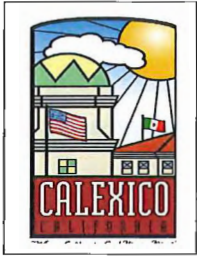


**AGENDA
ITEM**

9



AGENDA STAFF REPORT

DATE: March 16, 2022

TO: Mayor and City Council

PREPARED BY: Miguel Figueroa, City Manager
Best Best & Krieger LLP, City Attorney

APPROVED BY: Miguel Figueroa, City Manager *MF*

SUBJECT: Authorize City Manager to Enter into a Funding Agreement with Imperial County Air Pollution Control District for Funding for Alleyway Paving Project with the Recommended Changes Submitted by ICAPCD

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Recommendation:

It is recommended that the City enter into the attached Funding Agreement with Imperial County Air Pollution Control District (“ICAPCD”) for funding assistance for the Alleyway Paving Project (“Project”) with the recommended changes submitted by ICAPCD.

Background:

The federal Environmental Protection Agency (“EPA”) 2021 Targeted Airshed Grant Program (“Program”) assists local, state, and/or tribal air pollution control agencies to conduct emission reduction activities to reduce air pollution, especially in areas with the highest levels of ozone and PM_{2.5} ambient air concentrations. ICAPCD has received some of this funding for projects in Imperial County. ICAPCD has presented the City with a standard funding agreement for the Project.

Discussion

Staff recommends that the City enter into the proposed Funding Agreement with ICAPCD for funding assistance for a community project consisting of the paving of approximately 3.46 miles of unpaved alleyways in Calexico in an attempt to mitigate PM₁₀ and PM_{2.5}. The terms of the Funding Agreement are summarized as follows:



- City would receive up to \$3,350,371 for the Project
 - Exhibit "A" – Scope of Work for the Project
 - Exhibit "B" – Phasing Plans for the Project
- Within 30 days of approving completion of each Phase, ICAPCD will provide funding for that Phase.
- City will comply with prevailing wage and other Labor Code requirements.
- City will indemnify ICAPCD and carry required insurance.

On February 15, 2022, the ICAPCD notified the City of Calexico that the project agreement formally adopted by City Council on December 1, 2021 had been updated to reflect the newly appointed Chairman of our Board and changes to the following provisions on the agreement:

- Provision 11.2.7 and Provision 19.1.3 has been changed as well from the original funding agreement. The modification of Provision 11.2.7 was made in order to properly reflect the relationship and responsibilities between APCD, the GRANTEE, and its contractors. And Modification of Provision 19.1.3 now includes Professional Liability Insurance requirement for Errors and Omissions.

It is recommended by the City Attorney to authorize the City Manager to enter into the Funding Agreement with ICAPCD with the requested changes.

Fiscal Impact:

The City would receive up to \$3,350,371.00 to fund the Project.

Attachment:

1. Funding Agreement with ICAPCD with Exhibits.

FUNDING AGREEMENT

City of Calexico

THIS AGREEMENT FOR FUNDING (“Agreement”), made and entered into this _____ day of _____, 2022, by and between IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT, an air pollution control district formed and existing pursuant to California Health and Safety Code section 40002 (“ICAPCD”), and CITY OF CALEXICO (“CITY”), a municipal corporation of the State of California (“CITY”) (individually, “Party” collectively, “Parties”) shall be as follows:

RECITALS

WHEREAS CITY submitted a project proposal to ICAPCD seeking funding assistance from ICAPCD for a community project consisting of the paving of approximately 3.46 miles of unpaved alleyways in Calexico, California (“Project”) in an attempt to mitigate PM₁₀ and PM_{2.5}; and

WHEREAS, CITY has requested funding through ICAPCD’s Targeted Air Shed Grant in the amount of three million three hundred fifty thousand three hundred seventy-one dollars (\$3,350,371.00) to carry out the Project; and

WHEREAS, ICAPCD believes CITY’s request provides air quality and health benefits to a large number of citizens in Imperial County; and

WHEREAS, ICAPCD desires to provide such funding to CITY, subject to the terms and conditions provide for herein; and

WHEREAS, ICAPCD is authorized to enter into this Agreement under the provisions of California Health and Safety Code section 40701.

NOW THEREFORE, for and in consideration of the mutual promises set out herein, ICAPCD and CITY have and hereby agree as follows:

1. INCORPORATION OF RECITALS.

1.1. PARTIES hereby certify that to the best of their knowledge, the above recitals are true and correct.

1.2. The above recitals are hereby adopted and incorporated within this Agreement.

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2. DEFINITIONS.

“Scope of Work” shall mean that document that describes the Project and project requirements. The Scope of Work is attached hereto as **Exhibit "A"** and incorporated herein by this reference.

3. CONTRACT COORDINATION.

3.1. The Air Pollution Control Officer, or his/her designee, shall be the representative of ICAPCD for all purposes under this Agreement. The Air Pollution Control Officer, or his/her designee, is hereby designated as Contract Manager for ICAPCD. He/she shall supervise the progress and execution of this Agreement.

3.2. CITY shall assign a single Contract Manager to have overall responsibility for the progress and execution of this Agreement. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Contract Manager for any reason, the Contract Manager designee shall be subject to the prior written acceptance and approval of ICAPCD’s Contract Manager.

4. SCOPE OF WORK.

CITY shall provide all materials and labor to perform this Agreement consistent with the Scope of Work, attached hereto as **Exhibit “A.”** In the event of a conflict amongst this Agreement and the Scope of Work, this Agreement shall take precedence.

5. WORK TO BE PERFORMED BY CITY

5.1. CITY shall comply with all terms, conditions, and requirements of the Scope of Work and this Agreement.

5.2. CITY shall perform such other tasks as necessary and proper for the full performance of the obligations assumed by CITY hereunder.

5.3. CITY shall:

5.3.1. Procure all permits and licenses, pay all charges and fees, and give all notices that may be necessary and incidental to the due and lawful prosecution of the work to be performed by CITY under this Agreement;

- 5.3.2. Keep itself fully informed of all existing and proposed federal, State and local laws, ordinances, regulations, orders and decrees which may affect those under this Agreement;
- 5.3.3. At all times observe and comply with, and cause all of its employees to observe and comply with all of said laws, ordinances, regulations, orders and decrees mentioned above; and
- 5.3.4. Immediately report to ICAPCD's Contract Manager in writing any discrepancy or inconsistency it discovers in said laws, ordinances, regulations, orders, and decrees mentioned above in relation to any provisions of this Agreement.

6. REPRESENTATIONS BY CITY

- 6.1. CITY represents and warrants that it is a lawful entity possessing all required licenses and authorities to do business in the State of California and perform all aspects of this Agreement.
- 6.2. CITY represents and warrants that the person or people executing this Agreement on behalf of CITY have the authority of CITY to sign this Agreement and bind CITY to the performance of all duties and obligations assumed by CITY herein.
- 6.3. CITY represents and warrants that any employee, contractor, and/or agent who will be performing any of the duties and obligations of CITY herein possess all required licenses and authorities, as well as the experience and training, to perform such tasks.
- 6.4. CITY understands that ICAPCD considers the representations made herein to be material and would not enter into this Agreement with CITY if such representations were not made.
- 6.5. CITY understands and agrees that in the course of performance of this Agreement, CITY may be provided with information or data considered by ICAPCD to be confidential. ICAPCD shall clearly identify such information and/or data as confidential. CITY shall take all necessary steps necessary to maintain such confidentiality, including but not limited to restricting the dissemination of all material received to those required to have such data in order for CITY to perform under this Agreement.

7. **TERM OF AGREEMENT.**

This Agreement shall become effective upon the date first written above and shall remain in effect until the work to be performed under **Exhibit “A”** is completed, unless otherwise terminated as provided for herein.

8. **FUNDING.**

8.1. The total funding under this Agreement shall not exceed **three million three-hundred fifty-thousand thousand three hundred seventy-one dollars (\$3,350,371.00).**

8.2. Except as provided in Paragraph 8.1, ICAPCD shall not be responsible to pay CITY any additional funding, compensation, out-of-pocket expenses, fees, or other remuneration.

8.2 ICAPCD will leverage up to **one hundred eighty-five thousand three hundred twenty-eight dollars (\$185,328.00)** for Project Management, including personnel time and fringe benefits.

9. **PAYMENT OF FUNDING TO CITY FROM ICAPCD.**

9.1 CITY is to receive funding from ICAPCD in accordance with the Phasing Plans for the Alleyway Paving Project, attached hereto as **Exhibit “B”** and incorporated herein by this reference. CITY’s work on each phase of the Project is not deemed complete until reviewed, inspected and approved by ICAPCD staff.

10. **METHOD OF PAYMENT.**

Upon the approval from ICAPCD of the completion of each phase of the Project, CITY shall receive funding within a reasonable time thereafter, and in any event, in the normal course of business, within thirty (30) days after ICAPCD has approved the completion of each phase of the Project in accordance with **Exhibit “A”** and **Exhibit “B.”**

11. **PREVAILING WAGE, REGISTRATION, APPRENTICESHIP, AND OTHER REQUIREMENTS.**

11.1. CITY is hereby on notice that the work to be performed under this Agreement in connection with the Project may be subject to the prevailing wage, registration, apprenticeship, and other provisions of the California Labor Code.

11.2. In the event a determination is made by the California Department of the Industrial Relations (“DIR”) that said work under the Project is "public works" within the meaning of the California Labor Code, the CITY agrees to the fullest extent permitted by law to indemnify, defend, protect and hold ICAPCD and its representatives, officers, directors, designees, employees, agents, successors and assigns harmless from any and all claims, expenses, liabilities, causes of action, demands, losses, penalties, attorneys' fees and costs, in law or equity, of every kind and nature whatsoever arising out of or in connection with the City’s failure to comply with such a determination, and further agrees to abide by the following provisions:

11.2.1. Prevailing Wage. CITY shall require its contractor and subcontractors to pay all workers employed on the Project the higher of either the rates determined by the Director of DIR, or when applicable, the Davis-Bacon Federal wage rates as supplemented by the Department of Labor regulations.

- (a) Copies of the State prevailing rate of per diem wages are on file with the Department of Industrial Relations, Division of Apprenticeship Standards, 445 Golden Gate Avenue, San Francisco, California, and at the Imperial County Department of Public Works, and are available to CITY and any other interested party upon request.
- (b) CITY’s contractor shall post the prevailing rate of per diem wages at the Project work site.
- (c) CITY is responsible for compliance with the provisions herein.

11.2.2. Mandatory Registration with the Department of Industrial Relations - NEW REQUIREMENTS PURSUANT TO SB 854.

- (a) CITY’s contractor and their subcontractors shall be registered with the DIR and pay all applicable fees as set forth in Labor Code section 1725.5.
- (b) CITY shall not select a contractor unless the contractor is registered with the DIR pursuant to Labor Code section 1725.5. The requirements of this

section shall apply unless one of the limited exceptions provided under Labor Code Section 1771.1(a) applies.

- (c) CITY shall not award any contract for public work on a public works project (awarded on or after April 1, 2015) to a contractor unless the contractor is registered with the DIR pursuant to Labor Code section 1725.5.
- (d) The work on the Project described herein may be subject to compliance monitoring and enforcement with the DIR.
- (e) For further information concerning compliance with SB 854, please visit: <http://www.dir.ca.gov/Public-Works/854.html>.

11.2.3. Cognizance of Violations by ICAPCD.

- (a) CITY understands and agrees that ICAPCD shall take cognizance of violations of Chapter 1 of Part 7 of Division 2 of the California Labor Code committed in the course of the execution of this Agreement, and shall promptly report any suspected violations to the Labor Commissioner.
- (b) If applicable, CITY may bring an action in a court of competent jurisdiction to recover from ICAPCD the difference between the wages actually paid to an employee and the wages that were required to be paid to an employee pursuant to Chapter 1 of Part 7 of Division 2 of the California Labor Code, any penalties required to be paid pursuant to Chapter 1 of Part 7 of Division 2 of the California Labor Code, and costs and attorney's fees related to the action, if either of the following is true:
 - (i) ICAPCD previously affirmatively represented to CITY in writing, in the call for bids, or otherwise, that the work was not a “public work,” as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code; or
 - (ii) ICAPCD received actual written notice from the Department of Industrial Relations that the work is a “public work,” as defined in

Chapter 1 of Part 7 of Division 2 of the California Labor Code, and failed to disclose that information to CITY before the bid opening or award.

11.2.4. Prevailing Wage Rates and Payroll Records.

- (a) CITY shall require its contractor and their subcontractors to comply with §§ 1775 and 1776 of the California Labor Code relating to the payment of prevailing wage and the maintenance of certified payroll records and to make the certified payroll records available for inspection at all reasonable hours at the contractor's principal office. The responsibility for compliance with these provisions is fixed with the CITY's contractor, who the CITY must inform, and the contractor must understand and agree, that it shall, as a penalty to CITY, forfeit specific monetary fines for each worker paid less than the prevailing wage rates as determined by the Labor Commissioner for the work or craft in which the worker is employed for any work done pursuant to this Agreement.
- (b) CITY's contractor shall be liable for penalties when a subcontractor fails to pay its workers the general prevailing rate of per diem wages and any of the following conditions are met:

 - (i) CITY's contractor had knowledge of the failure of the subcontractor to pay the specified prevailing rate of wages to those workers; or
 - (ii) CITY fails to comply with the following requirement: The contract executed between CITY and its contractor for the performance of work on the Project shall include a copy of the provisions of California Labor Code §§ 1771, 1775, 1776, 1777.5, 1813 and 1815; and
 - (iii) CITY fails to comply with the following requirement: CITY shall monitor the payment of the specified general prevailing rate of per

diem wages by its contractor to its employees, by periodic review of the certified payroll records of the contractor; and

- (iv) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, CITY shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the Project; and
- (v) Prior to making final payment to its contractor for work performed on the Project, CITY shall obtain an affidavit signed under penalty of perjury from its contractor that the contractor has paid the specified general prevailing rate of per diem wages to his or her employees on the Project work and any amounts due pursuant to California Labor Code § 1813.

11.2.5. Work Day and Work Week Requirements.

- (a) CITY agrees to require its contractor and their subcontractors to comply with §§ 1810 through 1815 of the California Labor Code and, when applicable, sections 103 and 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 3700 et seq., as supplemented by the Department of Labor regulations, which provide that contractor's workers and their subcontractors' workers may not be required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week.
- (b) Work performed by employees of CITY's contractor and their subcontractors in excess of eight (8) hours per day, and forty (40) hours during any one (1) week, shall be compensated for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

- (c) The responsibility for compliance with these provisions is fixed with CITY's contractor and their subcontractor, who the CITY must inform, and the contractor must understand and agree, that as a penalty to CITY, forfeit specific monetary fines to CITY should CITY's contractor or their subcontractors fail to comply with the provisions contained within this paragraph.

11.2.6. Apprenticeship Requirements.

- (a) CITY agrees to require its contract to comply with §§ 1777.5, 1777.6 and 1777.7 of the California Labor Code relating to the employment of apprentices and to provide ICAPCD with copies of any contract award information and verified statements of the journeyman and apprentice hours performed pursuant to this Agreement as required by § 1777.5(e).
- (b) The responsibility for compliance with these provisions is fixed with CITY's contractor and their subcontractors for all apprenticeable occupations, where journeymen in the craft are employed on the public work, in a ratio of not less than one (1) apprentice for each five (5) journeymen (unless an exemption is granted in accordance with § 1777.5) and CITY's contractor and their subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public work solely on the ground of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in California Labor Code § 3077.
- (c) If the Project work falls within the jurisdiction of California Labor Code § 1777.5, ICAPCD shall, within five (5) days of the award, send a copy of the award to the Division of Apprenticeship Standards. In addition, ICAPCD shall notify the Division of Apprenticeship Standards of a finding of any discrepancy regarding the ratio of apprentices to journeymen within five (5) days of the finding.

11.2.7. Labor Standards Compliance Requirements.

- (a) It is CITY's contractor's responsibility to provide all labor compliance documentation from its contractor and their subcontractors completely and accurately in a timely manner. CITY's contractor is responsible to review promptly and then forward on all required documentation to CITY per the time schedules in the Labor Compliance Handout. Included with the Labor Compliance Handout, CITY's contractor will provide training, documentation requirements, forms, etc., at the preconstruction conference or at a time designated by CITY.
- (b) In the event, during the review process of labor compliance documentation from CITY's labor compliance monitor, inaccurate, missing or incomplete information was provided, the labor compliance monitor will request from CITY's contractor the items, revisions and documentation needed. The cost of this additional labor compliance enforcement shall be borne by CITY's contractor.

12. TIME FOR COMPLETION OF THE WORK.

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

12.2. Time extensions may be allowed for delays caused by ICAPCD, other governmental agencies, or factors not directly brought about by the negligence or lack of due care on the part of CITY

12.2.1. Such requests for extension shall be in writing and shall be forwarded to the attention of the ICAPCD Contract Manager.

12.2.2. All requests for extension outline the factual bases for the request.

13. MAINTENANCE AND ACCESS OF BOOKS AND RECORDS.

CITY shall maintain books, records, documents, reports and other materials developed under this Agreement as follows:

13.1. CITY shall maintain all reports, documents, and records, which demonstrate performance under this Agreement for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

13.2. Any records or documents required to be maintained by CITY pursuant to this Agreement shall be made available to ICAPCD for inspection or audit at any time during CITY's regular business hours; provided that ICAPCD provides CITY with seven (7) days advanced written or e-mail notice. Copies of such documents shall, at no cost to ICAPCD, be provided to ICAPCD for inspection at CITY, INC's address indicated for receipt of notices under this Agreement.

14. SUSPENSION OF AGREEMENT.

ICAPCD's Contract Manager shall have the authority to suspend this Agreement, in whole or in part, for such period as deemed necessary due to CITY's failure to complete part of or all of the work required under each phase of the Project as further described in **Exhibit "A"** and **Exhibit "B."**

15. TERMINATION.

15.1. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, unless such period is extended by mutual written consent, shall constitute a default under this Agreement. Any notice given pursuant to this section shall specify the nature of the alleged failure and, where possible, the manner in which the failure may be satisfactorily cured.

15.2. Upon failure to cure as herein provided, the Party alleging the failure may institute legal or equitable proceedings to enforce this Agreement.

16. INSPECTION.

CITY shall furnish ICAPCD with every reasonable opportunity for ICAPCD to ascertain that the work being performed by CITY is in accordance with the requirements and intentions of this Agreement. The inspection of such work shall not relieve CITY of any of its obligations to fulfill its Agreement as prescribed.

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17. INTEREST OF CITY.

- 17.1. CITY covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder.
- 17.2. CITY covenants that, in the performance of this Agreement, no contractor, subcontractor, or person having such an interest shall be employed.
- 17.3. CITY certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of ICAPCD.

18. INDEMNIFICATION.

To the greatest extent permitted by law, CITY agrees to indemnify, defend, protect and hold harmless ICAPCD and its representatives, officers, directors, designees, employees, successors and assigns from and against any and all claims, actions, demands, liabilities, damages, losses, and expenses of whatever kind, which are in any manner in whole or in part, or which are caused or contributed to in whole or in part, or which are claimed to be caused or contributed to in whole or in part even though such claims may be groundless, false, or fraudulent, by any willful misconduct or negligence or anyone acting under CITY's direction in connection with or incident with the services provided hereunder, unless the same be caused by the sole or concurrent negligence or willful misconduct of ICAPCD.

19. INSURANCE REQUIREMENTS.

- 19.1. CITY hereby agrees, at its sole cost and expense, to obtain and maintain in full force during the entire term of this Agreement (or extended term thereof) the following types of insurance as detailed below:
 - 19.1.1. Commercial General Liability. Coverage in a minimum amount of five million dollars (\$5,000,000) combined single limit to any one person, and ten million dollars (\$10,000,000) aggregate for any one accident, including personal injury, death, and property damage.
 - 19.1.2. Commercial Automobile Liability. Coverage in a minimum amount of one million dollars (\$1,000,000) combined single limit.
 - 19.1.3. Professional Liability. Errors and Omissions coverage in a minimum amount of

two million dollars (\$2,000,000) per person, per occurrence.

19.1.4 Workers' Compensation.

- (a) Coverage, if applicable, in full compliance with California statutory requirements, for all employees of CITY
- (b) Prior to the commencement of any work, CITY shall sign and file with ICAPCD the following certification: "I am aware of the provisions of California Labor Code §§3700 et seq. which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
- (c) This certification is included in this Agreement and signature of the Agreement shall constitute signing and filing of the certificate.
- (d) CITY understands and agrees that any and all employees, regardless of hire date, shall be covered by Workers' Compensation pursuant to statutory requirements prior to beginning any work on the Project.
- (e) Worker's Compensation coverage shall not be required if CITY does not, at any time, have any employees during the term of this Agreement, and any extension thereof.
 - (i) If CITY does not have any employees, initial here _____.
 - (ii) Should status change, CITY shall immediately notify ICAPCD in writing and comply with the insurance requirements above.

19.1.5. Employers Liability.

- (a) Coverage, if applicable, in the minimum amount of one million dollars (\$1,000,000) per accident for bodily injury and disease.
- (b) Employer's Liability coverage shall not be required if CITY does not, at any time, have any employees during the term of this Agreement, and any extension thereof.

- (i) If CITY does not have any employees, initial here _____.
- (ii) Should this status change, CITY shall immediately notify ICAPCD in writing and comply with the insurance requirements above.

19.2. Special Insurance Requirements. All insurance required shall:

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

19.2.2. Be primary coverage as respects ICAPCD and any insurance or self-insurance maintained by ICAPCD shall be in excess of CITY's insurance coverage and shall not contribute to it.

19.2.3. Name the Imperial County Air Pollution Control District and the County of Imperial and their officers, employees, and volunteers as additional insured on all policies, except Workers' Compensation insurance, and provide that ICAPCD may recover for any loss suffered by ICAPCD due to CITY's negligence.

19.2.4. State that it is primary insurance and regards ICAPCD and County of Imperial as additional insureds and contains a cross-liability or severability of interest clause

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

19.3. Additional Insurance Requirements.

19.3.1. ICAPCD is to be notified immediately of all insurance claims. ICAPCD is also to be notified if any aggregate insurance limit is exceeded.

19.3.2. The comprehensive or commercial general liability shall contain a provision of endorsements stating that such insurance:

- (a) Includes contractual liability;
- (b) Does not contain any exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to by insurers as the "XCU Hazards;"
- (c) Does not contain a "pro rata" provision which looks to limit the insurer's liability to the total proportion that its policy limits bear to the total coverage available to the insured;
- (d) Does not contain an "excess only" clause which require the exhaustion of other insurance prior to providing coverage;
- (e) Does not contain an "escape clause" which extinguishes the insurer's liability if the loss is covered by other insurance;
- (f) Includes ICAPCD and County of Imperial as additional insureds.
- (g) States that it is primary insurance and regards ICAPCD and County of Imperial as additional insureds and contains a cross-liability or severability of interest clause.

19.4. Deposit of Insurance Policy. Promptly on issuance, reissuance, or renewal of any insurance policy required by this Agreement, CITY shall, if requested by ICAPCD, provide ICAPCD satisfactory evidence that insurance policy premiums have been paid together with a duplicate copy of the policy or a certificate evidencing the policy and executed by the insurance company issuing the policy or its authorized agent.

19.5. Certificates of Insurance. CITY agrees to provide ICAPCD with the following insurance documents on or before the effective date of this Agreement:

19.5.1. Complete copies of certificates of insurance for all required coverages, including additional insured endorsements, shall be attached hereto as Exhibit "B" and incorporated herein.

19.5.2. The documents enumerated in this Paragraph shall be sent to the following:

County of Imperial
Risk Management Department
940 Main Street, Suite 101
El Centro, CA 92243

and

Imperial County Air Pollution Control District
150 South 9th Street
El Centro, CA 92243

19.6. Additional Insurance. Nothing in this, or any other provision of this Agreement, shall be construed to preclude CITY from obtaining and maintaining any additional insurance policies in addition to those required pursuant to this Agreement.

20. INDEPENDENT CONTRACTOR.

20.1. Nothing contained herein shall be construed to create, and the Parties hereto expressly disclaim any intent to create, any form of agency relationship, joint venture, or partnership.

20.2. CITY on its own behalf, and on the behalf of its agents and employees, agrees that CITY is acting as an independent contractor, and not as an agent, officer or employee of ICAPCD.

20.3. CITY is not an employee of ICAPCD and is only responsible for the requirements and results specified by this Agreement.

20.4. CITY shall be responsible to ICAPCD only for the requirements and results specified by this Agreement and except as specifically provided in this Agreement, shall not be subject to ICAPCD's control with respect to the physical actions or activities of CITY in fulfillment of the requirements of this Agreement.

20.5. CITY is not, and shall not be, entitled to receive from, or through, ICAPCD, and ICAPCD shall not provide, or be obligated to provide, CITY with Workers' Compensation coverage or any other type of employment or worker insurance or benefit coverage

required or provided by any federal, state or local law or regulation for, or normally afforded to, an employee of ICAPCD.

- 20.6. CITY shall not be entitled to have ICAPCD withhold or pay, and ICAPCD shall not withhold or pay, on behalf of CITY, any tax or money relating to the Social Security Old Age Pension Program, Social Security Disability Program, or any other type of pension, annuity, or disability program required or provided by any federal, state, or local law or regulation.
- 20.7. CITY shall not be entitled to participate in, or receive any benefit from, or make any claim against any ICAPCD fringe benefit program, including, but not limited to, ICAPCD's pension plan, medical and health care plan, dental and eye care plan, life insurance plan, or any other type of benefit program, plan, or coverage designated for, provided to, or offered to ICAPCD's employees.
- 20.8. ICAPCD shall not withhold or pay, on behalf of CITY, any federal, state, or local tax, including, but not limited to, any personal income tax, owed by CITY
- 20.9. CITY is, and at all times during the term of this Agreement, shall represent and conduct itself as an independent contractor, not as an employee of ICAPCD.
- 20.10. CITY shall not have the authority, express or implied, to act on behalf of, bind, or obligate ICAPCD in any way without the written consent of ICAPCD.

21. ASSIGNMENT.

Neither this Agreement nor any duties or obligations hereunder shall be assignable by CITY without the prior written consent of ICAPCD.

22. NON-DISCRIMINATION.

- 22.1. During the performance of this Agreement, CITY and its contractor or subcontract shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over forty (40)), marital status and denial of family care leave.

- 22.2. CITY and its contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- 22.3. CITY and its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285 et seq.).
- 22.4. The applicable regulations of the Fair Employment and Housing Commission implementing Government Code §12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- 22.5. The applicable regulations of §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794 (a)) are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- 22.6. CITY and its contractors and subcontractors shall give written notice of their obligations under Section 22 to labor organizations with which they have a collective bargaining or other agreement.
- 22.7. CITY shall include the nondiscrimination and compliance provisions of Section 22 in all subcontracts to perform work under this Agreement.

23. NOTICES.

- 23.1. Any notice by either party to the other shall be personally delivered to the party or sent by certified mail, return receipt requested, to the addresses set forth below:

ICAPCD:
Imperial County Air Pollution Control District
150 South 9th Street
El Centro, CA 92243
and

CITY:
City of Calexico
608 Heber Avenue
Calexico, CA 92231

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Imperial County Air Pollution Control District
Clerk of the District Board of Directors
940 West Main Street, Suite 209
El Centro, CA 92243

23.2. Notice shall be deemed to have been delivered only upon receipt by the Party, seventy-two (72) hours after deposit in the United States mail, or twenty-four (24) hours after deposit with an overnight carrier.

23.3. The addressees and addresses for purposes of this Section may be changed to any other addressee and address by giving written notice of such change. Unless and until written notice of change of addressee and/or address is delivered in the manner provided in this Section, the addressee and address set forth in this Agreement shall continue in effect for all purposes hereunder.

24. ENTIRE AGREEMENT.

This Agreement contains the entire contract between ICAPCD and CITY relating to the transactions contemplated and supersedes all prior or contemporaneous agreements, understandings, provisions, negotiations, representations, or statements, either written or oral.

25. MODIFICATION.

No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by both Parties.

26. CAPTIONS.

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

27. PARTIAL INVALIDITY.

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

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28. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.

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

29. WAIVER.

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

30. CHOICE OF LAW.

This Agreement shall be governed by the laws of the State of California. This Agreement is made and entered into in Imperial County, California. To the extent permitted by law, any action brought by either Party with respect to this Agreement shall be brought in a court of competent jurisdiction within said County.

31. AUTHORITY.

- 31.1. Each individual executing this Agreement on behalf of CITY represents and warrants that:
 - 31.1.1. He/She is duly authorized to execute and deliver this Agreement on behalf of CITY; and
 - 31.1.2. Such execution and delivery is in accordance with the terms of any Articles of Incorporation or Partnership, by-laws, or Resolutions of CITY and;
- 31.2. This Agreement is binding upon CITY accordance with its terms.

31.3. CITY shall deliver to ICAPCD evidence acceptable to ICAPCD of the foregoing within thirty (30) days of execution of this Agreement.

32. COUNTERPARTS.

This Agreement (as well as any amendments hereto) may be executed in any number of counterparts, each of which when executed shall be an original, and all of which together shall constitute one and the same Agreement. No counterparts shall be effective until all Parties have executed a counterpart hereof.

33. REVIEW OF AGREEMENT TERMS.

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

34. NON-APPROPRIATION.

This Agreement is based upon the availability of public funding. In the event that public funds are unavailable and not appropriated for the performance of the work set forth in this Agreement, the Agreement shall be terminated without penalty after written notice to CITY of the unavailability and/or non-appropriation of funds.

[Signatures to Follow on Next Page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first above written.

Imperial County Air Pollution Control District

City of Calexico

By: _____
Jesus Eduardo Escobar, Chairman
District Board of Directors

By: _____
Javier Moreno,
Mayor

ATTEST:

Blanca Acosta, Clerk of the District Board,
Imperial County Air Pollution Control District

APPROVED AS TO FORM:
ERIC R. HAVENS,
County Counsel

By: _____
Faye Winkler,
Deputy County Counsel