

Attachment B

Sample Consultant Agreement and Insurance Requirements

1 **AGREEMENT FOR SERVICES**

2
3 THIS AGREEMENT FOR SERVICES (“Agreement”), made and entered into this _____ day
4 of _____, 2024, is by and between the **IMPERIAL COUNTY TRANSPORTATION**
5 **COMMISSION** (“ICTC”) and _____, a _____
6 qualified to do business in California (“CONSULTANT”) (individually, “Party;” collectively, “Parties”).

7 **W I T N E S S E T H**

8 **WHEREAS**, ICTC desires to retain a qualified individual, firm or business entity to provide
9 professional services for Calexico Intermodal Transportation Center project administration and engineering
10 support services (“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 provide the
13 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 following:

15 1. **DEFINITIONS.**

16 1.1. “Proposal” shall mean CONSULTANT’s proposal entitled “Calexico Intermodal
17 Transportation Center Project Resident Engineering and Construction Management Scope of Work ”
18 dated_____. The Proposal is attached as **Exhibit “A”** and incorporated herein by this reference.

19 2. **CONTRACT COORDINATION.**

20 CONSULTANT shall assign a single Contract Manager to have overall responsibility for the
21 progress and execution of this Agreement. _____ is hereby designated as the Contract Manager for
22 CONSULTANT. Should circumstances or conditions subsequent to the execution of this Agreement
23 require a substitute Contract Manager for any reason, the Contract Manager’s designee shall be subject to
24 the prior written acceptance and approval of ICTC.

25 3. **DESCRIPTION OF WORK.**

26 3.1. CONSULTANT shall provide all materials and labor to perform this Agreement. In the
27 event of a conflict among this Agreement and the Proposal, this Agreement shall take precedence over the
28 Proposal.

1 3.2. CONSULTANT shall perform additional or extra work if required, utilizing the per hour
2 rate set forth in Exhibit "A".

3 4. WORK TO BE PERFORMED BY CONSULTANT.

4 4.1. CONSULTANT shall comply with all terms, conditions and requirements of the Proposal
5 and this Agreement.

6 4.2. CONSULTANT shall perform such other tasks as necessary and proper for the full
7 performance of the obligations assumed by CONSULTANT hereunder.

8 4.3. CONSULTANT shall:

9 4.3.1. Procure all permits and licenses, pay all charges and fees, and give all notices that
10 may be necessary and incidental to the due and lawful prosecution of the services to be performed
11 by CONSULTANT pursuant to this Agreement;

12 4.3.2. Use the standard of care usual to CONSULTANT's profession to keep itself fully
13 informed of all applicable existing and proposed federal, state and local laws, ordinances,
14 regulations, orders and decrees which may affect those engaged or employed under this Agreement,
15 any materials used in CONSULTANT's performance under this Agreement or the conduct of the
16 services under this Agreement;

17 4.3.3. At all times observe and comply with, and cause all of its employees to observe and
18 comply with all of said laws, ordinances, regulations, orders and decrees mentioned above; and

19 4.3.4. Immediately report to ICTC in writing any discrepancy or inconsistency it discovers
20 in said laws, ordinances, regulations, orders and decrees mentioned above in relation to any plans,
21 drawings, specifications or provisions of this Agreement.

22 4.3.5 Comply with all terms, conditions, and requirements of the Request for Proposal and
23 this Agreement, including all FTA requirements included in Exhibit F (Attachment A) of the
24 Request for Proposal.

25 4.4. Any videotape, reports, information, data or other material given to, or prepared or
26 assembled by, CONSULTANT pursuant to this Agreement shall be the property of ICTC and shall not be
27 made available to any individual or organization by CONSULTANT without the prior written approval of
28 ICTC. The preceding restriction shall not apply to information which is in the public domain, was

1 previously known to CONSULTANT, was acquired by CONSULTANT from others who have no
2 confidential relationship to ICTC with respect to same, or which through no fault of CONSULTANT
3 comes into the public domain. CONSULTANT shall not be restricted from releasing information,
4 including confidential information, in response to a subpoena, court order, or other legal process.
5 CONSULTANT shall not be required to resist such subpoena, court order, or legal process, but shall
6 promptly notify ICTC in writing of the demand for information before responding to such demand.

7 **5. REPRESENTATIONS BY CONSULTANT.**

8 5.1. CONSULTANT understands and agrees that ICTC has limited knowledge in the multiple
9 areas specified in the Proposal. CONSULTANT has represented itself to have experience in these fields
10 and understands that ICTC is relying upon such representation.

11 5.2. Subject to 5.2.1, CONSULTANT represents and warrants that it is a lawful entity
12 possessing all required licenses and authorities to do business in the State of California and perform all
13 aspects of this Agreement.

14 5.2.1. CONSULTANT shall not commence any work pursuant to this Agreement or
15 provide any other services, or materials, in connection therewith until CONSULTANT has received
16 written authorization from ICTC to do so.

17 5.3. CONSULTANT represents and warrants that the people executing this Agreement on behalf
18 of CONSULTANT have the authority of CONSULTANT to sign this Agreement and bind
19 CONSULTANT to the performance of all duties and obligations assumed by CONSULTANT herein.

20 5.4. CONSULTANT represents and warrants that any employee, contractor and/or agent who
21 will be performing any of the duties and obligations of CONSULTANT herein possess all required licenses
22 and authorities, as well as the experience and training, to perform such tasks.

23 5.5. CONSULTANT represents and warrants that the allegations contained in the Proposal are
24 true and correct.

25 5.6. CONSULTANT understands that ICTC considers the representations made herein to be
26 material and would not enter into this Agreement with CONSULTANT if such representations were not
27 made.

28 **6. COMPENSATION.**

1 The total compensation payable under this Agreement shall not exceed _____ unless
2 otherwise previously agreed to by ICTC.

3 7. PAYMENT.

4 CONSULTANT will bill ICTC on a not to exceed time and material basis upon completion of the
5 project or as set forth in the cost schedule attached hereto as **Exhibit "A"**. ICTC shall pay CONSULTANT
6 for completed and approved services upon presentation of its itemized billing. Notwithstanding the
7 foregoing, ICTC shall retain 10% of the total compensation until the work to be performed has been
8 completed in accordance with this Agreement, as determined by ICTC, and payment in full of all
9 subcontractors of CONSULTANT.

10 8. METHOD OF PAYMENT.

11 8.1 CONSULTANT shall at any time prior to the 15th day of any month, submit to ICTC a
12 written claim for compensation for services performed. The claim shall be in a format approved by ICTC.
13 CONSULTANT may expect to receive payment within a reasonable time thereafter and in any event in the
14 normal course of business within thirty (30) days after the claim is submitted.

15 9. TERM AND TIME FOR COMPLETION OF THE WORK.

16 9.1. This Agreement shall commence on the date first written above and shall remain in effect
17 through completion of the Project unless otherwise terminated as provided herein.

18 9.2. Program scheduling shall be as described in Exhibit "A" unless revisions to Exhibit "A" are
19 approved by both ICTC and CONSULTANT's Contract Manager. Time extensions may be allowed for
20 delays caused by ICTC, other governmental agencies, or factors not directly brought about by the
21 negligence or lack of due care on the part of CONSULTANT.

22 10. SUSPENSION OF AGREEMENT.

23 ICTC shall have the authority to suspend this Agreement, wholly or in part, for such period as
24 deemed necessary due to unfavorable conditions or to the failure on the part of CONSULTANT to perform
25 any provision of this Agreement. CONSULTANT will be paid the compensation due and payable to the
26 date of suspension.

27 11. SUSPENSION AND/OR TERMINATION.

28 11.1. ICTC retains the right to terminate this Agreement for any reason by notifying

1 CONSULTANT in writing seven (7) days prior to termination and by paying the compensation due and
2 payable to the date of termination; provided, however, if this Agreement is terminated for fault of
3 CONSULTANT, ICTC shall be obligated to compensate CONSULTANT only for that portion of
4 CONSULTANT's services which have been performed in accordance with the terms and conditions of this
5 Agreement. Said compensation is to be arrived at by mutual agreement between ICTC and
6 CONSULTANT; should the Parties fail to agree on said compensation, an independent arbitrator shall be
7 appointed and the decision of the arbitrator shall be binding upon the Parties.

8 11.2. Upon such termination, CONSULTANT shall immediately turn over to ICTC any and all
9 copies of videotapes, studies, sketches, drawings, computations and other data, whether or not completed,
10 prepared by CONSULTANT in connection with this Agreement. Such materials shall become the
11 permanent property of ICTC.

12 12. INSPECTION.

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

18 13. OWNERSHIP OF MATERIALS.

19 All original drawings, videotapes and other materials prepared by or in possession of
20 CONSULTANT pursuant to this Agreement shall become the permanent property of ICTC and shall be
21 delivered to ICTC upon demand.

22 14. INTEREST OF CONSULTANT.

23 14.1. CONSULTANT covenants that it presently has no interest, and shall not acquire any
24 interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the
25 performance of the services hereunder.

26 14.2. CONSULTANT covenants that, in the performance of this Agreement, no sub-contractor or
27 person having such an interest shall be employed.

1 14.3. CONSULTANT certifies that no one who has or will have any financial interest pursuant to
2 this Agreement is an officer or employee of ICTC.

3 15. INDEMNIFICATION.

4 A. Indemnity for Professional Services. To the furthest extent allowed by law, Consultant
5 shall indemnify, hold harmless and defend ICTC and its members, board members, officers, officials,
6 and employees, from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether
7 in contract, tort or strict liability, including but not limited to personal injury, death at any time and
8 property damage), and from any and all claims, demands and actions in law or equity (including
9 reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence,
10 recklessness or willful misconduct of Consultant, its principals, officers, employees, agents or volunteers
11 in the performance of professional services under this Agreement.

12 B. Other Indemnities. Other than in the performance of professional services, and to the
13 fullest extent allowed by law, Consultant shall indemnify, hold harmless and defend ICTC and its
14 members, board members, officers, officials, and employees, from any and all loss, liability, fines,
15 penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not
16 limited to personal injury, death at any time and property damage), and from any and all claims,
17 demands and actions in law or equity (including reasonable attorney's fees and litigation expenses)
18 arising or alleged to have arisen directly or indirectly out of performance of this Agreement.
19 Consultant's obligations under the preceding sentence shall apply regardless of whether ICTC or any of
20 its members, board members, officers, officials, employees, agents or volunteers are negligent, but shall
21 not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active
22 negligence, or caused by the willful misconduct, of ICTC, or any of its members, board members,
23 officers, officials, employees, agents or volunteers.

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

28 D. This section shall survive termination or expiration of this Agreement.

1 16. INDEPENDENT CONTRACTOR.

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

5 16.1. CONSULTANT is not an employee or agent of ICTC and is only responsible for the
6 requirements and results specified by this Agreement or any other agreement.

7 16.2. CONSULTANT shall be responsible to ICTC only for the requirements and results
8 specified by this Agreement and except as specifically provided in this Agreement, shall not be subject
9 to ICTC's control with respect to the physical actions or activities of CONSULTANT in fulfillment of
10 the requirements of this Agreement.

11 16.3. CONSULTANT is not, and shall not be, entitled to receive from, or through, ICTC, and
12 ICTC shall not provide, or be obligated to provide, CONSULTANT with Worker's Compensation
13 coverage or any other type of employment or worker insurance or benefit coverage required or provided
14 by any Federal, State or local law or regulation for, or normally afforded to, an employee of ICTC.

15 16.4. CONSULTANT shall not be entitled to have ICTC withhold or pay, and ICTC shall not
16 withhold or pay, on behalf of CONSULTANT, any tax or money relating to the Social Security Old Age
17 Pension Program, Social Security Disability Program, or any other type of pension, annuity, or disability
18 program required or provided by any Federal, State or local law or regulation.

19 16.5. CONSULTANT shall not be entitled to participate in, or receive any benefit from, or
20 make any claim against any ICTC fringe program, including, but not limited to, ICTC's pension plan,
21 medical and health care plan, dental plan, life insurance plan, or any other type of benefit program, plan,
22 or coverage designated for, provided to, or offered to ICTC's employee.

23 16.6. ICTC shall not withhold or pay, on behalf of CONSULTANT, any Federal, State, or local
24 tax, including, but not limited to, any personal income tax, owed by CONSULTANT.

25 16.7. CONSULTANT is, and at all times during the term of this Agreement, shall represent
26 and conduct itself as an independent contractor, not as an employee of ICTC.

27 16.8. CONSULTANT shall not have the authority, express or implied, to act on behalf of, bind
28 or obligate ICTC in any way without the written consent of ICTC.

1 17. INSURANCE.

2 Throughout the life of this Agreement, Consultant shall pay for and maintain in full force and
3 effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by
4 the California Insurance Commissioner to do business in the State of California and rated not less than
5 "A- VII" in Best's Insurance Rating Guide, or (ii) as may be authorized in writing by ICTC's Executive
6 Director or his/her designee at any time and in his/her sole discretion. The following policies of
7 insurance are required:

8 (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the
9 most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form
10 CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising
11 injury" with coverage for premises and operations (including the use of owned and non-owned
12 equipment), products and completed operations, and contractual liability (including, without limitation,
13 indemnity obligations under the Agreement) with limits of liability of not less than the following:

14 \$2,000,000 per occurrence for bodily injury and property damage

15 \$1,000,000 per occurrence for personal and advertising injury

16 \$4,000,000 aggregate for products and completed operations

17 \$4,000,000 general aggregate

18 (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as
19 the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01,
20 and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code
21 1 - Any Auto) with limits of liability of not less than \$2,000,000 per accident for bodily injury and
22 property damage.

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

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

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

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

4 Consultant shall be responsible for payment of any deductibles contained in any insurance policies
5 required hereunder and Consultant shall also be responsible for payment of any self-insured retentions.
6 At no time shall ICTC be responsible for the payment of any deductibles or self-insured retentions.

7 All policies of insurance required hereunder shall be endorsed to provide that the coverage shall
8 not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written
9 notice has been given to ICTC. Upon issuance by the insurer, broker, or agent of a notice of
10 cancellation, non-renewal, or reduction in coverage or in limits, Consultant shall furnish ICTC with a
11 new certificate and applicable endorsements for such policy(ies). In the event any policy is due to
12 expire during the work to be performed for ICTC, Consultant shall provide a new certificate, and
13 applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the
14 expiration date of the expiring policy.

15 The General Liability and Automobile Liability insurance policies shall be written on an
16 occurrence form. The General Liability (including ongoing operations and completed operations) and
17 Automobile Liability insurance policies shall name ICTC, its members, board members, officers,
18 officials, employees and agents as an additional insured. All such policies of insurance, excluding
19 Professional Liability and Workers Compensation, shall be endorsed so Consultant’s insurance shall be
20 primary and no contribution shall be required of ICTC, its members, board members, officers, officials,
21 employees, agents or volunteers. The coverage(s) shall contain no special limitations on the scope of
22 protection afforded to ICTC, its members, board members, officers, officials, employees and agents.
23 The Workers’ Compensation insurance policy shall contain a waiver of subrogation as to ICTC, its
24 members, board members, officers, employees, agents and volunteers.

25 If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made
26 coverage form:

27 (i) The retroactive date must be shown, and must be before the effective date of this Agreement
28 or the commencement of work by Consultant.

1 (ii) Insurance must be maintained and evidence of insurance must be provided for at least 5
2 years after completion of the work or termination of the Agreement, whichever first occurs.

3 (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy
4 form with a retroactive date prior to the effective date of the Agreement, or work commencement date,
5 Consultant must purchase extended reporting period coverage for a minimum of 5 years after
6 completion of the work or termination of the Agreement, whichever first occurs.

7 (iv) A copy of the claims reporting requirements must be submitted to ICTC for review.

8 (v) These requirements shall survive expiration or termination of the Agreement.

9 Consultant shall furnish ICTC with all certificate(s) and applicable endorsements effecting
10 coverage required hereunder. **All certificates and applicable endorsements are to be received and**
11 **approved by ICTC's Executive Director or his/her designee in his/her sole discretion prior to**
12 **ICTC's execution of the AGREEMENT and before work commences.** Upon request by ICTC,
13 Consultant shall provide for review of redacted copies of insurance policies at Consultant's corporate
14 office. This requirement shall survive expiration or termination of this Agreement.

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

22 The fact that insurance is obtained by Consultant shall not be deemed to release or diminish the
23 liability of Consultant, including, without limitation, liability under the indemnity provisions of this
24 Agreement. The duty to indemnify ICTC shall apply to all claims and liability regardless of whether any
25 insurance policies are applicable. The policy limits do not act as a limitation upon the policy limits do
26 not act as a limitation upon the amount of indemnification to be provided by Consultant. Approval or
27 purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the
28 liability of Consultant, its principals, officers, agents, employees, persons under the supervision of

1 Consultant, vendors, suppliers, invitees, sub-Consultants, or anyone employed directly or indirectly by
2 any of them.

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

9 18. ASSIGNMENT.

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

13 19. NON-DISCRIMINATION.

14 During the performance of this Agreement, CONSULTANT shall not unlawfully discriminate
15 against any employee or applicant for employment or employee of ICTC or member of the public
16 because of race, religion, color, national status, age, or sex. CONSULTANT shall ensure that the
17 evaluation and treatment of its employees and applicants for employment and employees and members
18 of the public are free of such discrimination. CONSULTANT shall comply with all provisions of the
19 Fair Employment and Housing Act (Government Code §12900, *et seq.*). The applicable regulations of
20 the Fair Employment Housing Commission implementing Government Code §12900 set forth in
21 Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this
22 Agreement by reference and made a part hereof as if set forth in full. CONSULTANT shall abide by the
23 Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and
24 regulations issued pursuant to said Act. CONSULTANT shall also abide by the American Disabilities
25 Act and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act.
26 CONSULTANT shall give written notice of its obligations under this clause to labor organizations with
27 which it has a collective bargain or other agreement. CONSULTANT shall include the non-
28

1 discrimination and compliance provision of this paragraph in all subcontracts to perform work pursuant
2 to this Agreement.

3 20. NOTICES AND REPORTS.

4 20.1. All notices and reports pursuant to this Agreement shall be in writing and may be given
5 by personal delivery or by mailing by certified mail, addressed as follows:

<p>6 ICTC</p> <p>7 Attn: Executive Director 8 Imperial County Transportation Commission 9 1503 N. Imperial Ave., Ste 104 10 El Centro, CA 92243</p>	<p>CONSULTANT</p>
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11 20.2. All notices and reports pursuant to this Agreement may be given by personal delivery or
12 by mailing by certified mail at such other address as either Party may designate in a notice to the other
13 Party given in such manner.

14 20.3. Any notice given by mail shall be considered given when deposited in the United States
15 Mail, postage prepaid, addressed as provided herein.

16 21. ENTIRE AGREEMENT.

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

20 22. MODIFICATION.

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

23 23. PARTIAL INVALIDITY.

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

27 24. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.

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

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

6 25. WAIVER.

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

10 26. CHOICE OF LAW.

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

14 27. ATTORNEY'S FEES.

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

17 28. AUTHORITY.

18 Each individual executing this Agreement on behalf of CONSULTANT represents and warrants
19 that:

20 28.1. He/She is duly authorized to execute and deliver this Agreement on behalf of
21 CONSULTANT;

22 28.2. Such execution and delivery is in accordance with the terms of the Articles of
23 Incorporation or Partnership, any by-laws or Resolutions of CONSULTANT and;

24 28.3. This Agreement is binding upon CONSULTANT accordance with its terms.

25 29. COUNTERPARTS.

26 This Agreement may be executed in counterparts.

27 30. ADDITIONAL FEDERAL CLAUSES.

1 During the performance of this Agreement, the CONSULTANT, for itself, its assignees, and
2 successors in interest, agrees to comply with the Additional Federal Clauses attached hereto as
3 **Attachment F as “Required Clauses”** and incorporated by this reference as though fully set
4 forth herein.

5 31. NON-APPROPRIATION.

6 31.1. All obligations of ICTC are subject to appropriation of resources by various federal,
7 State, and local agencies, including but not limited to the U.S. Department of Transportation
8 (“DOT”), Federal Transit Administration (FTA) and the California Department of Transportation
9 (“Caltrans”).

10 31.2. This Agreement is valid and enforceable only if sufficient funds are made available to
11 ICTC for the purposes of this Project. In addition, this Agreement is subject to any additional
12 restrictions, limitations, conditions, or any statute enacted by Congress, State Legislature, or
13 ICTC, and any regulations prescribed therefrom, that may affect the provisions, terms, or
14 funding of this Agreement.

15 31.3. If sufficient funds for the Project are not appropriated, this Agreement may be amended
16 or terminated in order to reflect said reduction in funding.

17 32. PREVAILING WAGE.

18 32.1. CONSULTANT acknowledges that any work that qualifies as a “public work” within the
19 meaning of California Labor Code section 1720 shall cause CONSULTANT, and its sub-
20 consultants, to comply with the provisions of California Labor Code sections 1775 et seq.

21 32.2. When applicable, copies of the prevailing rate of per diem wages shall be on file at ICTC
22 and available to any interested party upon request. CONSULTANT shall post copies of the
23 prevailing wage rate of per diem wages at the Project site.

24 32.3. CONSULTANT hereby acknowledges and stipulates to the following:

25 32.3.1. CONSULTANT has reviewed and agrees to comply with the provisions of Labor
26 Code section 1776 regarding retention and inspection of payroll records and
27 noncompliance penalties; and
28

1 32.3.2. CONSULTANT has reviewed and agrees to comply with the provisions of Labor
2 Code section 1777.5 regarding employment of registered apprentices; and

3 32.3.3. CONSULTANT has reviewed and agrees to comply with the provisions of Labor
4 Code section 1810 regarding the legal day's work; and

5 32.3.4. CONSULTANT has reviewed and agrees to comply with the provisions of Labor
6 Code section 1813 regarding forfeiture for violations of the maximum hours per day and
7 per week provisions contained in the same chapter.

8 32.3.5. CONSULTANT has reviewed and agrees to comply with any applicable
9 provisions for those Projects subject to Department of Industrial Relations (DIR)
10 Monitoring and Enforcement of prevailing wages. ICTC hereby notifies CONSULTANT
11 that CONSULTANT is responsible for complying with the requirements of Senate Bill
12 854 (SB854) regarding certified payroll record reporting. Further information concerning
13 the requirements of SB854 is available on the DIR website located at:
14 <http://www.dir.ca.gov/Public-Works/PublicWorksEnforcement.html>.

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16 33. REVIEW OF AGREEMENT TERMS.

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

21 **IN WITNESS WHEREOF**, the Parties have executed this Agreement on the day and year first
22 above written.

23 **IMPERIAL COUNTY**
24 **TRANSPORTATION COMMISSION:**

CONTRACTOR:

25
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27 By: _____

By: _____

28 Chairperson

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ATTEST:

CRISTI LERMA

Secretary to ICTC

APPROVED AS TO FORM:

ERIC HAVENS

County Counsel

By: _____

County Counsel