insured to the full limits of liability purchased by the CONSULTANT even if those limits of liability are in excess of those required by this Contract.
- 4.2.2 The CONSULTANT’S insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- 4.2.3 Coverage provided by the Consultant shall not be limited to the liability assumed under the indemnification provisions of this Contract.

4.3 Notice of Cancellation: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the COUNTY. Such notice shall be sent directly to **(County of Santa Cruz Department Representative's Name & Address)**.

4.4 Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an “A.M. Best” rating of not less than B+ VI. The COUNTY in no way warrants that the above-required minimum insurer rating is sufficient to protect the CONSULTANT from potential insurer insolvency.

4.5 Verification of Coverage: CONSULTANT shall furnish the COUNTY with certificates of insurance (ACORD form or equivalent approved by the County) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

- 4.5.1 All certificates and endorsements are to be received and approved by the COUNTY before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- 4.5.2 All certificates required by this Contract shall be sent directly to **(County Department Representative's Name and Address)**. The COUNTY project/contract number and

project description shall be noted on the certificate of insurance. The COUNTY reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

- 4.6 Sub-Consultants: All required sub-consultants' certificates and endorsements are to be received and approved by the COUNTY before work commences. All insurance coverages for sub-consultants shall be subject to the minimum requirements identified above unless otherwise specified in this Contract.
- 4.7 Approval: Any modification or variation from the insurance requirements in this Contract shall be made by the County Attorney, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

#### **ARTICLE 5 – INDEMNIFICATION**

The Consultant hereby agrees to defend, indemnify, save and hold harmless Santa Cruz County, its officials and employees without limitation from and against any and all claims (including, but not limited to, workers' compensation, disability or environmental liability claims), damages, losses, liabilities, fees, fines or expenses (including but not limited to attorney fees, court costs, and cost of appellate proceedings) relating to, arising from, resulting from or alleged to have arisen or resulted from the performance of professional services for the County in the Consultant's capacity as an architect. Consultant's duty to defend, indemnify, save and hold harmless the County, its officials and employees shall arise in connection with any and all claims, damages, losses, liabilities, fees, fines or expenses that are attributable to bodily injury, personal injury, sickness, disease, death or damage to, or destruction of, tangible or intangible property including the loss of use therefrom, or environmental claims and fines, caused in whole or in part by any act, error, mistake or omission of Consultant, its officers, officials, employees, members, agents, subcontractors or anyone for whose acts Consultant may be liable.

The insurance, its limits, amount and type required herein shall in no way be construed as limiting the scope of this indemnity.

#### **ARTICLE 6 – COMPLIANCE WITH LAWS**

CONSULTANT shall comply with all applicable federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona govern the rights of the Parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract will be brought and maintained in the Santa Cruz County Superior Court. Any changes in the governing laws, rules, and regulations during the term of this Contract apply, but do not require an amendment.

#### **ARTICLE 7 – STATUS OF CONSULTANT**

The status of CONSULTANT is that of an independent contractor and CONSULTANT is not considered an employee of Santa Cruz County. The CONSULTANT is not entitled to receive any fringe benefit associated with regular employment at the COUNTY and CONSULTANT will not be subject to the provisions of the merit system. CONSULTANT will be responsible for payment of all Federal, State and Local taxes on compensation it receives from the COUNTY. CONSULTANT shall be responsible for program development and operation without supervision by COUNTY.

#### **ARTICLE 8 – CONSULTANT'S PERFORMANCE**

CONSULTANT will perform the work in accordance with the terms of the Contract and with the degree of care and skill required of any similarly situated Arizona registrant. CONSULTANT will employ suitably trained and skilled professional personnel to perform all required services under this Contract. Prior to changing any key personnel, especially key personnel the COUNTY relied upon in making this Contract, CONSULTANT will obtain the approval of the COUNTY.

CONSULTANT is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all its effort and services under this Agreement. Without additional compensation, CONSULTANT will correct or revise any errors, omissions, or other deficiencies in all products of its efforts and other services provided. This includes resolving any deficiencies arising out of the acts or omissions of CONSULTANT discovered during or after the course of services performed by or for CONSULTANT under this Agreement, regardless of the COUNTY having knowledge of or condoning or accepting the products or services. Correction of such deficiencies will be at no cost to the COUNTY.

#### **ARTICLE 9 – NON-WAIVER**

The failure of the COUNTY to insist in any one or more instances upon full and complete compliance with any of the terms and provisions of this Contract or to take any action permitted as a result thereof is not a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either party of sums less than what they may be due and owed at any time is not an accord and satisfaction.

#### **ARTICLE 10 – SUB-CONSULTANT**

CONSULTANT shall be directly responsible for all acts and omissions of its SUB-CONSULTANT and persons who are directly or indirectly employed by SUB-CONSULTANT to the same extent as CONSULTANT would be held liable for the acts and omissions of employees directly employed by CONSULTANT. Nothing in this Contract creates any obligation on the part of the COUNTY to pay or arrange to pay any sum owed to a SUB-CONSULTANT except as may be required by law.

#### **ARTICLE 11 – NON-ASSIGNMENT**

CONSULTANT will not assign its rights to this Contract, in whole or in part, without prior written approval of the COUNTY. The COUNTY may withhold assignment of this Contract in its sole discretion.

#### **ARTICLE 12 – NON-DISCRIMINATION**

CONSULTANT will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated by this reference as if fully set forth herein, **including flow down of all provisions and requirements to any SUB-CONSULTANTS**. During the performance of this Contract, CONSULTANT will not discriminate against any employee or applicant for employment on the bases of race, age, color, religion, sex, or national origin.

#### **ARTICLE 13 – AMERICANS WITH DISABILITIES ACT**

CONSULTANT will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 C.F.R. Parts 35 and 36. If CONSULTANT is carrying out government programs or services on behalf of the COUNTY, then CONSULTANT will maintain accessibility to the program to the same extent and degree as would be required of the COUNTY under 28 C.F.R. Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so could result in the termination of this Contract.

#### **ARTICLE 14 – CANCELLATION FOR CONFLICT OF INTEREST**

This Contract is subject to the provisions of A.R.S. § 38-511 that provides in pertinent part:

"The state, its political subdivisions or any department of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating,



securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract."

#### **ARTICLE 15 – TERMINATION OF CONTRACT FOR DEFAULT**

A. Upon a failure by CONSULTANT to cure a default under this Contract within ten (10) days of its receipt of notice by the COUNTY of the default, the COUNTY may, in its sole discretion, terminate this Contract for default by written notice to CONSULTANT. Upon termination of this Contract for default, the COUNTY may take over any work and complete it by Contract or otherwise. CONSULTANT and its sureties, if any, will be liable for any damages to the COUNTY resulting from CONSULTANT'S default, including any increased costs incurred by COUNTY in completing the work. "Receipt of notice" in this paragraph includes receipt accomplished by personal delivery, electronic communication (e.g., e-mail, facsimile, etc.), telephonic communication to the onsite project manager, or under the "Notices" clause of Article 18 to this Contract.

B. The occurrence of any of the following constitutes an act of default:

1. Abandonment of or refusal or failure to prosecute the work or any separable part thereof with diligence that will ensure completion within the time specified in this Contract, including any extension thereto, or a failure to complete the work (or the separable part of the work) within the time specified in this Contract;
2. Persistent or repeated refusal or failure to supply enough properly skilled workers or materials to perform the work on schedule;
3. Failure to provide competent supervision at the site;
4. Failure to take down, rebuild, repair, alter or amend any defective or deficient work or to remove any defective or deficient material;
5. Failure to make prompt payment to SUB-CONSULTANTS or suppliers for labor or material;
6. Loss of CONSULTANT'S business or other required license or authority, or any curtailment or cessation, for any reason, of business or business operations that would substantially impair or preclude CONSULTANT'S performance of this Contract;
7. Disregard of any applicable laws, ordinances, or rules, or any instructions of the COUNTY or its representatives;
8. Commission of any substantial violation of any provision of the Contract;
9. Commencement of a voluntary or involuntary bankruptcy action involving the CONSULTANT; and/or
10. CONSULTANT becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver or liquidator appointed to manage its assets.

C. In the event of a termination for default:

1. All finished and unfinished as-builts, shop drawings, documents, data, studies, surveys, drawings, photographs, reports and other information in whatever form, including electronic, acquired or prepared by CONSULTANT for this project become the COUNTY'S property and will be delivered to COUNTY not later than five (5) business days after the effective date of the termination;
2. COUNTY may withhold payments to CONSULTANT arising under this or any other Contract for the purpose of set-off until such time as the exact amount of damage due to the COUNTY

from CONSULTANT is determined; and

3. Subject to the immediately preceding subparagraph (2), the COUNTY'S liability to CONSULTANT will not exceed the reasonable value of work satisfactorily performed prior to the date of termination for which payment has not been previously made.

D. The Contract will not be terminated for default nor will CONSULTANT be charged for damages under this Article if:

1. Excepting items numbered 9 and 10 in paragraph B of Article 15 above, the event of default or delay in completing the work arises from the following unforeseeable causes beyond the control of and without the fault or negligence of CONSULTANT:

- (i) Acts of God or of the public enemy;
- (ii) Acts of the COUNTY in either its sovereign or contractual capacity;
- (iii) Acts of another consultant in the performance of a Contract with the COUNTY;
- (iv) Fires;
- (v) Floods;
- (vi) Epidemics;
- (vii) Quarantine restrictions;
- (viii) Strikes;
- (ix) Freight embargoes;
- (x) Unusually severe weather; OR
- (xi) Delays of SUB-CONSULTANTS or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both CONSULTANT and the SUB-CONSULTANT(S) or their suppliers; AND

2. CONSULTANT, within three (3) days from the beginning of any event of default or delay (unless extended by COUNTY), notifies COUNTY in writing of the cause(s) therefor. In this circumstance, the COUNTY will ascertain the facts and the extent of the resulting delay. If, in the judgment of the COUNTY, the findings warrant such action, the time for completing the work may be extended.

E. If, after termination of the Contract for default, it is determined that CONSULTANT was not in default or that the delay was excusable, the rights and obligations of the PARTIES will be the same as if the termination had been issued for the convenience of the COUNTY.

F. The rights and remedies of COUNTY in this Article are cumulative and in addition to any other rights and remedies provided by law or under this Contract.

#### **ARTICLE 16-- TERMINATION FOR CONVENIENCE OF COUNTY**

The COUNTY may terminate this Contract at any time by giving written notice to CONSULTANT of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. Upon termination of the Contract, all finished or unfinished documents and other

materials will, at the option of COUNTY, become its property. If the COUNTY terminates the Contract as provided herein, the COUNTY will pay CONSULTANT an amount based on the time and expenses incurred by CONSULTANT in performance of the Contract prior to the contract termination date. However, the COUNTY will make no payment for anticipated profit on unperformed services.

**ARTICLE 17 – NON-APPROPRIATION OF FUNDS**

Notwithstanding any other provision in this Contract, the COUNTY may terminate this Contract if for any reason the Santa Cruz County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Contract. In the event of such termination, the COUNTY has no further obligation to CONSULTANT other than payment for services rendered prior to the Contract's termination.

**ARTICLE 18 – NOTICES**

Any notice required or permitted to be given under this Contract will be in writing and will be served by personal delivery or by certified mail upon the other party as follows:

COUNTY:

<Project Manager>  
<Requesting Department>  
<Building Location>  
<Address>  
<City, State, & Zip Code>  
<Tel: (XXX) XXX-XXXX>  
<Fax: (XXX) XXX-XXXX>

CONSULTANT:

<Consultant Contact, Position>  
<Consultant Name>  
<Consultant Address>  
<City, State Zip>  
<Tel: (XXX) XXX-XXXX>  
<Fax: (XXX) XXX-XXXX>

**ARTICLE 19 – OTHER DOCUMENTS**

CONSULTANT and the COUNTY, in entering into this Contract, have relied upon information and documentation provided by CONSULTANT'S in their Statement of Qualification (SOQ). The SOQ and any documents attached thereto are hereby incorporated by this reference and made a part of this Contract as if set forth fully herein. If there is an inconsistency between the terms of this Contract and the SOQ and/or its attachments, the provisions of this Contract will prevail. CONSULTANT will perform services in accordance with the terms of the Contract and at a level of care consistent with prevailing industry standards. In the event any provision of this Contract is inconsistent with those of any other document, the provisions of this Contract will prevail.

**ARTICLE 20 – REMEDIES**

Either party may pursue any remedies provided by law for the breach of this Contract if the procedures in Article 25 of this Contract are first exhausted. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

**ARTICLE 21 – SEVERABILITY**

Each provision of this Contract stands alone and any provision of this Contract found to be prohibited by law is ineffective to the extent of the prohibition without invalidating the remainder of the Contract.

**ARTICLE 22 – BOOKS AND RECORDS**

CONSULTANT will keep and maintain proper and complete books, records, and accounts, and will keep these open at all reasonable times for inspection and audit by duly authorized representatives of the

COUNTY.

CONSULTANT will retain all records relating to this Contract for at least five (5) years after its termination or cancellation or until any relevant pending legal proceeding or litigation has been closed, whichever is later. Alternatively, CONSULTANT may, at its option, deliver such records to the COUNTY for retention but the County is not required to take custody of these records.

### **ARTICLE 23 – DELAYS**

Neither party is in default of its performance of obligations herein to the extent that its performance of such obligations are prevented or delayed by any present or future cause, which is beyond the reasonable control of such party.

### **ARTICLE 24 – DISPUTES**

In the event of a dispute between COUNTY and CONSULTANT regarding any part of this Contract or the PARTIES' obligations or performance herein, either PARTY may request a special meeting between their respective representatives to resolve the dispute. If the dispute remains unresolved, either PARTY may request a meeting between the Director of the Santa Cruz County Public Works Department and CONSULTANT'S designated representative. This meeting shall be held within one (1) week of the PARTY'S request unless otherwise agreed upon by the PARTIES. If the dispute is not resolved through the meeting, then either PARTY may pursue such remedy or remedies available to them under the laws of the State of Arizona or the United States of America.

The Parties will continue performance of their respective obligations under this Contract notwithstanding the existence of a dispute.

### **ARTICLE 25 – OWNERSHIP OF DOCUMENTS**

All original drawings, field data, estimates, field notes, plans, specifications, documents, reports, calculations, and other information developed by CONSULTANT under this Contract vest in and become the property of the COUNTY and will be delivered to the COUNTY upon completion or termination of the services. However, CONSULTANT may retain and use copies thereof. The COUNTY agrees that the material will not be used for any project other than the project for which it was designed without the express permission of CONSULTANT.

### **ARTICLE 26 – PUBLIC INFORMATION**

Pursuant to A.R.S. § 39-121 *et. seq.*, and A.R.S. §§ 34-603(H) and 604(H), in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted by CONSULTANT in any way related to this Contract, including but not limited to pricing, product specifications, work plans, and any supporting data, becomes public information and upon request is subject to release and/or review by the general public, including competitors.

Any information submitted related to this Contract that CONSULTANT believes constitutes proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL prior to submittal to COUNTY and be accompanied by an index specifically identifying and describing the general contents of each page so marked. The index is a public record and should not include any information considered confidential.

Notwithstanding the above-stated provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 *et. seq.*, COUNTY will release records marked CONFIDENTIAL ten (10) business days after the date of notice to CONSULTANT of the request for release unless CONSULTANT has, within the ten (10) day period, secured a protective order,

injunctive relief, or other appropriate order from a court of competent jurisdiction enjoining the release of the records. For the purposes of this paragraph, the day of the request for release is not counted in the time calculation. CONSULTANT will be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

The COUNTY will not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL nor will COUNTY be financially responsible for any costs associated with securing such an order.

#### **ARTICLE 27 – LEGAL ARIZONA WORKERS ACT COMPLIANCE**

CONSULTANT hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to CONSULTANT'S employment of its employees and with the requirements of A.R.S. § 23-214(A). CONSULTANT will further ensure that each SUB-CONSULTANT performing work for CONSULTANT under this Contract likewise complies with these laws.

COUNTY has the right at any time to inspect the books and records of CONSULTANT and any SUB-CONSULTANT in order to verify such party's compliance with these laws.

Any breach of CONSULTANT'S or any SUB-CONSULTANT'S warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting CONSULTANT to penalties up to and including suspension or termination of this Contract. If the breach is by a SUB-CONSULTANT and the subcontract is suspended or terminated as a result, CONSULTANT will take such steps as may be necessary to either self-perform the services that would have been provided by SUB-CONSULTANT or to retain a replacement SUB-CONSULTANT (subject to COUNTY approval if SBE or DBE preferences apply) as soon as possible so as to not delay project completion.

CONSULTANT will advise each SUB-CONSULTANT of the COUNTY'S rights and SUB-CONSULTANT'S obligations under this Article by including the following provision in each sub-contract:

“—SUBCONSULTANT hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to SUB-CONSULTANT'S employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONSULTANT further agrees that the COUNTY may inspect the SUB-CONSULTANT'S books and records to ensure that SUB-CONSULTANT complies with these requirements. Any breach of this provision by SUB-CONSULTANT is a material breach of this Contract, subjecting SUB-CONSULTANT to penalties up to and including suspension or termination of this Contract.

Any additional costs attributable directly or indirectly to remedial action under this Article are the responsibility of CONSULTANT. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of CONSULTANT'S approved construction or critical milestone schedule, such period of delay will be excusable delay for which CONSULTANT is entitled to an extension of time but not costs.

#### **ARTICLE 28 – ENTIRE AGREEMENT**

This document constitutes the entire agreement between the PARTIES pertaining to the subject matter hereof and all prior or contemporaneous agreements and understandings, whether oral or written, are hereby superseded and merged herein. This Contract may only be modified, amended, altered, or extended by a written Amendment signed by the PARTIES.

IN WITNESS WHEREOF, the PARTIES have affixed their signatures to this Contract on the dates written below.

SANTA CRUZ COUNTY:

\_\_\_\_\_  
Chairman, Board of Supervisors

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy County Attorney

\_\_\_\_\_  
Name (Please Print)

CONSULTANT:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title (Please Print)

\_\_\_\_\_  
Date