



**NOTICE AND REQUEST FOR QUALIFICATIONS
PROFESSIONAL SERVICES FOR
EPHRAIM CANYON FLOOD REDUCTION PROJECT
(SANTA CRUZ COUNTY, ARIZONA) SOQ No. S-07-23-CO038**

Santa Cruz County invites qualified consultants to submit Statements of Qualifications for Professional Services for **EPHRAIM CANYON FLOOD REDUCTION PROJECT**.

Solicitation documents and Addenda may be downloaded online by visiting: <https://www.santacruzcountyz.gov/286/Bids-Solicitations>. Solicitation documents will be available on the first publication date.

SOLICITATION CRITICAL DATES

SOLICITATION QUESTIONS DUE DATE:

All solicitation questions must be emailed to the County Contract Services Representative, Leonard Fontes, at jlfontesjr@santacruzcountyz.gov no later than **5:00 p.m./local Arizona time on July 14, 2023**. All emails must contain **“Professional Services for SANTA CRUZ COUNTY—EPHRAIM CANYON FLOOD REDUCTION PROJECT RFQ”** in the subjectline.

DIRECT CONTACT WITH SELECTION COMMITTEE MEMBERS OR ANY COUNTY EMPLOYEE OTHER THAN THE CONTRACT SERVICES REPRESENTATIVE CONCERNING THIS RFQ IS STRICTLY PROHIBITED.

MANDATORY PRE-SUBMITTAL MEETING:

A Mandatory Pre-Submittal Meeting will be held at 10:00 AM on July 5, 2023, at the Santa Cruz County Board of Supervisors Meeting Room at 2150 North Congress Drive, Nogales, Arizona 85621.

STATEMENT OF QUALIFICATIONS (SOQ) SUBMITTAL:

Submit Statement of Qualifications in PDF form via email to: jlfontesjr@santacruzcountyz.gov. Emails must be dated prior to **3:00 p.m./local Arizona time on July 21, 2023**. -

LATE STATEMENTS OF QUALIFICATIONS WILL NOT BE ACCEPTED

PROJECT REFERENCE FORMS:

The Project Reference Forms (PRF) must be emailed on or before the SOQ submittal date and time. PRFs received after the date and time specified will not be accepted. Please see form instructions (Attachment 2).

PUBLISHED: NOGALES INTERNATIONAL (AFFIDAVIT OF PUBLICATION)

DATE(S): June 20, 2023; June 23, 2023

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DATE(S): June 20, 2023; June 21, 2023



REQUEST FOR QUALIFICATIONS

PROFESSIONAL SERVICES FOR EPHRAIM CANYON FLOOD REDUCTION SOQ NO.: S-07-23-CO038

BOARD OF SUPERVISORS

DISTRICT 1
DISTRICT 2
DISTRICT 3

MANNY RUIZ, VICE-CHAIR
RUDY MOLERA
BRUCE BRACKER, CHAIR

COUNTY MANAGEMENT

COUNTY MANAGER
PUBLIC WORKS DIRECTOR &
COUNTY ENGINEER
COUNTY PROJECT MANAGER

JENNIFER ST. JOHN
JESUS VALDEZ, P.E.
LEONARD FONTES, RLS

INFORMATION AND INSTRUCTIONS TO APPLICANTS

Santa Cruz County invites qualified consultants to submit Statements of Qualifications for Professional Services for **EPHRAIM CANYON FLOOD REDUCTION PROJECT**.

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<p><u>SOLICITATION QUESTIONS DUE DATE:</u> All solicitation questions must be emailed to the County Contract Services Representative, Leonard Fontes, at jlfontesjr@santacruzcountyaz.gov no later than 5:00 p.m./local Arizona time on July 14, 2023. All emails must contain “Professional Services for SANTA CRUZ COUNTY—EPHRAIM CANYON FLOOD REDUCTION PROJECT RFQ” in the subject line.</p> <p>DIRECT CONTACT WITH SELECTION COMMITTEE MEMBERS OR ANY COUNTY EMPLOYEE OTHER THAN THE CONTRACT SERVICES REPRESENTATIVE CONCERNING THIS RFQ, AT ANY TIME IS STRICTLY PROHIBITED.</p>
<p><u>MANDATORY PRE-SUBMITTAL MEETING:</u> A Mandatory Pre-Submittal Meeting will be held at 10:00 AM on July 5, 2023, at the Santa Cruz County Board of Supervisors Meeting Room at 2150 North Congress Drive, Nogales, Arizona 85621.</p>
<p><u>STATEMENT OF QUALIFICATIONS (SOQ) SUBMITTAL:</u> Submit Statement of Qualifications PDF via email to: jlfontesjr@santacruzcountyaz.gov. Emails must be dated prior to 3:00 p.m./local Arizona time on July 21, 2023.</p> <p style="text-align: center;">LATE STATEMENTS OF QUALIFICATIONS WILL NOT BE ACCEPTED</p>
<p><u>PROJECT REFERENCE FORMS:</u> The Project Reference Forms (PRF) must be emailed on or before the SOQ submittal date and time. PRFs received after the date and time specified will not be accepted. Please see form instructions (Attachment 2).</p>
<p><u>FEE NEGOTIATIONS:</u> August 2023</p>
<p><u>FINAL CONTRACT NTP:</u> September 2023</p>

SECTION 1 – PROJECT DESCRIPTION

Santa Cruz County Public Works Department Flood Control District (“County” or the “District”) proposes to construct an aboveground earthen impoundment structure to form a retention and detention basin on undeveloped land in Ephraim Canyon between Interstate 19 and the Mariposa Port of Entry. The project would reduce downstream flows during a 100-year event from a maximum of 3,460 cubic feet per second (cfs) to approximately 299 cfs. The impoundment structure includes a basal bleeder pipe to meter out water and an emergency spillway designed to release flows greater than 500-year flood events. The basin would include a sediment retention area below the outlet elevation that may also retain water at the base of the impoundment.

For more details on the project description, please see the *Ephraim Canyon Flood Reduction Scope of Work* that is provided as a separate document and may be downloaded online by visiting the Santa Cruz County Public Works Bids and Solicitations website: <https://www.santacruzcountyaz.gov/286/Bids-Solicitations>

SECTION 2 – SCOPE OF WORK

Please see the *Ephraim Canyon Flood Reduction Scope of Work* that is provided as a separate document and may be downloaded online by visiting the Santa Cruz County Public Works Bids and Solicitations website: <https://www.santacruzcountyaz.gov/286/Bids-Solicitations>

SECTION 3 – Santa Cruz County PROJECT MANAGER

Leonard Fontes of the Santa Cruz County Public Works Department will serve as Santa Cruz County's Project Manager. The Consultant team will be expected to work collaboratively with the County's Project Manager throughout the Project.

SECTION 4– STATEMENT OF QUALIFICATIONS EVALUATION CRITERIA

The Consultant will be selected through a qualifications-based selection process using the following criteria:

A. General Information (10 points)

1. Provide a general description of the Consultant that is proposing to provide professional services. Explain the legal organization of the proposed Consultant team. Provide an organization chart showing key personnel.

Consultant:

- Each responding Consultant must submit qualifications for the Consultant which includes, an Engineer properly licensed in Arizona.
- Each Consultant submitting qualifications must provide evidence that establishes the Consultant and its primary team members have completed or demonstrate the capability to complete projects of similar size, scope, schedule and complexity and that proposed key personnel have sufficient experience and training to competently manage and complete the professional services for the Project.
- The Consultant must describe why this particular team has been assembled for this particular Project. List proposed key Consultant personnel that will be assigned to and be responsible for completion of the work on this Project and indicate their respective roles and responsibilities, as well as their availability for the full duration of the project.

2. Provide the following information:

- a. List the Arizona licenses held by the Consultant and the key personnel who will be assigned to this Project. Provide the license number(s) held by the Consultant. In order to be considered for this project, the Consultant must hold the

appropriate license(s) for this Project.

- b. For each proposed key Consultant personnel assigned to this Project, provide a list of other projects they are currently assigned including the percentage of time committed to each project.
- c. Identify the location of the Consultant's principal office and the home office location of key staff on this project.
- d. Identify any contract or subcontract held by the members of the Consultant or officers of the members of the Consultant, which has been terminated within the last five years. Identify any claims arising from a contract which resulted in litigation or arbitration within the last three years. Briefly describe the circumstances and the outcomes.

B. Experience and Qualifications of the Team (20 points)

1. Identify at least three comparable projects in which the Consultant served as the prime Consultant. Special consideration will be given to teams that have led Consultants on similar successful projects. For each project identified, provide the following:
 - a. Description of the project
 - b. Role of the firm
 - c. Project's original contracted cost and final cost
 - d. Project dates, including any extensions
 - e. Project owner
 - f. Reference information (two current names with telephone numbers per project)
2. List of all Santa Cruz County projects where the team provided design or professional services in the last five years, either completed or ongoing.

C. Experience of Key Personnel Assigned to this Project (25 points)

1. For each key person identified, list their length of time with the Consultant firm and at least two comparable projects in which they have played a primary role. If a project selected for a key person is the same as one selected for the Consultant member, provide just the project name and the role of the keyperson. Projects completed by key personnel while employed for other firms may be listed but must be so identified. Identify significant experience or attributes which will be applicable to and useful on this Project.

For other projects provide the following:

- a. Description of project

- b. Role of the person
 - c. Project's original cost and final cost
 - d. Project dates
 - e. Project owner
 - f. Reference information (two current names with telephone numbers per project)
2. List any proposed sub-consultants, including key staff names and the experience and qualifications of these individuals or firms.

At a minimum, resumes will be required for the following key personnel team members:

Project Team:

- 1. Project or Construction Manager
- 2. Key Team Members

D. Understanding of the Project and Approach to Performing the Required Services (30 points)

- 1. Discuss the major issues your team has identified on this project and how you intend to address those issues, including utility coordination and adhering to this strict schedule as described in Section 171 of the Scope of Work.
- 2. Describe your team's project management approach and team organization during each phase of the project. Describe systems used for planning, scheduling, estimating, and managing each phase of the project. Briefly describe the team's experience on quality control, dispute issue resolution, and management.
- 3. The team must demonstrate its understanding of how to actively manage the project and assist the County by describing successful delivery strategies and lessons learned on previous similar projects and describe how the identified delivery strategies and lessons learned will be utilized on this project to achieve best value and timely project delivery. The team must also discuss their process and procedures for integrating Santa Cruz County's stakeholders in the various phases of the process and to ensure the stakeholder critical features are incorporated in the Project.

E. Project References (5 points)

The County requests feedback on past performance of your projects from other than Santa Cruz County. Email a copy of Attachment 2 - Project Reference Form (PRF) for completion by the Owner, or Owner's representative, directly responsible for oversight of the project, to at least three (3) Public/Private Agencies, for which you have completed similar work.

Zero points will be awarded for projects:

- If a PRF is received after the date and time specified in this RFQ.
- If your work on the project submitted is not substantially completed.
- If your firm was not the prime Consultant for the project submitted.
- If the person requested to respond was not directly responsible for project oversight.

F. Overall Evaluation of the Consultant and its Perceived Ability to Provide the Required Services (10 points)

1. Capability - Overall evaluation of the Consultant's capability to provide the required services as determined by the selection panel members. No additional submittal response is required.
2. Availability - Provide additional information to demonstrate that key personnel are available for the full duration of the project, including current commitments and future commitments.

G. ATTACHMENTS

1. **Attachment 1 - Certification:** Form must be initialed and included in the SOQ. If not attached to SOQ, may cause submission to be considered "non-responsive".
2. **Attachment 2 - Project Reference Form (PRF):** See directions as written in PRF.
3. **Attachment 3 - Sample Professional Services Contract:** For informational purposes only, no action is required.

FAILURE TO INCLUDE ALL INFORMATION REQUESTED AND/OR FAILURE TO PROVIDE EVIDENCE THAT THE APPLICANT MEETS THE MINIMUM QUALIFICATIONS LISTED HEREIN WILL CAUSE THE INCOMPLETE STATEMENT OF QUALIFICATIONS TO BE REJECTED AND NOT BE EVALUATED OR CONSIDERED IN THE SELECTION PROCESS.

SECTION 5 – SUBMITTAL REQUIREMENTS AND GROUNDS FOR DISQUALIFICATION

Consultants interested in this project should submit a Statement of Qualifications (SOQ). Submittal requirements are as follows:

- Cover Letter:** Provide a one-page cover letter including the full firm company name, address, phone number, the name and email address of your contact person for the project, and acknowledgement of all addenda.
- Evaluation Criteria:** Address the SOQ evaluation criteria in such a way as to follow the general evaluation criteria, and include a project organizational chart.
- Certification:** Include a fully initialed copy of Attachment 1 with your SOQ submittals.
- Submittals:**

1. This SOQ may not exceed 14 single-sided pages (only 8 ½" x 11" and/or 11" x 17" page sizes will be accepted) with a minimum of 10 pt. type. Each side of a page containing evaluation criteria information will be counted toward the maximum page limit. Submissions exceeding the page limit will be considered non-responsive. Pages having project photos, charts and/or graphs will be counted towards the maximum page limit. Additional information, which is not requested in the SOQ, will be counted towards the maximum page limit.
2. The following information is **NOT** included in the page limit:
 - Front and back covers, table of contents pages, and divider (tab) pages, unless they include information that can be evaluated by the selection panel.
 - Cover letter on company letterhead, maximum one (1) page.
 - Resumes must provide information specifically related to each key team member's education and experience, maximum two (2) pages. Resumes for submitting firm key team members and subconsultants key staff must NOT include project photos, company profiles or general company information. Any additional company information or non-key staff information included in the appendix section will be counted against the maximum page requirement.
 - Attachment 1
3. SOQs must be submitted via email to: jlfontesjr@santacruzcountyaz.gov.
LATE STATEMENTS OF QUALIFICATIONS WILL NOT BE ACCEPTED.

Please be advised the following **will be grounds for disqualification**, and will be strictly enforced:

- Receipt of submittal after the specified submission date and time.
- Submittal sent to an email other than: jlfontesjr@santacruzcountyaz.gov.
- Violating the "Contact with County Employees" policy contained in this RFQ.

SECTION 6 – SELECTION PROCESS AND SCHEDULE

The successful Consultant will be selected through a qualifications-based selection process. Interested Consultants must submit a Statement of Qualifications (SOQ). A Selection Panel will evaluate and score each SOQ according to the criteria set forth in Section 4 above.

In the event that Santa Cruz County determines to award the contract:

- (1) The County will enter into negotiations with the highest scoring Consultant and execute a contract upon completion of negotiation of fees and contract terms for approval by the Board of Supervisors. If Santa Cruz County is unsuccessful in negotiating a contract with the best-qualified Consultant, the County will terminate negotiations.
- (2) Santa Cruz County may then negotiate with the next most qualified team until a contract is executed, or Santa Cruz County may decide to terminate the selection process. Once a

contract is executed with the successful Consultant, the procurement is complete.

Notwithstanding the foregoing, the County reserves the right to reject any or all submissions, or to withhold contract award for any reason the County decides. See A.R.S. § 34-201(A)(4). Further, the County reserves the right not to award a contract at all under this solicitation. Consultants selected for award through this procurement will be notified directly by Santa Cruz County. Selection results for this procurement will be posted by Santa Cruz County Public Works Bids and Solicitations website: <https://www.santacruzcountyaz.gov/286/Bids-Solicitations>

SECTION 7—GENERAL INFORMATION

Solicitation documents and Addenda may be downloaded online by visiting the Santa Cruz County Public Works Bids and Solicitations website: <https://www.santacruzcountyaz.gov/286/Bids-Solicitations>. If you have questions about obtaining the RFQ or vendor registration, please contact Leonard Fontes at (520) 375- 7830.

Changes to Request for Qualifications. Any changes to this Request for Qualifications will be issued by addendum. Santa Cruz County will not be held responsible for any oral instructions. It is the responsibility of the registered RFQ holder to determine, prior to the submittal of the SOQ, if any addendum has been issued.

Release of Project Information. Santa Cruz County will provide the release of all public information concerning the project, including selection announcements and contract awards. Those desiring to release information to the public must receive prior written approval from the Santa Cruz County.

County Rights. Santa Cruz County reserves the right to reject any or all Statements of Qualifications, to waive any informality or irregularity in any SOQs received, and to be the sole judge of the merits of the respective SOQs received.

Contact with County Employees. Beginning on the date the RFQ is issued and until the date the contract is awarded or the RFQ withdrawn, all persons or entities that respond to the RFQ, including their authorized employees, agents, representatives, proposed partner(s), subcontractor(s), joint venture(s), member(s), or any of their lobbyists or attorneys (collectively the Applicant), will refrain from any direct or indirect contact with any person (other than the designated Contract Services Representative), including members of the evaluation panel, the County Manager, Department heads, and other members of the Santa Cruz County Board of Supervisors. As long as the RFQ solicitation is not discussed, Applicants may continue to conduct business with the County and discuss business that is unrelated to this RFQ solicitation with County staff. This policy is intended to create a level playing field for all Applicants, assure that contracts are awarded in public, and protect the integrity of the selection process. **APPLICANTS THAT VIOLATE THIS POLICY WILL BE DISQUALIFIED.**

Conflict of Interest. Santa Cruz County reserves the right to disqualify any Applicant on the basis of any real or apparent conflict of interest that is disclosed by the proposal submitted or any other data available to Santa Cruz County. This disqualification is at the sole discretion of the County.

Any Applicant submitting a proposal herein waives any right to object now or at any future time, before any body or agency, including but not limited to the Santa Cruz County Board of Supervisors or any court.

Data Confidentiality. Except as specifically provided in the Contract, the team or its subconsultants/subcontractors must not divulge data to any third party without prior written consent of the County.

Legal Worker Requirements. Santa Cruz County is prohibited by A.R.S. § 41-4401 from awarding a contract to any team who fails, or whose subconsultants/subcontractors fail, to comply with A.R.S. § 23- 214(A). The team and each subconsultant/subcontractor must comply with all federal immigration laws and regulations related to their employees and compliance with the stated law. Santa Cruz County retains the legal right to inspect the papers of any team or subconsultants/subcontractors employee who is awarded a contract to ensure that the team or subconsultant/subcontractor is complying with the law.

Lawful Presence Requirement. Pursuant to A.R.S. §§ 1-501 and 1-502, Santa Cruz County is prohibited from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign an affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships or limited liability companies.

No Israel Boycott. By entering into this contract, the team certifies that they are not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel as defined in the state statute.

Uyghurs Certification. Pursuant to and in compliance with A.R.S. § 35-394, Contractor hereby agrees and certifies that it does not currently, and agrees for the duration of this Agreement that Consultant will not, use:

- (1) the forced labor of ethnic Uyghurs in the People's Republic of China;
- (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; **or**
- (3) any Consultants, Subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

Protest Policy. Per A.R.S. §§ 41-2578(C)(2)(f) and (J), protests shall be handled pursuant to the Arizona Procurement Code (A.A.C. R2-7-A901 et seq.). Protests must be in writing and should be directed to jlfontesjr@santacruzcountyz.gov, with a copy to the state procurement administrator. If the protest is based upon alleged improprieties in this RFQ that are apparent before the offer due date and time, any protest shall be filed before the offer due date and time. In all other cases, protests shall be filed within 10 days after selection results for this procurement will be posted by

Santa Cruz County Public Works Bids and Solicitations website. For complete protest requirements, see the Arizona Procurement Code.

Questions. Questions pertaining to this selection process or contract issues should be directed to the Project Manager, Leonard Fontes at jlfontesjr@santacruzcountyaz.gov

Attachment 1
CERTIFICATION

I hereby consent and certify all statements below by initialing each box:	
<p>Initial</p> <input style="width: 50px; height: 30px;" type="text"/>	<p align="center">CERTIFICATE OF INSURABILITY</p> <p>I hereby certify that as an Applicant to Santa Cruz County for a Professional Services Contract, I am fully aware of insurance requirements contained in the Contract and by the submission of this Statement of Qualifications, I hereby assure Santa Cruz County that I am able to produce the insurance coverage required should I be selected to be awarded a Contract.</p> <p>Should I be awarded a Contract by Santa Cruz County, and then become unable to produce the insurance coverage specified within ten working days, I am fully aware and understand that I may not be considered for further projects by Santa Cruz County.</p>
<p>Initial</p> <input style="width: 50px; height: 30px;" type="text"/>	<p align="center">CONTRACT REVIEW STATEMENT</p> <p>As an Applicant to Santa Cruz County for a Professional Services Contract, I hereby certify that I have reviewed the Standard Form Professional Services Contract and have listed any objections to them below. The response must clearly identify if the attached contract is acceptable in all respects including warranty, insurance, and document ownership and retention requirements. If the contract is not acceptable, the response must identify the unacceptable clauses and must provide suggested alternate language. General or vague statements or invitations to discuss further are not adequate answers.</p> <p>I am aware; any objections to the Standard Form Professional Services Contract will be considered and included in the County's evaluation of my firm's qualifications. I am also aware, if I fail to list any objections to the County's Standard Professional Services Contract, I will not be allowed to raise any objections later if selected as the most qualified Applicant.</p>
<p>Initial</p> <input style="width: 50px; height: 30px;" type="text"/>	<p align="center">AUTHORIZATION FOR RELEASE OF PERFORMANCE INFORMATION AND WAIVER</p> <p>As an Applicant to Santa Cruz County for a Professional Services Contract, I hereby consent and authorize all those companies and government entities listed in my Statement of Qualifications and any other government entity for whom this company has performed professional services, to disclose and release to Santa Cruz County, or their representatives, information, records and opinions concerning this company's professional services performance. The purpose of this disclosure is to provide references to Santa Cruz County. I hereby waive any claim it may have against Santa Cruz County or any company or entity providing information to Santa Cruz County by reason of any information being disclosed or opinions provided regarding the actions or performance of this company.</p> <p>This authorization for disclosure of information is effective for the duration of the contract. This consent or copy of this authorization must be as valid and effective as the original.</p>

Attachment 2
PROJECT REFERENCE FORM (PRF)

Directions: Request three (3) Public/Private Agencies other than Santa Cruz County, for which you have completed similar work, to complete a copy of this PRF. Provide this form to the Owner, or Owner’s representative, directly responsible for oversight of the project to **COMPLETE AND SUBMIT THE PRF BY EMAIL TO: JLFONTESJR@SANTACRUZCOUNTYAZ.GOV PRIOR TO THE SOQ SUBMITTAL DEADLINE.** PRFs received after the date and time specified will not be accepted.

RFQ for:	PROFESSIONAL SERVICES FOR SANTA CRUZ COUNTY EPHRAIM CANYON FLOOD REDUCTION PROJECT Project No.: S-07-23-CO038				
Name of Firm to be Evaluated:					
Name of Project completed by the firm:					
QUESTIONS:					
Is the above referenced project already been complete? (circle one)	Yes	No			
If project is complete, enter completion date:					
What project delivery method was utilized?	<input type="checkbox"/> Design-Bid-Build	<input type="checkbox"/> Design-Build	<input type="checkbox"/> CMAR	<input type="checkbox"/> JOC	
Using the scale below, how would you rate this firm’s performance on the following:					
	Poor 1 2	Fair 3 4	Good 5 6	Very Good 7 8	Excellent 9 10
How would you rate work performed by this firm on your project?					
Was the work completed on time?					
Was the work completed within budget?					
What was the quality of the work performed?					
Was staff proactive in solving problems that may have occurred on your project?					
What was the extent of staff turnover? (10=low staff turnover, 1=high staff turnover)					
Would you be willing to contract with this firm again? (10=Yes, 1=No)					
TOTAL POINTS					

Name of Agency or Firm Submitting Evaluation: _____

Name and Phone Number of Person Submitting Evaluation: _____

Attachment 3

**SAMPLE PROFESSIONAL SERVICES CONTRACT
(FOR INFORMATIONAL PURPOSES ONLY)**

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

W I T N E S S E T H

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 Firm’s sub-consultants shall be subject to the same minimum requirements identified above.

4.1.2 Automobile Liability: Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract with a Combined Single Limit (CSL) of \$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, including automobiles owned, leased, hired or borrowed by the Consultant.” Prospective Firm’s sub-consultants shall be subject to the same minimum requirements identified above.

4.1.3 Workers’ Compensation and Employers’ Liability

- Workers’ Compensation Statutory requirements and benefits
- Employer’s Liability
 - Each Accident \$1,000,000
 - Disease—Each Employee \$1,000,000
 - Disease—Policy Limit \$1,000,000

Policy shall contain a waiver of subrogation against the County of Santa Cruz. Consultant’s sub-consultants shall be subject to the same minimum requirements identified in this section.

4.1.4 Professional Liability (Errors and Omissions Liability)

- Each Claim \$1,000,000
- Annual Aggregate \$2,000,000

In the event that any professional liability insurance required by this Contract is written on a claims-made basis, Consultant warrants that any retroactive date under the policy shall precede the effective date of this Contract and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed. Policy shall contain a **waiver of subrogation** against the County of Santa Cruz.

4.1.5 Professional Liability (Errors and Omissions) for Sub-Consultants: (Projects with an estimated construction cost of \$5,000,000.00 or greater.). In addition to the insurance requirements for the Consultant, the consultant’s registered sub-consultants (including structural, civil, mechanical, plumbing, electrical engineering, landscape architecture, survey, geotechnical and materials testing) are required to carry Professional Liability insurance as follows:

- *Estimated Project Construction Cost of \$5,000,000 to \$25,000,000*
 - Each registered sub-consultant will carry:
 - Each Claim \$1,000,000
 - Annual Aggregate \$1,000,00
- *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, t h e 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, t h e 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:

- | | |
|---|--|
| <u>COUNTY:</u>
<Project Manager>
<Requesting Department>
<Building Location>
<Address>
<City, State, & Zip Code>
<Tel: (XXX) XXX-XXXX>
<Fax: (XXX) XXX-XXXX> | <u>CONSULTANT:</u>
<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 P A R T Y ' 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.

SANTACRUZCOUNTY:

CONSULTANT:

Chairman, Board of Supervisors

Signature

Date

Name and Title (Please Print)

Date

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:

Deputy County Attorney

Name (Please Print)