




DATE SUBMITTED 2/27/2019  
 SUBMITTED BY City Manager's Office  
 DATE ACTION REQUIRED 3/06/2019

COUNCIL ACTION   
 PUBLIC HEARING REQUIRED   
 RESOLUTION   
 ORDINANCE 1<sup>ST</sup> READING   
 ORDINANCE 2<sup>ND</sup> READING   
 CITY CLERK'S INITIALS

**IMPERIAL CITY COUNCIL  
 AGENDA ITEM**

SUBJECT: <b>DISCUSSION/ACTION: DEVELOPMENT MANAGEMENT GROUP, INC.</b>  1. APPROVAL OF PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF IMPERIAL AND DEVELOPMENT MANAGEMENT GROUP, INC. FOR ECONOMIC DEVELOPMENT CONSULTING FOR A TWO YEAR TERM IN THE AMOUNT OF \$96,000.00.	
DEPARTMENT INVOLVED: <b>CITY MANAGER'S OFFICE</b>	
BACKGROUND/SUMMARY:  The City of Imperial continues to utilize the services of Development Management Group, Inc (DMG). Over the course of our contract, DMG has for retail recruitment and economic development for the purposes of expanding the goods and services market for Imperial residents. DMG shall serve as an economic ombudsman to the City of Imperial and those parties interested in making economic investments. In the role of ombudsman, DMG shall assist in shepherding projects through the entitlement and permit process. DMG shall be furnished with office, mobile phone and email contact information for all department heads in the City of Imperial and authorized alternate contacts. The City of Imperial shall endeavor to return all communication from DMG, Inc. regarding projects and clients (usually status-type or technical communication) four (4) business hours. Please see the attached contract and exhibits for more information.	
FISCAL IMPACT: <i>Please note: The proposed contract is for the term of two calendar years. Therefore the total contract amount is split over the term of three fiscal years; including the remainder of FY 18-19.</i>  Total Fiscal Impact Not to Exceed: \$96,000.00,	FINANCE INITIALS 
STAFF RECOMMENDATION: It is Staff's recommendation to approve the contract for the term of two calendars years between the City of Imperial and DMG, Inc.	DEPT. INITIALS 
MANAGER'S RECOMMENDATION: It is the City Manager's recommendation to approve the agreement between DMG, Inc. for the term of two calendar years for Economic Development Consulting Services	CITY MANAGER'S INITIALS 
MOTION:	
SECONDED: <span style="float: right;">APPROVED <input type="checkbox"/></span> AYES: <span style="float: right;">DISAPPROVED <input type="checkbox"/></span> NAYES: <span style="float: right;">REJECTED <input type="checkbox"/></span> ABSENT: <span style="float: right;">DEFERRED <input type="checkbox"/></span>  REFERRED TO:	



## **AGREEMENT FOR PROFESSIONAL SERVICES**

This ("AGREEMENT"), is made and effective as of February 20, 2019 between the CITY OF IMPERIAL, a municipal corporation ("AGENCY") and DEVELOPMENT MANAGEMENT GROUP, INC., a corporation ("CONSULTANT"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

### **I. TERM**

This AGREEMENT shall commence on March 6, 2019 and shall remain and continue in effect until tasks described herein are completed, but in no event later than December 31, 2020 unless sooner terminated pursuant to the provisions of this AGREEMENT.

### **II. SERVICES**

CONSULTANT shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. CONSULTANT shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A. To the extent that Exhibit A is a proposal from CONSULTANT, such proposal is incorporated only for the description of the scope of services and no other terms and conditions from any such proposal shall apply to this AGREEMENT unless specifically agreed to in writing.

### **III. PERFORMANCE**

CONSULTANT shall at all times faithfully, competently and to the best of his ability, experience, and talent, perform all tasks described herein. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONSULTANT hereunder in meeting its obligations under this AGREEMENT.

### **IV. AGENCY MANAGEMENT**

Agency's MANAGER shall represent AGENCY in all matters pertaining to the administration of this AGREEMENT, review and approval of all products submitted by CONSULTANT, but not including the authority to enlarge the Tasks to Be Performed or change the compensation due to CONSULTANT. Agency's Manager shall be authorized to act on AGENCY's behalf and to execute all necessary documents which enlarge the Tasks to Be Performed or change CONSULTANT's compensation, subject to Section 5 hereof.

### **V. PAYMENT**



**VII. DEFAULT OF CONSULTANT**

- A. The CONSULTANT's failure to comply with the provisions of this AGREEMENT shall constitute a default. In the event that CONSULTANT is in default for cause under the terms of this AGREEMENT, AGENCY shall have no obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and can terminate this AGREEMENT immediately by written notice to the CONSULTANT. If such failure by the CONSULTANT to make progress in the performance of work hereunder arises out causes beyond the CONSULTANT's control, and without fault or negligence of the CONSULTANT, it shall not be considered a default.
- B. If the Agency Manager or his designee determines that the CONSULTANT is in default in the performance of any of the terms or conditions of this AGREEMENT, he shall cause to be served upon the CONSULTANT a written notice of the default. The CONSULTANT shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the CONSULTANT fails to cure its default within such period of time or fails to present the AGENCY with a written plan for the cure of the default, the AGENCY shall have the right, notwithstanding any other provision of this AGREEMENT, to terminate this AGREEMENT without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this AGREEMENT.

**VIII. OWNERSHIP OF DOCUMENTS**

- A. CONSULTANT shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by AGENCY that relate to the performance of services under this AGREEMENT. CONSULTANT shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONSULTANT shall provide free access to the representatives of AGENCY or its designees at reasonable times to such books and records; shall give AGENCY the right to examine and audit said books and records; shall permit AGENCY to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this AGREEMENT. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.
- B. Upon completion of, or in the event of termination or suspension of this AGREEMENT, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the

course of providing the services to be performed pursuant to this AGREEMENT shall become the sole property of the AGENCY and may be used, reused, or otherwise disposed of by the AGENCY without the permission of the CONSULTANT. With respect to computer files, CONSULTANT shall make available to the AGENCY, at the CONSULTANT's office and upon reasonable written request by the AGENCY, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. CONSULTANT hereby grants to AGENCY all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by CONSULTANT in the course of providing the services under this AGREEMENT.

## **IX. INDEMNIFICATION AND DEFENSE**

### **A. Indemnity**

To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless AGENCY and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs, caused in whole or in part by the negligent or wrongful act, error or omission of CONSULTANT, its officers, agents, employees or subconsultants (or any agency or individual that CONSULTANT shall bear the legal liability thereof) in the performance of services under this AGREEMENT. CONSULTANT's duty to indemnify and hold harmless AGENCY shall not extend to the AGENCY's sole or active negligence.

### **B. Duty to defend**

In the event the AGENCY, its officers, employees, agents and/or volunteers are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this AGREEMENT, and upon demand by AGENCY, CONSULTANT shall defend the AGENCY at CONSULTANT's cost or at AGENCY's option, to reimburse AGENCY for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters to the extent the matters arise from, relate to or are caused by CONSULTANT's negligent acts, errors or omissions. Payment by AGENCY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONSULTANT and AGENCY, as to whether liability arises from the sole or active negligence of the AGENCY or its officers, employees, or agents, CONSULTANT will be obligated to pay for AGENCY's defense until such time as a final judgment has been entered adjudicating the AGENCY as solely or actively negligent. CONSULTANT will not be entitled in the absence of such a determination to any

reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

**X. INSURANCE**

CONSULTANT shall maintain prior to the beginning of and for the duration of this AGREEMENT insurance coverage as specified in Exhibit C attached to and part of this AGREEMENT.

**XI. INDEPENDENT CONSULTANT**

- A. CONSULTANT is and shall at all times remain as to the AGENCY a wholly independent consultant and/or independent contractor. The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither AGENCY nor any of its officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees, or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the AGENCY. CONSULTANT shall not incur or have the power to incur any debt, obligation, or liability whatever against AGENCY, or bind AGENCY in any manner.
- B. No employee benefits shall be available to CONSULTANT in connection with the performance of this AGREEMENT. Except for the fees paid to CONSULTANT as provided in the AGREEMENT, AGENCY shall not pay salaries, wages, or other compensation to CONSULTANT for performing services hereunder for AGENCY. AGENCY shall not be liable for compensation or indemnification to CONSULTANT for injury or sickness arising out of performing services hereunder.

**XII. LEGAL RESPONSIBILITIES**

The CONSULTANT shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this AGREEMENT. The CONSULTANT shall at all times observe and comply with all such laws and regulations. The AGENCY, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this Section.

**XIII. UNDUE INFLUENCE**

CONSULTANT declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the AGENCY in connection with the award, terms or implementation of this AGREEMENT,

including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the AGENCY has or will receive compensation, directly or indirectly, from CONSULTANT, or from any officer, employee or agent of CONSULTANT, in connection with the award of this AGREEMENT or any work to be conducted as a result of this AGREEMENT. Violation of this Section shall be a material breach of this AGREEMENT entitling the AGENCY to any and all remedies at law or in equity.

**XIV. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES**

No member, officer, or employee of AGENCY, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this AGREEMENT.

**XV. RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

- A. All information gained by CONSULTANT in performance of this AGREEMENT shall be considered confidential and shall not be released by CONSULTANT without AGENCY's prior written authorization. CONSULTANT, its officers, employees, agents, or subconsultants, shall not without written authorization from the Agency Manager or unless requested by the Agency Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this AGREEMENT or relating to any project or property located within the AGENCY. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives AGENCY notice of such court order or subpoena.
- B. CONSULTANT shall promptly notify AGENCY should CONSULTANT, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this AGREEMENT and the work performed there under or with respect to any project or property located within the AGENCY, unless the AGENCY is a party to any lawsuit, arbitration, or administrative proceeding connected to such Discovery, or unless CONSULTANT is prohibited by law from informing the AGENCY of such Discovery. AGENCY retains the right, but has no obligation, to represent CONSULTANT and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless AGENCY is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to CONSULTANT in such proceeding, CONSULTANT agrees to cooperate fully with AGENCY and to provide the opportunity to review any response to



discovery requests provided by CONSULTANT. However, AGENCY's right to review any such response does not imply or mean the right by AGENCY to control, direct, or rewrite said response.

- C. CONSULTANT covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. CONSULTANT further covenants that in the performance of this AGREEMENT, no person having such interest shall be employed by them as an officer, employee, agent, or sub-consultant. CONSULTANT further covenants that CONSULTANT has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the AGENCY or the study area and further covenants and agrees that CONSULTANT and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the AGENCY or the study area prior to the completion of the work under this AGREEMENT.

**XVI. NOTICES**

Any notices which either party may desire to give to the other party under this AGREEMENT must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To AGENCY: City of Imperial  
420 S Imperial Avenue  
Imperial, CA 92251  
Attention: Stefan T. Chatwin

To CONSULTANT: Development Management Group, Inc.  
41-625 Eclectic Street, Suite D-2  
Palm Desert, CA 92260  
Attention: Michael Bracken

**XVII. ASSIGNMENT**

The CONSULTANT shall not assign the performance of this AGREEMENT, nor any part thereof, nor any monies due hereunder, without prior written consent of the AGENCY. Because of the personal nature of the services to be rendered pursuant to this AGREEMENT, only CONSULTANT shall perform the services

described in this AGREEMENT. Michael Bracken may use assistants, under his/her direct supervision, to perform some of the services under this AGREEMENT. CONSULTANT shall provide AGENCY thirty (30) days' notice prior to the departure of Michael Bracken from CONSULTANT's employ. Should he/she leave CONSULTANT's employ, the AGENCY shall have the option to immediately terminate this AGREEMENT, within three (3) days of the close of said notice period. Upon termination of this Agreement, CONSULTANT's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the Governing Board and the CONSULTANT. Before retaining or contracting with any CONSULTANT for any services under this AGREEMENT, CONSULTANT shall provide AGENCY with the identity of the proposed CONSULTANT, a copy of the proposed written contract between CONSULTANT and such sub-consultant which shall include and indemnity provision similar to the one provided herein and identifying AGENCY as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed sub-consultant carries insurance at least equal to that required by this AGREEMENT or obtain a written waiver from AGENCY for such insurance.

**XVIII. LICENSES**

At all times during the term of this AGREEMENT, CONSULTANT shall have in full force and effect, all licenses required of it by law for the performance of the services described in this AGREEMENT.

**XIX. GOVERNING LAW**

The AGENCY and CONSULTANT understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this AGREEMENT and also govern the interpretation of this Agreement. Any litigation concerning this AGREEMENT shall take place in the municipal, superior, or federal district court with jurisdiction over the AGENCY.

**XX. ENTIRE AGREEMENT**

This AGREEMENT contains the entire understanding between the parties relating to the obligations of the parties described in this AGREEMENT. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this AGREEMENT or with respect to the terms and conditions of this AGREEMENT, are merged into this AGREEMENT and shall be of no further force or effect. Each party is entering into this AGREEMENT based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**XXI. WORK SCHEDULED/TIME OF COMPLETION**

AGENCY and CONSULTANT agree that time is of the essence in this AGREEMENT. AGENCY and CONSULTANT further agree that CONSULTANT's failure to perform on or at the times set forth in this AGREEMENT will damage and injure AGENCY, but the extent of such damage and injury is difficult or speculative to ascertain. Consequently, AGENCY and CONSULTANT agree that any failure to perform by CONSULTANT at or within the times set forth herein shall result in liquidated damages. AGENCY and CONSULTANT agree that such sum is reasonable and fair. Furthermore, AGENCY and CONSULTANT agree that this AGREEMENT is subject to Government Code Section 53069.85 and that each party hereto is familiar with and understands the obligations of said Section of the Government Code.

**XXII. CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL**

CONSULTANT is bound by the contents of CONSULTANT'S Proposal, Exhibit "D" hereto and incorporated herein by this reference. In the event of conflict, the requirements of AGENCY's Request for Proposals and this AGREEMENT shall take precedence over those contained in the CONSULTANT's proposals. The incorporation of the CONSULTANT's proposal shall be for the scope of services to be provided only, and any other terms and conditions included in such proposal shall have no force and effect on this AGREEMENT or the relationship between CONSULTANT and/or AGENCY, unless expressly agreed to in writing.

**XXIII. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this AGREEMENT on behalf of CONSULTANT warrants and represents that he/she has the authority to execute this AGREEMENT on behalf of the CONSULTANT and has the authority to bind CONSULTANT to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CONSULTANT

DEVELOPMENT MANAGEMENT GROUP, INC.

By: \_\_\_\_\_  
MICHAEL BRACKEN, OWNER

CITY OF IMPERIAL  
A Municipal Corporation

\_\_\_\_\_  
STEFAN T. CHATWIN, CITY MANAGER

ATTEST:

\_\_\_\_\_  
DEBRA JACKSON, CITY CLERK

APPROVED AS TO FORM:  
DENNIS MORITA, CITY ATTORNEY

By: \_\_\_\_\_

Attachments:	Exhibit A	Tasks to Be Performed
	Exhibit B	Payment Schedule
	Exhibit C	Insurance Requirements
	Exhibit D	Consultant's Proposal

**EXHIBIT A**

**TASKS TO BE PERFORMED**

1. DMG shall create, build and maintain relationships with:

Economic Development Committee/Commission  
Chamber of Commerce/Hotelier's Association/Visitor's Center  
City Council  
Community Development/Planning  
Public Works/Engineering  
Finance  
City Manager's Office  
Film Commission  
City Attorney's Office  
Other professional service consultants under contract

2. DMG shall create new relationships and ongoing communication lines with:

Real Estate Developers  
Commercial and Residential Real Estate Brokers  
Lending Sources (Banks and other Lending Institutions)  
Retailers  
Industrial Development Users  
~~Renewable Energy Developers and Users~~  
Additional Potential Businesses that may add to the Employment or Economic Base of the City of Imperial

3. Point of Contact

DMG shall serve as the initial point of contact for developers and businesses that seek to locate in the City of Imperial. DMG shall avail office and mobile phone contact along with email for use by said businesses to communicate with DMG.

#### 4. Ombudsman

DMG shall serve as an economic ombudsman to the City of Imperial and those parties interested in making economic investments. In the role of ombudsman, DMG shall assist in shepherding projects through the entitlement and permit process. DMG shall be furnished with office, mobile phone and email contact information for all department heads in the City of Imperial and authorized alternate contacts. The City of Imperial shall endeavor to return all communication from DMG, Inc. regarding projects and clients (usually status-type or technical communication) four (4) business hours.

#### 5. Sales & Marketing

DMG shall take the lead in the sales & marketing of the City of Imperial to targeted businesses, industries and professionals that could lead to economic investment in the City. This shall include, but not limited to industry groups (such as the International Council of Shopping Centers (and their members)), the Imperial Valley Economic Development Corporation, other identified regional/sub-regional economic development organizations and planning/hosting the annual Tour of Imperial.

#### 6. Technical Assistance

On an as-needed basis, DMG shall work with identified persons and companies seeking to make economic investments in the City of Imperial and provide them with the names and contact information for persons and entities within the region that can assist them with their endeavors (such referrals could include architects, financial sources, EB-5 (foreign direct investors), accountants and other professional services). Referrals shall be made to those persons/entities in which there is no financial or business conflict between that entity and DMG. Additionally, where possible, DMG shall provide multiple referrals so that there is no preference shown.

#### 7. Economic Impact Analysis

As projects move through the entitlement or permitting process, DMG shall produce an economic impact analysis (brief version) for said projects at the request of the City Manager and/or Community Development Director.

8. Demographics/Economic Updates

DMG shall avail a demographic analysis to the City Council, Chamber of Commerce and other business/community organizations in the City of Imperial on an annual basis. Further, DMG shall produce an annual economic brief for the City, Chamber and community utilizing available and generally respected third-party data.

9. Reporting/Invoicing

DMG shall create and provide a monthly invoice showing the number of hours worked on projects for the City of Imperial. Said invoices shall be paid within 30 days of receipt by the City.

Additionally, DMG shall provide the City of Imperial appropriate project updates either verbally (in the case of certain projects that may need additional confidentiality) or in writing on not less than a monthly basis. Further, DMG shall meet with the City Manager of the City of Imperial (by conference call or in person) at a minimum of once a month to discuss projects and updates.

10. Other Duties as Requested/Mutually Agreed

It is understood that Michael Bracken, as an individual and managing partner of Development Management Group, Inc. has extensive experience in both municipal management and economic development and as such he will avail himself to other duties that may be requested by the City Manager for the City of Imperial in which are mutually agreeable.

## **EXHIBIT B**

### **PAYMENT SCHEDULE**

The City shall pay consultant for the services described herein as follows:

***Years 1 & 2 (2019 and 2020 Calendar Years):***

DMG, Inc. shall be compensated at a monthly retainer of \$4,000 per month. It is expected that DMG, Inc. shall commit sufficient time on a monthly basis to economic development efforts to the City of Imperial. DMG, Inc. shall maintain appropriate timesheet documentation that will be available at the request of the City Attorney for the City of Imperial, CA. In general, DMG, Inc. shall average about 50 hours a month in this endeavor. Some months (especially those that involve business recruitment events) shall likely be more while others may reflect less hours.

DMG, Inc. will generally work remotely (in our offices in Palm Desert, CA or Carlsbad, CA) in an effort to be cost efficient. DMG, Inc. has significant experience in working in a remote environment utilizing conference calling, electronic mail, document storage and transfer services and communication software. To the extent that travel to the City of Imperial is needed (or to the business location of a particular potential business investor): DMG, Inc. will bill the City of Imperial appropriate mileage (as stated within the Internal Revenue Service regulations, currently 54 cents per mile).

DMG, Inc. shall be responsible for ancillary costs associated with certain office supply type materials in preparation for various projects (not inclusive of commercial-type designs or commercial scale/quality printing). All payments to Consultant shall be paid by the City of Imperial within thirty (30) days of submittal of an invoice and a signed United States Internal Revenue Service W-9.

DMG, Inc. does not bill separately for "retainer included expenses" which shall include travel to Las Vegas, Los Angeles or Phoenix for business recruitment events (ICSC-Las Vegas, ICSC-Los Angeles or The Lodging Conference). Retainer included expenses shall include transportation, hotel and meals to these three locations/events.



## EXHIBIT C

### INSURANCE REQUIREMENTS

Without limiting CONSULTANT's indemnification of AGENCY, 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 AGENCY.

**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 AGENCY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of AGENCY, its officers, agents, employees and volunteers.

**Umbrella or excess liability insurance.** 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 AGENCY 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 Agency’s Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with AGENCY at all times during the term of this contract. AGENCY 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 AGENCY 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 AGENCY before the AGENCY’s own insurance or self-insurance shall be called upon to protect it as a named insured.

**Agency’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, AGENCY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by AGENCY will be promptly reimbursed by CONSULTANT or AGENCY will withhold amounts sufficient to pay premium from CONSULTANT payments. In the alternative, AGENCY 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 Agency's Risk Manager.

**Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against AGENCY, 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 AGENCY, 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 AGENCY to inform CONSULTANT of non-compliance with any requirement imposes no additional obligations on the AGENCY 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 AGENCY 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 AGENCY.

**Notice of cancellation.** Consultant agrees to oblige its insurance agent or broker and insurers to provide to AGENCY 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 AGENCY 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 AGENCY 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 AGENCY for review.

**Agency's right to revise specifications.** The AGENCY reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the CONSULTANT ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the CONSULTANT, the AGENCY and CONSULTANT may renegotiate CONSULTANT's compensation.

**Self-insured retentions.** Any self-insured retentions must be declared to and approved by AGENCY. AGENCY 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 AGENCY.

**Timely notice of claims.** CONSULTANT shall give AGENCY 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.

**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.

**EXHIBIT D**  
**CONSULTANT'S PROPOSAL**

***BUSINESS CONSULTING AGREEMENT***

Mr. Stefan Chatwin, City Manager  
City of Imperial, California  
420 South Imperial Avenue  
Imperial, CA 92251

***RE: Business Consulting Agreement No. 010119: City of Imperial: Economic Development Consulting***

Dear Mr. Chatwin:

Thank you for the opportunity to present to you this Business Consulting Agreement (BCA) to continue to provide economic development consulting services to the City of Imperial, California. The purpose of this BCA is to detail services that Development Management Group, Inc. will provide in assisting the City of Imperial with economic investment efforts to expand your local economy.

This document shall detail the agreement between the City of Imperial, a California Municipal Government (hereinafter referred to as "City") and Development Management Group, Inc. (hereinafter referred to as "Consultant").

This Agreement shall act as a Representation Authorization for purposes of meeting with appropriate and applicable officials for activities as directed by City in connection with the tasks described below.

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**Review of Previous Work**

DMG, Inc. has had the privilege of working with the City of Imperial for the last couple of years. During that time, we have worked on the following initiatives/projects:

- a. Complete an Economic Development Strategic Plan for the City of Imperial.
- b. Completed Fiscal Impact Analysis of potential annexations into the City.
- c. Produce Annual Demographic/Market Analysis Briefs that are used to introduce the City/community to economic investors.
- d. Represented the City of Imperial at ICSC-Las Vegas (2), ICSC-Los Angeles (2) and The Lodging Conference (2).
- e. Served as a City Representative to communicate and work with the developer of the hotel project at the north end of the City.
- f. Served as the recruiter and ombudsperson for Pearson Winery.

- g. Served as the recruiter and ombudsperson for AutoZone.
- h. Serving as the City representative, recruiter and ombudsperson for the 15<sup>th</sup> Street Land currently in escrow with Halferty Development.
- i. Serving as the City representative, recruiter and ombudsperson working with the Colorado River Regional Water Quality Control District, Dollar General, Dynamic Development and Lundin Development in regards to the site at the corner of 6<sup>th</sup> Street and Highway 86 in Imperial (currently in escrow between Dollar General and Lundin Development).
- j. Serving as an ombudsperson for the proposed Fiesta Foods expansion into the City of Imperial.

**Professional Services of DMG, Inc.**

1. DMG, Inc. is qualified to complete demographic research for the City of Imperial and the surrounding market area.
2. DMG, Inc. is qualified to complete retail market opportunity analysis for the City of Imperial and the surrounding market area.
3. DMG, Inc. is qualified to prepare customized research for particular companies that the City of Imperial is targeting for location, expansion and/or relocation.
4. DMG, Inc. is qualified to make specific presentations to business prospects (retail, commercial and industrial) in support of efforts to attract additional investment into the community.
5. DMG, Inc. is qualified to complete economic, employment and fiscal impact analysis of proposed development projects in an effort to properly provide information to the residents, businesses, councilmembers and staff within the City of Imperial.
7. DMG, Inc. is qualified to complete appropriate preparation and represent the City of Imperial at industry trade-shows including the International Council of Shopping Centers (ICSC) Las Vegas International, San Diego Western Regional Conference(s) and other trade events for retail, commercial and industrial.
8. DMG, Inc. is qualified to provide customized market research for a variety of industries (in addition to retail, which is specified above).
9. DMG, Inc. is qualified to provide ombudsman services to the City of Imperial serving as a go-between and on-going communicator between the City and a developer/development project.
10. DMG, Inc. is qualified to provide economic development training to community members, business leaders, councilmembers and staff (DMG, Inc. has previously designed a 2-3 hour certification course that has been presented over 10 times in various communities).
11. DMG, Inc. is able to provide other economic development and post-redevelopment related services as needed.

12. DMG, Inc. is both qualified and experienced in the creation and maintenance of relationships with both retailers and retail developers across Southern California and shall be responsible for properly introducing market and location opportunity to said contacts on behalf of the City of Imperial.

13. DMG, Inc. is qualified and experienced in the implementation of an Economic Development Strategic Plan to attract economic investment.

**Hold Harmless**

Development Management Group, Inc. shall hold the City of Imperial harmless regarding any claims resulting from personal injury or automobile accidents.

**Termination**

DMG, Inc. is proposing the above as a two-year agreement. If it is determined that DMG, Inc. has not or is not able to perform the work in this Agreement, the City of Imperial shall have the right to terminate this Agreement with sixty (60) days written notice. At such time, Consultant shall have the right to submit an invoice for work performed to date along with the actual work performed to the City of Imperial. The City of Imperial shall have thirty (30) days for which to make payment to Consultant for all work performed prior to termination.

**Compensation and Retainer Included Expenses**

The City shall pay consultant for the services described herein as follows:

***Years 1 & 2 (2019 and 2020 Calendar Years):***

DMG, Inc. shall be compensated at a monthly retainer of \$4,000 per month. It is expected that DMG, Inc. shall commit sufficient time on a monthly basis to economic development efforts to the City of Imperial. DMG, Inc. shall maintain appropriate timesheet documentation that will be available at the request of the City Attorney for the City of Imperial, CA. In general, DMG, Inc. shall average about 50 hours a month in this endeavor. Some months (especially those that involve business recruitment events) shall likely be more while others may reflect less hours.

DMG, Inc. will generally work remotely (in our offices in Palm Desert, CA or Carlsbad, CA) in an effort to be cost efficient. DMG, Inc. has significant experience in working in a remote environment utilizing conference calling, electronic mail, document storage and transfer services and communication software. To the extent that travel to the City of Imperial is needed (or to the business location of a particular potential business investor): DMG, Inc. will bill the City of Imperial appropriate mileage (as stated within the Internal Revenue Service regulations, currently 54 cents per mile).

DMG, Inc. shall be responsible for ancillary costs associated with certain office supply type materials in preparation for various projects (not inclusive of commercial-type designs or commercial scale/quality printing). All payments to Consultant shall be paid by the City of Imperial within thirty (30) days of submittal of an invoice and a signed United States Internal Revenue Service W-9.

DMG, Inc. does not bill separately for “retainer included expenses” which shall include travel to Las Vegas, Los Angeles or Phoenix for business recruitment events (ICSC-Las Vegas, ICSC-Los Angeles or The Lodging Conference). Retainer included expenses shall include transportation, hotel and meals to these three locations/events.

Additionally, DMG, Inc. does represent multiple (non-competitive clients) and is able to provide an economy of scale for certain presence at ICSC-Las Vegas and ICSC-Los Angeles and is able to offer partnering into meeting space/trade show booth without requesting any additional compensation.

In regards to The Lodging Conference, the City may choose to participate in a booth partnership with other (non-competitive cities) at a proportionate cost to the overall booth cost (split between the number of cities sharing the expense). This is an optional event and will be discussed with the City Manager or designee at appropriate time(s).

#### **Certainty of Fee Arrangement and Contract Limit**

DMG, Inc. shall commit to the proposed fee arrangement being in place until December 31, 2020. Any services provided after the date listed above shall be done by mutual agreement of the City of Imperial and Development Management Group, Inc.

#### **Conflict Procedures & Disclosures**

DMG, Inc. is a highly experienced economic development consulting firm and does have both active and inactive clients throughout Southern California. Within Imperial County specifically, we are on a pre-qualified list of economists with the County of Imperial and from time to time have completed Fiscal/Employment and Economic Analysis on behalf of the County. Further in the past, we have been used as a consultant with the Imperial Valley Economic Development Corporation on projects related to regional economic development.

In the event that there is a potential conflict whereby a particular community DMG, Inc. is working on behalf of and a specific business client (that is negotiating or comparing multiple communities represented by DMG, Inc.), DMG, Inc. shall offer to represent the first community that identified that particular client to DMG, Inc.

Additionally, it is disclosed that the Managing Partner of Development Management Group, Inc. (Mr. Michael Bracken) serves on the Board of Directors of Community Valley Bank, a publically traded financial institution headquartered in Imperial County. Further his direct



ownership (inclusive of both stock and stock options) does not exceed 5% of total bank ownership.

### **Reporting/Communication**

DMG, Inc. shall produce on a minimum of a monthly basis, a Project Status Report (PSR). DMG, Inc. also proposes one or two monthly conference calls (generally lasting 15-30 minutes) for which to discuss progress and prospects.

DMG, Inc. proposes that all work done under this Agreement would be done with direct communication with the City of Imperial City Manager with the proviso that DMG, Inc. is able to communicate directly with department directors as appropriate when serving in an ombudsman (ombudsperson) role.

### **Insurance**

Development Management Group, Inc. shall have a Certificate of Liability Insurance (ACORD) with the City of Imperial named as additional insured prior to commencement of any work under this Agreement. DMG, Inc. respectfully requests that the City of Imperial accept the following insurance limits as satisfactory based on the professional services being provided.

Professional Error & Omission (minimum \$1,000,000)

Commercial General Liability (minimum \$2,000,000)

Automotive and Automobile Liability (minimum \$1,000,000)

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## **SCOPE OF WORK**

11. DMG shall create, build and maintain relationships with:

Economic Development Committee/Commission  
Chamber of Commerce/Hotelier's Association/Visitor's Center  
City Council  
Community Development/Planning  
Public Works/Engineering  
Finance

City Manager's Office  
Film Commission  
City Attorney's Office  
Other professional service consultants under contract

12. DMG shall create new relationships and ongoing communication lines with:

Real Estate Developers  
Commercial and Residential Real Estate Brokers  
Lending Sources (Banks and other Lending Institutions)  
Retailers  
Industrial Development Users  
Renewable Energy Developers and Users  
Additional Potential Businesses that may add to the Employment or Economic Base of the City of Imperial

13. Point of Contact

DMG shall serve as the initial point of contact for developers and businesses that seek to locate in the City of Imperial. DMG shall avail office and mobile phone contact along with email for use by said businesses to communicate with DMG.

14. Ombudsman

DMG shall serve as an economic ombudsman to the City of Imperial and those parties interested in making economic investments. In the role of ombudsman, DMG shall assist in shepherding projects through the entitlement and permit process. DMG shall be furnished with office, mobile phone and email contact information for all department heads in the City of Imperial and authorized alternate contacts. The City of Imperial shall endeavor to return all communication from DMG, Inc. regarding projects and clients (usually status-type or technical communication) four (4) business hours.

#### 15. Sales & Marketing

DMG shall take the lead in the sales & marketing of the City of Imperial to targeted businesses, industries and professionals that could lead to economic investment in the City. This shall include, but not limited to industry groups (such as the International Council of Shopping Centers (and their members)), the Imperial Valley Economic Development Corporation, other identified regional/sub-regional economic development organizations and planning/hosting the annual Tour of Imperial.

#### 16. Technical Assistance

On an as-needed basis, DMG shall work with identified persons and companies seeking to make economic investments in the City of Imperial and provide them with the names and contact information for persons and entities within the region that can assist them with their endeavors (such referrals could include architects, financial sources, EB-5 (foreign direct investors), accountants and other professional services). Referrals shall be made to those persons/entities in which there is no financial or business conflict between that entity and DMG. Additionally, where possible, DMG shall provide multiple referrals so that there is no preference shown.

#### 17. Economic Impact Analysis

As projects move through the entitlement or permitting process, DMG shall produce an economic impact analysis (brief version) for said projects at the request of the City Manager and/or Community Development Director.

#### 18. Demographics/Economic Updates

DMG shall avail a demographic analysis to the City Council, Chamber of Commerce and other business/community organizations in the City of Imperial on an annual basis. Further, DMG shall produce an annual economic brief for the City, Chamber and community utilizing available and generally respected third-party data.

19. Reporting/Invoicing

DMG shall create and provide a monthly invoice showing the number of hours worked on projects for the City of Imperial. Said invoices shall be paid within 30 days of receipt by the City.

Additionally, DMG shall provide the City of Imperial appropriate project updates either verbally (in the case of certain projects that may need additional confidentiality) or in writing on not less than a monthly basis. Further, DMG shall meet with the City Manager of the City of Imperial (by conference call or in person) at a minimum of once a month to discuss projects and updates.

20. Other Duties as Requested/Mutually Agreed

It is understood that Michael Bracken, as an individual and managing partner of Development Management Group, Inc. has extensive experience in both municipal management and economic development and as such he will avail himself to other duties that may be requested by the City Manager for the City of Imperial in which are mutually agreeable.