

Imperial County Transportation Commission

Request for Proposals for a Comprehensive Operational Analysis (COA)



Requested by: David Aguirre, Executive Director
Imperial County Transportation Commission
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August 6, 2024

Prepared by: Gustavo Gomez
Associate Transportation Planner

Proposals due no later than
4:00 p.m. on September 13, 2024

EXHIBITS

A – Sample Proposal Evaluation Form

B – Sample Consultant Agreement

For all Federally Funded Projects the following additional items shall also be considered part of the contract:

C – Required Certification by Consultant with Proposal

- Exhibit 15-H: DBE Information – Good Faith Efforts
- Exhibit 10-H: Cost Proposal (submitted in separate sealed envelope)
- Exhibit 10-O1: Consultant Proposal DBE Commitment
- Exhibit 10-Q: Disclosure of Lobbying Activities

D – Required Certification by Consultant and ICTC after Contract Execution

- Exhibit 10-O2: Local Agency Proposer DBE Information (Consultant Contract)
- Exhibit 17-F: Final Report – Utilization of DBEs
- Exhibit 17-O: DBE Certification Status Change

E – FTA Required Third-Party Contract Clauses

- No Government Obligation to Third Parties
- Program Fraud and False and Fraudulent Statements and Related Acts
- Access to Records and Reports
- Federal Changes
- Civil Rights (EEO, Title VI, & ADA)
- Incorporation of Federal Transit Administration Terms
- Prohibition on Certain Telecom and Video Surveillance Services or Equipment
- Energy Conservation
- Disadvantaged Business Enterprise (DBE) Prompt Payment/Return of Retainage
- Intelligent Transportation Systems (ITS)-National Architecture
- Termination
- Government-wide Debarment and Suspension
- Legal Matters Concerning a Covered Transaction
- Breaches and Dispute Resolution
- Lobbying and Lobbying Certification Statement
- Clean Air
- Clean Water
- Fly America (Property or Persons International Travel)

THE IMPERIAL COUNTY TRANSPORTATION COMMISSION

Request for Proposals For Comprehensive Operational Analysis

I. INTRODUCTION

Imperial County Transportation Commission (ICTC) is seeking proposals from qualified and experienced consulting firms to develop a Comprehensive Operational Analysis (COA). The goal of this project is to evaluate and enhance the efficiency, effectiveness, and sustainability of ICTC's transit services. ICTC is looking for an experienced consultant/firm to assess its current operations, identify areas for improvement, and develop recommendations for optimizing service delivery.

The selected consultant will be responsible for:

- **Assessing Current Operations:** Conduct a thorough analysis of our existing transit operations to identify inefficiencies, gaps, and opportunities for improvement
- **Developing Recommendations:** Provide actionable recommendations to enhance service delivery, maximize ridership with existing financial constraints and ensure long-term sustainability. Recommendations may include adjustments/removal of exiting routes/stops/trips and implementation of new routes/stops/trips.
- **Community Engagement:** Develop a comprehensive plan that includes innovative methods for soliciting broad community input and addressing resident goals and objectives
- **Future Planning:** Evaluate future options such as electrification and consolidation, and provide recommendations for service improvements spanning from immediate to long-term (1 to 10 years)
- **Feasibility of Passenger Rail:** Assess the feasibility and potential implementation of adding passenger rail services within the Imperial County. Assessment should include the possibility of building new passenger rail corridor or perhaps utilizing existing Union Pacific rail corridor.
- **Feasibility of Signal Prioritization:** Evaluate the feasibility and potential benefits of implementing signal prioritization to optimize transit operations, reduce travel times, and enhance schedule adherence.

Objectives of the Comprehensive Operational Analysis

1. Identify Areas for Improvement

- Examine route performance, ridership patterns, scheduling, infrastructure, and assess changes to cities and locations of interest

- Highlight opportunities to optimize service delivery and address inefficiencies, including the feasibility of implementing passenger rail services and signal prioritization to enhance transit connectivity and efficiency
2. Enhance Efficiency and Effectiveness:
 - Assess the effectiveness of current operations inclusive of routes and trips
 - Identify bottlenecks, redundancies, out of date practices, and low usage bus stops.
 - Provide data-driven recommendations to streamline operations and improve service quality, integrating feasibility assessment of signal prioritization
 3. Address Customer Needs
 - Gather data on passenger demand, travel patterns, bus stop usage, and customer satisfaction
 - Shape service planning and optimization strategies to align with community needs
 4. Optimize Resource Allocation
 - Analyze operational data and financial information for informed decision-making
 - Optimize fleet management, personnel, route and trip decisions infrastructure investment, and maintenance
 - Identify areas of underutilization or misallocation for more effective resource use and cost savings
 5. Support Decision-Making and Planning
 - Provide insights and recommendation to support strategic decision-making
 - Prioritize initiatives, allocate budgets, and implement changes based on data-driven findings
 - Create a roadmap for long-term sustainability and growth of transit services
 6. Enhance Stakeholder Communication
 - Engage with passengers, staff, and community stakeholders
 - Gather input, address concerns, and foster collaboration
 - Build trust, encourage participation, and increase support for proposed changes

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	August 6, 2024
B.	Last Day to Submit Questions Regarding RFP	August 22, 2024
D.	Proposal Due Date	September 13, 2024
E.	Provider Ranking and Staff Recommendation (non-public opening)	Week of September 16, 2024
F.	Oral Interviews (if utilized)	Week of September 16, 2024
G.	Selection and Notification Award	September 2024
H.	ICTC Approval of Contract	September 2024
J.	Notice of Award/Notice to Proceed	September 2024
K.	Completed Initial Draft Report	August 2025
L.	Presentation of Report to Commission	November 2025
M.	Delivery of Final Report	February 2026

IV. SCOPE OF WORK

The Imperial County Transportation Commission (ICTC) seeks a consulting firm to conduct a Comprehensive Operational Analysis (COA) of its local fixed-route bus and demand-response services. This analysis will lead to recommendations for program and service design improvements to enhance overall system efficiency and operational effectiveness. The study will explore all possible alternatives to address existing services and currently known but unmet service requests, as well as anticipated requests in newly developing or redeveloping areas.

The goal of the COA is to evaluate strengths and weaknesses of the current transit operations and develop a plan that enhances the efficiency and effectiveness of existing transit services while responding to the changing demands. The plan will provide recommendations for short-term (1-5 years) and long-term (5-10 years) service improvements. Additionally, this study will define an ongoing methodology for system evaluation and updated performance guidelines.

COA Study Process Overview

1. Data Collection
 - a. Ridership
 - b. On-time performance
 - c. Customer satisfaction
 - d. Effectiveness of route alignments and trips
 - e. Service schedules
 - f. Existing dissemination of transit information
2. Analyze Transit Market Conditions (present and future)
 - a. Develop future service recommendations
 - b. Develop a strategic plan to improve ICTC service and its network
3. Develop a 10-year plan
 - a. Suggested network and expansion improvements
 - b. Collect public and stakeholder input for the 10-year plan
 - c. Update the 10-year plan to reflect public input and comments
 - d. Present the final 10-year plan to the ICTC Commission Board

Strategic Areas for Guidance

1. Develop a plan that will provide recommendations to ensure a transit service network that will meet ICTC transit needs
2. For fixed route services, recommendations for ICTC for future service expansion and/or restructuring of its existing bus services which will consider the following at a minimum:
 - a. Transit mobility demand;
 - b. Access to transit services;
 - c. Optimized route alignment to serve trip generators and neighborhoods
 - d. Residential and economic growth in the service area
 - e. Improving mobility for residents in disadvantaged communities
 - f. Existing travel patterns to provide public transit as an alternative to automobiles to mitigate congestion
 - g. Potential restructuring to expand service to new areas, consolidate bus stops, improvement frequency, and repurpose routes

- h. List of innovative technologies to improve planning, management, and service delivery
3. For Demand Response/Paratransit Dial-A-Ride, recommendations for ICTC summarizing and evaluating the service according to:
 - a. Rider and trip eligibility, including services beyond ADA requirements
 - b. Service performance/characteristics
 - Passenger, revenue hours/miles, vehicles hours/miles, by weekday and weekend
 - Peak/off-peak ridership demand by passenger classification
 - Cost effectiveness (per passenger, per revenue hour, per mile per vehicle trip and vehicle revenue mile/hour; subsidy per passenger, and farebox recovery)
 - c. Determine trends, deficiencies and opportunities and other issues related to providing demand responsive service including current levels of passenger satisfaction
 - d. Explore alternative transit options to include the following: micro transit integration, service to disadvantaged communities with low to no-fare options
 - e. Evaluate current dispatch software and develop a list of innovative technologies aimed at improving planning, managing and service delivery

Detailed objectives are as follow, but not limited to:

1. Provide significant opportunities to engage community members in transit planning to improve ICTC's transit services, including fixed route and paratransit service within the County.
2. Undertake a comprehensive analysis including equity analysis of ICTC's existing ridership, passenger load, productivity, on-time performance, revenue service encompassing miles and hours, fare revenues, subsidy per passenger, and overall performance of existing service
3. Review existing transit service data, including ridership statistics, route performance and operational costs.
4. Analyze transit service schedules, frequencies, and coverage to identify gaps and inefficiencies.
5. Examine maintenance and repair processes to identify opportunities for streamlining operations and reducing down time.
6. Conduct a demand analysis to understand the travel patterns, needs, and preferences of our target population.
7. Document on time performance and identify causes of problems in meeting standards and expectations.
8. Develop recommendations to address service needs including but not limited to: new fixed route services, discontinuation of non-productive services/routes, adjustments to bus stops and trips, revised running times, headways and modification of demand-

response service programs potentially including deletion of existing programs and implementation of new programs.

9. Develop a strategic plan that includes a short-term (1-5 years) and long-term (5-10 years) phased plan detailing routes and service frequencies necessary to meet anticipated growth in the service area
10. Assess and recommend improvements to existing funding and budgeting structure.
11. Fulfill regional, state, and federal goals by improving ICTC's transit service to support greater transit use, increased regional travel options and connectivity, and associated benefits.
12. Document expected future system needs based on housing and development plans and projections for the local area.
13. Assess the long-term financial sustainability of our transit services and provide recommendations for revenue generation or cost reduction strategies.

Passenger Rail Services Feasibility

ICTC also seeks to evaluate the feasibility and potential implementation of adding passenger rail services within the Imperial County. This analysis will explore the viability and logistical requirement for integrating passenger rail into the existing transportation infrastructure without delving into financial analysis or economic impact considerations.

Detailed objectives regarding passenger rail are as follows, but not limited to:

1. Evaluate Viability: Assess the current infrastructure and logistical requirements for integrating passenger rail services into the existing transportation infrastructure of Imperial County
2. Identify Requirements: Determine necessary infrastructure upgrades and equipment needs for introducing passenger rail services. Assess possible corridor options.
3. Consult with key stakeholders, including government agencies, local businesses, community organizations, and residents, to gather input and address concerns related to the proposed passenger rail project.

Feasibility of Signal Prioritization

In alignment with enhancing operational efficiency and service reliability, the feasibility of signal prioritization will be assessed as part of the Comprehensive Operational Analysis. Signal prioritization aims to optimize traffic signal operations to benefit transit vehicles, thereby reducing travel times, improving schedule adherence and enhancing overall service quality. This initiative will be integrated into the analysis to explore its technical viability, infrastructure requirements, operational impacts, and stakeholder engagement considerations.

1. Technical Viability: Assess the feasibility of integrating priority signal system with ICTC's current transit operations and technologies. Assess the need for upgrades or modifications to traffic signal hardware and software to support signal prioritization.

2. **Infrastructure Requirements:** Identify necessary infrastructure improvements to implement signal prioritization effectively. Consider costs and logistics associated with installing priority signal equipment at key intersections along ICTC's transit routes. Evaluate the potential for phased implementation to prioritize high impact corridors or routes with frequent transit service.
3. **Operational Impact:** Analyze the anticipated benefits of signal prioritization in terms of operational efficiencies and service enhancements. Quantify potential reduction in travel times, and improvements in schedule adherence. Assess the impact on overall transit service reliability and passenger satisfaction through pilot testing or simulation studies.

Based on the feasibility assessment, provide recommendations for integrating signal prioritization into ICTC's transit operations. Outline a phased implementation plan that aligns with the COA's short-term (1-5 years) and long-term (5-10 years) service improvement goals. Develop a roadmap for installing priority signal equipment, conducting pilot projects, and monitor performance metrics.

Work Tasks

1. Route Productivity Analysis

The productivity of individual routes shall be assessed by the use of statistical rankings. Routes with low productivity shall be targeted for in-depth analysis. Rankings should be done separately for weekday and weekend service.

The Consultant shall collect information on running times, traffic conditions, bus stop usage, route inter-relationship and passenger activity to identify possible operational problems, ridership patterns, and trip generators. The Consultant shall investigate and analyze current and projected land use, population densities, activity centers, and develop trends and relate them to transit improvements. The Consultant shall develop route profiles, including description of unmet transit needs, productivity, improvements, and recommended changes. Route maps shall be included with each profile. Using the data collected in this and other tasks, specific route and service level recommendations shall be formulated.

Recommendations will include route alignments, schedules, headways, hours of service, areas served, interlines, transfer points to other regional transit, time points, traffic considerations, estimates of cost and schedules for implementation and bus stop locations. Moreover, recommendations shall include chronological order as to plan revisions to the service with a ranking of short-term to end-of-plan rankings.

Consultant will be responsible for conducting public hearings to disseminate the draft plans, and present for public comments for purposes of providing input to the Consultants and ICTC Staff prior to identification and deduction for the preferred alternative(s). In addition, Consultant will be responsible to incorporate public comments and suggestions to the Final 10-Year Plan is presented to the ICTC Board.

2. Latent and Future Demand Estimation

The study area shall be statistically examined using demographic data on a census basis, to determine potential for transit ridership. Areas not presently served by transit or marginally served by transit should be emphasized in the analysis. In addition, major activity centers shall be identified including, but not limited to:

- a. Major commercial areas
- b. Major employment areas
- c. Health care facilities
- d. Major social services agencies
- e. Schools
- f. New and planned housing developments including housing density plotting, multi-family, and home values
- g. Transit Oriented Development/Transit Adjacent Development

3. Public Outreach and Comment Opportunity

Upon preparation of the draft 10-Year Plan of proposed alternatives/recommendations, the Consultant shall schedule, and conduct noticed public meetings. These meetings shall be held for the purpose of providing the public with an opportunity to hear a summary of key study findings, the proposed service goals and objectives and a presentation of the proposed service alternatives. The public will be invited to offer comments, suggestions, and observations on the proposed alternatives of the 10-Year Plan, for consideration by the Consultant and ICTC staff in developing the preferred alternative(s). Meetings must be scheduled to ensure attendance of the public at varying times of the day (i.e., morning, mid-day, and after the typical work schedule).

The Consultant shall be responsible for marketing and designing the public meeting/hearing format and shall attend the meeting and be prepared to present the analysis findings and proposed service alternatives, answer questions and receive public comment. The Consultant shall collect, and complete public comments received at these meetings and incorporate relative comments in the development of the short and long-range plans. Some formal written summaries of public comments and how those comments were incorporated into the plans shall be prepared and included as part of the Final 10-Year Plan. The consulting team will prepare a strategy for staging and attracting public. In addition, the Consultant shall afford the public the means to provide public comment through an online format. ICTC can assist in securing meeting location(s) and disseminating notices of public meetings. Consultant shall consider the possibility of incorporating electronic meeting attendance to all public meetings.

Deliverables

Consultant shall deliver:

1. Weekly Progress Reports

Consultant shall produce Weekly Status Reports which shall be submitted electronically to the ICTC Project Manager, or his designee, and shall include a description of accomplishments to date, a comparison of actual-to-scheduled progress and the proportion of budget expended by project task.

2. Data Collection

All data and working papers used for the study will remain the domain and property of ICTC upon completion of the project and may be used in the future at ICTC's discretion.

Submission of all source data for surveys and system and route analyses. All source data for the system, including all cross-tabulated information and charts, shall be submitted for each bus route. All work papers developed in connection with the project shall include calculation methodology, assumptions and data worksheets, which can be used as audit trails for financial and non-financial data where applicable. All maps, graphics and charts and tables developed shall also be submitted.

3. Draft/Final Report

Consultant shall deliver the draft final report for review by ICTC staff prior to issuing final report. Consultant to develop recommendations for optimization of ICTC's immediate and future needs as it related to restructuring its existing bus services by taking into account the following:

- a. Executive Summary of Findings
- b. An explicit description of the methodology for data collection and research methods used.
- c. Evaluation criteria used to determine the validity and reliability of the analysis.
- d. Graphic representations and/or tabular reports of all the data collected accompanied by explanatory text and commentary on the data.
- e. A comparative analysis of ICTC and other contracted municipal fixed-route services which are comparable in size (that compares cost per revenue service hour), ridership, on-time performance, and level of service comparison at a minimum).
- f. Projections for residential and economic growth in the ICTC service area
- g. Existing travel patterns of transit dependent riders and discretionary riders to explore the best possible approach to enhancing the use of public transportation, increasing ridership and consequently mitigating that increasing vehicular traffic congestion in the service area

- Potential realignment restructuring of services to provide improved frequency, regional integration
- An analysis of how the proposed changes will benefit passengers
- An assessment of the number of riders and bus stops affected by the proposed changes
- Phases of implementation strategies
- Projections of estimated costs for operating, capital investments, and system ridership over the ten (10) year plan
- A summary of necessary capital project (if any) to support the proposed service changes/improvements

The result of the analysis shall be used to ensure that ICTC continues to improve its service to meet both current and future needs of the community within the constraints of available funding from local, State and Federal sources and effective and efficient ends of sustainability.

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, 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 IX, 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 **17%** 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*

One firm will be selected for this project. Cost Proposals (Caltrans LAPM Exhibit 10H Example 2) will not be submitted with the proposal. ICTC will first rank and score the submitted proposals and will contract the top-ranked firm for the submittal of the cost proposal. Cost proposals consider the following:

- A. Develop costs and fees for the services requested. Submit a not-to-exceed fee proposal based on anticipated fully burdened hourly rates.
- B. When preparing costs and fees consider the scope of work involving project kick-off and review of available documentation, material submittals, and project documentation and prepare a lump sum fixed fee breakdown based on anticipated staff and hours. Costs should be organized for full-time hourly rates. Such hoarsely rates should be fully

burned or loaded, including full compensation for all overhead and profit. Billing rates shall include provision for normal office costs, including but not limited to office rental, utilities insurance, cell phone or radio, equipment, normal supplies and materials, in-house reproduction services, and local travel costs.

C. No subcontractors shall be utilized without prior authorization by the ICTC and modification to the submitted DBE subcontractor's list or goal is discouraged and may lead to project funding issues.

D. Firm may submitted its own form of the cost proposal; however, Exhibit 10-H LAPM must be submitted as part of the proposal. Executable copies of Exhibit 10-H and all other updated LAPM forms can be found here: <https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>

E. If using sub-consultants, the prime consultant must submit an exhibit 10-H for each sub-consultant (which only reflects the cost of the sub-consultant work). Those costs must be reflected in the cost proposal of the prime consultant. For more information, please consult the Caltrans Local Assistance Procedures Manual Chapter 10 "Consultant Selection."

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.

VI. SUBMITTAL REQUIREMENTS

- A. Consultants are to submit (1) original, three (3) copies, and one USB drive containing a PDF version of the proposal marked “ICTC Comprehensive Operational Analysis”. Email submissions are **not** allowed. The proposal shall be held in confidence until the award of the contract. At that time, it becomes a matter of public record.
- 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 4 P.M., local time, on **September 13, 2024**, at the office of:

David Aguirre, Executive Director
Imperial County Transportation Commission
Attn: Gustavo Gomez, Associate Transportation Planner
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.

VII. PRE-SUBMITTAL ACTIVITIES

A. Non-Mandatory Pre-Proposal Meeting and Questions Concerning Request for Proposals

The non-mandatory pre-proposal conference will be on **August 26, 2024 at 9am** local time. Attendance is encouraged but not mandatory. The pre-proposal conference will be held virtually through Zoom. Zoom meeting information will be issued via addendum.

Questions must be received in writing via mail, e-mail, or hand delivery no later than 3 P.M. local time, on **August 22, 2024** addressed to:

Gustavo Gomez, Associate Transportation Planner
Imperial County Transportation Commission
1503 N. Imperial Ave. Suite 104
El Centro, CA 92243
760-592-4494
e-mail: gustavogomez@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.

VIII. 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.

IX. CONSULTANT EVALUATION AND SELECTION PROCESS

- A. ICTC will utilize a one-step process as noted in Caltrans Local Assistance Procedures Manual (LAPM) Chapter 10- Consultant Selection Process. ICTC reserved the right to include an oral interview process component. If an oral interview is considered, selected firms will be notified.
- B. Proposals will be reviewed by an evaluation committee. Sample evaluation criteria for proposals are attached for your information as Attachment A. The evaluation committee's assessment and recommendations shall be forwarded to the Executive Director for review. ICTC reserves the right to negotiate the price with the higher-ranked proposer and if agreement on the terms is not possible, the ICTC may opt to go with the next highest-ranked proposer (LAPM Chapter 10).
- C. ICTC reserves the right to select any consultant who is determined qualified and may not correlate to a number 1, number 2, or even number 3 ranked consultant. Additionally, ICTC reserves the right to reject any and all proposals submitted and/or requested additional information for clarification. so.

X. 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.

XII. PROTESTS

ICTC will consider all protests regarding the contracting process or the award of a contract submitted by 3:00 P.M. on the deadlines discussed below. ICTC will only review protests submitted by an actual or prospective proposer. A protest must be made in writing, contain an original signature and must be mailed or hand delivered to ICTC. Protests which do not strictly comply with ICTC’s protest procedures will be rejected.

Protests relating to the content of the RFP package must be filed on or before the date the response is due. Protests relating to the intent to make an award, must be filed within three days before the award. 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:

Gustavo Gomez, Associate Transportation Planner
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 relevant 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 protester 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 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

Attachment A

Sample Proposal Evaluation Form

SAMPLE PROPOSAL EVALUATION FORM

DATE: _____

EVALUATOR: _____

RESPONDENT: _____

PROJECT: _____

CRITERIA	MAXIMUM POINTS	SCORE
1. Project Technical Experience	30	
2. Methodology and Approach	30	
3. Staff Qualifications and Key Personnel	25	
4. Completeness and References	15	
<hr/>		

TOTAL SCORE: _____

Comments:

Attachment B
Sample Consultant Agreement

1 **AGREEMENT FOR SERVICES**

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

7 **WITNESSETH**

8 **WHEREAS**, ICTC desires to retain a qualified individual, firm or business entity to provide
9 professional services for a Comprehensive Operational Analysis (“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. “Proposal” shall mean CONSULTANT’s proposal entitled “ICTC Comprehensive
16 Operational Analysis RFP” dated _____. The Proposal is attached as **Exhibit “A”** and incorporated
17 herein by this reference.

18 2. **CONTRACT COORDINATION.**

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

24 3. **DESCRIPTION OF WORK.**

25 3.1. CONSULTANT shall provide all materials and labor to perform this Agreement. In the
26 event of a conflict among this Agreement and the Proposal, this Agreement shall take precedence over the
27 Proposal.
28

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

3 4. WORK TO BE PERFORMED BY CONSULTANT.

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

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

8 4.3. CONSULTANT shall:

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

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

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

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

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

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

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

7 5. REPRESENTATIONS BY CONSULTANT.

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

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

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

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

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

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

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

28 6. COMPENSATION.

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

3 7. PAYMENT.

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

10 8. METHOD OF PAYMENT.

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

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

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

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

22 10. SUSPENSION OF AGREEMENT.

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

27 11. SUSPENSION AND/OR TERMINATION.

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

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

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

12 12. INSPECTION.

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

18 13. OWNERSHIP OF MATERIALS.

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

22 14. INTEREST OF CONSULTANT.

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

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

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

3 15. INDEMNIFICATION.

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

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

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

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

1 16. INDEPENDENT CONTRACTOR.

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

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

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

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

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

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

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

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

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

1 17. INSURANCE.

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

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

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

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

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

17 \$4,000,000 general aggregate

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 18. ASSIGNMENT.

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

13 19. NON-DISCRIMINATION.

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

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

3 20. NOTICES AND REPORTS.

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

<p>6 ICTC</p> <p>7 Attn: Executive Director 8 Imperial County Transportation Commission 9 1503 N. Imperial Ave., Ste 104 10 El Centro, CA 92243</p>	<p>CONSULTANT</p>
--	--------------------------

11 20.2. All notices and reports pursuant to this Agreement may be given by personal delivery or
12 by mailing by certified mail at such other address as either Party may designate in a notice to the other
13 Party given in such manner.

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

16 21. ENTIRE AGREEMENT.

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

20 22. MODIFICATION.

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

23 23. PARTIAL INVALIDITY.

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

27 24. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.

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

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

6 25. WAIVER.

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

10 26. CHOICE OF LAW.

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

14 27. ATTORNEY'S FEES.

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

17 28. AUTHORITY.

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

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

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

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

25 29. COUNTERPARTS.

26 This Agreement may be executed in counterparts.

27 30. ADDITIONAL FEDERAL CLAUSES.

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

5 31. NON-APPROPRIATION.

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

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

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

17
18 33. REVIEW OF AGREEMENT TERMS.

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

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

**IMPERIAL COUNTY
TRANSPORTATION COMMISSION:**

CONTRACTOR:

By: _____

Chairperson

By: _____

ATTEST:

CRISTI LERMA
Secretary to ICTC

APPROVED AS TO FORM:

ERIC HAVENS
County Counsel

By: _____

County Counsel

Attachment C

Required Certification by Consultant with Proposal

EXHIBIT 15-H: PROPOSER/CONTRACTOR GOOD FAITH EFFORTS

Cost Proposal Due Date _____ PE/CE

Federal-aid Project No(s). _____ Bid Opening Date _____ CON

The _____ established a Disadvantaged Business Enterprise (DBE) goal of _____% for this contract. The information provided herein shows the required good faith efforts to meet or exceed the DBE contract goal.

Proposers or bidders submit the following information to document their good faith efforts within five (5) calendar days from cost proposal due date or bid opening. Proposers and bidders are recommended to submit the following information even if the Exhibit 10-O1: Consultant Proposal DBE Commitments or Exhibit 15-G: Construction Contract DBE Commitment indicate that the proposer or bidder has met the DBE goal. This form protects the proposer’s or bidder’s eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

The following items are listed in the Section entitled “Submission of DBE Commitment” of the Special Provisions, **please attach additional sheets as needed:**

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications	Dates of Advertisement

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of DBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates

- C. The items of work made available to DBE firms including those unbundled contract work items into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation in order to meet or exceed the DBE contract goal.

Items of Work	Proposer or Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract

- D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Names, addresses and phone numbers of firms selected for the work above:

- E. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining information related to the plans, specifications and requirements for the work which was provided to DBEs:

F. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining bonding, lines of credit or insurance, necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results

H. Any additional data to support a demonstration of good faith efforts:

SAMPLE COST PROPOSAL 2

**SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)**

Note: Mark-ups are Not Allowed

Consultant _____ Prime Consultant Subconsultant 2nd Tier Subconsultant

Project No. _____ Contract No. _____ **Contract Amount \$** _____ **Date** _____

For Combined Rate	Fringe Benefit % + General & Administrative %	=	Combined ICR%
OR			
For Home Office Rate	Fringe Benefit % + General & Administrative %	=	Home Office ICR%
For Field Office Rate	Fringe Benefit % + General & Administrative %	=	Field Office ICR%
		Fee	= %

BILLING INFORMATION

CALCULATION INFORMATION

Name/Job Title/Classification ¹	Hourly Billing Rates ²			Effective Date of Hourly Rate		Actual or Avg. Hourly Rate ⁴	% or \$ Increase	Hourly Range - for Classifications Only
	Straight ³	OT(1.5x)	OT(2x)	From	To			
John Doe – Project Manager * Civil Engineer II	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		Not Applicable
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	
Sue Jones – Construction Engineer/Inspector Engineer I	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		Not Applicable
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	
Buddy Black – Claims Engineer Engineer III	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		Not Applicable
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	
Land Surveyor **	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	\$00 - \$00
Technician	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	\$00 - \$00

(Add pages as necessary)

7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is its standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.
9. The cost proposal format shall not be amended. All costs must comply with the Federal cost principles.
10. Add additional pages if necessary.
11. Subconsultants must provide their own cost proposals.

SAMPLE COST PROPOSAL 2

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

7. Generally Accepted Accounting Principles (GAAP)
8. Terms and conditions of the contract
9. [Title 23 United States Code Section 112](#) - Letting of Contracts
10. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
11. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
12. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Prime Consultant or Subconsultant Certifying:

Name: _____ Title*: _____
 Signature: _____ Date of Certification (mm/dd/yyyy): _____
 Email: _____ Phone Number: _____
 Address: _____

* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____
 3. Project Description: _____
 4. Project Location: _____
 5. Consultant's Name: _____ 6. Prime Certified DBE:

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
Local Agency to Complete this Section		11. TOTAL CLAIMED DBE PARTICIPATION	%
17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____ Consultant's Ranking after Evaluation: _____ Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.	IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. _____ 12. Preparer's Signature 13. Date _____ 14. Preparer's Name 15. Phone _____ 16. Preparer's Title		
_____ 21. Local Agency Representative's Signature 22. Date _____ 23. Local Agency Representative's Name 24. Phone _____ 25. Local Agency Representative's Title			

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENTCONSULTANT SECTION

1. **Local Agency** - Enter the name of the local or regional agency that is funding the contract.
2. **Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
3. **Project Location** - Enter the project location as it appears on the project advertisement.
4. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
5. **Consultant's Name** - Enter the consultant's firm name.
6. **Prime Certified DBE** - Check box if prime contractor is a certified DBE.
7. **Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
8. **DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
9. **DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
10. **DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
11. **Total Claimed DBE Participation %** - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
12. **Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
13. **Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
14. **Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
15. **Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
16. **Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

17. **Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
18. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
19. **Proposed Contract Execution Date** - Enter the proposed contract execution date.
20. **Consultant's Ranking after Evaluation** - Enter consultant's ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
21. **Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
22. **Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
23. **Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
24. **Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
25. **Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

<p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action:</p> <p><input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award</p>	<p>3. Report Type:</p> <p><input type="checkbox"/> a. initial <input type="checkbox"/> b. material change</p> <p>For Material Change Only: year ____ quarter ____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known</p> <p>Congressional District, if known _____</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known _____</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p>	
<p>10. Name and Address of Lobby Entity (If individual, last name, first name, MI)</p> <p>(attach Continuation Sheet(s) if necessary)</p>	<p>11. Individuals Performing Services (including address if different from No. 10) (last name, first name, MI)</p>	
<p>12. Amount of Payment (check all that apply)</p> <p>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>	<p>14. Type of Payment (check all that apply)</p> <p><input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____</p>	
<p>13. Form of Payment (check all that apply):</p> <p><input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____</p>		
<p>15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:</p> <p>(attach Continuation Sheet(s) if necessary)</p>		
<p>16. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/></p>		
<p>17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>		
		<p>Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____</p>
<p>Authorized for Local Reproduction Standard Form - LLL</p>		
<p>Federal Use Only:</p>		

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to: subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant, or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
11. Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
12. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
13. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Check all boxes that apply. If other, specify nature.
15. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
16. Check whether or not a continuation sheet(s) is attached.
17. The certifying official shall sign and date the form, and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04

Attachment D

Required Certification by Consultant and ICTC
after Contract Execution

EXHIBIT 10-O2 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____
 3. Project Description: _____
 4. Project Location: _____
 5. Consultant's Name: _____ 6. Prime Certified DBE: 7. Total Contract Award Amount: _____
 8. Total Dollar Amount for **ALL** Subconsultants: _____ 9. Total Number of **ALL** Subconsultants: _____

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Local Agency to Complete this Section			\$
20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____			%
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			14. TOTAL CLAIMED DBE PARTICIPATION
IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.			
_____ 23. Local Agency Representative's Signature		_____ 24. Date	_____ 15. Preparer's Signature
_____ 25. Local Agency Representative's Name		_____ 26. Phone	_____ 16. Date
_____ 27. Local Agency Representative's Title			_____ 17. Preparer's Name
			_____ 18. Phone
			_____ 19. Preparer's Title

DISTRIBUTION: 1. Original – Local Agency
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENTCONSULTANT SECTION

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
- 4. Project Location** - Enter the project location as it appears on the project advertisement.
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
- 8. Total Dollar Amount for ALL Subconsultants** – Enter the total dollar amount for all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 9. Total number of ALL subconsultants** – Enter the total number of all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 10. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 11. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 12. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 13. DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 14. Total Claimed DBE Participation** - \$: Enter the total dollar amounts entered in the "DBE Dollar Amount" column. %: Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 15. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 16. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 17. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 18. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 19. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

- 20. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 21. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 22. Contract Execution Date** - Enter the date the contract was executed.
- 23. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 24. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 25. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 26. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 27. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

EXHIBIT 17-F FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND FIRST-TIER SUBCONTRACTORS

1. Local Agency Contract Number		2. Federal-Aid Project Number		3. Local Agency		4. Contract Completion Date	
5. Contractor/Consultant			6. Business Address			7. Final Contract Amount	
8. Contract Item Number	9. Description of Work, Service, or Materials Supplied	10. Company Name and Business Address	11. DBE Certification Number	12. Contract Payments		13. Date Work Completed	14. Date of Final Payment
				Non-DBE	DBE		
15. ORIGINAL DBE COMMITMENT AMOUNT \$ _____				16. TOTAL			

List all first-tier subcontractors/subconsultants and DBEs regardless of tier whether or not the firms were originally listed for goal credit. If actual DBE utilization (or item of work) was different than that approved at the time of award, provide comments on an additional page. List actual amount paid to each entity. If no subcontractors/subconsultants were used on the contract, indicate on the form.

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT							
17. Contractor/Consultant Representative's Signature		18. Contractor/Consultant Representative's Name		19. Phone		20. Date	
I CERTIFY THAT THE CONTRACTING RECORDS AND ON-SITE PERFORMANCE OF THE DBE(S) HAS BEEN MONITORED							
21. Local Agency Representative's Signature		22. Local Agency Representative's Name		23. Phone		24. Date	

DISTRIBUTION: Original – Local Agency, Copy – Caltrans District Local Assistance Engineer. Include with Final Report of Expenditures

ADA NOTICE: For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, Local Assistance Procedures Manual TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND FIRST-TIER SUBCONTRACTORS

- 1. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 2. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 3. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 4. Contract Completion Date** - Enter the date the contract was completed.
- 5. Contractor/Consultant** - Enter the contractor/consultant's firm name.
- 6. Business Address** - Enter the contractor/consultant's business address.
- 7. Final Contract Amount** - Enter the total final amount for the contract.
- 8. Contract Item Number** - Enter contract item for work, services, or materials supplied provided. Not applicable for consultant contracts.
- 9. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials provided. Indicate all work to be performed by DBEs including work performed by the prime contractor/consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 10. Company Name and Business Address** - Enter the name, address, and phone number of all subcontracted contractors/consultants. Also, enter the prime contractor/consultant's name and phone number, if the prime is a DBE.
- 11. DBE Certification Number** - Enter the DBE's Certification Identification Number. Leave blank if subcontractor is not a DBE.
- 12. Contract Payments** - Enter the subcontracted dollar amount of the work performed or service provided. Include the prime contractor/consultant if the prime is a DBE. The Non-DBE column is used to enter the dollar value of work performed by firms that are not certified DBE or for work after a DBE becomes decertified.
- 13. Date Work Completed** - Enter the date the subcontractor/subconsultant's item work was completed.
- 14. Date of Final Payment** - Enter the date when the prime contractor/consultant made the final payment to the subcontractor/subconsultant for the portion of work listed as being completed.
- 15. Original DBE Commitment Amount** - Enter the "Total Claimed DBE Participation Dollars" from Exhibits 15-G or 10-O2 for the contract.
- 16. Total** - Enter the sum of the "Contract Payments" Non-DBE and DBE columns.
- 17. Contractor/Consultant Representative's Signature** - The person completing the form on behalf of the contractor/consultant's firm must sign their name.
- 18. Contractor/Consultant Representative's Name** - Enter the name of the person preparing and signing the form.
- 19. Phone** - Enter the area code and telephone number of the person signing the form.
- 20. Date** - Enter the date the form is signed by the contractor's preparer.
- 21. Local Agency Representative's Signature** - A Local Agency Representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.
- 22. Local Agency Representative's Name** - Enter the name of the Local Agency Representative signing the form.
- 23. Phone** - Enter the area code and telephone number of the person signing the form.
- 24. Date** - Enter the date the form is signed by the Local Agency Representative.

EXHIBIT 17-O DISADVANTAGED BUSINESS ENTERPRISES (DBE) CERTIFICATION STATUS CHANGE

1. Local Agency Contract Number		2. Federal-Aid Project Number		3. Local Agency		4. Contract Completion Date	
5. Contractor/Consultant			6. Business Address			7. Final Contract Amount	
8. Contract Item Number	9. DBE Contact Information		10. DBE Certification Number	11. Amount Paid While Certified	12. Certification/Decertification Date (Letter Attached)	13. Comments	

If there were no changes in the DBE certification of subcontractors/subconsultants, indicate on the form.

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT					
14. Contractor/Consultant Representative's Signature		15. Contractor/Consultant Representative's Name		16. Phone	17. Date
I CERTIFY THAT THE CONTRACTING RECORDS AND ON-SITE PERFORMANCE OF THE DBE(S) HAS BEEN MONITORED					
18. Local Agency Representative's Signature		19. Local Agency Representative's Name		20. Phone	21. Date

DISTRIBUTION: Original – Local Agency, Copy – Caltrans District Local Assistance Engineer. Include with Final Report of Expenditures

ADA NOTICE: For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, Local Assistance Procedures Manual TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

**INSTRUCTIONS –DISADVANTAGED BUSINESS ENTERPRISES (DBE)
CERTIFICATION STATUS CHANGE**

- 1. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 2. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 3. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 4. Contract Completion Date** - Enter the date the contract was completed.
- 5. Contractor/Consultant** - Enter the contractor/consultant's firm name.
- 6. Business Address** - Enter the contractor/consultant's business address.
- 7. Final Contract Amount** - Enter the total final amount for the contract.
- 8. Contract Item Number** - Enter contract item for work, services, or materials supplied provided. Not applicable for consultant contracts.
- 9. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted contractors/consultants.
- 10. DBE Certification Number** - Enter the DBE's Certification Identification Number.
- 11. Amount Paid While Certified** - Enter the actual dollar value of the work performed by those subcontractors/subconsultants during the time period they are certified as a DBE.
- 12. Certification/Decertification Date (Letter Attached)** - Enter either the date of the Decertification Letter sent out by the Office of Business and Economic Opportunity (OBE0) or the date of the Certification Certificate mailed out by OBE0.
- 13. Comments** - If needed, provide any additional information in this section regarding any of the above certification status changes.
- 14. Contractor/Consultant Representative's Signature** - The person completing the form on behalf of the contractor/consultant's firm must sign their name.
- 15. Contractor/Consultant Representative's Name** - Enter the name of the person preparing and signing the form.
- 16. Phone** - Enter the area code and telephone number of the person signing the form.
- 17. Date** - Enter the date the form is signed by the contractor's preparer.
- 18. Local Agency Representative's Signature** - A Local Agency Representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.
- 19. Local Agency Representative's Name** - Enter the name of the Local Agency Representative signing the form.
- 20. Phone** - Enter the area code and telephone number of the person signing the form.
- 21. Date** - Enter the date the form is signed by the Local Agency Representative.

Attachment F
FTA Required Third-Party Contract Clauses

THIRD PARTY CONTRACT CLAUSES

**Federal Transit Administration and
California Department of Transportation Required Provisions**

1. Source of Funding:

This contract entered on _____ between Imperial County Transportation Commission _____
(DATE) (AWARDING AGENCY)
 and _____ for
(CONTRACTOR)
Calexico Intermodal Transportation Center
(PROJECT)
 is being funded with the following fund source(s) and amounts:

FUND SOURCE	AMOUNT
Federal Transit Administration	
Active Transportation Program	
Transportation Development Act	

Parties referenced in the following clauses are defined as:

“AWARDING AGENCY” is the subrecipient of the State of California Department of Transportation.

“PROJECT” is the AWARDING AGENCY’s federally-supported project.

“CONTRACTOR” is the third-party vendor who has entered into this third-party contract with the AWARDING AGENCY to provide goods or services directly to the AWARDING AGENCY for the accomplishment of the PROJECT.

“Subagreements” are agreements made between the CONTRACTOR and any subcontractors to facilitate the accomplishment of this third-party contract.

For All Third-Party Contract Awards Excluding Micro-Purchases, Except Construction Contracts Exceeding \$2,000.00

No Obligation to Third-Parties by use of a Disclaimer

- A. No Federal Government Obligation to Third Parties. The CONTRACTOR agrees that, absent of the Federal Government’s express written consent, the Federal Government shall not be subject to any obligations or liabilities to any contractor, any third-party contractor, or any other person not a party to the Grant Agreement in connection with the performance of the PROJECT. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, or third-party agreement, the Federal Government continues to have no obligation or liabilities to any party, including the CONTRACTOR or third-party contractor.
- B. Third-Party Contracts and Subagreements Affected. To the extent applicable, federal requirements extend to third-party contractors and their contracts at every tier, and to the subagreements of third-party contractors and the subagreements at every tier. Accordingly, the CONTRACTOR agrees to include, and to require its third-party contractors to include appropriate clauses in each third-party contract and each subagreement financed in whole or in part with financial assistance provided by the FTA.
- C. No Relationship between the California Department of Transportation and Third-Party Contractors. Nothing contained in this Contract or otherwise, shall create any contractual

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

relationship, obligation or liability between the California Department of Transportation and any third-party contractors, and no third-party contract shall relieve the CONTRACTOR of his responsibilities and obligations hereunder. The CONTRACTOR agrees to be fully responsible to the AWARDDING AGENCY for the acts and omissions of its third-party contractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONTRACTOR. The CONTRACTOR'S obligation to pay its third-party contractors is an independent obligation from the AWARDDING AGENCY'S obligation to make payments to the CONTRACTOR. As a result, the California Department of Transportation shall have no obligation to pay or to enforce the payment of any moneys to any third-party contractor.

- D. Obligations on Behalf of the California Department of Transportation. The CONTRACTOR shall have no authority to contract for or on behalf of, or incur obligations on behalf of the California Department of Transportation.
- E. AWARDDING AGENCY Approval of Subagreements. The AWARDDING AGENCY shall approve in writing all proposed Subagreements, Memorandums of Understanding (MOU), or similar documents relating to the performance of the Contract prior to implementation. The CONTRACTOR agrees that it will not enter into any Subagreements unless the same are approved in writing by the AWARDDING AGENCY. Any proposed amendments or modifications to such Subagreements must be approved by the AWARDDING AGENCY prior to implementation.

Program Fraud and False or Fraudulent Statements or Related Acts

- A. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 et seq. and US Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this PROJECT. Upon execution of an underlying contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, and pertaining to the underlying contract or the federally assisted PROJECT for which this contracted work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 in the CONTRACTOR to the extent the Federal Government deems appropriate.
- B. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a PROJECT that is financed in whole or in part with federal assistance originally awarded by the FTA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.
- C. The CONTRACTOR agrees to include the above two clauses in each subagreement financed in whole or in part with Federal Assistance provided by the California Department of

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

Transportation. It is further agreed that these clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Access to Records

The AWARDDING AGENCY, the California Department of Transportation, the State Auditor General, and any duly authorized representative of the Federal government shall have access to any books, records, and documents of the CONTRACTOR and its subcontractors that are pertinent to this Contract of audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. The CONTRACTOR shall include a clause to this effect in every subagreement entered into relative to the PROJECT.

Record Keeping

The CONTRACTOR and all subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Contract. All parties shall make such materials available at their respective offices at all reasonable times during the performance and for three (3) years from the date of final payment under this Contract and all subagreements.

Accounting Records

The CONTRACTOR shall establish and maintain separate accounting records and reporting procedures specified for the fiscal activities of the PROJECT. The CONTRACTOR'S accounting system shall conform to generally accepted accounting principles (GAAP) and uniform standards that may be established by California Department of Transportation. All records shall provide a breakdown of total costs charged to the PROJECT including properly executed payrolls, time records, invoices, and vouchers.

Federal Changes, Amendments to State, and Local Laws, Regulations, and Directives

The terms of the most recent amendments to any federal, State, or local laws, regulations, FTA directives, and amendments to the grant or cooperative contract that may be subsequently adopted, are applicable to the PROJECT to the maximum extent feasible, unless the California Department of Transportation provides otherwise in writing.

Civil Rights (Title VI, EEO, & ADA)

During the performance of this Contract, the CONTRACTOR its assignees and successors in interest, agree to comply with all federal statutes and regulations applicable to grantee subrecipients under the Federal Transit Act, including, but not limited to the following:

- A. Race, Color, Creed, National Origin, Sex. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and federal transit law at 49 U.S.C. Section 5332, the CONTRACTOR Agrees to comply with all applicable equal employment opportunity (EEO) requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the PROJECT. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

termination, rates of pay or other forms of compensation; and selection from training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation any issue.

- B. Nondiscrimination. The CONTRACTOR, with regard to the work performed by it during the contract term shall act in accordance with Title VI. Specifically, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. Department of Transportation's Regulations, including employment practices when the Contract covers a program whose goal is employment. Further, in accordance with Section 102 of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. Section 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation may issue.
- C. Solicitations for Subcontractors Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation by the CONTRACTOR for work performed under a subagreement, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the subcontractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports. The CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the AWARDING AGENCY or the California Department of Transportation to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish the information, the CONTRACTOR shall certify to the AWARDING AGENCY of the California Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance. In the event of the CONTRACTOR'S noncompliance with the nondiscrimination provisions of the Contract, the AWARDING AGENCY shall:
1. Withholding of payment to the CONTRACTOR under the Contract until the CONTRACTOR complies, and/or
 2. Cancellation, termination, or suspension of the Contract, in whole or in part.
- F. Incorporation of Provisions. The CONTRACTOR shall include the provisions of these paragraphs A through F in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONTRACTOR will take such action with respect to any subcontractor or procurement as the AWARDING AGENCY or the California Department of Transportation may direct as a

THIRD PARTY CONTRACT CLAUSES

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means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such directions, the CONTRACTOR may request the AWARDING AGENCY to enter into such litigation to protect the interest of the AWARDING AGENCY, and, in addition, the CONTRACTOR may request the California Department of Transportation to enter into such litigation to protect the interests of the California Department of Transportation.

G. Section 504 and Americans with Disabilities Act Program Requirements

The CONTRACTOR will comply with 49 CFR Parts 27, 37, and 38, implementing and Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, as amended.

Incorporation of FTA Terms

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any California Department of Transportation requests which would cause the California Department of Transportation to be in violation of the FTA terms and conditions. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any AWARDING AGENCY requests which would cause the AWARDING AGENCY to be in violation of the FTA terms and conditions.

Prohibition on certain telecommunications and video surveillance services or equipment.

AWARDING AGENCY is prohibited from obligating or expending loan or grant funds to:

- A. Procure or obtain;
- B. Extend or renew a contract to procure or obtain; or
- C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 2. Telecommunications or video surveillance services provided by such entities or using such equipment.
 3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

THIRD PARTY CONTRACT CLAUSES

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- D. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- E. CONTRACTOR represents and warrants that it has performed a due diligence review of its supply chain and that no such “covered telecommunications equipment or services” shall be provided to the AWARDING AGENCY that would cause the AWARDING AGENCY to be in violation of the prohibition contained in the Act.

Energy Conservation

The CONTRACTOR agrees to comply with the mandatory energy efficiency standards and policies within the applicable California Department of Transportation energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42, U.S.C. Section 6321 et seq.

Awards Exceeding \$10,000.00

Additional Termination Provisions

- A. Termination for Convenience (General Provision). When it is in the AWARDING AGENCY’s best interest, the AWARDING AGENCY reserves the right to terminate this Contract, in whole or in part, at any time by providing a TEN (10) DAY WRITTEN NOTICE to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to the AWARDING AGENCY. If the CONTRACTOR has any property in its possession belonging to the AWARDING AGENCY, the CONTRACTOR will account for the same, and dispose of it in the manner the AWARDING AGENCY directs.
- B. Termination for Default (General Provision). If the CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the CONTRACTOR fails to perform in the manner called for in the contract, or if the CONTRACTOR fails to comply with any other provisions of the contract, the AWARDING AGENCY may terminate this contract for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the AWARDING AGENCY that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the CONTRACTOR, the AWARDING AGENCY, after setting up a new delivery of performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

- C. Mutual Termination. The PROJECT may also be terminated if the AWARDING AGENCY and the CONTRACTOR agree that its continuation would not produce beneficial results

THIRD PARTY CONTRACT CLAUSES

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commensurate with the further expenditure of funds or if there are inadequate funds to operate the PROJECT equipment or otherwise complete the PROJECT.

Awards Exceeding \$25,000.00

Debarment and Suspension

- A. The CONTRACTOR agrees to comply with the requirements of Executive Order Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. Section 6101 note; and U.S. DEPARTMENT OF TRANSPORTATION regulations on Debarment and Suspension and 49 CFR Part 29.
- B. Unless otherwise permitted by the California Department of Transportation, the CONTRACTOR agrees to refrain from awarding any third-party contract of any amount to or entering into any sub-contract of any amount with a party included in the "U.S. General Services Administration's (U.S. GSA) List of Parties Excluded from Federal procurement and Non-procurement Program," implementing Executive Order Nos. 12549 and 12689, "Debarment and Suspension" and 49 CFR Part 29. The list also include the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than Executive Order Nos. 12546 and 12689.
- C. Before entering into any subagreements with any subcontractor, the CONTRACTOR agrees to obtain a debarment and suspension certification from each prospective recipient containing information about the debarment and suspension status and other specific information of that AWARDING AGENCY and its "principals," as defined at 49 CFR Part 29.
- D. Before entering into any third-party contract exceeding \$25,000.00, the CONTRACTOR agrees to obtain a debarment and suspension certification from each third-party contractor containing information about the debarment and suspension status of that third-party contractor and its "principals," as defined at 49 CFR 29.105(p). The CONTRACTOR also agrees to require each third-party contractor to refrain from awarding any subagreements of any amount, at any tier, to a debarred or suspended subcontractor, and to obtain a similar certification for any third-party subcontractor, at any tier, seeking a contract exceeding \$25,000.00.

Legal Matters Concerning a Covered Transaction

- A. If a current or prospective legal matter that may affect the Federal Government or STATE emerges, the AWARDING AGENCY must promptly notify the STATE. The AWARDING AGENCY must include a similar notification requirement in its Third Party Agreements and must require each CONTRACTOR to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.
 - 1. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government or STATE as a party to litigation or a legal disagreement in any forum for any reason.
 - 2. Matters that may affect the Federal Government or STATE include, but are not limited to, the Federal or STATE Government's interests in the Award, the accompanying Underlying

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Agreement, and any Amendments thereto, or the Federal or STATE Government's administration or enforcement of federal laws, regulations, and requirements.

3. The AWARDING AGENCY must promptly notify the STATE, if the AWARDING AGENCY has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving FY2020 Contractors Manual – Procurement 9-49 federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the AWARDING AGENCY and STATE, or an agreement involving a principal, officer, employee, agent, or CONTRACTOR of the AWARDING AGENCY. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the AWARDING AGENCY, including divisions tasked with law enforcement or investigatory functions.

Awards Exceeding \$100,000.00

Provisions for Resolution of Disputes, Breaches, or Other Litigation

The AWARDING AGENCY and the CONTRACTOR shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the CONTRACTOR shall submit to the AWARDING AGENCY Representative for this Contract or designee a written demand for a decision regarding the disposition of any dispute arising under this Contract. The AWARDING AGENCY Representative shall make a written decision regarding the dispute and will provide it to the CONTRACTOR. The CONTRACTOR shall have the opportunity to challenge in writing within ten (10) working days to the AWARDING AGENCY's Executive Director or his/her designee. If the CONTRACTOR'S challenge is not made within the ten () day period, the AWARDING AGENCY Representative's decision shall become the final decision of the AWARDING AGENCY. The AWARDING AGENCY and the CONTRACTOR shall submit written, factual information and supporting data in support of their respective positions. The decision of the AWARDING AGENCY shall be final, conclusive, and binding regarding the dispute, unless the CONTRACTOR commences an action in court of competent jurisdiction to contest the decision in accordance with Division 3.6 of the California Government Code.

Lobbying

- A. The CONTRACTOR agrees that it will not use federal assistance funds to support lobbying. In accordance with 31 U.S.C. and U.S. Department of Transportation Regulations, "New Restrictions on Lobbying." 49 CFR Part 20, if the bid is for an award for \$100,000.00 or more the AWARDING AGENCY will not make any federal assistance available to the CONTRACTOR until the AWARDING AGENCY has received the CONTRACTOR'S certification that the CONTRACTOR has not and will not use federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal grant,

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cooperative agreement, or any other federal award from which funding for the PROJECT is originally derived, consistent with 31 U.S.C. Section 1352, and;

- B. If applicable, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an office or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with the form instructions.
- C. The CONTRACTOR shall require that the language of the above two clauses be included in the award documents for all sub-awards at all tiers (including subagreements, sub-grants, and contracts under grants, loans, and cooperative agreements) which exceed \$100,000.00 and that all awarding agencies shall certify and disclose accordingly.

This Contract is a material representation of facts upon which reliance was placed when the Contract was made or entered into. These provisions are a prerequisite for making or entering into a Contract imposed by Section 1352, Title 31, U.S. Code. Any person who fails to comply with these provisions shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each failure.

Clean Water

- A. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The CONTRACTOR agrees to report each violation to the AWARDING AGENCY and understands and agrees that the AWARDING AGENCY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The CONTRACTOR also agrees to include these requirements in each subagreement exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Awards Exceeding \$150,000.00

Buy America

The CONTRACTOR shall comply with the Buy-America requirements of 49 U.S.C. 5323(j) and 49 CFR Part 661 for all procurements of steel, iron, and manufactured products used in PROJECT. Buy-America requirements apply to all purchases, including materials and supplies funded as operating costs, if the purchase equals or exceeds \$150,000.00. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(c) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

Clean Air

- A. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq. The CONTRACTOR agrees to report each violation to the AWARDING AGENCY and understands and agrees that the AWARDING AGENCY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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- B. The CONTRACTOR also agrees to include these requirements in each subagreement exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Awards with Transport of Property or Persons

U.S. Flag Requirements (Cargo Preferences)(Fly America)

- A. Shipments by Ocean Vessel. For third-party contacts that may involve equipment, materials, or commodities which may be transported by ocean vessels, the CONTRACTOR and subagreements must comply with 46 U.S.C. Section 55303 and 46 CFR Part 381, "Cargo Preferences-U.S. Flag Vessels."
- B. Shipments by Air Carrier. For third-party contracts that may involve shipments of federally assisted property by air carrier, the CONTRACTOR and subagreements must comply with the "Fly America" Act and 49 U.S.C. Section 40118, "Use of United States of America Flag Carriers," and 41 CFR Section 301-10.131 through 301-10.143.
- C. Project Travel. In accordance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1973, as amended, ("Fly America" Act), 49 U.S.C. 40118 and 41 CFR Part 301-10, the CONTRACTOR and all subcontractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation, to the extent such service is available or applicable.

Awards with Transit Operations

Transit Employee Protective Arrangements (Transit Operation Only)

The CONTRACTOR agrees to comply with applicable transit employee protective requirements, as follows:

- A. The CONTRACTOR agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. 5333(b), and U.S.DOL guidelines at 29 CFR Part 215, and any amendments there to.
- B. The CONTRACTOR also agrees to include the applicable requirements in each subagreement involving transit operations financed in whole or in part with federal assistance provided by the FTA.

Charter Service Operations

(Transit Operation and Rolling Stock Only) The CONTRACTOR agrees to comply with 49 U.S.C. Section 5323(d) and 49 CFR Part 604, which provides that recipients and awarding agencies of the FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions listed at 49 CFR-Subpart B. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation. The CONTRACTOR assures and certifies that the revenues generated by its incidental charter bus operations (if any) are, and shall remain, equal to or greater than the cost (including depreciation on federally assisted equipment) of providing the service. The

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CONTRACTOR understands that the requirements of 49 CFR Part 604 will apply to any charter service provided, the definitions in 49 CFR part 604 apply to this contract, and any violation of this contract may require corrective measures and the imposition of penalties, including debarment from the receipt of further federal assistance for transportation.

School Bus Operations

(Transit Operation and Rolling Stock Only) Pursuant to 49 U.S.C. 5323(F) and 49 CFR Part 605, the CONTRACTOR agrees that it and all its subcontractors will: (1) engage in school transportation operations in competition with private school transportation operators only to the extent permitted by an exception provided by 49 U.S.C. 5323(F) and implementing regulations, and (2) comply with requirements of 49 CFR Part 605 before providing any school transportation using equipment of facilities acquired with federal assistance awarded by the FTA and authorized by 49 U.S.C. Chapter 53 or Title 23 U.S.C. for transportation projects. The CONTRACTOR understands that the requirements of 49 CFR Part 605 will apply to any school transportation it provides, that the definitions of 49 CFR Part 605 apply to any school transportation agreement, and a violation of the contract may require corrective measures and the imposition of penalties, including debarment from the receipt of further federal assistance for transportation.

Vehicle Operator Licensing

The CONTRACTOR is required to comply with all applicable requirements of the Federal Motor Carrier Safety Administration regulations and the California Vehicle Code including, but not limited to, the requirement that all vehicle operators have a valid State of California driver's license, including any special operator license that may be necessary for the type of vehicle operated.

Drug-Free Workplace (FTA Section 5311 Awards)

The CONTRACTOR certifies by signing a Contract with the AWARDING AGENCY that it will provide a drug-free workplace, and shall establish policy prohibiting activities involving controlled substances in compliance with Government Code Section 8355, et seq. The CONTRACTOR is required to include the language of this paragraph in award documents for all sub-awards at all tiers (including subagreements, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all awarding agencies shall disclose accordingly. To the extent the CONTRACTOR, any third-party contractor at any tier, any AWARDING AGENCY at any tier, or their employees, perform a safety sensitive function under the PROJECT, the CONTRACTOR agrees to comply with, and assure the compliance of each affected third-party contractor at any tier, each affected AWARDING AGENCY at any tier, and their employees with 49 U.S.C. Section 5331, and the FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug use in Transit Operations," 49 CFR Part 655.

Drug and Alcohol Testing

The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the California Department of Transportation, or the AWARDING AGENCY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The CONTRACTOR agrees further to certify annually its compliance with Part 655 before (insert date) and to submit the Management Information System (MIS) reports before (insert date) to (the Executive Director of the Imperial County Transportation Commission). To certify compliance the

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CONTRACTOR shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The CONTRACTOR agrees further to submit upon request a copy of the Policy Statement developed to implement its drug and alcohol testing program; In addition, the CONTRACTOR agrees to: (to be determined by the AWARDING AGENCY, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

Awards with Rolling Stock

Bus Testing

The CONTRACTOR agrees to comply with the requirements of 49 U.S.C. Section 5318(e), 5323(c), and the FTA regulations, "Bus Testing," 49 CFR Part 665, and any revision thereto, including the certification that before expending any federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or before authorizing final acceptance of that bus, that model of bus will have been tested at the ALTOONA Bus Research and Testing Center. The CONTRACTOR must obtain the final testing report and provide a copy of the report to the AWARDING AGENCY.

Pre-Award and Post Delivery Audit

The CONTRACTOR agrees to comply with the requirements of 49 U.S.C. Section 5323(l), 5323(m), and the FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, and any revision thereto.

Miscellaneous Special Requirements

Intelligent Transportation Systems (ITS) National Architecture

To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation System (ITS) Architecture and Standards as required by 23 U.S.C. Section 517(d), 23 U.S.C. Section 512 note, and 23 CFR Part 655 and 940, and follow the provisions of the FTA Notice, "FTA National ITS Architecture Policy on Transit projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives the FTA may issue at a later date, except to the extent the FTA determines otherwise in writing.

Prompt Payment and Return of Retainage

- A. The AWARDING AGENCY shall comply with 49 CFR Part 26.29 and ensure the CONTRACTOR pay its subcontractors performing work satisfactorily completed related to this contract no later than thirty (30) days after the CONTRACTOR's receipt of payment for that work from the AWARDING AGENCY.
- B. Unless the approved project is for Construction, the CONTRACTOR shall not hold retainage (withhold retention) from any subcontractor. The STATE shall not hold retainage (i.e. withhold retention) from any CONTRACTOR.
- C. If a dispute arises regarding Construction projects only, the CONTRACTOR may exercise its rights under California Public Contract Code (PCC) Sections 10262 and 10262.5 or California Business and Professions Code (BPC) Section 7108.5, as applicable.
- D. The CONTRACTOR is required to pay its subcontractors for satisfactory performance of work related to this Agreement no later than 30 days after the CONTRACTOR's receipt of payment for that work from the AWARDING AGENCY. In addition, the CONTRACTOR is required to

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return any retainage (retention) payment to any subcontractor within 30 days after the subcontractor's work related to this Agreement is satisfactorily completed.

Recycled Products

The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.