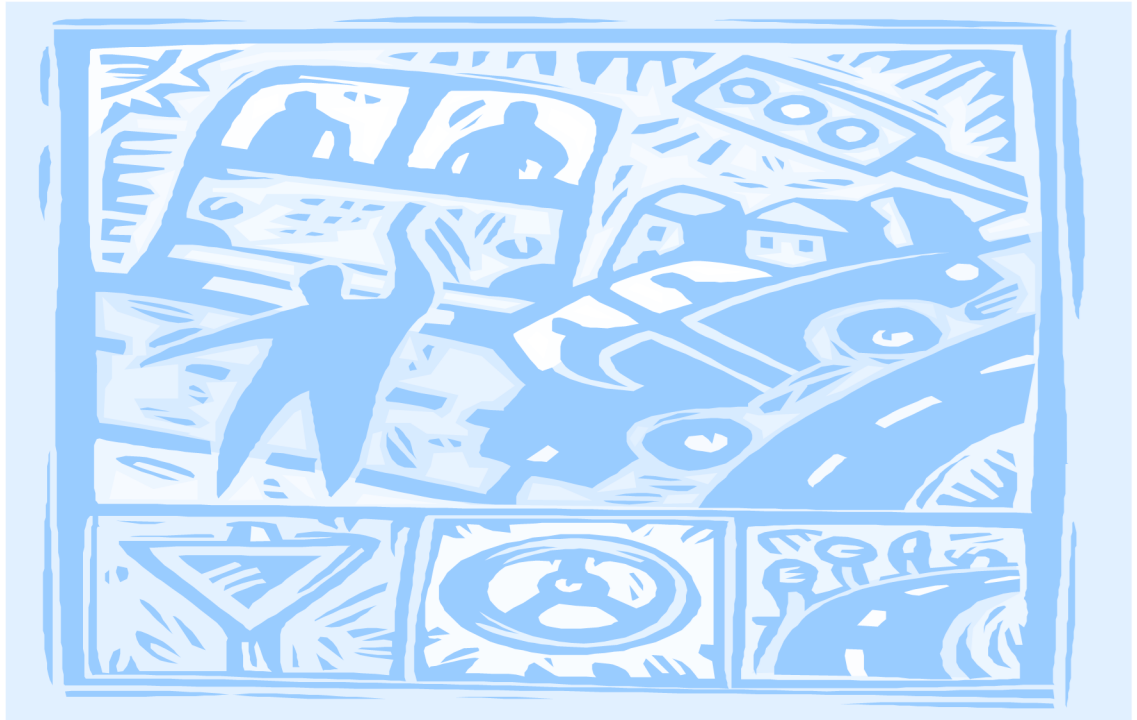


November 2022



The Imperial County Transportation Commission (ICTC)

Request For Proposal

**TRANSPORTATION DEVELOPMENT ACT (TDA)
Tri-ennial Performance Audit
FY 2019-20, FY 2020-21 and FY 2021-22**

THE IMPERIAL COUNTY TRANSPORTATION COMMISSION

Request for Proposals for TRANSPORTATION DEVELOPMENT ACT (TDA) TRIENNIAL PERFORMANCE AUDIT PROGRAM

I. INTRODUCTION

The Imperial County Transportation Commission (ICTC) is seeking proposals from qualified firms for professional services to conduct performance audits of ICTC and its public transit operators, as required by the Transportation Development Act (TDA) of 1971. This Request for Proposal (RFP) describes the project, the required scope of services, the consultant selection process, and the minimum information that must be included in the proposal.

Failure to submit information in accordance with the RFP requirements and procedures may be cause for disqualification.

II. BACKGROUND

ICTC is the sub-regional transportation planning and programming agency for the area's seven incorporated cities and the county government. The ICTC builds consensus, makes strategic plans, obtains and allocates resources, and provides information on a broad range of topics pertinent to the Imperial Valley region's transportation services and infrastructure.

The ICTC is an independent agency governed by a Commission composed of council members, county supervisors and elected officials from each of the region's eight (8) local governments and the Imperial Irrigation District (IID). Membership includes the cities of Brawley, Calipatria, Calexico, El Centro, Holtville, Imperial, Westmorland, the County of Imperial and the IID.

III. PROJECT SUMMARY

A. Project Background/Project Description

ICTC is responsible for the completion of performance audits of itself and transit operators as required by the Transportation Development Act of 1971. However, there are no Article 4 operators in operation. All transit operations are under Article 8. ICTC chooses to also have performance audits conducted on the various Article 8 transit operations. The legislative requirements relating to performance auditing may be found in Section 99246 of the California Public Utilities Code and Sections 6662.5 and 6664.5 of Title 21 of the California Code of Regulations. Within the Code, references to 'Director' refer to the California Director of Transportation.

The minimum requirements for performance audits are as follows:

1. PERFORMANCE AUDITS OF PLANNING ENTITIES AND OPERATORS

“PUC 99246. (a) The transportation planning agency shall designate entities other than itself, a county transportation commission, a transit development board, or an operator to make the performance audit of its activities, and those of county transportation commissions and transit development boards located in the area under its jurisdiction, with respect to this chapter, and of each operator to whom it allocates funds. The transportation planning agency shall consult with the entity to be audited prior to designating the entity to make the performance audit.

Where a transit development board created pursuant to Division 11 (commencing with Section 120000) or a county transportation commission exists, the board or commission, as the case may be, shall designate entities other than itself, a transportation planning agency, or an operator to make a performance audit of its activities and those of operators located in the area under its jurisdiction to whom it directs the allocation of funds. The board or commission shall consult with the entity to be audited prior to designating the entity to make the performance audit.

(b) The performance audit shall evaluate the efficiency, effectiveness, and economy of the operation of the entity being audited and shall be conducted in accordance with the efficiency, economy, and program results portions of the Comptroller General’s “Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.” Performance audits shall be submitted triennially pursuant to a schedule established by the transportation planning agency, transit development board, or county transportation commission having jurisdiction over the operator.

(c) The performance audit of the transportation planning agency, county transportation commission, or transit development board shall be submitted to the Director. The transportation planning agency, county transportation commission, or transit development board, as the case may be, shall certify in writing to the Director that the performance audit of operators located in the area under its jurisdiction has been completed.

(d) With respect to an operator providing public transportation services, the performance audit shall include, but not be limited to, a verification of the operator’s operating cost per passenger, operating cost per vehicle service hour, passengers per vehicle service hour, passengers per vehicle service mile, and vehicle service hours per employee, as defined in Section 99247. The performance audit shall include, but not be limited to, consideration of the needs and types of the passengers being served and the employment of part-time drivers and the contracting with common carriers of persons operating under a franchise or license to provide services during peak hours, as defined in subdivision (a) of Section 99260.2.

The performance audit may include performance evaluations both for the entire system and for the system excluding special, new, or expanded services instituted to test public transportation service growth potential.”

2. PERFORMANCE AUDITS OF TRANSPORTATION PLANNING AND PROGRAMMING ENTITIES

“PUC 6662.5. (a) Each transportation planning agency, county transportation commission, and metropolitan transit development board shall designate an independent entity to make a performance audit of its activities with respect to the Act pursuant to Public Utilities Code Section 99246. The performance audit shall be submitted to the Director triennially, in accordance with a schedule established by the transportation planning agency, county transportation commission and metropolitan transit development board.

(b) If the transportation planning agency, county transportation commission, or metropolitan transit development board fails to transmit a performance audit within one year after the date on which the report was due, the agency, commission, or board shall not be eligible to receive funds allocated for administration or planning until the audit report is transmitted or unless prior approval is granted by the Director.”

3. PERFORMANCE AUDITS OF OPERATORS

“PUC 6664.5. (a) A performance audit shall be conducted triennially pursuant to Public Utilities Code Section 99246 on a schedule determined by the transportation planning agency, county transportation commission, or metropolitan transit development board having jurisdiction over the operator, for each operator that has operated its public transportation commission, or metropolitan transit development board, as appropriate, shall provide the Director and the Controller, prior to September 1 of each fiscal year:

(1) A schedule of performance audit reports to be submitted during that fiscal year.

(2) A list of all entities which are subject to performance audits pursuant to Public Utilities Code Section 99246.

(b) Each transportation planning agency, county transportation commission, or metropolitan transit development board, as appropriate, shall provide a written certification to the Director that scheduled performance audit of operators located in the area under jurisdiction has been completed.

The individual audits to be included as part of this audit program are listed in Table 1, with summary information presented for each operator in order to provide an indication of the scope of the operations involved.”

Table 1

FY 2021-22 Data

Properties to be Audited	Operating Budget	Total Passengers	Revenue Miles
Imperial Valley Transit (IVT)	\$5,041,433	506,120	755,359
IVT – Blue/Green Lines	\$705,752	6,322	41,331
IVT – Gold Line	\$367,026	7,581	26,251
IVT Access	\$1,773,790	9,749	109,817
IVT MedTrans	\$629,968	1,333	57,952
IVT RIDE – Brawley	\$311,046	3,998	16,413
IVT RIDE – Calexico	\$515,488	6,729	25,207
IVT RIDE – El Centro	\$755,212	10,796	32,249
IVT RIDE – Imperial	\$190,159	2,177	15,063
IVT RIDE – Heber	\$117,181	2,072	9,848
IVT RIDE - West Shores	\$64,254	376	10,908
YCAT Turquoise and Blue Lines*	\$162,063	13,448	111,321
Planning Agency: ICTC	\$1,130,062	N/A	N/A

*ICTC is participating in an MOU with the Yuma County Intergovernmental Public Transit Authority (YCIPTA) and the Quechan Indian Tribe. The MOU is in regards to ICTC’s participation in the service delivery of the Yuma County Area Transit (YCAT) Turquoise Routes 5 and 10, between Yuma AZ. and El Centro CA. This participation involves a contribution of TDA funding and assistance with service planning and reviewing performance measurements. The consultant is required to review the performance of the YCAT route 5 and 10 as a part of the scope of work for this triennial audit cycle.

4. ICTC’s Approach to Performance Auditing

The ICTC approach to performance auditing is to utilize the Transportation Development Act Guidebook and Triennial Performance Audit Guidebook which is located at the Caltrans Website: <http://www.dot.ca.gov/hq/MassTrans/tdao.htm>

5. Objectives of the Performance Audit Program

The primary objective to be achieved by conducting these performance audits is to obtain a set of recommendations for each operator for compliance with the regulations. A secondary objective is to provide improvements in efficiency and productivity that, where possible, lead to specific, identifiable cost savings. The audit should be constructive and useful to the operator as an internal management tool, and should also identify significant achievements in addition to areas needing improvement. The proposal should specify the firm’s experience and capabilities in performing the analysis work necessary to develop such recommendations.

B. Fee Estimate Range

The estimate of the fee range for the completion of the project is \$75,000. The budget is established in the FY 2022-23 ICTC Overall Work Plan and Budget.

C. Payment

The selected consultant will be paid by the fixed fee method, with monthly invoices based on deliverables or portions of work completed. ICTC will retain 10% from each invoice until the final delivery of the product.

IV. SCOPE OF REQUIRED SERVICES

A. Project Description

The following specific products will be required from the performance audit consultant:

1. Review of Base Statistics and Performance Indicators

Review the base statistics and performance indicators submitted by each operator to ICTC and identify trends in individual operator performance. These data should be reported within a context that will enable management and policy board members to evaluate the results.

ICTC has a transit operator performance indicator monitoring system as a means of measuring trends in individual operator efficiency, effectiveness, and productivity.

The performance indicator monitoring system was to provide trend information for key system-wide and functional area indicators for use in performance auditing. The availability of the trend information is intended to provide a performance auditor with an indication of potential problem areas for further investigation, as well as areas in which an operator's performance is acceptable or particularly outstanding. The base statistics available through the quarterly monitoring system for fixed-route and demand responsive systems are shown in attachment C.

Section 99246 of the Public Utilities Code requires that a performance audit include a verification of five performance indicators (operating cost per passenger, operating cost per vehicle service hour, passengers per vehicle service hour, passengers per vehicle service mile, and vehicle service hours per employee). If during the course of conducting the performance audit the auditor discovers any shortcomings in the operator's data collection techniques, compilation methods, or reporting procedures, such findings should be noted in the report with recommendations for appropriate improvements.

The auditor should also review ICTC's internal calculation process and results as it pertains to the use of State Transit Assistance funds.

2. Review of Previous Performance Audit Recommendations

Review previous performance audit recommendations and the progress made by each operator on implementation.

Operators have been previously subject to the formal performance audit process. However, the auditor should review the findings and recommendations of the previous performance audit for ICTC and examine efforts to implement appropriate recommendations. Recommendations that have not been implemented but still appear to have merit should be reconsidered for inclusion in the recommendations for this performance audit cycle.

3. Consideration of Other Factors

Consider the needs and types of passengers being served, the employment of part-time drivers and the contracting with common carriers of persons operating under a franchise or license to provide services during peak hours.

The performance audit requirements specify that the performance audit should also include a consideration of the needs and types of the passengers being served, the employment of part-time drivers, and the contracting with common carriers to provide peak-hour services. Through the document reviews, interviews with key personnel, and analysis of operator practices, the auditor should consider the degree to which the services being provided are meeting the needs of the passengers, and the potential of employing part-time drivers and contracting for peak-hour services to increase the efficiency and effectiveness of the system's operations.

4. The Performance Audit Report

Prior to issuing and presenting a final performance audit report, the auditor shall provide up to 30 calendar days as an opportunity for the operators and ICTC to respond to any draft findings. The auditor should ensure that each operator has a clear understanding of the draft audit findings and recommendations.

As the final product of each performance audit, a report will be presented by the audit firm to the ICTC Management Committee and the Commission. This report should include the review of the base statistics and indicators, the review of prior performance audit recommendations, the consideration of other factors, and a summary of major findings and recommendations. Since the performance audit is intended as a management tool, the report should be positive in nature, noting areas where performance is acceptable or outstanding, as well as pointing out areas where improvement is needed. Recommendations should emphasize the improvements that can be made and the benefits that can be achieved. There will not necessarily be recommendations for each functional area. The recommendations for improvement should be assigned a priority to indicate the relative importance of implementation, and the potential cost savings or other benefits to be achieved should be identified. In no case should the cost of implementation exceed the benefits to be gained.

5. Performance Audit of ICTC

A performance audit report of ICTC will be completed with a focus on its activities related to the administration of the Transportation Development Act.

The Imperial Valley Association of Government (IVAG), as the predecessor to the ICTC, developed the Transportation Development Act Claim Guidebook. The successful proposer is expected to review these guidelines when considering the effectiveness of ICTC administrative roles. The Guidelines are located at the ICTC web page: www.imperialctc.org

B. Project Schedule

ICTC anticipates the process for nominating and selecting a consultant, and awarding the contract will be according to the following tentative schedule:

A.	Release RFP	November 16, 2022
B.	Last Day to Submit Questions Regarding RFP	November 28, 2022
C.	Proposal Due Date	December 16, 2022
D.	Proposal Ranking and Staff Recommendation (non-public opening)	Week of December 19th, 2022
E.	Oral Interviews (if utilized)	Week of December 26th, 2022
F.	Selection and Notification of Award	December 2022
G.	Contract Negotiations Complete	December 2022
H.	Approval of Contract	January 2023
I.	Notice of Award/Notice to Proceed	January 2023
J.	Completed Initial Draft Report for Staff review	March 2023
K.	Revised draft for Member Agency Review	April 2023
L.	Presentation of Final DRAFT Report to ICTC SSTAC, ICTC Management Committees	May 3 and 10, 2023
M.	Presentation of Final DRAFT Report to ICTC Commission	May 24, 2023
N.	Revisions to Final DRAFT if Necessary Delivery of Final Report	June 2023

V. PROPOSAL REQUIREMENTS

A. GENERAL

1. The proposal should be concise, well organized and demonstrate the proposer's qualifications and experience applicable to the project. The proposal shall be limited to 100 double sided pages (8.5 inches x 11 inches), inclusive of resumes, graphics, forms, pictures, photographs, dividers, front and back covers, cover letter, etc., but not of letters of commitment from subcontractors or DBE documentation. Type size and margins for text pages should be in keeping with accepted standard formats for desktop publishing and processing and should result in no more than five hundred (500) words per page.
2. The written proposal must include a discussion of the proposer's approach to the project, a breakdown and explanation of project tasks, a proposed project schedule, an estimate of costs and documentation of the firm and consultant's qualifications for the scope of work. The cost estimate should be submitted in a separate sealed envelope.
3. The proposer will be evaluated based upon the information submitted in accordance with Section V. B, the evaluation criteria in Section X, and compliance with all requirements of this RFP.

B. Contents

Proposals submitted in response to this RFP shall be in the following order and shall include:

1. *Executive Summary*

Include a 1-2 page overview of the entire proposal describing the most important elements of the proposal.

2. *Identification of the Proposer and Establishment of Proposer's Fiscal Responsibility*

Please provide the following information:

- a. Legal name and address of proposer's company.
- b. Number of years proposer's company has been in business.
- c. Legal form of company (partnership, corporation, joint venture,

etc.). If joint venture, identify the members of the joint venture and provide all information required within the section for each member. If a corporation, certify that the corporation is in good standing with the Secretary of State.

- d. If a company is wholly-owned subsidiary of a “parent company,” provide the legal name and form of the parent company.
- e. Address(es) of office(s) that will work on this project.
- f. If Disadvantaged Business Enterprise (DBE) certified, identify certifying agency, as well as gender and ethnicity.
- g. Name, title, address, email address and telephone number of the person to contact concerning the proposal.
- h. State whether the proposer has filed bankruptcy in the last ten (10) years and provide any other relevant information concerning whether the proposer is financially capable of completing this project.
- i. Provide all applicable license numbers for licenses relevant to or required for this project, the names of the holders of those licenses, and the names of the agencies issuing those licenses.

3. *Experience and Technical Competence*

Describe the proposer’s experience in completing similar consulting efforts. List three (3) successfully completed projects of a similar nature. For each completed project, provide the name of the company and project manager the proposer performed worked for, telephone numbers, type of work performed, and dollar value of the contracts. A project currently being performed may be submitted for consideration as one of the references.

4. *Proposed Method to Accomplish the Work*

Describe the proposer’s technical and management approach to the project and how the proposer will plan for and accommodate each into the project effort. Provide a proposed project schedule. Discuss how and what lines of communication will be implemented to maintain the project schedule.

5. *Knowledge and Understanding of Local Environment and Relevant Laws*

Describe the proposer’s experience working in the local environment and proposed local presence for interfacing with ICTC’s Project Coordinator.

The environment includes, but is not limited to: cities, county and other local agencies' regulations and policies. Describe proposer's experience with and knowledge of relevant State and Federal laws.

6. *Project Organization and Key Personnel*

a. Describe proposed project organization, including identification and responsibilities of key personnel. Indicate role and responsibility of all staff, prime consultant and subconsultants. If applicable, indicate how local firms are being utilized to ensure a strong understanding of State and local laws, ordinances, regulations, policies, requirements and permitting. Indicate the extent of the commitment of key personnel for the duration of the project and furnish resumes of key personnel. Provide a summary of the hours by staffing level and a grand total of hours for the project. ICTC's evaluation of the proposal will consider the proposer's entire team; therefore, no changes in the team composition will be allowed without prior written approval of ICTC. Subconsultant letters of commitment are required.

b. Describe the experience of the proposer's project team in detail, including the team's project manager, and other key staff members, on projects of similar size, capacity, and dollar value. For each similar project, include the client's name and telephone number. It is ICTC's policy to interview proposer's references.

7. *ICTC's Disadvantaged Business Enterprise (DBE) Program and Discrimination Policy*

a. Proposers are urged to obtain disadvantaged business enterprise (DBE) participation on this project, although there is no specific project goal for DBE participation. It is ICTC policy to provide disadvantaged, minority, and women-owned business enterprises, as defined in Part 26, Title 49 CFR, an equitable opportunity to participate in all contracting opportunities. ICTC's DBE Program, which includes minority and women-owned business enterprises, is designed so that contract administration, consultant selection, and all related procurement activities are conducted without regard to race, color, religion, disability, political beliefs, age, national origin, gender, or cultural background. Accordingly, no firm or individual shall be denied the opportunity to compete for ICTC contracts by reasons so stated or implied.

b. ICTC requires all potential ICTC consultants and subconsultants to comply with Title VI and Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in

Employment Act, and the California Fair Employment and Housing Act, as amended, and all other applicable discrimination laws. ICTC has zero tolerance for discrimination or harassment by its consultants.

- c. Describe the proposer's overall plan to make contracting opportunities available to all interested and qualified firms. This includes a strategy to identify the available subcontracting resources and a willingness to make subcontracting opportunities available to such firms.
- d. Submit a subconsultant list, if applicable, which lists any subconsultants for this project, DBE status (if applicable), scope of work, and approximate percentage of the work performed by subconsultants (as a percentage of the total award to the prime consultant). In accordance with current federal regulations, DBEs and joint ventures involving DBEs must be certified for eligibility by Caltrans, by other qualified Department of Transportation recipients or by other certifying public agencies. Documentation verifying DBE status must be submitted in the proposal for all firms (prime consultant or subconsultant) claiming such status.

8. *Previous Contracts with ICTC*

The proposer shall submit a list which indicates all prime contracts and/or amendments awarded to the proposer by ICTC for the last three (3) years. The list shall include a short description of the project, the project's scope of work, award date, completion date, name of ICTC's assigned project manager, and contract value.

9. *Exceptions to this Request for Proposals*

The proposer shall certify whether it takes no exception(s) to this RFP, including but not limited to a sample Standard Agreement for Services (Attachment A). If the proposer does take exception(s) to any portion(s) of the RFP or contract, the specific portion(s) to which exception(s) is taken must be identified and explained. Failure to make exceptions to the RFP or contract will be deemed a waiver of any objection. Exceptions may be considered during the proposal evaluation process.

10. *Addenda to this Request for Proposals*

The proposer shall confirm in its proposal the receipt of all addenda issued to this RFP.

11. *Statement of Impartiality*

The nature of this project requires an impartial unbiased approach on the part of the consultant team. This proposal shall include a statement declaring that the consultants and subconsultants are not currently, and will not, during the performance of these services, participate in any other similar work involving a third party with interests currently in conflict or likely to be in conflict with ICTC's interests.

12. *Detailed Cost Estimate*

In a separate sealed envelope, provide an estimate of the total direct and indirect costs to complete all tasks identified in the scope of work with a detailed cost breakdown. The format or appearance of the price proposal is left to the discretion of the Proposer, but must identify:

- a. the number of staff hours and hourly rates for each professional and administrative staff person who will be committed to this project, including fringe and overhead costs
- b. an estimate of all other direct and indirect costs, such as material and reproduction costs
- c. an estimate of subconsultant services, if needed.

VI. RESPONSIBILITIES OF THE ICTC

- A. The ICTC will direct the development of the project, provide management oversight, coordinate communications and introductions, and conduct administrative arrangements.
- B. The ICTC will pay an agreed upon amount within 30 days after submittal of an invoice(s). County will retain 10% of each invoice until the completion of the project.
- C. The ICTC will not be able to provide dedicated workspace facilities i.e. office space. However, arrangements can be made to utilize conference room space.

VII. SUBMITTAL REQUIREMENTS

- A. Proposals shall be submitted in two (2) sealed packages. Each package shall be clearly marked and indicating which Request for Proposal the response pertains to. The proposal shall be held in confidence until the award of the contract. At that time it becomes a matter of public record. The individual price proposal sheet shall be retained as "proprietary" and "confidential", if so marked.
 1. Provider shall submit package No. 1 with one (1) original and four (4) copies and one (1) PDF marked "ICTC TDA Performance Audit Technical Proposal." The package shall bear the Provider's name and address.

2. Provider shall submit package No. 2 with one (1) original and four (4) copies and one (1) PDF in a sealed envelope marked “ICTC TDA Performance Audit Cost/Price Proposal.” The envelope shall bear the Provider’s name and address.

- B. The proposal and any required certifications shall be signed by an individual or individuals authorized to execute legal documents on behalf of the proposer.
- C. The proposal must be addressed to and received no later than 3 P.M., local time, on **December 16, 2022** at the office of:

David Aguirre, Executive Director
Imperial County Transportation Commission
1503 N. Imperial Ave. Suite 104
El Centro, CA. 92243

Postmarks will not be accepted in lieu of this requirement.

- D. Proposals are to be submitted in sealed packages with the following information clearly marked on the outside of each package.
 - 1. Name of proposer
 - 2. Project title
 - 3. Package Number (e.g., 1 of 2)
- E. Failure to comply with requirements of the RFP may result in disqualification. ICTC is not responsible for finding, correcting, or seeking clarification regarding ambiguities or errors in proposals. If a proposal is found to contain ambiguities or errors, it may receive a lower score during the evaluation process. ICTC reserves the right to disqualify a proposed detailed cost estimate with mathematical or clerical errors, inconsistencies or missing information which prevent ICTC from fully evaluating the proposal. ICTC may, but is not required to, seek clarification from a proposer regarding information in a proposal. Errors and ambiguities in proposals will be interpreted in favor of ICTC.
- F. Proposals and/or modifications received subsequent to the hour and date specified above will not be considered.

VIII. PRE-SUBMITTAL ACTIVITIES

A. Questions Concerning Request for Proposals

No pre-bid meeting is scheduled. Questions will be addressed in an addendum format. All addendums will be posted on the ICTC website at www.imperialctc.org. Therefore, all questions relating to the RFP must be received in writing via mail, facsimile, E-mail or hand delivery no later than 3 P.M. local time, on **November 28, 2022** addressed to:

David Aguirre, Executive Director
Imperial County Transportation Commission
1503 N. Imperial Ave. Suite 104
El Centro, CA 92243
760-592-4494
e-mail: davidaguirre@imperialctc.org

B. Revision to the Request for Proposals

ICTC reserves the right to revise the RFP prior to the date that proposals are due. Revisions to the RFP shall be posted on the Web page devoted to this RFP at least one full business day prior to the deadline for proposals. It is the responsibility of the proposer to contact the project coordinator and check the Web site for any revisions related to this RFP.

IX. CONSULTANT EVALUATION AND SELECTION PROCESS

- A. ICTC will establish a consultant evaluation committee (“Committee”) for this project that will include representatives from ICTC and its member agencies with experience and expertise in the related discipline(s).
- B. Based upon the proposals submitted, the Committee may select a short-list of qualified firms for this project. ICTC reserves the right to make final consultant selection based solely upon evaluation of the written proposals, without short-listing firms or conducting oral interviews, should it find it to be in its best interest to do so. The Committee may interview the short-listed firms. Based upon the written proposal, interview, and reference scores, and other appropriate evaluation factors, the Committee will rank the qualified finalists.
- B. The Committee will recommend the top-ranked proposer to ICTC’s Executive Director who will request authority from the Commission to enter into final negotiations with the selected firm. The Commission has final authority for selection.

- E. Upon receipt of the Commission’s approval the Project Coordinator will enter into negotiations with the selected firm. The negotiations may cover: scope of work, contract schedule, contract terms and conditions, technical specifications, level of effort and price. If it is not possible to reach an acceptable agreement with the selected firm, the Project Coordinator will recommend to the Executive Director that negotiations be terminated and that negotiations with the second ranked firm be initiated. The Executive Director has final authority to terminate negotiations and begin negotiations with another proposer.
- F. After negotiation of an agreement that is fair and reasonable, the Project Coordinator will recommend to the Executive Director that ICTC enter into the proposed agreement. Final authority to approve the agreement rests with the Executive Director.

X. EVALUATION CRITERIA

Proposers will be evaluated on the following criteria according to the weights assigned below. If oral interviews are conducted, they will be worth 25 points. ICTC reserves the right to add the proposers’ interview scores into the evaluation criteria or to select proposers based solely upon their written proposal or oral interview.

Proposers will be evaluated on the following criteria according to the weights assigned below.

A. Project Technical and Related Experience [20 Points]

Qualified consultants should have a variety of experience in performing similar audits or performance type reviews/studies with public, government, private, not-for-profit, and other agencies.

B. Proposed Methodology and Approach to Work [30 Points]

Proposers must demonstrate the ability to carry out the project by meeting the proposal requirements identified in Sections IV, V, and VI of the RFP. High quality, clear, and complete proposals showing proposer’s understanding of the Project and willingness to comply with standard contract requirements will receive higher scores in this category. While proposers are required to meet the goals and deadlines for the project as described in this RFP, proposers may receive higher scores in this category if they demonstrate innovative, advanced and/or well-thought-out methodologies that ICTC may not have specifically identified in this RFP.

C. Project Team / Staff Qualifications [25 Points]

Project staff qualifications include a combination of experience, education and background in transit operations, performance measurements, similar work etc.

D. Cost or Best Value [15 Points]

Proposals will be evaluated for providing the best methodology and services at the lowest cost and with the least amount of risk.

E. Completeness of Response and References [10 Points]

References in the proposals will be evaluated

XI. SPECIAL CONDITIONS

A. Reservations

This RFP does not commit ICTC to award a contract, to defray any costs incurred in the preparation of a proposal pursuant to this RFP, or to procure or contract for work. ICTC may reject bids without providing the reason(s) underlying the declination. A failure to award a contract to the lowest bidder will not result in a cause of action against ICTC.

B. Public Records

All proposals submitted in response to this RFP become the property of ICTC and public records and, as such, may be subject to public review.

C. Right to Cancel

ICTC reserves the right to cancel or revise, for any reason, in part or in its entirety, this RFP. If ICTC cancels the RFP prior to the deadline for proposals or revises the RFP, notification will be placed on ICTC's Web site. www.imperialctc.org

D. Additional Information

ICTC reserves the right to request additional information and/or clarification from any or all proposers to this RFP, but is under no obligation to do so.

E. Conflict of Interest

ICTC has established a policy concerning potential conflict of interest in program management, design and construction. This policy applies to all proposers and their proposed consultants/subconsultants.

F. Public Information

Consultants who wish to release information to the public regarding consultant selection, contract award or data provided by ICTC must receive prior written approval from ICTC before disclosing such information to the public.

G. Contract for Services

The selected consultants will be required to sign a final version of the attached “Standard Sample Agreement for Services” (Attachment C) and to provide the insurance certificates and all other required documentation within fifteen (15) calendar days of execution of the Agreement.

XII. PROTESTS

Pursuant to the requirements set forth in FTA Circular 4220.1F, “Third Party Contracting Requirements,” the following procedures shall be used by ICTC to fairly and promptly respond to any protests received regarding third party contracts or the contracting process.

ICTC will consider all protests regarding the contracting process or the award of a contract within 30 days of the execution of the Agreement. ICTC will only review protests submitted by a prospective proposer or other party whose direct economic interest would be affected by the award of a contract or failure to receive a contract award. A protest by any adversely affected person must be made in writing and must be mailed or hand delivered to ICTC. A protest which does not strictly comply with ICTC’s protest procedures will be rejected.

Protests relating to the content of the RFP package must be filed within ten (10) business days after the date the RFP is made available to the public by ICTC. Protests relating to the intent to make an award solicited by an RFP must be filed within ten (10) business days of the decision to award. The date of filing shall be the date of receipt of protests by ICTC. Untimely protests will be rejected.

If deemed necessary, ICTC shall notify all proposers of record that a protest has been filed and that the award has been postponed until further notice. If necessary, proposers will be asked to extend the time for acceptance of their proposal in order to avoid the need for re-advertisement of the solicitation.

A. Protest Contents

A letter of protest must set forth detailed grounds for the protest and be fully supported with technical data, documentary evidence, names of witnesses and other pertinent information related to the subject being protested. The protest must also state the law, rule, regulation or practice on which the protest is based. The protestor must demonstrate or establish a clear violation of a specific law or

regulation, e.g., a violation of the Buy America requirements.

If the protestor considers that the protest contains proprietary material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest document, and alleged proprietary information shall be so identified wherever it appears.

Protests shall be addressed to:

David Aguirre, Executive Director
Imperial County Transportation Commission
1503 N. Imperial Ave. Suite 104
El Centro, CA 92243

B. Reply to Protest

An ICTC Protest Committee appointed by the Executive Director will review all protests in a timely manner and reply to the protest, in writing, within ten (10) business days. All material submitted by the protestor will be considered. Such material will not be withheld from any interested party outside of ICTC or any agency which may be involved with the contract except to the extent that the withholding of information is permitted or required by law or regulation.

C. Request for Protest Reconsideration

Upon receipt of an adverse decision by ICTC, the protestor may file a request for protest reconsideration. A request for protest reconsideration must be directed to the Executive Director in writing and received within ten (10) full business days from the postmark date of the reply from ICTC. The Executive Director will respond to the request for protest reconsideration within ten (10) full business days. The decision of the Executive Director will be in writing and final. No further protests will be heard by ICTC.

D. State Appeal Process

Under certain limited circumstances, and after the protestor has exhausted all administrative protest remedies made available at the local level, an interested party may protest to the California Department of Transportation (Department) the award of a contract pursuant to a Federal Transit Administration (FTA) grant.

Department review of any protest will be limited to:

1. Local agency's failure to have or follow its own protest procedures or its failure to review a complaint or protest.
2. Violations of the Federal or State law or regulations.

The protest filed with Department shall include:

1. The name and address of the protester.
2. Clear identification of the local agency responsible for the RFP process.
3. A statement of the grounds for protest and any supporting documentation (the grounds for protest filed with Department must be fully supported to the extent feasible. Additional materials in support of an initial protest will only be considered if authorized by the FTA regulations).
4. A copy of the protest filed with the local agency, and a copy of local agency's decision, if any.
5. Indication of the desired ruling or relief from Department.

Such support should be sent to:

The California Department of Transportation
Division of Mass Transportation
P.O. Box 942874 - MS 39
Sacramento, CA 942874-0001

Attachments:

- A. Sample Proposal Evaluation Form
- B. Transit Services Description
- C. Sample Agreement

Attachment A

Sample Proposal Evaluation Form

ATTACHMENT A

SAMPLE PROPOSAL EVALUATION FORM

DATE: _____

EVALUATOR: _____

RESPONDENT: _____

PROJECT: _____

CRITERIA	MAXIMUM POINTS	SCORE
A. Project Technical and Related Experience	20	
B. Proposed Methodology And Approach to Work	30	
C. Project Team / Staff Qualifications	25	
D. Cost or Best Value	15	
F. Completeness of Response and References	10	

TOTAL SCORE: _____

EVALUATOR'S COMMENTS:

Attachment B

Transit Services Descriptions

ATTACHMENT B - PUBLIC TRANSIT

Imperial Valley Transit - Fixed Route Transportation

Imperial Valley Transit (IVT) is an inter-city fixed route bus system, subsidized and administered by the Imperial County Transportation Commission (ICTC) and operated and managed by First Transit, Inc. The service has eleven (11), wheelchair accessible 40ft. transit buses and four (4) wheelchair accessible minibuses.

Service is provided from 6:00 AM until approximately 11:30 PM weekdays, and 6:00 AM to approximately 5:00 PM on Saturdays, within the areas classified as the Primary Zone; a North-South axis throughout Brawley, Imperial, El Centro, Heber and Calexico, and from 6:00 AM until approximately 7:00 PM in the Secondary Zones; outlying cities and communities of Niland, Calipatria, Westmorland, Seeley and Holtville. The outlying Remote Zone communities such as Ocotillo and Bombay Beach are served once a week on a life line and the far Eastern portion of the County: Winterhaven is served twice a week, by Yuma County Area Transit. For information please refer to the IVT website at www.ivtransit.org service brochure or call ICTC's Mobility Coordinator at 760-592-4494. For specific trip information please call 760-482-2900.

Imperial Valley Transit – Blue/Green/Gold Lines

Imperial Valley Transit also operates extension lines called the IVT- Blue and Green Lines in the City of El Centro and the Gold Line in the City of Brawley. The Blue, Green and Gold Lines provide service in coordination with the regular fixed route system. This service utilizes smaller buses with three (3) wheelchair accessible buses and connects to the public facilities and services which are not currently served by the larger bus system. The service is subsidized and administered by the Imperial County Transportation Commission (ICTC) and operated and managed by First Transit, Inc. The service consists of two (2) routes, Eastbound and Westbound, and operates between 6:00 AM and until approximately 6:30 PM Monday through Friday in the City of El Centro and a local loop that operates from 6:00 AM until approximately 7:00 PM Monday through Friday in the City of Brawley. For information please refer to the IVT website www.ivtransit.org service brochure or call ICTC's Mobility Coordinator at 760-592-4494. For specific trip information please call 760-482-2900.

IVT ACCESS (ADA Paratransit)

The Americans with Disabilities Act (ADA) Comparable Complementary Paratransit Service is a federally mandated service requiring equal access to the public fixed route bus system for individuals with disabilities. The service operates nine (9) wheelchair accessible, mini-buses as a demand response service in tandem with the fixed route bus system for certified eligible disabled passengers. The service area and hours are the same as the fixed route bus system discussed above. The service is available to certified eligible disabled passengers. The service is subsidized and administered by the Imperial County Transportation Commission (ICTC) and operated and managed by First Transit, Inc. For more information please refer to the IVT ACCESS website www.ivtaccess.org service brochure or call ICTC's Mobility Coordinator at 760-592-4494. For eligibility information please call ICTC's ADA Certification Coordinator at 760-592-4494. For reservations of trip information call 760-482-2908.

IVT MedTrans

IVT MedTrans is a non-emergency medical transportation service between communities in Imperial County and the large hospitals and medical facilities within San Diego County. The service is subsidized and administered by the Imperial County Transportation Commission (ICTC) and operated and managed by First Transit, Inc. The demand response service is provided twice (2) a day four days a week alternating Mondays and Fridays, with four (4) pick up spots in Brawley, El Centro Imperial, and Calexico. Pick up service is available on a limited basis from the home for an additional fare. The service is designed to provide persons with disabilities, children, veterans, low income and transit dependent persons access to medical facilities and services not available within Imperial County, e.g. Children's Hospital in San Diego. For information please refer to the IVT MedTrans website www.ivtmedtrans.org service brochure or call ICTC's Mobility Coordinator at 760-592-4494. For reservation or trip information please call IVT MedTrans at 760-337-1766.

IVT RIDE (Intracity dial-a-ride)

IVT RIDE is a demand response transit service within the Cities of Brawley, Calexico, El Centro, Imperial and the West Shores area. Each location has specific service hours and fares. The service is for seniors age 60 and older and requires a certification with valid photo ID. The service is also for persons with disabilities who have completed the ADA Certification Process through ICTC. The service is subsidized and administered by the Imperial County Transportation Commission (ICTC), and is managed and operated by First Transit, Inc. For information please refer to the IVT RIDE website www.ivtride.org service brochure or call ICTC's Mobility Coordinator at 760-592-4494. For reservations or trip information please call IVT RIDE at 760-337-1760.

IVT RIDE Brawley: This service is a demand response transit service within the City of Brawley. The service uses two (2) cutaway, wheelchair accessible buses and is provided six (6) days a week.

IVT RIDE Calexico This service is a demand response transit service within the City of Calexico. The service uses three (3) cutaway, wheelchair accessible buses and is provided seven (7) days a week.

IVT RIDE El Centro: This service is a demand response transit service within the City of El Centro. The service also operates between the City of Imperial and El Centro. The service uses four (4) cutaway, wheelchair accessible buses and is provided six (6) days a week.

IVT RIDE Heber: This service is a demand response transit service within Heber. The service also operates between the City of Imperial and El Centro. The service uses one (1) cutaway, wheelchair accessible bus and is provided four (4) days a week.

IVT RIDE Imperial: This service is a demand response transit service within the City of Imperial and El Centro. The service uses one (1) cutaway, wheelchair accessible bus and provided six (6) days a week.

IVT RIDE West Shores: This service is a demand response transit service within the community of West Shores in the County of Imperial which is open to the general public as the only public transportation option in this community. The service operates within the communities on the west side of the Salton Sea. The IVT Ride West Shores service is provided (2) days a week. The demand response service also connects with Imperial Valley Transit Fixed Route in Westmorland on Tuesdays.

Attachment C

Sample Agreement

1 **AGREEMENT FOR SERVICES**

2
3 THIS AGREEMENT FOR SERVICES (“Agreement”), made and entered into this _____ day
4 of _____, 2018, is by and between the **IMPERIAL COUNTY TRANSPORTATION**
5 **COMMISSION** (“ICTC”) and [business name] [business type] (“CONSULTANT”) (individually,
6 “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 [specify services] (“the Project”); and

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

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

14 1. DEFINITIONS.

15 1.1. “RFP” shall mean ICTC’s request for proposals entitled “Imperial County Transportation
16 Commission (ICTC) [name of RFP]” dated [date]. The RFP is attached as **Exhibit “A”** and incorporated
17 herein by this reference.

18 1.2. “Proposal” shall mean CONSULTANT’s proposal entitled “Proposal to Provide: [name of
19 proposal]” dated [date]. The Proposal is attached as **Exhibit “B”** and incorporated herein by this reference.

20 2. CONTRACT COORDINATION.

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

26 ///

27 ///

28 ///

1 3. DESCRIPTION OF WORK.

2 3.1. CONSULTANT shall provide all materials and labor to perform this Agreement. In the
3 event of a conflict among this Agreement, the RFP and the Proposal, the RFP shall take precedence over the
4 Proposal and this Agreement shall take precedence over both.

5 3.2. CONSULTANT shall perform additional or extra work if required, utilizing the per hour
6 rate set forth in Exhibit "B".

7 4. WORK TO BE PERFORMED BY CONSULTANT.

8 4.1. CONSULTANT shall comply with all terms, conditions and requirements of the RFP,
9 Proposal and this Agreement.

10 4.2. CONSULTANT shall perform such other tasks as necessary and proper for the full
11 performance of the obligations assumed by CONSULTANT hereunder.

12 4.3. CONSULTANT shall:

13 4.3.1. Procure all permits and licenses, pay all charges and fees, and give all notices that
14 may be necessary and incidental to the due and lawful prosecution of the services to be performed
15 by CONSULTANT pursuant to this Agreement;

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

21 4.3.3. At all times observe and comply with, and cause all of its employees to observe and
22 comply with all of said laws, ordinances, regulations, orders and decrees mentioned above; and

23 4.3.4. Immediately report to ICTC in writing any discrepancy or inconsistency it discovers
24 in said laws, ordinances, regulations, orders and decrees mentioned above in relation to any plans,
25 drawings, specifications or provisions of this Agreement.

26 4.4. Any videotape, reports, information, data or other material given to, or prepared or
27 assembled by, CONSULTANT pursuant to this Agreement shall be the property of ICTC and shall not be
28 made available to any individual or organization by CONSULTANT without the prior written approval of

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

8 5. REPRESENTATIONS BY CONSULTANT.

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

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

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

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

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

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

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

1 6. COMPENSATION.

2 The total compensation payable under this Agreement shall not exceed [] dollars (\$[]) unless
3 otherwise previously agreed to by ICTC.

4 7. PAYMENT.

5 CONSULTANT will bill ICTC on a time and material basis upon completion of the project or as set
6 forth in the cost schedule attached hereto as **Exhibit "C"**. ICTC shall pay CONSULTANT for completed
7 and approved services upon presentation of its itemized billing. Notwithstanding the foregoing, ICTC shall
8 retain 10% of the total compensation until the work to be performed has been completed in accordance with
9 this Agreement, as determined by ICTC, and payment in full of all 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.

28

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 employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and
7 damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at
8 any time and property damage), and from any and all claims, demands and actions in law or equity
9 (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the
10 negligence, recklessness or willful misconduct of Consultant, its principals, officers, employees, agents
11 or volunteers 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, employees, agents and volunteers from any and all loss,
15 liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability,
16 including but not limited to personal injury, death at any time and property damage), and from any and
17 all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation
18 expenses) 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 solely by the gross
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 Any deductibles or self-insured retentions must be declared to, and approved by, the ICTC’s Executive
7 Director or his/her designee in his/her sole discretion. At the option of the ICTC’s Executive Director or
8 his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured
9 retentions as respects ICTC, its members, board members, officers, officials, employees and agents; or
10 (ii) Consultant shall provide a financial guarantee, satisfactory to the ICTC’s Executive Director or
11 his/her designee in his/her sole discretion, guaranteeing payment of losses and related investigations,
12 claim administration and defense expenses. At no time shall ICTC be responsible for the payment of
13 any deductibles or self-insured retentions.

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

22 The General Liability and Automobile Liability insurance policies shall be written on an
23 occurrence form. The General Liability (including ongoing operations and completed operations) and
24 Automobile Liability insurance policies shall name ICTC, its members, board members, officers,
25 officials, employees and agents as an additional insured. All such policies of insurance shall be
26 endorsed so Consultant’s insurance shall be primary and no contribution shall be required of ICTC, its
27 members, board members, officers, officials, employees, agents or volunteers. The coverage(s) shall
28 contain no special limitations on the scope of protection afforded to ICTC, its members, board members,

1 officers, officials, employees and agents. Should Consultant maintain insurance with broader coverage
2 and/or limits of liability greater than those shown above, ICTC requires and shall be entitled to the
3 broader coverage and/or the higher limits of liability maintained by Consultant. Any available insurance
4 proceeds in excess of the specified minimum limits of insurance and coverage shall be available to
5 ICTC.

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

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

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

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

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

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

18 Consultant shall furnish ICTC with all certificate(s) and applicable endorsements effecting
19 coverage required hereunder. **All certificates and applicable endorsements are to be received and**
20 **approved by ICTC's Executive Director or his/her designee in his/her sole discretion prior to**
21 **ICTC's execution of the AGREEMENT and before work commences.** Upon request of ICTC,
22 Consultant shall immediately furnish ICTC with a complete copy of any insurance policy required under
23 this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and
24 correct copy of the original policy. This requirement shall survive expiration or termination of this
25 Agreement.

26 If at any time during the life of the Agreement or any extension, Consultant or any of its sub-
27 Consultants fail to maintain any required insurance in full force and effect, all work under this
28 Agreement shall be discontinued immediately, until notice is received by ICTC that the required

1 insurance has been restored to full force and effect and that the premiums therefore have been paid for a
2 period satisfactory to ICTC. Any failure to maintain the required insurance shall be sufficient cause for
3 ICTC to terminate this Agreement. No action taken by ICTC hereunder shall in any way relieve
4 Consultant of its responsibilities under this Agreement.

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

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

20 18. ASSIGNMENT.

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

24 19. NON-DISCRIMINATION.

25 During the performance of this Agreement, CONSULTANT shall not unlawfully discriminate
26 against any employee or applicant for employment or employee of ICTC or member of the public
27 because of race, religion, color, national status, age, or sex. CONSULTANT shall ensure that the
28 evaluation and treatment of its employees and applicants for employment and employees and members

1 of the public are free of such discrimination. CONSULTANT shall comply with all provisions of the
2 Fair Employment and Housing Act (Government Code §12900, *et seq.*). The applicable regulations of
3 the Fair Employment Housing Commission implementing Government Code §12900 set forth in
4 Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this
5 Agreement by reference and made a part hereof as if set forth in full. CONSULTANT shall abide by the
6 Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and
7 regulations issued pursuant to said Act. CONSULTANT shall also abide by the American Disabilities
8 Act and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act.
9 CONSULTANT shall give written notice of its obligations under this clause to labor organizations with
10 which it has a collective bargain or other agreement. CONSULTANT shall include the non-
11 discrimination and compliance provision of this paragraph in all subcontracts to perform work pursuant
12 to this Agreement.

13 20. NOTICES AND REPORTS.

14 20.1. All notices and reports pursuant to this Agreement shall be in writing and may be given
15 by personal delivery or by mailing by certified mail, addressed as follows:

16 **ICTC**

17 Attn: Executive Director
18 Imperial County Transportation Commission
19 1503 N. Imperial Ave., Ste 104
20 El Centro, CA 92243

CONSULTANT

Attn: Project Manager

21 20.2. All notices and reports pursuant to this Agreement may be given by personal delivery or
22 by mailing by certified mail at such other address as either Party may designate in a notice to the other
23 Party given in such manner.

24 20.3. Any notice given by mail shall be considered given when deposited in the United States
25 Mail, postage prepaid, addressed as provided herein.

26 21. ENTIRE AGREEMENT.

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

1 22. MODIFICATION.

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

4 23. PARTIAL INVALIDITY.

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

8 24. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.

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

16 25. WAIVER.

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

20 26. CHOICE OF LAW.

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

24 27. ATTORNEY'S FEES.

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

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1 28. AUTHORITY.

2 Each individual executing this Agreement on behalf of CONSULTANT represents and warrants
3 that:

4 28.1. He/She is duly authorized to execute and deliver this Agreement on behalf of
5 CONSULTANT;

6 28.2. Such execution and delivery is in accordance with the terms of the Articles of
7 Incorporation or Partnership, any by-laws or Resolutions of CONSULTANT and;

8 28.3. This Agreement is binding upon CONSULTANT accordance with its terms.

9 29. COUNTERPARTS.

10 This Agreement may be executed in counterparts.

11 30. REVIEW OF AGREEMENT TERMS.

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

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

3 **IMPERIAL COUNTY TRANSPORTATION COMMISSION:**

4
5 _____
6 Chair

7 **ATTEST:**

8
9 _____
10 Secretary to the Commission

11 **CONSULTANT:**

12
13 By: _____

14
15 **APPROVED AS TO FORM:**

16 **COUNTY COUNSEL**

17
18 By: _____
19 Deputy County Counsel