



**Zero-Emission Bus Analysis and
Rollout Plan
Request for Proposals**

November 2022

THE IMPERIAL COUNTY TRANSPORTATION COMMISSION

Request for Proposals For Zero-Emission Bus Analysis and Rollout Plan for ICTC

I. INTRODUCTION

Imperial County Transportation Commission (ICTC) is soliciting proposals from consulting firms with qualifications and experience necessary to develop a complete Zero-Emission Bus Rollout Plan for the Imperial County Transportation Commission to comply with the California Air Resources Board (CARB) Innovative Clean Transit (ICT) regulation specific to small transit agencies.

The ICT regulation was adopted in December 2018 and requires all public transit agencies to gradually transition to a 100 percent zero-emission bus (ZEB) fleet. Beginning in 2029, 100% of new purchases by transit agencies must be ZEBs, with a goal for full transition by 2040. A ZEB rollout plan from each transit agency, approved by its Board, is required to show how it is planning to achieve a full transition to zero-emission technologies by 2040. Small transit agencies, including ICTC, must submit their Rollout Plan by July 1, 2023.

The purpose of this project is to assist ICTC in implementing the ICT regulation by performing fleet, facilities, and operational analysis and creating a detailed plan to assist ICTC in reaching a zero-emission bus fleet.

II. GENERAL BACKGROUND

ICTC is the regional transportation planning and regional public transit agency for the Imperial Valley region. ICTC builds consensus, makes strategic plans, obtains and allocates resources, contracts for transit services, and provides information on a broad range of topics pertinent to the Imperial Valley region's transportation services and infrastructure.

ICTC is an independent public agency governed by a Commission composed of city council members and county supervisors 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.

ICTC administers contracts with third parties for the operation of the inter-city regional and intra-city circulator public bus systems. In addition, ICTC administers third-party contracts for intra-city paratransit systems.

III. 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.	Advertise and Issue RFP	November 7, 2022
B.	Last Day to Submit Questions Regarding RFP	November 28, 2022
D.	Proposal Due Date	December 16, 2022
E.	Provider Ranking and Staff Recommendation (non-public opening)	Week of December 19th , 2022
F.	Oral Interviews (if utilized)	Week of December 26th, 2022
G.	Selection and Notification Award	Week of December 26th, 2022
H.	ICTC Approval of Contract	Week of December 26th, 2022
I.	Notice of Award/Notice to Proceed	Late January 2023
K.	Report Due	June 30, 2023

IV. SCOPE OF WORK

Imperial County Transportation Commission (ICTC) seeks to conduct a comprehensive analysis of Zero-Emission Technology as it pertains to its public transit vehicles. ICTC aims to develop a comprehensive document in response to the California Air Resources Boards (CARB) Innovative Clean Transit (ICT) Regulation, which mandates the full conversion of bus fleets to zero-emission by 2040. The report should also be in compliance with the Zero-Emission Bus Rollout Plan Guidance for Transit Agencies as issued by CARB. The analysis will develop recommended ZEB modes and provide a Zero Emission Bus Rollout Plan for revenue fleet conversion by 2040 (with infrastructure and operating plan).

The analysis will consider the operational and financial impacts of a full fleet conversion; examine the difference in the capital and operating costs of new battery-electric or hydrogen fuel cell bus technology versus a gasoline/diesel bus, the capital cost of associated ZEB infrastructure, the capital cost of rehabilitation or purchase of interim non-ZEB vehicles and infrastructure, and the overall operating cost impacts. The analysis should also evaluate existing routes and services for determination of potential optimal phasing of ZEB into said routes or services.

The overall goal of the project is to provide ICTC with a board approved Zero Emission Bus Rollout Plan as required by CARB. Additional goals of the project include but not limited to: determine the most capital cost-effective approach to a 100% bus fleet with zero emission propulsion; determine capital improvements required to achieve the 100% ZEB fleet and operation; provide a financing and purchasing strategy that allows ICTC to sustainably meet ZEB deadlines, and develop a comprehensive understanding of how compliance with this regulation will impact ICTC in the future, and how federal legislation may impact the plan.

More detailed objectives of the study are as follows:

1. Evaluate the existing fleet by determining the existing quantity and age of buses as well as the vehicles' work and route requirements, including dwell time and location, that will need to transition to a ZEB fleet.
2. Evaluate existing infrastructure by determining whether the existing local infrastructure can support Battery Electric Buses (BEBs) or Hydrogen Fuel Cell Buses (HFCBs) and identify infrastructure improvements and locations needed to retain existing operating parameters, schedules, and range during the transition to a full ZEB fleet.
3. Identify and evaluate what battery charging or hydrogen fuel infrastructure will be required for a future fleet of BEBs, HFCBs or a combination.
4. Evaluate current or planned infrastructure projects that can be modified to support agency compliance with the CARB ZEB regulation.
5. Identify feasible infrastructure improvements, develop a realistic implementation plan, estimate the costs of the improvements, and develop an infrastructure phasing plan that allows for existing operations while reaching compliance by 2040.
6. Develop a phasing plan for procurement of ZEB vehicles with consideration of replacement and incremental needs to reach compliance by 2040 as well as the timing of delivery of required fueling infrastructure.
7. Prepare an operational and financial comparison of the administration, operations, and maintenance (O&M) needs between ZEBs and current vehicles.
8. Estimate the O&M costs of the overall ZEB operations for the transition scenario.
9. Prepare a comprehensive summary of any anticipated challenges for ZEB rollout and transition.
10. Prepare a report in compliance with Zero-Emission Bus Rollout Plan Guidance for Transit Agencies inclusive of the items noted within the project Scope of Work.

Project Management

This task includes management and administration activities that will be provided by the Consultant consistent with the technical scope of services and with the requirements of the Agency. Project Management includes, but is not limited to, management and leadership efforts required to successfully guide the multi-disciplined team through the scope of the services. Project management also includes meeting the requirements of the approved quality assurance and quality control (QA/QC) process to ensure that deliverables are produced to the appropriate standard of care in terms of correctness and appropriateness of the information contained in each deliverable item. Elements of Project Management include management and coordination with project stakeholders; administration; reporting; quality control (QC); safety; and cost/schedule monitoring and control.

Financial Analysis

Consultant shall develop a detailed capital and operating financial analysis comparing the purchase of zero-emission buses to the purchase of existing gasoline/diesel buses from several perspectives. From a capital perspective, the primary categories of costs are the initial purchase price, lifetime (through 2040) and operational costs, and replacement of the ZEB fleet. The initial purchase price of the zero-emission vehicle shall be all inclusive, including recharging infrastructure, potential alternative fuel storage, manuals, vehicle logic units, security cameras, automatic passenger counters, fare collection equipment, and any training that is required. The lifetime cost shall include vehicle replacement parts and battery lifecycle and replacement needs. The operational costs include the cost of fuel (electricity versus hydrogen or gasoline and diesel) and vehicle maintenance.

VI. 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, inclusive of resumes, graphics, forms, pictures, artwork, photographs, cover letters, etc., but not of letters of commitment from subcontractors. 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 the 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 under the evaluation criteria in Section XI, 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 the 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 a wholly-owned subsidiary of a "parent company," provide the legal name and form of the parent company.
- e. Address(es) of primary office(s) that will work on this project.
- f. If DBE certified, identify the 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) completed projects of a similar nature. For each completed project, provide the name of the company and project manager the proposer performed work 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 these 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 the role and responsibility of prime consultants and all sub-consultants, including DBE sub-consultants. 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 an indication of the staffing level 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 the 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, including the client's name and telephone number. It is ICTC's policy to interview the proposer's references.

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

- a. Proposers are required to obtain disadvantaged business enterprise (DBE) participation on this project. The specific goal for DBE participation is **1.0%** for the project. Biannual reporting is required with Good Faith Effort (GFE) documentation. It is ICTC policy to provide disadvantaged, minority, small business, 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 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 will not tolerate illegal 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 sub-consultant list, if applicable, which lists any sub-consultants for this project, DBE status (if applicable), the scope of work, and approximate percentage of the work performed by sub-consultants (as a percentage of the total award to the prime consultant). Under 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 sub-consultant) claiming such status.

8. *Previous Contracts with ICTC*

The proposer shall submit a list that 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 scope of work, award date, completion date, name of ICTC's assigned project manager, and contract value.

9. *Exceptions/Deviations to this Request for Proposal*

State any requested exceptions to or deviations from the requirements of this RFP, segregating “technical” exceptions from “contractual agreement” exceptions. Each exception must reference the particular section and page in the RFP, Scope of Work, or a contractual agreement that refers to the ICTC’s requirements for easy reference.

If no exceptions or deviations are requested in the proposal, then ICTC will interpret this to mean that the proposer is fully satisfied and no further exceptions or deviations will be allowed.

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 sub-consultants 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 conflict with ICTC’s interests.

12. *Detailed Cost Estimate*

Provide an estimate of the total direct and indirect costs to complete all tasks identified in the scope of work. A detailed cost breakdown shall be provided identifying: 1) 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; 2) an estimate of all other direct costs, such as material and reproduction costs; and 3) an estimate of sub-consultant services if needed.

13. *Confidential or Proprietary Information*

All proposals submitted in response to this RFP become the property of ICTC and are public records and, as such, may be subject to public review. Proposals and the documents constituting any contract entered into thereafter become the exclusive property of the ICTC and shall be subject to the California Public Records Act (Government Code Sections 6250 *et seq.*; “the Act”). The ICTC’s use and disclosure of its records are governed by the Act.

Those elements in each proposal which the Provider considers to be trade secrets, as that term is defined in Civil Code Section 3426.1(d), or otherwise exempt by law from disclosure, should be prominently marked as “CONFIDENTIAL” or “PROPRIETARY” by the Provider. The ICTC will use its best efforts to inform the Provider of any request for disclosure of any such document. The ICTC shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked if the disclosure is deemed to be required by law or by an order of the Court.

In the event of litigation concerning disclosure of information the Provider considers exempt from disclosure, the ICTC will act as a stakeholder only, holding the information until otherwise ordered by a court or other legal process. If the ICTC is required to defend an action arising out of a request under the Act for any of the contents of the Provider’s proposal marked “Confidential” or “Proprietary,” the Provider shall defend and indemnify the ICTC from all liability, damages, costs, and expense, including attorneys’ fees, in any action or proceeding arising under the Act.

To ensure confidentiality, the Provider is instructed to enclose all “Confidential,” “Proprietary,” data in so marked sealed envelopes, which should then be included with the proposal. Because the proposal is available for review by any person after award of a contract resulting from an RFP, the ICTC shall not in any way be held responsible for disclosure of any “Confidential” or “Proprietary” documents that are not contained in envelopes and prominently marked.

VII. SUBMITTAL REQUIREMENTS

- A. Proposals shall be submitted in two (2) sealed packages. Each package shall be marked and indicating which services the responses pertain 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 as “confidential.”
1. Provider shall submit package No. 1 with one (1) original, four (4) copies, and one PDF each marked “**ICTC Zero Emission Bus Analysis and Rollout Plan 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 in a sealed envelope marked “**ICTC Zero Emission Bus Analysis and Rollout Plan Cost/Price Proposal.**” The envelope shall bear the Provider’s name and address.

- B. The proposal transmittal letter 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, Interim Executive Director
Imperial County Transportation Commission
1503 N. Imperial 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 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 the 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 that prevents 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 after the hour and date specified above will not be considered.

VIII. PRE-SUBMITTAL ACTIVITIES

A. Questions Concerning Request for Proposals

Questions 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, Interim 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/Addendum/Cancellation to the Request for Proposals

ICTC reserves the right to revise or cancel the RFP or issue an addendum before the date that proposals are due. Revisions, cancellations, or addendums to the RFP shall be posted on the ICTC website at www.imperialctc.org at least one full business day before the deadline for proposals. It is the responsibility of the proposer to contact the ICTC project coordinator and check the Web site for any revisions related to this RFP.

IX. 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 the submittal of an invoice(s). The ICTC will retain 10% of each invoice annually.
- 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.

X. CONSULTANT EVALUATION AND SELECTION PROCESS

- A. ICTC will establish an evaluation committee (“Committee”) for this project that may include representatives from ICTC and its member agencies with experience and expertise in the related discipline(s).
- B. Based upon the proposals deemed “responsive”, the Committee may select a short-list of qualified firms for this project. The short-listed firms will be invited for oral interviews. The consultant’s project lead or manager will then be expected to make a presentation to the Committee that summarizes the creative and bilingual public outreach and associated approach recommended for this project.
- C. 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.

- D. The Committee will recommend the top-ranked proposer to ICTC's Executive Director who will request Commission authority to award a contract. The Commission has final authority for selection. The proposer selected will be sent a Notice of Award/Notice to Proceed.

XI. 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.

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

A. Project Technical Experience [20 Points]

Qualified consultants will have a variety of experience in performing similar projects 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. High-quality, creative, tactful, and complete proposals showing the 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, creative, unique and advanced, and/or well-thought-out methodologies that ICTC may not have specifically identified in this RFP.

C. Project Team / Staff Qualifications / DBE [25 Points]

Project staff qualifications include an appropriate level or combination of education, licensing, experience, education, and background for the project, with additional points for documented experience in transit marketing, design, etc.

D. Cost/Price [15 Points]

Proposals will be evaluated for providing the most creative, responsive, and thorough approach, at the lowest cost.

E. Completeness of Response/ References [10 Points]

References in the proposals will be evaluated. ICTC's inability to obtain positive

feedback on a proposer during reference checks or to confirm a proposer's history of financial responsibility may reduce that proposer's score in this category.

XII. 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 under 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 its entirety, this RFP. If ICTC cancels the RFP before 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/sub-consultants. See Standard Sample Agreement for Services in the Attachments for any additional information and required certifications by consultants and their sub-consultants.

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. Data Collection

Upon completion of this project, the accumulated documentation becomes the property of the ICTC. The selected consultant will turn over all data, documents, reports, graphs, maps, etc. to ICTC staff.

H. Contract for Services

The selected consultants will be required to sign a customized version of the attached “Standard Sample Agreement for Services” in the Attachments and to provide the insurance certificates and all other required documentation within fifteen (15) calendar days of issuance of the Notice of Intent to Award.

XIII. PROTESTS

ICTC will consider all protests regarding the contracting process or the award of a contract submitted by 4:00 P.M. on the deadlines discussed below. ICTC will only review protests submitted by an actual or prospective proposer or someone else whose direct economic interest would be affected by the award of a contract or by failure to award a contract. 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 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.

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, Interim 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 promptly 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 the Executive Director of the 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 and schedule a review with the Commission. The decision of the Commission will be 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).

Department review of any protest will be limited to:

1. Local agency's failure to have or follow its 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 a protest filed with the 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 the local agency's decision, if any.
5. Indication of the desired ruling or relief from the Department.

Such support should be sent to:

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

APPENDICES:

- A. Sample Proposal Evaluation Form
- B. Sample Consulting Agreement

Attachment A

Sample Evaluation Form

PROPOSAL EVALUATION FORM

DATE: _____

EVALUATOR: _____

RESPONDENT: _____

PROJECT: Zero-Emission Bus Analysis and Rollout Plan

CRITERIA	MAXIMUM POINTS	SCORE
1. Project Technical Experience	20	
2. Methodology and Approach	30	
3. Staff/ Team's Qualifications/ DBE	25	
4. Cost and Best Value	15	
6. Completeness and References	10	
TOTAL SCORE:		_____

Comments:

Attachment B
Draft Consulting 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 **WITNESSETH**

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.

27 ///

28 ///

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.

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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