



**1503 N. IMPERIAL AVENUE, SUITE 104
EL CENTRO, CA 92243-2875
PHONE: (760) 592-4494
FAX: (760) 592-4410**

**TRANSPORTATION COMMISSION
SPECIAL MEETING**

AGENDA

**TUESDAY, SEPTEMBER 11, 2018
5:30 PM**

**ICTC OFFICES
1503 N. Imperial Ave., Suite 104
Large Conference Room
El Centro, CA 92243**

CHAIR: LUIS PLANCARTE

VICE CHAIR: ROBERT AMPARANO

Individuals wishing accessibility accommodations at this meeting, under the Americans with Disabilities Act (ADA), may request such accommodations to aid hearing, visual, or mobility impairment by contacting ICTC offices at (760) 592-4494. Please note that 48 hours advance notice will be necessary to honor your request.

I. CALL TO ORDER AND ROLL CALL

II. EMERGENCY ITEMS

- A. Discussion/Action of emergency items, if necessary.

III. PUBLIC COMMENTS

Any member of the public may address the Commission for a period not to exceed three minutes on any item of interest not on the agenda within the jurisdiction of the Commission. The Commission will listen to all communication, but in compliance with the Brown Act, will not take any action on items that are not on the agenda.

IV. ACTION CALENDAR

- A. Agreement for Professional Financial Auditing Services - FY 2017-18 through FY 2019-20 Page 3

The Executive Director forwards this item to the Commission for their review and approval after public comment, if any:

1. Authorize the Chairman to sign the agreement for the ICTC Agreement for Professional Financial Auditing Services effective September 1, 2018, for the audit period FY 2017-18 through FY 2019-20, with the firm of Vavrinek, Trine, Day & Co., LLP:
 - A. For the fiscal reporting period of July 1, 2017 through June 30, 2018, the annual not to exceed fee set at \$68,200
 - B. For the fiscal reporting period of July 1, 2018 through June 30, 2019, the annual not to exceed fee set at \$87,700
 - C. For the fiscal reporting period of July 1, 2019 through June 30, 2020, the annual not to exceed fee set at \$83,700

**CITIES OF BRAWLEY, CALEXICO, CALIPATRIA, EL CENTRO, HOLTVILLE, IMPERIAL, WESTMORLAND,
IMPERIAL IRRIGATION DISTRICT AND COUNTY OF IMPERIAL**

V. MEETING DATE AND PLACE

- A. The next meeting of the **Imperial County Transportation Commission** will be held on **Wednesday, September 26, 2018** at **6:00 p.m.**, at the **County of Imperial Board Chambers**, at 940 W. Main Street, El Centro, CA.

VI. ADJOURNMENT

- A. Motion to adjourn



1503 N. IMPERIAL AVE., SUITE 104
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 PHONE: (760) 592-4494
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August 17, 2018

Luis Plancarte, Chairman
 Imperial County Transportation Commission
 1503 N. Imperial Ave. Suite 104
 El Centro, Ca. 92243

SUBJECT: Agreement for Professional Financial Auditing Services - FY 2017-18 through FY 2019-20

Dear Commission Members:

The competitive bid for professional audit services recently concluded. The audit agreement is for work associated with fiscal years FY 2017-18, FY 2018-19 and FY 2019-20.

A proposal review team consisting of SCAG and ICTC staff, and Mr. Josue Mercado, a CPA from JM Consulting Resources scored and ranked the five proposals. The scoring process utilized standard categories including but not limited to: relevant staff experience; audit schedule attainment; methodology; references; and costs.

The audit work involves the agency’s multiple financial reports and program audits including:

- The State Controller’s Office Annual Report of Financial Transactions of Transit Operators
- State Controller’s Office Annual Report of Financial Transactions of Regional Transportation Planning Agencies
- State Controller’s Office Annual Report of the Government Compensation Report
- Single Audit (for federal funds)
- Program audits to satisfy grant program requirements
- Audit Years two and three; a comprehensive annual agency financial audit (CAFR) - The CAFR is a new product required that was not performed in recent past audits

The following summarizes the estimated total hours, average cost per hour, and total costs for three years for each of the proposals received.

Name	Total Hours (Three-Year)	Average Cost/Hour	Total Cost (Three-Year)
Moss, Levy & Hartzheim, LLP	2,106	\$105.31	\$221,773
The Pun Group	1,950	\$102.01	\$198,926
Sotomayor & Associates, LLP	1,602	\$266.33	\$426,659
Vasquez & Associates, LLP	1,674	\$127.85	\$214,017
Vavrinek Trine & Day, LLP	1,886	\$127.04	\$239,600

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For comparison, the expiring contract's final year allowed a total cost of \$69,905.

The Evaluation Committee recommended that a contract be awarded to the firm of Vavrinek, Trine, Day & Co., LLP (VTD). A summary of the more responsive proposal from VTD indicated that:

1. The members of the project team are all CPAs, with experience focused on governmental accounting with several regional transportation planning and peer transit agencies in Southern California, and are familiar with the technical aspects of ICTC's regulations and transit administrative practices.
2. The project team recently completed a three-year contract with the Local Transportation Authority and are familiar with ICTC staff and accounting practices and software.
3. The project team does not complete corporate or personal taxes, therefore there are no conflicts within the Scope of Work/project schedule.
4. The project team offered value added benefits through their knowledge and association with other similar agencies; including periodic review sessions with ICTC staff on financial reporting, validating and reporting transit related metrics, financial best practices, or a variety of other topics depending on the future needs and interests of ICTC.

The other proposals had shortcomings in one or more areas including but not limited to: a lack of a satisfactory CPA firm peer review, lack of understanding of the various ICTC programs and lack of mention of the required federal single audit report.

The original procurement documents; request for proposal and proposals; and contract exhibits referenced in the contract document are available for review at the ICTC administrative offices by request.

The expense for this project was identified and approved in the ICTC FY 2018-19 OWP and budget (7416001-525090, 7417001-525090, 7577001), approved on June 27, 2018.

The Executive Director forwards this item to the Commission for their review and approval after public comment, if any:

1. Authorize the Chairman to sign the agreement for the ICTC Agreement for Professional Financial Auditing Services effective September 1, 2018, for the audit period FY 2017-18 through FY 2019-20, with the firm of Vavrinek, Trine, Day & Co., LLP:
 - A. For the fiscal reporting period of July 1, 2017 through June 30, 2018, the annual not to exceed fee set at \$68,200
 - B. For the fiscal reporting period of July 1, 2018 through June 30, 2019, the annual not to exceed fee set at \$87,700
 - C. For the fiscal reporting period of July 1, 2019 through June 30, 2020, the annual not to exceed fee set at \$83,700

Sincerely,



MARK BAZA
Executive Director

MB/ksw/cl

1 **ACCOUNTANCY AGREEMENT**

2 THIS AGREEMENT is made and entered into this _____, 2018 by and
3 between the **IMPERIAL COUNTY TRANSPORTATION COMMISSION** (“ICTC”), and
4 **VAVRINEK, TRINE, DAY & CO., LLP**, a limited liability partnership (“AUDITOR”).

5 **RECITALS**

- 6 **A.** AUDITOR is a limited liability partnership and a duly licensed certified public
7 accounting firm in good standing under the laws of the State of California and is in the
8 business of supplying independent accounting services and assistance to clients.
- 9 **B.** The objective of the audits is an opinion as to whether the individual fund financial
10 statements are fairly presented, in all material respects, in conformity with accounting
11 principles generally accepted in the United States of America. AUDITOR is willing
12 to accept such engagement.
- 13 **C.** ICTC wishes to employ AUDITOR to perform:
- 14 i. California State Controller’s Office entitled “Annual Report of Financial
15 Transaction of Transit Operators”, the “Annual Report of Financial
16 Transaction of Regional Transportation Planning Agencies” for FY 2018,
17 2019, and 2020
 - 18 ii. California State Controller’s Office Government Compensation Report for
19 FY 2018, 2019, and 2020
 - 20 iii. Standalone audits including the Transportation Development Act (TDA-
21 7076), State Transit Assistance Fund (STA, PTMISEA,CTGSP, 7079)
22 LCTOP (7553), TDA SB325 (Article 8c)for fiscal years ending June 30,
23 2018, 2019, and 2020 and the Regional Transit Program (7416), Regional
24 Planning Program (7417), and Regional Collaboration Program (7577),
25 fiscal year ending June 30, 2018
 - 26 iv. Single Audit Report for FY 2018, 2019, and 2020
 - 27 v. Independent auditing services for the Comprehensive Financial Audit
28 Report (CAFR) for fiscal years ending June 30, 2019, and 2020

1 **D.** ICTC wishes to employ AUDITOR to perform Audits and the AUDITOR is willing to
2 accept such engagement for fiscal years ending June 30, 2018, June 30, 2019, and
3 June 30, 2020.

4 NOW THEREFORE, ICTC hereby engages and AUDITOR hereby accepts such engagement
5 upon the terms and conditions set forth herein.

6 **1. TERM.**

7 This Agreement shall become effective on the date first written above and shall continue in
8 effect until the services provided for herein have been performed, but no later than December 31,
9 2020, unless sooner terminated as provided herein.

10 **2. SERVICES TO BE PERFORMED BY AUDITOR.**

11 **2.1.** AUDITOR will conduct the Audits, for the fiscal years ending June 30, 2018,
12 2019, and 2020, as detailed in the “July 2018 Imperial County Transportation
13 Commission (ICTC) Request for Proposals for Annual Financial Audits” attached as
14 **Exhibit “A”** and “Proposal to Provide Professional Auditing Services For the fiscal
15 year ended June 30, 2018, 2019 and 2020” submitted by AUDITOR attached as
16 **Exhibit “B”**, both of which are incorporated by this reference.

17 **2.2** The audits will be conducted in accordance with auditing standards generally accepted
18 in the United States of America, the standards for financial audits contained in
19 *Government Auditing Standards*, issued by the Controller General of the United States
20 for applicable audits, and will include tests of the accounting records and other
21 procedures considered necessary to express an opinion.

22 **2.3** AUDITOR will also provide a report on internal control related to the financial
23 statements and compliance with the provisions of applicable laws, regulations,
24 contracts, agreements, and grants, noncompliance with which could have a material
25 effect on the financial statements as required by Government Auditing Standards for
26 applicable audits. The report on internal control and compliance will include a
27 statement that the report is intended solely for the information and use of the audit
28 committee, management, and specific legislative or regulatory bodies and is not

1 intended to be and should not be used by anyone other than these specified parties. If
2 funds are subject to an audit requirement that is not encompassed in the terms of this
3 AGREEMENT, AUDITOR will communicate to management and those charged with
4 governance that an audit in accordance with U.S. generally accepted auditing
5 standards and the standards for financial audits contained in Government Auditing
6 Standards may not satisfy the relevant legal, regulatory, or contractual requirements.

7 **2.4** AUDITOR will conduct the Reports, for the fiscal years ending June 30, 2018, June
8 30, 2019, and June 30, 2020, as detailed in Exhibits "A" and "B".

9 **2.5** If requested by the ICTC, or CalTrans, or the Federal Transit Administration,
10 AUDITOR will appear before the requesting body and explain any audit report or
11 opinion.

12 **2.6** In the event of a conflict between this Agreement or any amendment thereto, and any
13 attached exhibit, this Agreement or any amendment thereto shall take precedence over
14 any attached exhibit.

15 **3. RETENTION AND AVAILABILITY OF WORK PAPERS.**

16 All supporting papers and work papers prepared by AUDITOR in connection with the Audit
17 shall be retained for a minimum of four (4) fiscal years following the close of the Audit for the fiscal
18 year and shall be available for inspection and examination during AUDITOR'S normal business
19 hours upon request from ICTC or representatives of ICTC, the State Controller and/or ICTC.

20 **4. TIME FOR COMPLETION.**

21 Audits and reports shall be completed per the schedule listed. Upon completion, AUDITOR
22 will furnish three (3) copies of the audit report to ICTC and an electronic version in PDF format.

ICTC Audit	Start Date	Completion Date
Fiscal Year 2017-2018	September 01, 2018	December 31, 2018
Fiscal Year 2018-2019	April 01, 2019	December 31, 2019
Fiscal Year 2019-2020	April 01, 2020	December 31, 2020

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24
25
26
27 **4.1** All audits shall be submitted by December 31st of the year following the fiscal
28 year that ended the previous June 30th. Upon completion of the Audit,

AUDITOR will furnish three (3) copies of the audits to ICTC and an electronic version in PDF format.

4.2 All reports shall be submitted by the date required by the California State Controller’s Office or the federal due date . Upon completion of the reports, AUDITOR will furnish three (3) copies of the report to ICTC and an electronic version in PDF format.

5. COMPENSATION OF AUDITOR.

5.1 In consideration for the services to be performed by AUDITOR, ICTC agrees to pay AUDITOR at the hourly rates indicated on the Fee Schedule as described in **Exhibit “C”**, attached and incorporated by this reference as though fully set forth herein.

5.2 ICTC agrees to compensate AUDITOR for all services provided under this contract, for all audits and reports, including all out-of-pocket expenses, in amounts not to exceed the following:

Fiscal Year	Not to Exceed Amount
Fiscal Year 2017-2018	\$68,200
Fiscal Year 2018-2019	\$87,700
Fiscal Year 2019-2020	\$83,700

5.3 Except as provided under Paragraphs 5.1 and 5.2, ICTC shall not be responsible to pay AUDITOR any other compensation, out-of-pocket expenses, fees or other remuneration.

5.4 Said payment shall not be due and payable until such time as AUDITOR has provided ICTC with a monthly service statement which shall itemize all out-of-pocket expenses and work performed for each said period. Said statements must meet with the approval of ICTC and be received by ICTC no later than the 10th day of every month following that for which the subject work was performed.

5.5 Invoices, clearly indicating the period for which the bill is made, shall be submitted to:

Imperial County Transportation Commission
ATTN: Executive Director

1 1503 N. Imperial Ave., Suite 104
2 El Centro, CA 92243

3 **5.6** AUDITOR acknowledges ICTC is under no obligation to compensate AUDITOR for
4 services rendered or expenses accrued under this Agreement not authorized by ICTC.

5 **5.7** If ICTC requires work in addition to that defined in the "Services to be Performed By
6 Auditor," Paragraph 2, AUDITOR shall provide a cost estimate and written
7 description of the additional work needed to perform such services. Compensation
8 and the time for completing such additional services must be negotiated and approved
9 in writing by ICTC prior to the commencement of any such services.

10 **6. INDEMNIFICATION.**

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

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

1 caused solely by the gross negligence, or caused by the willful misconduct, of ICTC, or any of its
2 members, board members, officers, officials, employees, agents or volunteers.

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

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

8 **7. INSURANCE.**

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

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

22 \$2,000,000 per occurrence for bodily injury and property damage

23 \$1,000,000 per occurrence for personal and advertising injury

24 \$4,000,000 aggregate for products and completed operations

25 \$4,000,000 general aggregate

26 (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at
27 least as broad as the most current version of Insurance Service Office (ISO) Business Auto
28 Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned

1 automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less
2 than \$2,000,000 per accident for bodily injury and property damage.

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

5 (iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than
6 \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each
7 employee.

8 (v) PROFESSIONAL LIABILITY (Errors and Omissions) insurance appropriate
9 to AUDITOR's profession, with limits of liability of \$2,000,000 per claim/occurrence and
10 \$2,000,000 policy aggregate.

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

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

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

1 expire during the work to be performed for ICTC, AUDITOR shall provide a new certificate, and
2 applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to
3 the expiration date of the expiring policy.

4 The General Liability and Automobile Liability insurance policies shall be written on an
5 occurrence form. The General Liability (including ongoing operations and completed operations)
6 and Automobile Liability insurance policies shall name ICTC, its members, board members, officers,
7 officials, employees and agents as an additional insured. All such policies of insurance shall be
8 endorsed so AUDITOR's insurance shall be primary and no contribution shall be required of ICTC,
9 its members, board members, officers, officials, employees, agents or volunteers. The coverage(s)
10 shall contain no special limitations on the scope of protection afforded to ICTC, its members, board
11 members, officers, officials, employees and agents. Should AUDITOR maintain insurance with
12 broader coverage and/or limits of liability greater than those shown above, ICTC requires and shall
13 be entitled to the broader coverage and/or the higher limits of liability maintained by AUDITOR.
14 Any available insurance proceeds in excess of the specified minimum limits of insurance and
15 coverage shall be available to ICTC.

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

18 (i) The retroactive date must be shown, and must be before the effective date of
19 this Agreement or the commencement of work by AUDITOR.

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

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

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

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

4 AUDITOR shall furnish ICTC with all certificate(s) and applicable endorsements effecting
5 coverage required hereunder. **All certificates and applicable endorsements are to be received and**
6 **approved by ICTC's Executive Director or his/her designee in his/her sole discretion prior to**
7 **ICTC's execution of the Agreement and before work commences.** Upon request of ICTC,
8 AUDITOR shall immediately furnish ICTC with a complete copy of any insurance policy required
9 under this Agreement, including all endorsements, with said copy certified by the underwriter to be a
10 true and correct copy of the original policy. This requirement shall survive expiration or termination
11 of this Agreement.

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

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

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

7 **8. TERMINATION.**

8 **8.1. Termination by Either Party.** This Agreement may be terminated, without cause, by
9 either party upon thirty (30) days prior written notice to the other party.

10 **8.2. Compensation in Early Termination.** In the event that this Agreement is terminated
11 prior to the completion of the term of contract as specified herein, AUDITOR shall be
12 entitled to the compensation earned prior to the date of termination as provided for in
13 this Agreement, computed pro rata up to and including that date. The compensation
14 earned and unpaid at the time of termination shall be paid without abatement or
15 reduction immediately upon termination of this Agreement. AUDITOR shall be
16 entitled to no further compensation as of the date of termination.

17 **9. INDEPENDENT CONTRACTOR.**

18 **9.1.** AUDITOR shall be responsible to ICTC only for the requirements and results
19 specified by this Agreement. AUDITOR shall not be subject to ICTC'S control with
20 respect to the physical actions or activities of AUDITOR or of AUDITOR'S
21 employees or agents in connection with the operation of the business or AUDITOR'S
22 fulfillment of the requirements of the Agreement, except as specifically provided in
23 this Agreement.

24 **9.2.** AUDITOR is, and at all times during the term of this Agreement shall represent and
25 conduct itself as, an independent contractor and not as an agent or employee of ICTC.
26 AUDITOR shall not have the authority, express or implied, to bind or obligate ICTC
27 in any way.

28 ///

1 **10. ASSIGNMENT.**

2 Neither this Agreement nor any duties or obligations hereunder shall be assignable by
3 AUDITOR without the prior, written, consent of ICTC.

4 **11. NON-DISCRIMINATION.**

5 **11.1.** During the performance of this Agreement, AUDITOR and its subcontractors shall not
6 unlawfully discriminate against any employee or applicant for employment or member
7 of the public because of race, religion, color, national origin, ancestry, physical or
8 mental disability, medical condition, marital status, age or gender. AUDITOR shall
9 insure that the evaluation and treatment of their employees and applicants for
10 employment and members of the public are free of such discrimination. AUDITOR
11 shall comply with the provisions of the Fair Employment and Housing Act (California
12 Government Code §12900 *et seq.*). The applicable regulations of the Fair
13 Employment and Housing Commission implementing Government Code §12900, set
14 forth in Chapter 5 of Division 4 of Title 1 of the California Administrative Code, are
15 incorporated into this Agreement by reference and made a part thereof as if set forth in
16 full. AUDITOR shall also abide by the Federal Civil Rights Act of 1964 and all
17 amendments thereto, and all administrative rules and regulations issued pursuant to
18 said Act. AUDITOR shall give written notice of its obligations under this clause to
19 labor organizations with which it has a collective bargain or other agreement.

20 **11.2.** AUDITOR shall include the non-discrimination and compliance provision of this
21 paragraph in all subcontracts to perform work under this Agreement.

22 **12. NOTICES.**

23 All notices under this Agreement shall be in writing and may be given by personal delivery or
24 by sending through the U.S. Post Office, certified mail, return receipt requested, addressed to ICTC,
25 ATTN: Executive Director, 1503 N. Imperial Ave., Suite 104, El Centro, CA 92243 and to
26 AUDITOR at 9810 Scripps Lake Drive, Suite H, San Diego, CA 92131 or at such other address as
27 either party may designate in a notice to the other party given in such manner. Any notice sent by
28 mail shall be considered given when received.

1 **13. ENTIRE AGREEMENT.**

2 This Agreement contains the entire agreement between ICTC and AUDITOR relating to the
3 transactions contemplated hereby and supersedes all prior or contemporaneous agreements,
4 understanding, provisions, negotiations, representations or statements, either written or verbal.

5 **14. MODIFICATION.**

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

8 **15. PARTIAL INVALIDITY.**

9 If any of the provisions in this Agreement is held by a court of competent jurisdiction to be
10 invalid, void or unenforceable, the remaining provisions will continue to be in full force and effect.

11 **16. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.**

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

19 **17. WAIVER.**

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

23 **18. CHOICE OF LAW.**

24 The laws of the State of California shall govern this Agreement. This Agreement is made and
25 entered into in Imperial County, California. To the extent permitted by law, any action brought by
26 either party with respect to this Agreement shall be brought in a court of competent jurisdiction
27 within said County.

28 ///

1 **19. ATTORNEYS' FEES.**

2 If either party herein brings an action to enforce the terms thereof or declare rights hereunder,
3 the prevailing party in any such action, on trial or appeal, shall be entitled to its reasonable attorneys'
4 fees to be paid by the losing party as fixed by the court.

5 **20. AUTHORITY.**

6 Each of the individuals executing this Agreement on behalf of AUDITOR and ICTC represent
7 and warrant that:

8 **20.1** He or she is duly authorized to execute and deliver this Agreement on behalf of
9 AUDITOR or ICTC as applicable;

10 **20.2** Such execution and delivery on behalf of AUDITOR is in accordance with the terms
11 of the Articles of Incorporation or Partnership, any By-Laws or Resolutions of
12 AUDITOR; and

13 **20.3** Such execution and delivery on behalf of ICTC is duly authorized by the Board of
14 Supervisors and within the authority of the signatory identified below.

15 **21. COUNTERPARTS.**

16 This Agreement may be executed in counterparts.

17 **22. REVIEW OF AGREEMENT TERMS.**

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

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