



City of Imperial
Community Development Department

LABOR COMPLIANCE CONSULTING SERVICES

Request for Proposals

IMPERIAL TRANSIT PARK
Barioni Blvd. between L & M Streets
RFP No. 2018-04

Project Funded by:

*Department of Transportation Federal Transit Administration
FTA GRANT NO. CA-04-0248-00
Public Transportation Modernization Improvement, and Service
Enhancement Account Program
(PTMISEA)
Local Transportation Authority (LTA) Measure 'D' &
City of Imperial*

Point of Contact:
Community Development Department
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760.355.3335
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ATTACHMENT A

CITY OF IMPERIAL REQUEST FOR PROPOSALS FOR LABOR COMPLIANCE CONSULTING SERVICES FOR IMPERIAL TRANSIT PARK PROJECT

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 2:30 p.m. on Wednesday, August 08, 2018, PROPOSALS for negotiation and award of a contract concerning Labor Compliance Consulting Services.

To be considered, one original and three copies of 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 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 firm to receive the contract award. Community Development Department staff recommendation will be forwarded to the CITY MANAGER 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 A, 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 Isabel Alvarez, Administrative Analyst, with the Community Development Department of the City of Imperial at (760) 355-3335 or via email: isabelalvarez@cityofimperial.org.

ATTACHMENT B

INFORMATION FOR PROPOSERS

1.0 PURPOSE

The CITY, through the Community Development Department, is soliciting competitive proposals from qualified experienced individuals or firms to provide Labor Compliance Consulting Services for its TRANSIT PARK PROJECT (RFP No. 2018-04). 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 email and US mail. CITY assumes no responsibility for lost or misrouted mail. The term of the Agreement for services will be for the duration of the construction of said project.

2.0 CALENDAR OF EVENTS

2.1	RFP issued	August 03, 2018
2.2	Package, References, and other documentation must be received by the City no later than 2:30 p.m. on	August 08, 2018

3.0 SCOPE OF SERVICES

The individual or firm will perform these services under the supervision and direction of the Community Development Director. The CITY wishes to contract with an individual or firm for the duration of the construction of the Imperial Transit Park Project (RFP No. 2018-04).

3.1 The Consultant shall be responsible for assisting the CITY with activities needed to ensure that workers employed by the CITY's contractors and their subcontractors are hired and paid in compliance with all applicable labor standards.

3.2 The Consultant shall serve as the primary contact person for the CITY's contractors and their subcontractors for issues related to labor compliance standards. The Consultant shall attend pre-construction meetings to provide contractors and their subcontractors with informational materials and requirements regarding labor compliance standards and to review the labor compliance standards applicable to each project.

3.3 The Consultant shall immediately inform the CITY of any changes or developments regarding issues of federal or California compliance.

3.4 Prior to each bid advertisement, the Consultant shall obtain the most current and applicable wage decisions information and provide this in a timely manner to all prospective contractors and subcontractors. Thereafter, the Consultant shall immediately inform the contractors and their subcontractors of any changes or developments regarding issues of labor compliance, relevant to their contract performance for the City of Imperial.

3.5 Prior to commencement of contractors' or subcontractors' work, the Consultant shall provide verification that their licenses are current and active with the California State Contractor's License Board and they are not on a federal debarment list.

3.6 The Consultant shall provide the CITY and its contractors and their subcontractors with all required labor compliance standards contract language for inclusion in all applicable contracts to be executed by the CITY and its contractors.

3.7 The consultant must conduct all interviews at the work site. Interviews may occur at random, without providing previous notification to their contractor and subcontractor.

3.8 The Consultant shall respond promptly to all Requests for Information by the CITY and its contractors and their subcontractors for information pertaining to federal and California labor compliance standards.

3.9 The Consultant shall immediately inform the CITY whenever a contractor or subcontractor is found to be out of compliance with applicable labor standards.

3.10 The Consultant shall assist the CITY with contractors' applications for progress payments.

3.11 The Consultant shall promptly review the Certified Payroll Reports (CPRs) as received and notify the prime contractor of any deficiencies in wages, overtime compensation, incomplete or inaccurate CPRs, and/or incomplete or inaccurate Statements of Compliance.

3.12 The Consultant shall maintain all original documentation in an organized, manageable and current status and make it available to the CITY for review at any time.

3.13 The Consultant shall prepare and submit in a timely manner, all monthly, semi-annual and final reports, so that the CITY has sufficient time for review prior to submitting them to the State of California Department of Housing and Community Development.

3.14 At the conclusion of a project, the Consultant shall provide to the CITY, all CPRs and all other documentation and correspondence related to the project.

3.15 If requested, the Consultant shall participate in Labor Compliance Monitoring conducted by the State of California, at a time and place specified by the CITY and the State of California.

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

If submitting hard copies, all statements of proposals must include an original and three copies to be submitted in envelopes bearing on the outside the name of the individual or firm, address, and the title of the RFP for which the qualifications are being submitted. 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 and telegraph. Accepted methods of delivery are via electronic mail, 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 facsimile, electronic mail, 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 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. A brief statement of your policy regarding affirmative action.
- e. 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 Labor Compliance Services shall be based on the fee schedule proposed and work authorized. 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 Labor Compliance Consultant Services shall be completed and delivered to the Community Development Director within 10 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 Department of Transportation Federal Transit Administration (FTA) and/or other grant programs:	20 points
3.	Specific experience as it pertains to the Scope of Work above mentioned in Item 3.0:	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 procurement requirements. The CITY may select one consulting firm or a combination of consulting firms to provide the range of services requested.

13.0 PROHIBITIONS 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.

14.0 FEDERAL REGULATIONS

14.1 Affirmative Action

The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Transportation Federal

Transit Administration (FTA). CITY hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged, minority and women's business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, religious creed, sex, or national origin in consideration for an award. Minority- and women-owned and operated businesses are encouraged to apply.

14.2 Section 3

The work to be performed under this contract in on a project assisted under a program providing direct federal financial assistance from the Department of Transportation Federal Transit Administration (FTA), and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and moderate income persons residing within the project area and that the contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the area of the project. Regulations for implementing the Section 3 clause are contained in 24 CFR 135, as amended, and as specified in the project specifications.

14.3 Federal Terms and Conditions During the performance of the contract, the Contractor must agree to comply with all applicable Federal laws and regulations including but not limited to each of the following:

A. Equal Opportunity

During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will comply with Executive Order 11246 of September 24, 1965 entitled Equal Employment Opportunity as amended by Executive Order 11375 of October 1967 as supplemented in Department of Labor regulations (41 CFR Chapter 60).
2. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places,

available to employees and applicants for employment, notices to be provided by the CITY setting forth the provision of the nondiscrimination clause.

3. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.

4. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to this books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order N. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may

request the United States or enter into such litigation to protect the interests of the United States.

8. The contractor shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

9. Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of the Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance reports prior to or as an initial part of their bid or negotiation of a contract.

10. Whenever the Contractor or subcontractor has a collective bargaining agreement or other Contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, that to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the Contractor, the Contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he/she has made to obtain such information.

11. The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent of behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provision of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance

with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

12. The Contractor will cause the forgoing provision to be inserted in all subcontracts for work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the forgoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

B. Disadvantaged/Minority/Women Business Enterprise Federal Regulatory Requirements under 24 CFR 85.36(e)

1. The Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

2. Affirmative steps shall include:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- e. Using the Services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

C. Copeland "Anti-Kickback" Act (18 U.S.C. 874)

Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

D. Compliance with Labor Standard Provisions

Contractor shall comply with all provisions contained in the form HUD-4010, Federal Labor Standards Provisions.

E. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330)

Contractor will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Requires the contracting officer to insert the clauses set forth in 29 CFR Part 5, construction contracts awarded by grantees and sub grantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

F. Requirements and Regulations pertaining to Data and Design

All data and design and engineering work created under this Agreement shall be owned by the CITY and shall not be subject to copyright protection. The rights to any invention which is developed in the course of this Agreement shall be the property of the CITY.

G. Requirements and Regulations Pertaining to Reporting

The CITY, State CDBG, HUD and the Comptroller General of the United States of any of their duly authorized representatives shall be granted access to any books, documents, papers and recorders of Contractor which are directly pertinent the contract.

H. Compliance with Clean Air Act and Clean Water Act

1. Contractor shall comply with all applicable standards, orders and requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)).
2. Contractor shall comply with all applicable standards, orders and requirements issued under Section 508 of the Clean Air Act (33 U.S.C. 1368).
3. Contractor shall comply with Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15).

I. Compliance with Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871)

The Contractor shall comply with the mandatory standards and policies relating to energy efficiency with are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

D/MBE/WBE Implementation Guidelines

The following information, as applicable, shall be retained by Contractor and produced upon request by General Services if determined by General Services to be necessary to establish the bidder's "good faith efforts" to meet the Disadvantaged/Minority/Women Business Enterprise (D/M/WBE) requirements:

1. The names and dates of advertisement of each newspaper, trade paper, and minority-focus paper in which a request for D/M/WBE participation for this project was placed by the bidder.
2. The names and dates of notices of all certified D/M/WBEs solicited by direct mail for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the D/M/WBEs were interested.
3. The items of work for which the bidder request subbids or materials to be supplied by D/M/WBEs, the information furnished interested D/M/WBEs in the way of plans, specifications and requirements for the work, and any breakdown of items of work into economically feasible units to facilitate D/M/WBE participation. Where there are D/M/WBEs available for doing portions of the work normally performed by the bidder with his own forces, the bidder will be expected to make portions of such work available for D/M/WBEs to bid on.
4. The names of D/M/WBEs who submitted bids for any of the work indicated in (3) above, which were not accepted, and summary of the bidder's discussions and/or negotiations with them, the name of the subcontractor or supplier that was selected for that portion of work, and the reasons for the bidder's choice. If the reason for rejecting the D/M/WBE bid was price, give the price bid by the rejected D/M/WBE and the price bid by the selected subcontractor or supplier.
5. Assistance that the bidder has extended to D/M/WBEs identified in (4) above to remedy the deficiency in their subbids.
6. To find a D/M/WBE certified firm, you may call (916) 455-3520, go online to: <http://www.dot.ca.gov/hq.bep>, or via email at: D/M/WBE Caltrans-Publications Distribution Unit, 1900 Royal Oaks, Sacramento, CA 95815-3800.

ATTACHMENT C

AGREEMENT FOR LABOR COMPLIANCE CONSULTANT SERVICES

“CONSULTANT”

AND

CITY OF IMPERIAL

This AGREEMENT is made and entered on the ____ of August, 2018, 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 Labor Compliance Consultant Services, as provided herein; and

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 labor compliance consultant services for its **IMPERIAL TRANSIT PARK (RFP No. 2018-04)** which is deriving State and Federal public funds hereinafter referred to collectively as “PROJECT” located at the following location:

Barioni Blvd. between L & M Streets

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

1. 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.
2. 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.
3. CONSULTANT, upon notice to proceed from the CITY, shall provide labor compliance related services as required for the administration and enforcement of State and Federal Labor Standards and proper payment of prevailing wages. CONSULTANT shall furnish and pay for all labor, materials and supervision necessary for the timely and efficient performance of such services.
4. CONSULTANT shall not subcontract or assign any services or responsibilities set forth in this AGREEMENT without the prior written consent and approval of the CITY.

5. PRE-CONSTRUCTION PHASE

- a. After provided project and contractor information and, after execution of Agreement, CONSULTANT shall work with the CITY to do the following:
 - i. Within five days of request by CITY, CONSULTANT shall obtain the correct State and Federal prevailing wage determinations as well as all State, Federal and Local prevailing wage requirements and shall submit to CITY as soon as received;
 - ii. CITY shall include the received wage determinations, outline of requirements and required forms in the bid and construction contract documents which shall be reviewed for accuracy by CONSULTANT;
 - iii. CONSULTANT shall work with CITY to include the appropriate labor standards provisions, contracting language and wage determinations in the construction contract;
 - iv. CONSULTANT shall hold a pre-construction conference to explain labor standards requirements with CITY and all subcontractors on PROJECT;
 - v. CONSULTANT shall check the eligibility status of each contractor and subcontractor to work on the PROJECT (non-debarment certification and licensing); and
- b. After the award of the contract for a PROJECT, and prior to the commencement of any work by the Contractor or its Subcontractors, CONSULTANT shall conduct a Pre-Construction Conference with the CITY, the prime Contractor and all available

Subcontractors.

c. At the Pre-Construction Conference, the CONSULTANT shall advise the prime Contractor and Subcontractors of their responsibilities and obligations regarding the labor standards provisions and State and Federal wage determinations contained in the contract documents. The CONSULTANT shall discuss and be prepared to answer questions regarding the labor law requirements applicable to the PROJECT, including, but not limited to the following: State, Local, and Federal prevailing wage requirements, State and Federal wage determinations, the respective record keeping responsibilities including but not limited to daily logs, certified payroll records and time sheets, the requirement for the submittal of certified payroll records to CONSULTANT and CITY, apprenticeship requirements, the prohibition against discrimination in employment and required forms for filing and submittal of such forms.

d. CONSULTANT shall prepare the necessary labor compliance documents and suggested reporting forms to be provided to the Contractor and Subcontractors at the Pre-Construction Conference including, but not limited to the following: the applicable State and Federal prevailing wage determinations, the WH 1321 "Notice to Employees" poster, blank certified payroll record forms (Form WH-347 or A-131 Form with Instructions), blank fringe benefit statement, payroll deduction authorization form, statement of non-performance form, certification of understanding and authorization form, Contractor's/Subcontractors certification concerning labor standards and prevailing wages form and apprenticeship requirements with supporting forms including the DAS 140 Form, the DAS 142 Form and the CAC 2 Form.

e. At the Pre-construction conference, CONSULTANT shall provide and discuss in detail the responsibility of Contractors and Subcontractors of paying employees to ensure compliance with all State, Federal and Local labor standards provisions. CONSULTANT shall also inform all Contractors present of their responsibility to submit certified payroll reports to CONSULTANT. CONSULTANT shall review the following requirements in detail:

- 1) Proper payment of prevailing wage rates to all workers on PROJECT;
- 2) Apprentice requirements including filing of DAS 140Form, requesting and hiring apprentices in 1 to 5 ratio to journeymen, proper payment of training contributions;
- 3) Penalties for willful noncompliance of Federal, State and Local laws;
- 4) Certified Payroll Records to be completed and sent on a weekly basis to CONSULTANT;
- 5) Nondiscrimination in employment pursuant to Federal and State laws;
- 6) Kickbacks prohibited;
- 7) Acceptance of Fees prohibited;
- 8) Proper listing of all subcontractors including tiered subcontractors;
- 9) Proper licensing for work to be performed;
- 10) Unfair competition prohibited;
- 11) Workers' Compensation Insurance required;
- 12) OSHA regulations must be followed;

- 13) Undocumented workers are prohibited on PROJECT;
- 14) Workers must receive itemized wage statements with each paycheck.

f. CONSULTANT shall ensure that the Contractor's and all of the Subcontractors' representatives certify that they acknowledge and understand the labor standards provisions and requirements for the PROJECT by signing the Appendix A form.

g. CONSULTANT shall answer all questions regarding labor standards requirements and shall have all in attendance at Pre-construction conference sign in their attendance and acknowledge receipt of materials and forms distributed by CONSULTANT.

h. CONSULTANT shall document the pertinent data as to the items discussed at the Pre-construction conference and shall prepare a report of minutes to be given to the CITY. The minutes shall contain the following:

- i. Project name, location and description, State and Federal wage determination numbers and dates.
- ii. Name of Consultant.
- iii. Contract amount.
- iv. Date and place of conference.
- v. Conference attendees (sign-in sheet).
- vi. Summary of items covered (including but not limited to: pre-construction handout, Appendix A Form, DAS 140 Form, Fringe Benefit Statement Form, DAS 142 Form, CAC 2 Form, Certification of Authorization and Understanding Form, WH 347 Form, A-131 Form, Statement of Compliance, Non-Performance Form & Section 3 Form with all supporting documentation.

6. CERTIFIED PAYROLL RECORDS

a. CONSULTANT shall monitor Contractor and Subcontractors to ensure they maintain weekly certified payroll records ("CPR") and submit CPRs to CONSULTANT and CITY. Subcontractors shall submit their payroll directly to CONSULTANT. Weekly payrolls shall be completed and submitted to CONSULTANT in a timely manner, preferably no later than seven work days following completion of the work week. Should contractors not submit CPR's within the required timeframe, CONSULTANT shall notify contractor in writing of the requirement and set new deadline for contractor. Should CPRs not be submitted, CONSULTANT shall notify CITY of noncompliance and request withholding or delay of next pay application until compliance is met.

b. When received, CONSULTANT shall review all submitted CPRs to ensure compliance with all State, Federal and Local labor standards. CONSULTANT shall ensure each CPR is accompanied by a statement of compliance signed by the Contractor and each Subcontractor (if applicable) indicating that the payroll records are correct and complete, that the wage rates contained therein are not less than the State and Federal rates determined for the PROJECT and that the classifications set forth for each employee conform with the work

performed. CONSULTANT shall also ensure that only classifications appearing on and the State and Federal wage determinations are used and shall check for disproportionate employment of laborers, helpers, apprentices or trainees. CONSULTANT shall review all CPRs in a manner as to not delay payment to the Contractor and Subcontractors if CONSULTANT does not have a basis for recommending withholding of contract payments based on its review of such CPRs.

c. CONSULTANT shall date payrolls upon receipt and initial them upon review. The payrolls shall be examined by CONSULTANT upon receipt so that any necessary corrective action may be initiated before the problem multiplies, and may be accomplished while any affected workers are still available. CONSULTANT shall use Project Tracking Log and CPR Log to record payroll accuracies and/or omissions.

d. CONSULTANT shall review all CPRs to ensure the following: that the worker's rate for straight time hours equal or exceed the rate specified in the contract by reference to the State and Federal Prevailing Wage Determinations for the class of work actually performed, overtime payments, subsistence, travel, shift differential and other payments are made in accordance with the applicable State and Federal Prevailing Wage Determinations and applicable laws.

e. If collected payrolls are incomplete or incorrect, CONSULTANT shall return the incomplete payrolls to the Contractor for completion except when falsification is suspected. If a payroll is false, the CONSULTANT shall prepare a report of such findings and shall send it to CITY. Incorrect payroll shall be revised by contractor. In the case of an incomplete payroll, the CONSULTANT may request supplemental payroll to supply missing information in lieu of returning it to the Contractor.

f. In addition to verifying information in Section 6 (b), (d), CONSULTANT shall review all CPRs to ensure the following: payroll computations are correct, all deductions on payroll are permissible, and the statement of compliance is signed by the CITY, officer, or designated employee of the contractor. When incorrect, CONSULTANT shall notify contractor immediately with a Request for Information (RFI) where a new deadline shall be set for compliance, usually within ten days. When the corrected documents are received and verified for compliance, the contractor shall be notified and the file completed for that week. Strict deadlines, use of forms during review and checklists to be completed all aid in CONSULTANT's duties to avoid penalties for noncompliance.

g. CONSULTANT shall keep detailed records of the compliance of each payroll received, supporting documentation received and RFI's sent to contractors. All outstanding requests, missing information, payroll or supporting documentation shall be detailed by CONSULTANT on a monthly summary submitted to CITY via email by the 15th of the following month. Only noncompliance issues shall be addressed to CITY.

h. CONSULTANT shall notify CITY via email when noncompliant contractors have met compliance. If contractors are still noncompliant after the ten day deadline, CONSULTANT shall notify CITY of the request to withhold payment to contractor until compliance is met. CITY shall only get involved with requesting documents from contractor if CONSULTANT is unable.

7. APPRENTICESHIP REQUIREMENTS

a. CONSULTANT shall ensure that the Contractor and all Subcontractors comply with the apprenticeship requirements set forth in CA Labor Code Section 1777.5 and California Code of Regulations Section 230.1. CONSULTANT shall collect copies of DAS 140 and DAS 142 forms with supporting documentation to prove appropriate submission of forms, shall verify apprentices are individually registered in a bona fide apprenticeship program registered with a State or Federal Apprenticeship Agency recognized by the Bureau using the online verification system. The approval shall be printed out and put in contractor file.

b. CONSULTANT shall ensure that the allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to their entire work force under the registered program. The general ratio shall be no less than 1 apprentice hour for each 5 journeymen hours. CONSULTANT shall collect from all contractors evidence of apprentices used or if not used in the proper ratio, requested from applicable apprenticeship halls using the DAS 142 form. CONSULTANT shall provide contractor with language from CA Labor Code Section 1777.5 and CA Code of Regulations 230 and 230.1 regarding the requirement for requesting and using apprentices in a set minimum ratio as well as the applicable penalties for not doing so.

c. CONSULTANT shall ensure the registration of a Contractor or Subcontractor to an approved apprentice program using the online verification process. A copy of such registration shall be printed out and put in file. If verification is not found online, CONSULTANT shall contact contractor to furnish proof of registration.

d. CONSULTANT shall ensure the proper payment of apprentices with the wage rate determined by the DIR or DOL (WHD) for the classification of the work actually performed by comparing the payroll rates with the published rates for PROJECT.

8. ON SITE INSPECTIONS

a. CONSULTANT shall conduct on-site interviews with workers on the PROJECT on a random but frequent basis, preferably weekly, depending on trades on site, the construction schedule and State, Federal and Local requirements for site visits. Consultant will follow set internal site-visitation schedule. Consultant shall conduct site

interviews more often if there is any evidence that a violation may have occurred or to ensure interviews are done for each craft and classification on the PROJECT. Site interviews will be conducted on a random basis without prior notification to contractors, unannounced, at staggered inspection times and on a reoccurring basis. Consultant shall conduct bilingual interviews so as to be certain that there is no communication barrier with workers who don't speak English. CONSULTANT shall ensure site interviews are done as often as necessary to verify compliance and compare information with payrolls received. Should discrepancies be found on site, additional on-site inspections will be requested from CITY. CITY shall approve additional site visits as requested to verify compliance with prevailing wage law.

b. When on the PROJECT site, CONSULTANT shall ensure that the State and Federal wage determinations and other required material are posted by the Contractor at the site in a prominent and accessible place where they can be easily read by workers. The poster WH-1321 "Notice to Employees" shall be included in this.

c. CONSULTANT shall interview workers in all trades and make an effort to interview up to 10% of workers in all trades. Interviewer shall use HUD Record of Employee Interview form.

d. CONSULTANT shall initiate the interview by identifying himself/herself to the worker to be interviewed and shall explain their purpose for being on PROJECT site. CONSULTANT shall inform the worker of the specific location at which the State wage decisions are posted at the PROJECT site.

e. CONSULTANT shall ask worker all questions on form and question the worker for more information if needed to verify compliance with labor standards.

f. CONSULTANT shall compare information collected during the interview with payroll received from Contractor to ensure compliance. If discrepancies are found, CONSULTANT shall initiate an investigation.

g. CONSULTANT shall complete the HUD Record of Employee Interview form, take detailed notes of equipment on site, subcontractors and trades on site, work being completed and estimated headcount of workers on site. Interviewer shall take pictures of equipment and work being done for the file.

h. CONSULTANT shall return to the office and prepare a Site Interview Summary for PROJECT detailing all workers interviewed, equipment seen on site, problems (if any) on site and include any notes they feel are required to verify compliance. Summary shall be printed for the file and saved electronically on server.

i. CONSULTANT shall enter required information on the Site Visitation Log which will be verified with certified payroll records once received. The log will be updated as compliant or noncompliant. Noncompliance means the payroll information

does not match information received on site during the interview. If noncompliance is found, CONSULTANT shall immediately contact contractor with discrepancy and request corrected information by set deadline. If this information is not received by set deadline, CITY shall be notified and the audit/investigative process shall start.

9. INVESTIGATION AND ENFORCEMENT ACTION

a. CONSULTANT shall investigate any and all complaints or discrepancies promptly. The investigation of labor standards complaints received from workers on the PROJECT receives priority attention.

b. CONSULTANT's duties in investigating include, but are not limited to, the following:

- i. State and Federal Wage rate decision posting requirements.
- ii. Examination of payrolls.
- iii. Examination of basic time and work records including daily reports.
- iv. Conformity with Apprentice/Trainee requirements
- v. Laborers and Mechanics not listed in the wage decision.
- vi. Employee interviews.
- vii. Obtaining written statements from employees
- viii. Preparing investigation report, notifying contractor and CITY.
- ix. Collecting all corrected documents to ensure compliance.

c. When an underpayment of wages or labor violation has occurred, CONSULTANT's duties in enforcing include, but are not limited to, the following:

- i. Notifying CITY via email immediately of discrepancy and results of investigation.
- ii. Making written recommendations, after a full and complete investigation to the satisfaction of the CONSULTANT, to CITY to withhold contract payments and assess appropriate penalties for not paying the per diem prevailing wages.
- iii. Making written recommendations to CITY to withhold contract payments and assess appropriate penalties for failing to comply with the required apprenticeship requirements for the PROJECT.

- iv. Making written recommendations to CITY and State, Federal & Local agencies if needed for forfeitures and preparing the required file or reports.
 - v. Forwarding the written recommendations for forfeitures and the required file or reports to affected parties.
- d. After determination of the amount of forfeiture, CONSULTANT shall assist the CITY in preparing and serving the appropriate notice of withholding of contract payments to the Contractor and/or Subcontractor and ensure payment of wage restitution when funds have been withheld.

CONSULTANT shall devote the necessary personnel for performance of its obligations under this AGREEMENT and shall designate a Labor Compliance Officer who will be responsible for coordinating the CONSULTANT's performance under this AGREEMENT.

10. OUTREACH ACTIVITIES

CONSULTANT shall assist in the successful implementation of labor compliance by conducting the following outreach activities:

- a. General communication and outreach relative to public information regarding the State, Federal and Local labor standards provisions, notifications, updates, pre-determined increases and any prevailing wage questions contractors may have.
- b. Presentations to Contractors and Subcontractors at all Pre-construction conferences and additional meetings is required.
- c. Ongoing communication (via correspondence or meetings) with workers at the PROJECT when review of the CPRs reveals the possibility of State or Federal prevailing wage violations as well as violations of State, Federal or Local compliance law.
- d. Periodic meetings with Contractor and Subcontractors interested in public works contracting with the CITY.
- e. Monthly status updates via email notifying CITY of records received by all subcontractors and outstanding payroll and/or discrepancies. Additional updates if contractors are found to be in noncompliance or withholding of payment is required.

f. Providing advice and expertise to answer any questions from the CITY's staff, Contractors and Subcontractors relative to the terms, requirements and administration of the labor compliance enforcement.

ARTICLE II – CITY'S RESPONSIBILITIES

1. 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.

2. 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.

3. CITY shall allow CONSULTANT access on the PROJECT for site interviews to the extent reasonably determined by CONSULTANT to be appropriate 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

1. 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.

2. 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.

3. 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

1. 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.

2. 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.

3. 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.

4. 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

1. 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:

a. 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;

b. 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 Labor Compliance 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;

c. 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 Labor Compliance 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 Labor Compliance requirements and all applicable labor law.

2. 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.

3. 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 Workers' 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.

4. 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.

5. 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.

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

7. 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: _____

By: _____

Name: _____

Name:

Title: _____

Title:

DATE: _____

DATE: August ____, 2018

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 Workers’ 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, employees or subconsultants.

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