



City of Imperial
Community Development Department

SERVICE AREA PLAN & DEVELOPMENT
IMPACT FEES UPDATE

Request for Proposals
P09-2020

Point of Contact:
Lisa Tylanda, Planner
400 S. Imperial Avenue., Suite 101, Imperial, CA 92251
(760) 355-3326
ltylanda@cityofimperial.org

DUE DATE: August 14, 2020

Table of Contents

Request for Proposals	Attachment A
Information for Proposers	Attachment B
City of Imperial Governing Agreement.....	Attachment C
Insurance Requirements	Attachment D

ATTACHMENT A

CITY OF IMPERIAL REQUEST FOR PROPOSALS FOR SERVICE AREA PLAN & DEVELOPMENT IMPACT FEES UPDATE

NOTICE IS HEREBY GIVEN that the City of Imperial, acting by and through its CITY COUNCIL, hereinafter referred to as the “CITY”, will receive up to, but no later than **3:00 p.m. on Friday, August 14, 2020** PROPOSALS to update the City’s Service Area Plan and Development Impact Fees. The selected consultant will review the existing Service Area Plan and Development Impact Fees and will update the documents to reflect current conditions.

To be considered, please submit three (3) hard copies and one (1) color digital pdf copy in an unused USB flash drive. All exhibits included in the Service Area Plan and Development Impact Fee Update shall be provided in ArcGIS or AutoCAD format.

PROPOSALS must be received in the office of the CITY CLERK, 420 South Imperial, CA, California, 92251, Attention: Debra Jackson, City Clerk, by the time specified above.

It is the CITY’s intention to select the qualified consultant whose proposal is deemed to be most advantageous to the CITY in accordance with the evaluation criteria set forth in this Request for Proposals. The Community Development Department will review and score the proposals and recommend the most responsive and responsible consultant to receive the contract award. City staff recommendation will be forwarded to the IMPERIAL CITY COUNCIL for final determination.

Each proposal must conform and be responsive to the City of Imperial’s Governing Agreement, a copy of which is attached as Attachment C. This Governing Agreement may also be obtained at the offices of the Community Development Department located at 400 South Imperial Avenue, Suite 101 - Imperial CA 92251.

The CITY reserves the right to reject any or all PROPOSALS, or to waive any irregularities or informalities in any qualifications or in the selection process. Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), Women Business Enterprises (WBE), and Veteran Owned Businesses (VOB) are encouraged to participate.

Questions concerning the proposal should be directed to Lisa Tylenda, Planner, with the City of Imperial at (760) 355-3326 or via email: ltylenda@cityofimperial.org.

ATTACHMENT B

INFORMATION FOR PROPOSERS

1. PURPOSE

The CITY, through the Community Development Department, desires to retain the services of a qualified consultant team experienced in the preparation of Service Area Plan and Development Impact Fee Update. The selected consultant will review the existing Service Area, the adopted DIF and 2019 Draft DIF.

The City of Imperial is located in the center of Imperial County in California's southeastern desert region. Incorporated in 1904, the City of Imperial is the oldest city in the county, and it is currently the fastest growing city in the Imperial Valley with an estimated population of 19,907 according to latest population estimated from the State Department of Finance.

SERVICE AREA PLAN

Service Area Plans are intended to assess current service demand and future service needs within an agency's sphere of influence, and demonstrate that future public facilities, for the provision of services, have been identified in accordance with the Cortese-Knox-Hertzberg Act. The city's last Service Area Plan was updated in 2015. Service area plans provide each LAFCO with a tool to comprehensively study existing and future public service conditions and to evaluate organizational options for accommodating growth, preventing urban sprawl, preserving open space and prime agricultural lands, and efficiently extending government services. The City of Imperial Service Area Plan will provide the Imperial County Local Agency Formation Commission with a detailed description and analysis of how facilities will be provided in the proposed sphere of influence. It is critical for the City to update its Service Area Plan to evaluate the current City services and ensure their adequacy for the future provisions of services. Services and facilities being provided by the City are as follows: Circulation, Parks, Library, Administrative Services, Law Enforcement, and Fire.

The requirements of the contents of an up to date service area plan are determined by the State's Government Code. Per Government Code Section 56430, LAFCO shall prepare a written statement of its determinations with respect to each of the following plan requirements:

1. Growth and population projections for the affected area;
2. Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies;
3. Financial ability of the city and other local agencies to provide services;
4. Status of, and opportunities for, shared facilities;
5. Accountability for community service needs, including governmental structure and operational efficiencies;
6. Any other matter related to effective or efficient service delivery.

SCOPE OF SERVICES shall be presented, as follows:

Summary

This section should focus on how the facilities will be financed. The conditions proposed by the

plan should also be highlighted. A table shall be included in this section that will summarize the various facilities, their costs and anticipated methods of financing.

Introduction

This section should provide a background on the City, identify the purpose of the Service Area Plan, and identify the contents and organization of the Service Area Plan.

Buildout Projections

This section shall include the potential development within the City's existing city limits and the sphere of influence.

Phasing Projections

This section shall attempt to project how and when development will be phased. The intent shall be to provide an additional tool that will allow the City to anticipate future public facility needs and to allocate funds for their improvement.

Requirements for Public Services

This section shall update the public services section and include a detailed description and analysis identifying when and how each facility will be provided and financed, based upon buildout projections and phasing assumptions. The facilities and services that shall be updated and analyzed under this section are as follows: Circulation, Administrative Facilities, Fire Facilities, Law Enforcement Facilities, Library Facilities, and Park Facilities.

Each of the public services discussed shall be outlined as follows:

- a. Performance Standard
- b. Facility Planning and Adequacy Analysis
- c. Inventory of Existing Facilities
- d. Inventory of Approved Facilities
- e. Buildout demand for facilities
- f. Phasing of Facilities
- g. Mitigation

Financing

This section shall provide a summary of the financial alternatives available to fund each facility and include a discussion of the potential financial impact on the City's finances.

Appendices

The City shall be furnished with all technical studies used to complete the Service Area Plan.

DEVELOPMENT IMPACT FEES

The City of Imperial assesses a variety of development impact fees on new development to mitigate City-wide impacts on public improvements, public services, and community amenities. The City's impact fee program must comply with the Mitigation Fee Act (California Government Code Section 66000 et seq., also known as Assembly Bill 1600). The city's current Development Impact Fee Report was last updated in 2010. Projections of future development used are intended to reflect the development potential of all undeveloped land covered by the City of Imperial's General Plan Land Use Element, no growth rate or build out date is assumed. Public Facilities, equipment and infrastructure improvements currently addressed by the City's Development Impact Fee include: Circulation, Parks, Library, Administrative Services, Law Enforcement, and Fire.

SCOPE OF SERVICES shall be presented as follows:

Findings and Fees: Provide sufficient information and the necessary findings to help the City determine the development impact fees based on the proposed infrastructure requirements to support the City's General Plan growth projections and the City's 10-Year Capital Improvement Plan. The consultant will work with City staff to determine other supporting infrastructure (i.e., equipment, vehicles, etc.) or other operational services that could rightfully be included in the fee program to ensure the costs of such supporting infrastructure are paid by development. The Development Impact Fee report must be consistent with the SAP update included in this RFP.

Best Practices: Recommend best practices to help ensure better collections.

Report Deliverables: Prepare a final report submitted to the City containing background information, methodology, findings, and recommendations. More specifically, consultant shall prepare a report containing, but not limited to, the following:

Background information

- A description of the overall methodology
- Supporting justification
- Calculations that demonstrate the legal nexus between recommended fees and the impact created by new development
- Relationship between the fee's use and the type of project on which it would be imposed
- Purpose of the fee
- How the fee would be used
- Description of the relationship between the need for any additional facilities and the type of development project on which the fee would be imposed
- Any additional matters that City staff should be made aware of, findings, and recommendations

If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

2. METHODOLOGY

Provide a detailed description of the approach and methodology to be used to accomplish the Scope of Work of this RFP. The Methodology section should include:

An implementation plan that describes in detail:

- The methods, including controls by which your firm or entity manages projects of the type sought by this RFP
- The methodology for soliciting and documenting views of internal and external stakeholders
- Any other project management or implementation strategies or techniques that the respondent intends to employ in carrying out the work

Description of efforts your firm or entity will undertake to achieve client satisfaction and to satisfy the requirements of the Scope of Work.

Project schedule, identifying all tasks and deliverables to be performed, durations for each task, and overall time of completion.

Description of specific tasks your firm or entity will require from City staff.

Provide any other information that would assist us in evaluating your qualifications.

Meetings: The consultant shall include attendance at the following meetings, as a minimum, in their proposal. Should the consultant identify a meeting that they feel is necessary to achieve the results and is beyond the meetings described below, they shall describe them in their proposal. Unless otherwise determined by the City, consultant shall plan on meetings being held at the City of Imperial.

Kick-off meeting between consultant and City staff to review objectives of study, agree to methodology, exchange information, timing and schedule for all tasks, and to determine information to be provided by City staff.

Review findings with City staff. Consultant to provide information supporting findings to date and proposed fees.

City Council meeting to present draft study report. Discuss methodology, findings, formal presentation, answer questions about finding, collect input for preparation of final report.

Final City Council meeting to follow up on first meeting and present final report.

The consultant shall consider the following *optional* meetings in their proposal, with a separate fee schedule, if necessary, for these two additional meetings.

Public meeting to present draft study report. Meeting to share findings with stakeholders, including developers and engineers. Consultant to facilitate meeting, provide exhibits and formal presentation, collect input and prepare meeting minutes capturing public input.

One additional public meeting.

**The City reserves the right to modify the scope of services before the contract is awarded depending on cost and the City's confidence in the selected consultant.*

Final selection of individual or firm will be contingent upon approval from Community Development Department. All communications relating to this RFP must be directed to the contact person named above and only through email or written correspondence. Any other forms of communications between a respondent and CITY's staff concerning this RFP are prohibited. In no instance is a respondent to discuss cost information, quality of responses, names of additional respondents, or any other information requested by or contained in a proposal with the point of contact or any other staff prior to proposal evaluation. Failure to comply with this section may result in CITY's disqualification of the proposal. The respondent is responsible for ensuring the response is received before the deadline. The CITY will accept proposals via personal delivery, United States Postal Service or other delivery services such as FedEx or United Parcel Service. CITY assumes no responsibility for lost or misrouted mail. The term of the Agreement for services will be 30 days.

TENTATIVE SCHEDULE

2.1	Release Date	July 28, 2020
2.2	Deadline to receive written questions	July 11, 2020 at 12:00pm
2.3	Submittal Date	August 14, 2020 at 3:00pm
2.4	Anticipated City Council Award	August 19, 2020

4.0 MANDATORY REQUIREMENTS FOR ALL PROPOSALS

4.1 All proposals must demonstrate that the consultant has a willingness and ability to comply with all documents, including but not limited to, the Governing Agreement identified as Attachment C.

4.2 All proposals must be accompanied with the name(s), title(s) and resume(s) of the individual(s) who will be performing the services should the contract be awarded.

4.3 All parties submitting proposals shall include with their proposals at least three (3) current references, including name, address, and telephone number.

5.0 CONTRACT TERMS AND CONDITIONS

Please refer to Attachment C, Governing Agreement. Attachment C is a draft agreement to be used as a sample of the agreement that the winning party will be expected to sign. It is not the final agreement and there may be additional or different terms included in the final agreement.

6.0 PREPARATION OF PROPOSAL

All statements of proposals must include three (3) hard copies and one (1) color digital pdf copy in an unused USB flash drive. All exhibits included in the Service Area Plan and Development Impact Fee Update shall be provided in ArcGIS or AutoCAD format.

It is the sole responsibility of respondent to ensure that proposals are received by the CITY in the proper time. Any proposals received after the scheduled closing time for receipt will be returned to the individual or firm unopened. Proposals are not accepted via facsimile, electronic mail and telegraph. Accepted methods of delivery are via personal delivery, United States Postal Service or other delivery services such as FedEx or United Parcel Service.

7.0 SIGNATURE

The statement of qualifications document or any modification must be signed in the name of the individual and must bear the original signature of the person or persons authorized to sign the proposal.

8.0 MODIFICATIONS

Any modification of any proposals submitted must be in writing and received by CITY prior to the closing time for proposals. Modifications may be submitted by personal delivery, United States Postal Service or other delivery services such as FedEx or United Parcel Service. Any qualifications or modifications received after the scheduled closing time for receipt of statement of qualifications will be returned to the consultant unopened.

9.0 ERASURES

Proposals submitted must not contain any erasures, interlineations, or other corrections unless each such correction is suitably authenticated by putting in the margin immediately opposite the correction the surname or surnames of the person or persons signing the statement of qualifications.

10.0 WITHDRAWAL OF PROPOSALS

Respondents may withdraw their proposals either personally or by written request at any time prior to the scheduled closing time for receipt of proposals.

11.0 PROPOSAL ELEMENTS

Proposals must address each of the elements in this section.

11.1 Statement of Qualifications

- a. Relevant Experience: All services shall be performed by qualified personnel under the supervision of a professional licensed or otherwise qualified by the state. Include the names, addresses and phone numbers of contact persons for several contracts for which you have performed services as solicited in this RFP.
- b. Relevant Education: Applicant's demonstration of professional license, certification and training required to perform services.
- c. Responsiveness to Project Requirements: Applicant's demonstrated success in completing projects on time and responsiveness to meeting changing requirements. Attentiveness to and compliance with RFP instructions, interview requirements, and other aspects of the selection process will be considered as an indication of responsiveness.
- d. The Appraiser shall carry not less than the following insurance and shall provide verification to the CITY upon request:
 1. Professional Liability Insurance: Errors and Omissions Insurance in an amount of at least \$1,000,000 single limit coverage, covering all personnel employed by the Consultant in the capacity of acting as an Agent of the municipality.
 2. General Liability Insurance: General Liability Insurance in an amount of at least \$1,000,000, single limit coverage, covering all personnel employed by the Consultant in the capacity of acting as an Agent of the municipality.
 3. Worker's Compensation: Worker's Compensation Coverage in full compliance with California statutory requirements for all personnel employed by the Consultant in the capacity of acting as an Agent of the municipality.
 4. Automobile Liability Insurance: Automobile Liability Insurance in an amount of at least \$1,000,000 combined single limit coverage including owned, non-owned and hired vehicles.

11.2 Proposed Scope of Work

A prospective Consultant should indicate an understanding of the requested services as described in Section 3, Scope of Services, and describe how it proposes to service the CITY in these aspects.

11.3 Project Personnel and Their Availability

Provide resume(s) of the key personnel who would be assigned to perform the services as described. Indicate status of each person's relationship to your firm, whether an employee, partner, subcontractor, or other contractual agreement. The statement should also identify for each member of the project team, their area of expertise, role in the project, and experience with similar or related projects.

11.3.1 Qualified personnel shall perform all services and shall maintain all necessary certificates and licenses required to perform such services.

11.3.2 Except when, and if, the workload demands otherwise, all services shall be conducted within the normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday.

11.4 Cost of Proposed Services

The cost of the Services shall be based on a lump sum not to exceed the amount of the agreement. Describe your proposed fee schedule for determining the cost of the requested services for the term of the contract. Billing for the services shall be submitted to the Community Development Department.

11.5 Time

Subject to any limitations stated in this proposal, the specified Engineering Design Services shall be completed and delivered to the Community Development Director within 30 calendar days after written authorization to proceed is received, barring circumstances beyond the Consultant’s control that force a delay. In such instance, the Consultant will inform the Community Development Director of the cause of such delay.

11.6 Protection of Property

The Consultant shall take all reasonable precautions to prevent damage to property, visible and concealed, and shall reasonably restore the site to the condition existing prior to the Consultant’s entry.

12.0 SELECTION PROCESS

The City of Imperial will review the qualifications based on the selection criteria and 100-point scale as follows:

1.	General firm and individual experience	10 points
2.	Specific experience as it pertains to the services	20 points
3.	Specific experience as it pertains to the Service Area Plan and Development Impact Fees Scope of Work	20 points
4.	Capacity to perform the Scope of Work and ability to conclude the work in a timely manner	15 points
5.	Quality of staff and their availability	15 points
6.	Overall quality of qualifications, especially thoroughness	5 points
7.	Cost of Services	15 points
	TOTAL VALUE:	100 points

Additional questions may be asked to respondents and formal interviews may be conducted as well. Respondents will be notified of any additional required information or interviews after written proposals have been evaluated. The CITY reserves the right to reject any and all qualifications submitted; to request clarification of services submitted; to request additional information; and to waive any irregularity in the qualifications and review process, as long as CITY procedures remain consistent with City’s procurement requirements. The CITY may select one consulting firm or a combination of consulting firms to provide the range of services requested.

13.0 PROHIBITION AS SUBCONTRACTORS UNDER COMPETITIVE PROPOSALS

No party submitting a proposal who is permitted to withdraw a proposal shall, for compensation, perform any subcontract or other service for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn proposal was submitted.

ATTACHMENT C

**AGREEMENT FOR SERVICE AREA PLAN UPDATE AND DEVELOPMENT IMPACT FEES
UPDATE**

“CONSULTANT”

AND

CITY OF IMPERIAL

This AGREEMENT is made and entered on the ____ of September, 2020, by and between the City of Imperial hereinafter referred to as “CITY”, and _____ hereinafter referred to as “CONSULTANT”.

WHEREAS, CITY desires to engage Consultant to perform Service Area Plan Update and Development Impact Fee Update;

WHEREAS, the Consultant is qualified and desires to accept such engagement;

WHEREAS, The Department of Industrial Relations (DIR) and California Labor Code Section 1770 et seq. requires compliance with all State and Federal and Local labor standards requirements, including payment of State and Federal prevailing wages and compliance with prevailing wage laws; and

WHEREAS, The United States Department of Labor (DOL) and Davis-Bacon and Related Acts, the California Department of Industrial Relations (DIR), and local authorities require compliance with all State, Federal and Local labor standards requirements, including payment of prevailing wages and compliance with prevailing wage laws.

WHEREAS, CITY desires to obtain a consultant services for the **Service Area Plan and Development Impact Fees Update** which is deriving Local public funds hereinafter referred to collectively as “PROJECT”.

WHEREAS, CONSULTANT represents it has the necessary personnel, professional qualifications, expertise and financial capability to provide such special consultant services in conformity with the laws of the State of California; and

WHEREAS, the period during which services are provided under this AGREEMENT shall not exceed 12 months including all extensions and subject to the provisions set forth in Article VI.

Now, THEREFORE, In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

ARTICLE I – CONSULTANT’S RESPONSIBILITIES & SCOPE OF SERVICES

CONSULTANT's services shall consist of those services performed by CONSULTANT and CONSULTANT's employees. CONSULTANT shall not subcontract any work to any other parties for the duration of this project.

CONSULTANT's services shall be performed in a manner that is consistent with professional skill and care and the orderly progress of the work. CONSULTANT shall perform its services diligently, expeditiously and with adequate forces consistent with the requirements for the PROJECT.

CONSULTANT shall furnish and pay for all labor, materials and supervision necessary for the timely and efficient performance of such services.

ARTICLE II – CITY'S RESPONSIBILITIES

The CITY, through the CONSULTANT, ultimately has the duty to ensure the State and Federal prevailing wages are being paid correctly to workers on the PROJECT and all contractors are abiding by State, Federal and Local prevailing wage law.

CITY shall assist and provide all requested information by CONSULTANT promptly and as is reasonably required for CONSULTANT to perform its obligations under this AGREEMENT.

ARTICLE III – CONSULTANT'S DOCUMENTS

Any and all documents prepared by CONSULTANT for the PROJECT shall be and remain the property of the CITY pursuant to applicable codes.

ARTICLE IV - ACCOUNTING RECORDS OF CONSULTANT

Records of CONSULTANT's direct personnel and other expenses pertaining to the PROJECT, and records of accounts between the CITY and CONSULTANT shall be kept on a generally recognized accounting basis and shall be available to the CITY or CITY's authorized representative at mutually convenient times. Detailed monthly time tracking reports shall accompany all invoices submitted on a monthly basis.

ARTICLE V - COMPENSATION TO CONSULTANT

The CITY agrees to pay CONSULTANT within thirty (30) days upon receipt of invoice, in accordance with the payment rates and terms and the schedule of payment, incorporated herein by this reference as though set forth in full. This amount shall not [Insert amount] dollars (\$__.00) for the total term of the AGREEMENT unless additional payment is approved as provided in this AGREEMENT.

CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the CITY MANAGER. CONSULTANT shall be compensated for any additional services in the amounts and in the manner as agreed to by CITY MANAGER and CONSULTANT at the time CITY'S written authorization is given to CONSULTANT for the performance of said services. The CITY MANAGER may approve additional work but in no event shall the total amount to be paid pursuant to this AGREEMENT exceed ten-thousand dollars (\$10,000.00) without prior approval by the CITY Council.

CONSULTANT shall submit in invoice in an amount not to exceed [Insert amount] dollars (\$__.00) upon completion of Tasks called for by this AGREEMENT. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the CITY disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this AGREEMENT shall be made within thirty (30) days of receipt of an invoice therefore.

ARTICLE VI - TERMINATION

This AGREEMENT may be terminated by either party upon fourteen (14) days written notice to the other party in the event of a failure of performance by such other party, including insolvency of CONSULTANT or CITY, or if the CITY should decide to abandon or indefinitely postpone the PROJECT, as long as such termination is approved beforehand by the CITY.

In the event of a termination based upon abandonment or postponement by CITY, the CITY shall pay CONSULTANT for all services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including review of payroll records, and expense reports up until the date of the abandonment or postponement. In ascertaining the services actually rendered hereunder up to the date of termination of this AGREEMENT, consideration shall be given to both completed work and work in process of completion and other documents whether delivered to the CITY or in the possession of the CONSULTANT. In the event termination is for a failure of performance, all damages and costs associated with the termination, including increased consultant and replacement consultant costs shall be deducted from payments to CONSULTANT.

This AGREEMENT may be terminated without cause by CITY upon fourteen

(14) days written notice to CONSULTANT as long as such termination has been previously approved by the CITY. In the event of a termination without cause, the CITY shall pay CONSULTANT for all services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination. In ascertaining the services actually rendered hereunder up to the date of termination of this AGREEMENT, consideration shall be given to both completed work and work in process of completion and to other documents whether

delivered to the CITY or in the possession of the CONSULTANT. In addition, CONSULTANT will be reimbursed for reasonable termination costs through the payment of no more than 3% of all actual costs incurred up until the date of termination, but not more than the actual documented costs incurred by CONSULTANT for four months prior to the date of termination, as termination costs upon CONSULTANT's provision of substantiating justification documents. This payment is agreed to compensate CONSULTANT for the unpaid profit CONSULTANT would have made under the PROJECT on the date of termination and is consideration for entry into this termination for convenience clause.

In the event of a dispute between the parties as to performance of the work or the interpretation of this AGREEMENT, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, CONSULTANT agrees to continue the work diligently to completion. If the dispute is not resolved, CONSULTANT agrees it will neither rescind the AGREEMENT nor stop the progress of the work, but CONSULTANT's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the PROJECT has been completed, and not before.

ARTICLE VI – MISCELLANEOUS

To the fullest extent permitted by law, CONSULTANT agrees to indemnify, defend and hold CITY, subcontractors and service contractors entirely harmless from all liability arising out of:

Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to CONSULTANT's employees arising out of CONSULTANT's work under this AGREEMENT;

Liability for damages for (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by CONSULTANT or the CITY, or any person, firm or corporation employed by CONSULTANT in connection with the Engineering Design Services, except for liability resulting from the sole or active negligence, or willful misconduct of the CITY, its officers, employees, agents or independent consultants who are directly employed by the CITY;

Any loss, injury to or death of persons or damage to property caused by any act, neglect, default or omission of CONSULTANT, or any person, firm or corporation employed by CONSULTANT, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation including the CITY, arising out of, or in any way connected with the Engineering Design Services, including injury or damage either on or off CITY property; but not for any loss, injury, death or damages caused by the sole or active negligence, or willful misconduct of the CITY.

Notwithstanding the foregoing, CONSULTANT shall not be responsible to defend the CITY, nor shall CONSULTANT reimburse the CITY for any damages or costs attendant to Contractor or Subcontractor

claims for delay arising out of the requirement that they comply with the provisions of the Engineering Design Services and all applicable labor law.

CONSULTANT shall purchase and maintain policies of insurance required by CITY as defined in Attachment A of this AGREEMENT. Each policy of insurance required in (b) above shall name CITY and its officers, agents and employees as additional insured's; shall state that, with respect to the operations of CONSULTANT hereunder, such policy is primary and any insurance carried by CONSULTANT shall notify CITY in the event of material change in, or failure to renew, each policy. Prior to commencing work, CONSULTANT shall deliver to CITY certificates of insurance as evidence of compliance with the requirements herein. In the event CONSULTANT fails to secure or maintain any policy of insurance required hereby, CITY may, at its sole discretion, secure such policy of insurance in the name of and for the account of CONSULTANT, and in such event CONSULTANT shall reimburse CITY upon demand for the cost thereof.

CONSULTANT, in the performance of this AGREEMENT, shall be and act as an independent Contractor. CONSULTANT understands and agrees that CONSULTANT and all of CONSULTANT's employees shall not be considered officers, employees or agents of the CITY, and are not entitled to benefits of any kind or nature normally provided employees of the CITY and/or to which CITY's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONSULTANT assumes the full responsibility for the acts and/or omissions of CONSULTANT'S employees or agents as they relate to the services to be provided under this AGREEMENT. CONSULTANT shall assume full responsibility for payment of all, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective CONSULTANT's employees.

Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of any third party against either the CITY or CONSULTANT.

The CITY and CONSULTANT, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to this AGREEMENT with respect to the terms of this AGREEMENT.

This AGREEMENT shall be governed by the laws of the State of California.

This AGREEMENT represents the entire AGREEMENT between the CITY and CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended or modified only by an agreement in writing signed by both the CITY and CONSULTANT.

This AGREEMENT entered into as of the day and year signed below by CITY. CITY
CONSULTANT

City of Imperial

By: _____

Name: _

Title: _____

DATE: _ DATE: _____

ATTACHMENT D

“INSURANCE REQUIREMENTS”

INSURANCE REQUIREMENTS

Without limiting CONSULTANT’s indemnification of CITY, and prior to commencement of Work, CONSULTANT shall obtain, provide and maintain at its own expense during the term of this AGREEMENT, policies of insurance of the type and amounts described below and in a form satisfactory to CITY.

General Liability Insurance. CONSULTANT shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO “insured contract” language will not be accepted.

Automobile Liability Insurance. CONSULTANT shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this AGREEMENT, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Professional Liability (errors & omissions) Insurance. CONSULTANT shall maintain professional liability insurance that covers the Services to be performed in connection with this AGREEMENT, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this AGREEMENT and CONSULTANT agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this AGREEMENT.

Workers’ Compensation Insurance. CONSULTANT shall maintain Worker’s Compensation Insurance (Statutory Limits) and Employer’s Liability Insurance (with limits of at least \$1,000,000).

CONSULTANT shall submit to CITY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of CITY, its officers, agents, employees and volunteers.

Umbrella or Excess Liability Insurance. [Optional depending on limits required]. CONSULTANT shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

A drop down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;

Pay on behalf of wording as opposed to reimbursement;

Concurrency of effective dates with primary policies;

Policies shall "follow form" to the underlying primary policies; and

Insureds under primary policies shall also be insureds under the umbrella or excess policies.

Other Provisions or Requirements

Proof of Insurance – CONSULTANT shall provide certificates of insurance to CITY as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by CITY'S Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with CITY at all times during the term of this contract. CITY reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of Coverage – CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by CONSULTANT, his agents, representatives or employees.

Primary/Noncontributing – Coverage provided by CONSULTANT shall be primary and any insurance or self-insurance procured or maintained by CITY shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of CITY before the CITY's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's Rights of Enforcement – In the event any policy of insurance required under this AGREEMENT does not comply with these specifications or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments. In the alternative, CITY may cancel this AGREEMENT.

Acceptable insurers – All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the CITY's Risk Manager.

Waiver of Subrogation – All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against CITY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONSULTANT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONSULTANT hereby waives its own right of recovery against CITY, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of Contract Provisions (Non-Estoppel) – CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of the CITY to inform CONSULTANT of non-compliance with any requirement imposes no additional obligations on the CITY nor does it waive any rights hereunder.

Requirements Not Limiting – Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

Notice of Cancellation – Consultant agrees to oblige its insurance agent or broker and insurers to provide to CITY with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional Insured Status – General liability policies shall provide or be endorsed to provide that CITY and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

Prohibition of Undisclosed Coverage Limitations – None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to CITY and approved of in writing.

Separation of Insureds – A severability of interests provision must apply for all additional insureds ensuring that Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer’s limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass Through Clause – CONSULTANT agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by

CONSULTANT, provide the same minimum insurance coverage and endorsements required of CONSULTANT. CONSULTANT agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONSULTANT agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to CITY for review.

Self-Insured Retentions – Any self-insured retentions must be declared to and approved by CITY. CITY reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by CITY.

Timely Notice of Claims – CONSULTANT shall give CITY prompt and timely notice of claims made or suits instituted that arise out of or result from CONSULTANT’s performance under this AGREEMENT, and that involve or may involve coverage under any of the required liability policies. Notice to Agency not to exceed ten (10) days.

Additional Insurance – CONSULTANT shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

///END OF PROPOSAL