

**AGREEMENT FOR CALEXICO ON DEMAND TRANSIT SERVICES**

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3 THIS AGREEMENT FOR SERVICES (“Agreement”), made and entered into this 26<sup>th</sup> day  
4 of January, 2022, is by and between the **IMPERIAL COUNTY**  
5 **TRANSPORTATION COMMISSION** (“ICTC”) and **NOMAD TRANSIT LLC**, a Delaware  
6 limited liability company, and registered as a foreign limited liability company in California  
7 (“CONSULTANT”) (individually, “Party;” collectively, “Parties”).

8 **WHEREAS**, ICTC desires to retain a qualified individual, firm or business entity to provide  
9 professional services for systems and methods to establish, monitor, operate and/or manage on-  
10 demand transit networks (“the Project”); and

11 **WHEREAS**, ICTC desires to engage CONSULTANT to provide services by reason of its  
12 qualifications and experience for performing such services, and CONSULTANT has offered to  
13 provide the required services for the Project on the terms and in the manner set forth herein.

14 **NOW, THEREFORE**, ICTC and CONSULTANT have and hereby agree to the  
15 following:

16 1. DEFINITIONS.

17 1.1. “Proposal” shall mean CONSULTANT’s proposal entitled “Master Terms and Conditions  
18 for Via Transit as a Service” together with the “Transit-as-a-Service (TAAS) Service Order”.

19 The Proposal is attached as **Exhibit “A”** and incorporated herein by this reference.

20 1.2. “CMO Agreement” shall mean ICTC’s agreement with the California Air Resources Board  
21 (CARB) under the Clean Mobility Options (CMO) Voucher Agreement Program. The CMO  
22 Agreement is attached as Exhibit “B” and incorporated herein by this reference.2. CONTRACT

23 COORDINATION.

24 CONSULTANT shall assign a single Contract Manager to have overall responsibility for the  
25 progress and execution of this Agreement. Krista Glotzbach is hereby designated as the  
26 Contract Manager for CONSULTANT. Should circumstances or conditions subsequent to the  
27 execution of this Agreement require a substitute Contract Manager for any reason, the Contract  
28 Manager’s designee shall be subject to the prior written acceptance and approval of ICTC not

1 to be unreasonably withheld or delayed.

2 3. DESCRIPTION OF WORK.

3 3.1. CONSULTANT shall provide all materials and labor to perform this Agreement. In the  
4 event of a conflict among this Agreement, the CMO Agreement and the Proposal, such conflict  
5 shall be resolved in the order the foregoing documents are listed herein.

6 3.2. CONSULTANT may perform additional or extra work if required subject to the conditions  
7 and compensation set forth in Exhibit "A".

8 4. WORK TO BE PERFORMED BY CONSULTANT.

9 4.1. CONSULTANT shall comply with all terms, conditions and requirements of the Proposal,  
10 all terms, conditions and requirements that are applicable to the CONSULTANT in the CMO  
11 Agreement and all terms, conditions and requirements in this Agreement.

12 4.2. CONSULTANT shall perform such other tasks as necessary for the full performance of the  
13 obligations assumed by CONSULTANT hereunder.

14 4.3. CONSULTANT shall:

15 4.3.1. Procure all permits and licenses, pay all charges and fees, and give all notices that  
16 may be necessary to the due and lawful prosecution of the services to be performed by  
17 CONSULTANT pursuant to this Agreement;

18 4.3.2. Use the standard of care usual to CONSULTANT's profession to keep itself fully  
19 informed of all applicable existing and proposed federal, state and local laws, ordinances,  
20 regulations, orders and decrees which may affect those engaged or employed under this  
21 Agreement, any materials used in CONSULTANT's performance under this Agreement  
22 or the conduct of the services under this Agreement;

23 4.3.3. At all times observe and comply with, and cause all of its employees to observe and  
24 comply with all of said laws, ordinances, regulations, orders and decrees mentioned  
25 above; and

26 4.3.4. Immediately report to ICTC in writing any discrepancy or inconsistency it  
27 discovers in said laws, ordinances, regulations, orders and decrees mentioned above in  
28 relation to any plans, drawings, specifications or provisions of this Agreement.

1 4.4. Any videotape, reports, information, or other material given to CONSULTANT by ICTC  
2 or prepared by CONSULTANT for ICTC as explicitly identified in the Proposal shall be the  
3 property of ICTC and shall not be made available to any third party individual or organization  
4 by CONSULTANT without the prior written approval of ICTC. The preceding restriction shall  
5 not apply to information which is in the public domain, was previously known to  
6 CONSULTANT, was acquired by CONSULTANT from others who have no confidential  
7 relationship to ICTC with respect to same, or which through no fault of CONSULTANT comes  
8 into the public domain. CONSULTANT shall not be restricted from releasing information,  
9 including confidential information, in response to a subpoena, court order, or other legal  
10 process. CONSULTANT shall not be required to resist such subpoena, court order, or legal  
11 process, but shall promptly notify ICTC in writing of the demand for information before  
12 responding to such demand if allowable under applicable law.

13 **5. REPRESENTATIONS BY CONSULTANT.**

14 5.1. Subject to 5.1.1, CONSULTANT represents and warrants that it is a lawful entity  
15 possessing all required licenses and authorities to do business in the State of California and  
16 perform all aspects of this Agreement.

17 5.1.1. CONSULTANT shall not commence any work pursuant to this Agreement or provide any  
18 other services, or materials, in connection therewith until CONSULTANT has received written  
19 authorization from ICTC to do so.

20 5.2. CONSULTANT represents and warrants that the people executing this Agreement on behalf  
21 of CONSULTANT have the authority of CONSULTANT to sign this Agreement and bind  
22 CONSULTANT to the performance of all duties and obligations assumed by CONSULTANT  
23 herein.

24 5.3. CONSULTANT represents and warrants that any employee, contractor and/or agent who  
25 will be performing any of the duties and obligations of CONSULTANT herein possess all  
26 required licenses and authorities, as well as the experience and training, to perform such tasks.

27 5.5. CONSULTANT represents and warrants that the representations contained in the Proposal  
28 are true and correct.

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5.6. CONSULTANT understands that ICTC considers the representations made herein to be material and would not enter into this Agreement with CONSULTANT if such representations were not made.

6. COMPENSATION.

The total compensation payable under this Agreement shall not exceed **one million two hundred fifty-three thousand two hundred ninety six dollars (\$1,253,296)** unless otherwise previously agreed to by ICTC.

7. PAYMENT.

CONSULTANT will bill ICTC as set forth in **Exhibit "A"**. ICTC shall pay CONSULTANT for completed services upon presentation of an invoice.

8. METHOD OF PAYMENT.

8.1 CONSULTANT shall at any time prior to the 15th day of any month, submit to ICTC a written claim for compensation for services performed. The claim shall be in accordance with the requirements set forth in Exhibit A and Exhibit B. ICTC shall pay CONSULTANT within thirty (30) days after the claim is submitted.

9. TERM AND TIME FOR COMPLETION OF THE WORK.

9.1. This Agreement shall commence on the date first written above and shall remain in effect for twenty-four (24) months after the launch of the Deployment (as defined in the service order attached hereto). unless otherwise terminated as provided herein or extended upon mutual written agreement of the Parties. The agreement shall also contain two (2) single year mutual options.

9.2. The schedule for the services to be provided by CONSULTANT shall be as described in Exhibit "A" and the milestones noted in Exhibit "B" unless revisions to Exhibit "A" and the milestones noted in Exhibit "B" are approved by both ICTC and CONSULTANT's Contract Manager in writing. Time extensions may be allowed for delays caused by ICTC, other governmental agencies, or factors not directly brought about by the negligence or lack of due care on the part of CONSULTANT.

10. SUSPENSION OF AGREEMENT.

1 ICTC shall have the authority to suspend this Agreement, wholly or in part, for such period as  
2 deemed necessary due to the failure on the part of CONSULTANT to perform any provision of  
3 this Agreement. CONSULTANT will be paid the compensation due and payable at such time.

4 11. SUSPENSION AND/OR TERMINATION.

5 11.1. ICTC retains the right to terminate this Agreement in the event of CONSULTANT'S  
6 material breach of the terms of this Agreement, if ICTC loses funding for the services provided  
7 hereunder, or if ICTC reasonably determines that continuing this Agreement would pose  
8 material risk of harm to ICTC, in each case, by notifying CONSULTANT in writing thirty (30)  
9 days prior to termination and by paying the compensation due and payable to the date of  
10 termination; provided, however, if this Agreement is terminated due to CONSULTANT's  
11 material breach, ICTC shall be obligated to compensate CONSULTANT only for that portion  
12 of CONSULTANT's services which have been performed in accordance with the terms and  
13 conditions of this Agreement. Said compensation is to be arrived at by mutual agreement  
14 between ICTC and CONSULTANT; should the Parties fail to agree on said compensation, an  
15 independent arbitrator shall be appointed and the decision of the arbitrator shall be binding  
16 upon the Parties.

17 11.2. Upon such termination, CONSULTANT shall immediately turn over to ICTC any and all  
18 copies of videotapes, studies, sketches, drawings, and computations, whether or not completed,  
19 explicitly prepared by CONSULTANT for ICTC in accordance with Section 4.4 for this  
20 Agreement. Such materials shall become the permanent property of ICTC.

21 12. INSPECTION.

22 CONSULTANT shall furnish ICTC with every reasonable opportunity for ICTC to ascertain  
23 that the services of CONSULTANT are being performed in accordance with the requirements  
24 of this Agreement. All work done and materials furnished, if any, shall be subject to ICTC's  
25 inspection and approval. The inspection of such work shall not relieve CONSULTANT of any  
26 of its obligations to fulfill its Agreement as prescribed.

27 13. OWNERSHIP OF MATERIALS.

28 All original drawings, videotapes and other materials prepared by CONSULTANT for ICTC in

1 accordance with Section 4.4 of this Agreement shall become the permanent property of ICTC  
2 and shall be delivered to ICTC upon demand.

3 Notwithstanding anything to the contrary herein or in any other documentation related hereto,  
4 Consultant retains ownership over information, data, documents and/or any intellectual  
5 property not expressly developed for ICTC as agreed to in writing. For the avoidance of doubt,  
6 and notwithstanding anything to the contrary, no intellectual property will be conceived,  
7 created or furnished under this Agreement. All intellectual property rights in and to  
8 Consultant's cloud-based solution and all of its derivative works and improvements are owned  
9 by, and are proprietary to Consultant, and no such rights are or shall be granted to or transferred  
10 to ICTC.

11 **14. INTEREST OF CONSULTANT.**

12 14.1. CONSULTANT covenants that it presently has no interest, and shall not acquire any  
13 interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree  
14 with the performance of the services hereunder.

15 14.2. CONSULTANT covenants that, in the performance of this Agreement, no sub-contractor  
16 or person having such an interest shall be employed. For the avoidance of doubt, vehicle  
17 suppliers and / or independent contractor driver partners shall not be considered subcontractors  
18 for the purposes of this section 14.2

19 14.3. CONSULTANT certifies that no one who has or will have any financial interest pursuant  
20 to this Agreement is an officer or employee of ICTC.

21 **15. INDEMNIFICATION.**

22 A. Indemnity for Professional Services. To the furthest extent allowed by law, Consultant shall  
23 indemnify, hold harmless and defend ICTC and its members, board members, officers, officials,  
24 employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures,  
25 costs and damages (whether in contract, tort or strict liability, including but not limited to  
26 personal injury, death at any time and property damage), arising from any and all third-party  
27 claims, demands and actions in law or equity (including reasonable attorney's fees and litigation  
28 expenses) that arise out of or relate to the gross negligence, recklessness or willful misconduct of

1 Consultant, its principals, officers, employees, agents or volunteers in the performance of  
2 professional services under this Agreement.

3 **B. Other Indemnities.** Other than in the performance of professional services, and to the fullest  
4 extent allowed by law, Consultant shall indemnify, hold harmless and defend ICTC and its  
5 members, board members, officers, officials, employees, agents and volunteers from any and all  
6 loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict  
7 liability, including but not limited to personal injury, death at any time and property damage),  
8 arising from any and all third-party claims, demands and actions in law or equity (including  
9 reasonable attorney's fees and litigation expenses) arising or alleged to have arisen directly or  
10 indirectly out of CONSULTANT's grossly negligent performance of this Agreement.

11 Consultant's obligations under the preceding sentence shall apply regardless of whether ICTC or  
12 any of its members, board members, officers, officials, employees, agents or volunteers are  
13 negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages  
14 to the extent caused by the gross negligence, or caused by the willful misconduct, of ICTC, or  
15 any of its members, board members, officers, officials, employees, agents or volunteers.

16 **C.** If Consultant should subcontract all or any portion of the services to be performed under this  
17 Agreement, Consultant shall require each subcontractor to indemnify, hold harmless and defend  
18 ICTC and its members, board members, officers, officials, employees, agents and volunteers in  
19 accordance with the terms of the preceding paragraphs.

20 **D.** This section shall survive termination or expiration of this Agreement. Consultant's liability  
21 under this Agreement shall not exceed the fees payable to Consultant hereunder.

22 **16. INDEPENDENT CONTRACTOR.**

23 In all situations and circumstances arising out of the terms and conditions of this Agreement,  
24 CONSULTANT is an independent contractor, and as an independent contractor, the following  
25 shall apply:

26 16.1. CONSULTANT is not an employee or agent of ICTC and is only responsible for the  
27 requirements and results specified by this Agreement.

28 16.2. CONSULTANT shall be responsible to ICTC only for the requirements and results

1 specified by this Agreement and except as specifically provided in this Agreement, shall not be  
2 subject to ICTC's control with respect to the physical actions or activities of CONSULTANT  
3 in fulfillment of the requirements of this Agreement.

4 16.3. CONSULTANT is not, and shall not be, entitled to receive from, or through, ICTC, and  
5 ICTC shall not provide, or be obligated to provide, CONSULTANT with Worker's  
6 Compensation coverage or any other type of employment or worker insurance or benefit  
7 coverage required or provided by any Federal, State or local law or regulation for, or normally  
8 afforded to, an employee of ICTC.

9 16.4. CONSULTANT shall not be entitled to have ICTC withhold or pay, and ICTC shall not  
10 withhold or pay, on behalf of CONSULTANT, any tax or money relating to the Social Security  
11 Old Age Pension Program, Social Security Disability Program, or any other type of pension,  
12 annuity, or disability program required or provided by any Federal, State or local law or  
13 regulation.

14 16.5. CONSULTANT shall not be entitled to participate in, or receive any benefit from, or make  
15 any claim against any ICTC fringe program, including, but not limited to, ICTC's pension plan,  
16 medical and health care plan, dental plan, life insurance plan, or any other type of benefit  
17 program, plan, or coverage designated for, provided to, or offered to ICTC's employee.

18 16.6. ICTC shall not withhold or pay, on behalf of CONSULTANT, any Federal, State, or local  
19 tax required to be withheld by an employer, including, but not limited to, any personal income  
20 tax, owed by CONSULTANT.

21 16.7. CONSULTANT is, and at all times during the term of this Agreement shall, be and  
22 represent and conduct itself as an independent contractor, not as an employee of ICTC.

23 16.8. CONSULTANT shall not have the authority, express or implied, to act on behalf of, bind or  
24 obligate ICTC in any way without the written consent of ICTC.

25 **17. INSURANCE.**

26 Throughout the life of this Agreement, Consultant shall pay for and maintain in full force and  
27 effect all policies of insurance required hereunder with an insurance company(ies) either (i)  
28 admitted by the California Insurance Commissioner to do business in the State of California and



1 rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) as may be authorized in  
2 writing by ICTC's Executive Director or his/her designee at any time and in his/her sole  
3 discretion. CONSULTANT and ICTC agree to use commercially reasonable efforts to obtain a  
4 waiver from CMO for the insurance requirements noted in Exhibit B. The parties acknowledge  
5 that Consultant does not meet the deductible requirements set forth therein and ICTC agrees that  
6 it does not require CONSULTANT to meet such deductible requirements. CONSULTANT  
7 intends to submit a waiver request to CMO. In the event, CMO does not grant a waiver for the  
8 deductible insurance requirement set forth in Exhibit B, ICTC and CONSULTANT shall engage  
9 in good faith discussions to find a mutually agreeable solution. The following policies of  
10 insurance are required:

11 (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the  
12 most current version of Insurance Services Office (ISO) Commercial General Liability Coverage  
13 Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and  
14 advertising injury" with coverage for premises and operations (including the use of owned and  
15 non-owned equipment), products and completed operations, and contractual liability (including,  
16 without limitation, indemnity obligations under the Agreement) with limits of liability of not less  
17 than \$5,000,000 for bodily injury, property damage, personal and advertising injury, products and  
18 completed operations combined with a \$5,000,000 annual policy aggregate.

19 (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as  
20 the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00  
21 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed  
22 vehicles (Code 211 - Any Auto) with limits of liability of not less than \$5,000,000 per accident  
23 for bodily injury and property damage.

24 (iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

25 (iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000  
26 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

27 (v) PROFESSIONAL LIABILITY (Errors and Omissions) insurance appropriate to Consultant's  
28 profession, with limits of liability of \$2,000,000 per claim/occurrence and \$2,000,000 policy

1 aggregate.

2 (vi) CYBER LIABILITY COVERAGE. Cyber Liability coverage, with limits not less than  
3 \$1,000,000 per occurrence or claim. Coverage shall be sufficiently broad to respond to the duties  
4 and obligations as is undertaken by awardee in the voucher agreement and shall include, but not  
5 be limited to, claims involving infringement of intellectual property, including but not limited to  
6 infringement of copyright, trademark, trade dress, invasion of privacy violations, information  
7 theft, damage to or destruction of electronic information, release of private information, alteration  
8 of electronic information, extortion and network security. The policy shall provide coverage for  
9 breach response costs as well as regulatory fines and penalties as well.

10 In the event Consultant purchases an Umbrella or Excess insurance policy(ies) to meet the  
11 minimum limits of insurance set forth above, this insurance policy(ies) shall “follow form” and  
12 afford no less coverage than the primary insurance policy(ies).

13 Consultant shall be responsible for payment of any deductibles contained in any insurance  
14 policies required hereunder and Consultant shall also be responsible for payment of any self-  
15 insured retentions. Any deductibles or self-insured retentions in excess of \$100,000 must be  
16 declared to, and approved by, the ICTC’s Executive Director or his/her designee in his/her sole  
17 discretion. At the option of ICTC’s Executive Director or his/her designee, either (i) the insurer  
18 shall reduce or eliminate such deductibles or self-insured retentions as respects ICTC, its  
19 members, board members, officers, officials, employees and agents; or (ii) Consultant shall  
20 provide a financial guarantee, satisfactory to the ICTC’s Executive Director or his/her designee in  
21 his/her sole discretion, guaranteeing payment of losses and related investigations, and defense  
22 expenses. At no time shall ICTC be responsible for the payment of any deductibles or self-  
23 insured retentions.

24 All policies of insurance required hereunder shall be endorsed to provide that the coverage shall  
25 not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day  
26 written notice has been given to ICTC. Upon issuance by the insurer, broker, or agent of a notice  
27 of cancellation, non-renewal, or reduction in coverage or in limits, Consultant shall furnish ICTC  
28 with a new certificate and applicable endorsements for such policy(ies). In the event any policy is

1 due to expire during the work to be performed for ICTC, Consultant shall provide a new  
2 certificate, and applicable endorsements, evidencing renewal of such policy not less than 15  
3 calendar days prior to the expiration date of the expiring policy. The General Liability and  
4 Automobile Liability insurance policies shall be written on an occurrence form. The General  
5 Liability (including ongoing operations and completed operations) and Automobile Liability  
6 insurance policies shall name CalStart, ICTC, its members, board members, officers, officials,  
7 employees and agents as an additional insured or alternatively be covered by a blanket additional  
8 insured endorsement. All such policies of insurance shall be endorsed so Consultant's insurance  
9 shall be primary and no contribution shall be required of ICTC, its members, board members,  
10 officers, officials, employees, agents or volunteers. The coverage(s) shall contain no special  
11 limitations on the scope of protection afforded to ICTC, its members, board members, officers,  
12 officials, employees and agents. The Workers' Compensation insurance policy shall contain a  
13 waiver of subrogation as to ICTC, its members, board members, officers, employees, agents and  
14 volunteers. Should Consultant maintain insurance with broader coverage and/or limits of liability  
15 greater than those shown above, ICTC requires and shall be entitled to the broader coverage  
16 and/or the higher limits of liability maintained by Consultant. Any available insurance proceeds  
17 in excess of the specified minimum limits of insurance and coverage shall be available to ICTC.  
18 If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made  
19 coverage form:

- 20 (i) The retroactive date must be shown and must be before the effective date of this  
21 Agreement or the commencement of work by Consultant.
- 22 (ii) Insurance must be maintained during the term of this Agreement.
- 23 (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy  
24 form with a retroactive date prior to the effective date of the Agreement, or work commencement  
25 date, Consultant must purchase extended reporting period coverage for a minimum of 5 years  
26 after completion of the work or termination of the Agreement, whichever first occurs.
- 27 (iv) A copy of the claims reporting requirements must be submitted to ICTC for review.
- 28 (v) These requirements shall survive expiration or termination of the Agreement.

1 Consultant shall furnish ICTC with all certificate(s) and applicable endorsements  
2 effecting coverage required hereunder. **All certificates and applicable**  
3 **endorsements are to be received and approved by ICTC's Executive Director**  
4 **or his/her designee in his/her sole discretion prior to ICTC's execution of the**  
5 **AGREEMENT and before work commences.** This requirement shall survive  
6 expiration or termination of this Agreement.

7 If at any time during the life of the Agreement or any extension, Consultant or any of its sub-  
8 Consultants fail to maintain any required insurance in full force and effect, all work under this  
9 Agreement shall be discontinued immediately, until notice is received by ICTC that the required  
10 insurance has been restored to full force and effect and that the premiums therefore have been  
11 paid for a period satisfactory to ICTC. Any failure to maintain the required insurance shall be  
12 sufficient cause for ICTC to terminate this Agreement. No action taken by ICTC hereunder shall  
13 in any way relieve Consultant of its responsibilities under this Agreement.

14 The fact that insurance is obtained by Consultant shall not be deemed to release or diminish the  
15 liability of Consultant, including, without limitation, liability under the indemnity provisions of  
16 this Agreement. The duty to indemnify ICTC shall apply to all claims and liability regardless of  
17 whether any insurance policies are applicable. The policy limits do not act as a limitation upon  
18 the amount of indemnification to be provided by Consultant. Approval or purchase of any  
19 insurance contracts or policies shall in no way relieve from liability nor limit the liability of  
20 Consultant, its principals, officers, agents, employees, persons under the supervision of  
21 Consultant, vendors, suppliers, invitees, sub-Consultants, or anyone employed directly or  
22 indirectly by any of them.

23 If Consultant should subcontract all or any portion of the services to be performed under this  
24 Agreement, Consultant shall require each sub-Consultant to provide insurance protection in favor  
25 of ICTC, its members, board members, officers, officials, employees, agents and volunteers in  
26 accordance with the terms of each of the preceding paragraphs, except that the sub-Consultant's  
27 certificates and endorsements shall be on file with Consultant and ICTC prior to the  
28 commencement of any work by the sub-Consultant.

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18. ASSIGNMENT.

Neither this Agreement nor any duties or obligations hereunder shall be assignable by CONSULTANT without the prior written consent of ICTC. CONSULTANT may employ other specialists to perform services as required with prior approval by ICTC.

19. NON-DISCRIMINATION.

During the performance of this Agreement, CONSULTANT shall not unlawfully discriminate against any employee or applicant for employment or employee of ICTC or member of the public because of race, religion, color, national status, age, or sex. CONSULTANT shall ensure that the evaluation and treatment of its employees and applicants for employment and employees and members of the public are free of such discrimination. CONSULTANT shall comply with all provisions of the Fair Employment and Housing Act (Government Code §12900, *et seq.*). The applicable regulations of the Fair Employment Housing Commission implementing Government Code §12900 set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONSULTANT shall abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act. CONSULTANT shall also abide by all applicable provisions of the American Disabilities Act and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act.

CONSULTANT shall give written notice of its obligations under this clause to labor organizations with which it has a collective bargain or other agreement. CONSULTANT shall include the non-discrimination and compliance provision of this paragraph in all subcontracts to perform work pursuant to this Agreement.

20. NOTICES AND REPORTS.

20.1. All notices and reports pursuant to this Agreement shall be in writing and may be given by personal delivery or by mailing by certified mail, addressed as follows:

**ICTC**

Attn: Executive Director

**CONSULTANT**

Attn: Project Manager

1	Imperial County Transportation Commission	Nomad Transit LLC
2	1503 N. Imperial Ave., Ste 104	95 Morton Street, 3 <sup>rd</sup> Floor
3	El Centro, CA 92243	New York, NY 10014
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5 20.2. All notices and reports pursuant to this Agreement may be given by personal delivery or  
6 by mailing by certified mail at such other address as either Party may designate in a notice to  
7 the other Party given in such manner.

8 20.3. Any notice given by mail shall be considered given when deposited in the United States  
9 Mail, postage prepaid, addressed as provided herein.

10 21. ENTIRE AGREEMENT.

11 This Agreement contains the entire agreement between ICTC and CONSULTANT relating to  
12 the transactions contemplated hereby and supersedes all prior or contemporaneous agreements,  
13 understandings, provisions, negotiations, representations, or statements, either written or oral.

14 22. MODIFICATION.

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

17 23. PARTIAL INVALIDITY.

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

21 24. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.

22 As used in this Agreement and whenever required by the context thereof, each number, both  
23 singular and plural, shall include all numbers, and each gender shall include a gender.

24 CONSULTANT as used in this Agreement or in any other document referred to in or made a  
25 part of this Agreement shall likewise include both singular and the plural, a corporation, a  
26 partnership, individual, firm or person acting in any fiduciary capacity as executor,  
27 administrator, trustee or in any other representative capacity or any other entity. All covenants  
28 herein contained on the part of CONSULTANT shall be joint and several if more than one

1 person, firm or entity executes the Agreement.

2 25. WAIVER.

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

6 26. CHOICE OF LAW.

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

11 27. ATTORNEY'S FEES.

12 If either Party herein brings an action to enforce the terms thereof or declare rights hereunder,  
13 each Party in any such action, on trial or appeal, shall bear its own attorney's fees and costs.

14 28. AUTHORITY.

15 Each individual executing this Agreement on behalf of CONSULTANT represents and  
16 warrants that:

17 He/She is duly authorized to execute and deliver this Agreement on behalf of CONSULTANT;

18 28.2. Such execution and delivery is in accordance with the terms of the Articles of  
19 Incorporation or Partnership, any by-laws or Resolutions of CONSULTANT and;

20 28.3. This Agreement is binding upon CONSULTANT accordance with its terms.

21 29. COUNTERPARTS.

22 This Agreement may be executed in counterparts.

23 30. REVIEW OF AGREEMENT TERMS.

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

28 NON-APPROPRIATION.

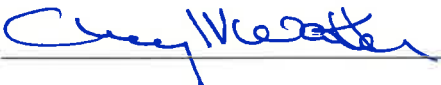
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This Agreement is based upon the availability of public funding. In the event that public funds are unavailable and not appropriated for the performance of the services set forth in this Agreement, the Agreement shall be terminated without penalty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

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

**IMPERIAL COUNTY  
TRANSPORTATION COMMISSION:**

**CONSULTANT:**

By:   
Chairperson

By:   
F89EDB5082754FA...

ATTEST:

  
CRISTI LERMA  
Secretary to ICTC

APPROVED AS TO FORM:

County Counsel

By:  /s/ for  
  
Deputy County Counsel