

REQUEST FOR PROPOSALS (RFP)
FOR
ON-CALL LAND SURVEYING SERVICES
RFP NO. 2024-05



City of Imperial
Public Services Department
420 S. Imperial Ave
Imperial, CA 92251
(760) 355-2155 | Cityofimperial.org

Approved for Advertising:


David Dale, PE, PLS
Public Services Director

KEY RFP DATES (Subject to Change):

Issue Date: June 26, 2024
Deadline for Questions: July 18, 2024 (2:00pm PST)
Proposal Due Date: July 26, 2024 (3:00pm PST)

PROPOSALS MUST BE SUBMITTED ON THE SPECIFIED DATE AND TIME. THE CITY WILL NOT CONSIDER PROPOSALS RECEIVED AFTER THE DUE DATE. AN AMENDMENT IS CONSIDERED A NEW PROPOSAL AND WILL NOT BE ACCEPTED AFTER THE SPECIFIED DATE AND TIME.



TABLE OF CONTENTS

	<u>Page</u>
I. Introduction	3
II. Purpose and Background	3
III. Project Posting and Scheduling	4
IV. Scope of Services	4
V. Assignment of Work	5
VI. Responsibility of City	6
VII. Submission Requirements	6
VIII. Evaluation Criteria	8
IX. Selection Process	8
X. Submission Deadline	9
XI. Request for Additional Information	10
XII. Payment to Consultant	10
XIII. Termination for Convenience of the City	11
XIV. Independent Contractor	11
XV. General Conditions	11
XVI. Prevailing Wages	11
XVII. Closing Items	12

EXHIBITS

A – PROPOSAL ACKNOWLEDGEMENT FORM

B – SAMPLE PROFESSIONAL SERVICES AGREEMENT

C – INSURANCE REQUIREMENTS



I. INTRODUCTION

The City of Imperial, California (the “City”, “Imperial”), is located in the heart of most urbanized portions of Imperial County, California between the cities of Brawley (to the North) and El Centro (to the South). Imperial was created by the Imperial Land Company and was named by George Chaffey.

The City was plotted in 1902 for home and commercial businesses. Over the years it became the location for the home of the Imperial Irrigation District (IID), the California Mid-Winter Fair and the Imperial County airport (IPL).

The City of Imperial was incorporated as a City on July 12, 1904. It is a General Law City that operates under a Council-Manager form of government. The City of Imperial is committed to promoting and providing for the safety, health, and welfare of its citizens and business community.

The population of the City of Imperial, as of January 2024, is 22,141(CA Department of Finance). Imperial is a full-service city and encompasses an area of 6.29 square miles.

II. PURPOSE AND BACKGROUND

The City of Imperial (“City”) is requesting proposals from qualified and experienced consultants to provide On-Call Land Surveying Services.

Qualified entities are invited to submit written proposals for consideration in accordance with this request.

The successful Consultant(s) will be required to enter into an agreement with the city, which will include the requirements of this RFP, as well as other requirements to be specified at a later date. The anticipated duration of the agreement will be for one (1) year with the option of two (2) one (1) year extensions upon mutual agreement. By submitting a proposal, the Consultant agrees to all of the terms of this RFP.

Compensation for the on-call, agreements shall be handled through task orders and will be financed through project specific sources. Note, there is no expectation or guarantee of a total contract amount.

The contract will be regulated according to the provisions of all federal, state and local laws and ordinances that are applicable. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1774. All Service Providers and sub-consultant(s) shall pay all workers not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed, pursuant to Sections 1770 et seq. of the California Labor Code. Prevailing wage rates are available on the Internet at: <<http://www.dir.ca.gov>>. All Service Providers and sub-consultant(s) shall comply with the registration and qualification requirements pursuant to Sections 1725.5 and 1771.1 of the California Labor Code.



III. PROJECT POSTING AND SCHEDULING

This RFP is posted at the City of Imperial website at the following address: <https://cityofimperial.org/> under “Connect > Departments > Public Services > Related Pages > RFP & BID”. Consultants wishing to propose in response to this RFP must obtain this document from our website. Due to the fact that anyone can download the RFP and the City has no method for tracking the distribution, the City is not able to maintain a list of potential consultants and/or proposers and cannot provide individual notification of amendments or addendums to this RFP.

The City will therefore post any addendums to the RFP on the above-mentioned website. All consultants shall refer to the website to verify all addendums that have been issued and that they have acknowledged all such addendums in their proposal.

PROPOSED SCHEDULE OF EVENTS

EVENT	DATE
Issue Request for Proposal	June 26, 2024
Last Day for Request(s) for Clarification <i>must be submitted in writing</i>	July 18, 2024 (2:00pm PST)
Proposal Due	July 26, 2024 (3:00pm PST)
Consultant Selection	August 2024
City Awards Contract(s)	August 2024 – September 2024

IV. SCOPE OF SERVICES

Consultant will provide the necessary on-call, land surveying services to the City in accordance with all provisions within this RFP. These services will be on an on call, basis and the consultant will act as an extension of staff. The consultant shall have staff qualified to conduct all necessary survey work, as well as prepare written documents. Prevailing wages shall apply to project services where applicable.

Project tasks shall include, but are not necessarily limited to, those items noted below. **If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant’s proposal.**

- Review maps, plats, legal descriptions and other land surveying documents prepared by City and/or third party. Some documents may require endorsement as the authority of contracted, licensed surveyor of the City.
- Review maps, plats, legal descriptions and other land surveying documents submitted to the City for review. All activities will be performed under the responsible charge of the Director of Public Services and the Public Services Director will provide any endorsements as necessary.
- Prepare maps, plats, legal descriptions and other land surveying documents for the benefit of the City. Some activities may be performed under the responsible charge of the Director of Public Services.



- Conduct various field surveying activities as needed for the benefit of the City. Some activities may be performed under the responsible charge of the Director of Public Services. Prior to any field surveys, the consultant shall submit a DIR number to the City. Field surveys made by consultants shall require the payment of prevailing wages. For wage determinations, see <https://www.dir.ca.gov/oprl/dprevagedetermination.htm>
- Loan of personnel for various field surveying activities. Some activities may be performed under the responsible charge of the Director of Public Services.
- Research and due diligence investigations as needed for the benefit of the City. Some activities may be performed under the responsible charge of the Director of Public Services.

V. ASSIGNMENT OF WORK

The City will assign task orders as services are needed to any of the contracted firms as it deems necessary and appropriate. All work shall be performed under the direction of an appropriate licensed professional land surveyor registered with the State of California. No subcontractors shall be utilized without prior authorization by City.

For each project for which services will be requested, the City will issue a Task Order Request to one or more firms under the on call agreement and request a cost proposal which must include project understanding and the appropriate lump sum fixed fee rate for the completion of the project. The proposal shall include protocols to be used, a breakdown of the hours to be spent per task by staff classification, milestones used to mark the consultant's accomplishments and points of payment authorization and the amount of time needed to perform the work from the time the notice to proceed is received by the consultant.

The consultant will have a prescribed number of working days, indicated in the task order, to submit the requested proposal. Failure to submit the proposal in the prescribed time may constitute grounds for having the proposal rejected and another firm under the on call agreement assigned the task. The City will review the proposal and make the decision of award based on qualifications for the task as well as overall cost.

Time frames for the consultant to complete tasks or achieve task milestones shall be negotiated on a task-by-task basis. Milestones and tasks defined for this contract are used to mark the consultant's accomplishments and as a guide for payment authorization. Any delays in the submitted schedule of work must be pre-authorized by authorized City staff.

At the conclusion of the task, the selected firm shall submit to the City a project completion file which contains the required information, forms, certifications, communications, etc. A digital version of the project file will also need to be submitted on a compact disc (CD) containing all required documentation in portable document format (PDF) as well as any modifiable document used (.doc files, etc.). The required project file will need to be submitted before the final payment and retention can be released.



VI. RESPONSIBILITIES OF THE CITY

1. The City will direct the development of the project(s), provide management oversight, and conduct administrative arrangements only.
2. The City will pay an agreed upon amount normally within 30 days after receipt of an invoice.
3. The City will not provide dedicated workplace facilities, but upon request will provide a conference room for meetings with the Department, consultant and other appropriate agencies.
4. The City reserves the right to perform any portion of the scope of work by City personnel or other consultants should the City determine it would be in the best interest of the City to do so.

VII. SUBMISSION REQUIREMENTS

Proposals and all other information and documents submitted in response to this RFP are subject to the California Public Records Act, which generally mandates the disclosure of documents in the possession of the City upon the request of any person, unless the content of the document falls within a specific exemption category.

Three (3) hardcopies and one (1) PDF on USB of the Proposal must be submitted containing the following elements:

- Proposers must submit three (3) bound copies of their proposal to the City for review.
- 8-1/2" x 11" sheet sizes should be used for the text, with 11" x 17" sheet sizes for any fold-out drawings.
- The proposal shall be limited to twenty-five (25) double-sided pages. Resumes for proposed personnel, tabs, and cover/back pages will not be counted towards the page limit.
- Proposals should be as concise as possible and specific to this project.

LETTER OF TRANSMITTAL

A Letter of Transmittal shall be addressed to Jenell Guerrero, Assistant to the City Manager. At a minimum, the proposal must contain the following information:

- Identification of the proposing Consultant who will have contractual responsibility with the City. Identification shall include the legal name of the company, corporate address, telephone number, and email address of the contact person identified during the period of proposal evaluation.
- A statement representing that the Consultant has thoroughly examined and become familiar with the work required in this RFP and is capable of performing quality work to achieve the objectives of the City.
- Acknowledgement of receipt of all addenda, if any.
- A statement to the effect that the proposal shall remain valid for a period of not less than ninety (90) days from the date of submittal.
- Signature of the official authorized to bind Consultant to the terms of the proposal.
- Signed statement attesting that all information submitted with the proposal is true and correct.



WRITTEN PROPOSAL

The Proposal shall consist of the following sections:

1. Letter of Transmittal. Contents of the Letter of Transmittal listed above.
2. Firm Structure and History. Including the firm's experience managing projects similar in magnitude and scope, key personnel and structure (organization chart), credentials, background, and ownership of the firm.
3. Key personnel. List qualifications of personnel with resumes and a breakdown of responsibilities. The Firm's project manager, who will be responsible for planning, coordinating, and conducting the majority of the work, must be identified and committed to the project. The City must approve changes to key personnel committed to work on the project subsequent to award of contract. Resumes must be submitted for key personnel who will be assigned to this project.
4. A narrative briefly describing the proposed approach using general descriptions for the activities.
5. A list of proposed sub-consultants, sub-contractors, suppliers, and manufacturers, including their qualifications pertinent to this project.
6. A client reference list from previous City / Government Agency projects of similar scope and magnitude. List should include key personnel-contacts and their position with the agency.
7. A Fee Schedule of the Consultant's Hourly / Standard Rates (*inclusive of reimbursement costs for mileage, printing, telephone, photographs, postage, and delivery*)
8. Evidence of compliance with City insurance requirements (*Certificate of Insurance*)
9. Exceptions and Deviations. Contractor shall state any exceptions or deviations from the requirements of this RFP, segregating "technical" exceptions from "contractual" exceptions. Where the Consultant wishes to propose alternative approaches to meeting the City's technical or contractual requirements, these shall be thoroughly explained. If no contractual exceptions are noted, Consultant will be deemed to have no objection to the contract requirements as set forth in **EXHIBIT B**, "Sample Professional Services Agreement."
10. Proposal Acknowledgement Form. Contractor shall complete and submit **EXHIBIT A**, "Proposal Acknowledgement Form." Failure to submit this signed form will result in the disqualification of the Consultant's proposal.



VIII. EVALUATION CRITERIA

Submitted proposals will be evaluated based on the following factors, but may not be limited to just these factors:

Criteria	Approximate Weight
Staffing Capabilities / Technical Competence. Candidates shall have knowledge of the principles and practices of land surveying services. Available resources to perform the requested services, as well as an understanding of the practices, applicable laws and state permits; codes and standards applicable to public works.	20%
Approach to Work. Methodology to be implemented to address and coordinate the various elements within the program.	30%
Past Performance Record. Experience in completion of services of similar complexity and scale for other agencies within Southern California is desirable. Efficiency and timeliness in completion of program requirements.	35%
Cost. Reasonableness of the firm’s fixed price and or hourly rates, and competitiveness of quoted firm-fixed prices with other proposals received	10%
Exceptions and deviations from the City’s standard Professional Services Agreement	5%

IX. SELECTION PROCESS

Per California law, the procurement of Professional Services must be selected on the basis of qualifications, or Qualifications Based Selection (QBS) in accordance with Public Law 92-582. The procurement of Professional Services can be one-time or multi-year.

The City reserves the right to require in-person interviews with Contractors, if deemed necessary, after the evaluation of the written proposals.

Each RFP will be reviewed to determine if it meets the submittal requirements contained within this RFP. Failure to meet the requirements for the RFP will be cause for rejection of the proposal. The city may reject any proposal if it is conditional, incomplete, or contains irregularities. The City may waive an immaterial deviation in a proposal, but this shall in no way modify the proposal document or excuse the Consultant from compliance with the contract requirements if the Consultant is awarded the contract.

Prior to the start of work, the selected consultant will be required to execute an Agreement for Services with the City. The consulting firm must review the attached sample consulting agreement and minimum insurance amounts. No modification requests to material terms of agreement will be made. The agreement shall not be in force until contracting is approved by the City of Imperial Council and after written authorization to proceed has been provided.



Prior to submittal, for Council approval, of the agreement with the City, the successful firm must provide evidence of insurance coverage as noted in the insurance requirements exhibit. The successful firm will be required to maintain the required coverages, at its sole cost and expense, throughout the entire term and any subsequent modification terms of the contract.

Insurance requirements noted in insurance exhibit are based on projected City estimates. Insurance amounts may be adjusted once the final cost and fees proposal is reviewed. Any contract resulting from this RFP will be financed with funds available to the City through project specific sources.

The city intends to select the top **TWO (2) consultants** for this contract.

X. SUBMISSION DEADLINE

In order to be considered, the Consultant must submit in SEALED envelope three (3) hardcopies and one (1) PDF copy on USB of the Service Proposal to the following office by 3:00pm PST on July 26, 2024:

City of Imperial – City Hall
420 S. Imperial Ave
Imperial, CA 92251
Attention: Jenell Guerrero

The proposal outer envelope shall be labeled:

“PROPOSAL FOR ON-CALL LAND SURVEYING SERVICES”

The proposal must be received at the office listed above no later than the date and time outlined within this RFP.

There is no expressed or implied obligation for the City to reimburse firms for any expenses incurred in preparing proposals in response to this request. Materials submitted by respondents are subject to public inspection under the California Public Records Act (Government Code Sec. 6250 et seq.). Any language purporting to render the entire proposal confidential or proprietary will be ineffective and disregarded.

The City reserves the right to retain all proposals submitted, and to use any idea in a proposal, regardless of whether the proposal was selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in the RFP, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City and the selected firm.

All property rights, including publication rights of all reports produced by the selected firm in connection with services performed under this agreement, shall be vested in the City.



XI. REQUEST FOR ADDITIONAL INFORMATION

All questions and/or inquiries regarding this RFP shall be directed to:

Jenell Guerrero, MPA
Assistant to the City Manager
Email: jguerrero@imperial.ca.gov

All questions and/or inquiries shall be submitted by 2:00pm PST on July 18, 2024

Consultants are responsible to verify receipt of any addenda issued. Confirmation of receipt of all addenda is part of the Proposal Acknowledgement Form (**EXHIBIT A**).

XII. PAYMENT TO CONSULTANT

Compensation for the on call services agreements shall be handled through task orders and will be financed through project specific sources. Note, there is no expectation or guarantee of a total contract amount.

The Consultant shall provide a “Payment Schedule” indicating the fee for individual tasks with a “Not-to-Exceed Fixed Fee” which shall be the sum of all tasks.

Tasks shall include, but not be limited to, all Professional Consultant Services necessary to complete the work covered by this Proposal.

The City will pay the Consultant for work completed as identified in the Payment Schedule.

Progress payments shall be based on tasks performed as identified in the Payment Schedule. Monthly invoices will specifically identify job title, person-hours, and costs incurred by each task. Sub-categorization of task is permitted to better define the task for payment.

Reimbursement costs such as mileage, printing, telephone, photographs, postage and delivery, are to be included in the “Not-to-Exceed Fixed Fee.”

All tasks including labor and reimbursable costs such as mileage, printing, telephone, photographs, postage, and delivery shall be supporting documentation presented at the time payment is requested.

The City will pay the Consultant for all acceptable services rendered in accordance with the Agreement and Task Order Request.

When the Consultant is performing, or is requested to perform, work beyond the scope of service in the Task Order Request an amendment will be executed between the City and Consultant.

Payment will be based on hourly rate for work completed associated with each applicable task as identified.



XIII. TERMINATION FOR CONVENIENCE OF THE CITY

The City reserves the right to terminate the “Professional Services Agreement” for the “convenience of the City” at any time by giving thirty (30) days written notice to the Consultant of such termination and specifying the effective date thereof. All finished or unfinished drawings, maps, documents, field notes, and other materials produced and procured by the Consultant under the said aforementioned Agreement is, at the option of the City, City property and shall be delivered to the City by the Consultant within ten (10) working days from the date of such termination.

XIV. INDEPENDENT CONTRACTOR

The Contractor’s relationship to the City in the performance of the Contractor’s services for this project is that of an independent contractor. The personnel performing said services shall at all times be under the Contractor’s exclusive direction and control and shall be employees of the Contractor, not employees of the City. The Contractor shall pay all wages, salaries, and other amounts due its employees in connection with the performance of said work, and shall be responsible for all employee reports and obligations, including, but not limited to, Social Security, income tax withholding, unemployment compensation, and Workers’ Compensation.

XV. GENERAL CONDITIONS

Pre-contractual expenses are defined as expenses incurred by the Consultant in: (1) preparing the proposal; (2) submitting the proposal to the City; (3) presenting during the selection interview; (4) negotiating with the City on any matter related to the proposal; (5) any other expenses incurred by the Consultant prior to an executed Agreement, and (6) attendance of City Council for Award of Contract.

The City shall not, in any event, be liable for any pre-contractual expenses incurred by the Contractor. Services shall not commence until the Agreement for Professional Contractor Services has been executed by the City.

The Contractor is responsible for notifying Underground Service Alert and providing proper traffic control, at no additional expense to the City.

The City reserves the right to withdraw this RFP at any time without prior notice. Further, the City makes no representations that any Agreement will be awarded to any Consultant responding to this RFP. The City expressly reserves the right to postpone reviewing the proposals for its own convenience and to reject any and all proposals responding to this RFP without indicating any reasons for such rejection(s). Any contract awarded for these Contractor engagements will be made to the Contractor who, in the opinion of the City, is best qualified

XVI. PREVAILING WAGES

Certain labor categories under this project are subject to prevailing wages as identified in the State of California Labor Code commencing in Section 1770 et. seq. These labor categories when employed for any work on or in the execution of a “Public Works” project require payment of prevailing wages including but not limited to, testing, potholing and non-design work.



XVII. CLOSING ITEMS

Clarification desired by a respondent relating to definition or interpretation shall be requested in writing with sufficient time to allow for a response and prior to the RFP due date. All requests for information are to be submitted no later than 2:00pm on July 18, 2024. Oral explanation or instructions shall not be considered binding on behalf of the City.

Any modifications to this solicitation will be issued by the City as a written addendum and posted to the City of Imperial website: <https://cityofimperial.org/> under “Connect > Departments > Public Services > Related Pages > RFP & BID”.

The City will not consider proposals received after the specified date and time. An amendment is considered a new proposal and will not be accepted after the specified date and time. Any contract resulting from this RFP will be financed with funds available to the City through project specific sources.

This RFP does not commit the City of Imperial to award a contract or pay any costs associated with the preparation of a proposal.

The City reserves the right to cancel, in part or in its entirety, this solicitation should this be in the best interest of the City.

Questions concerning this RFP are to be directed to Jenell Guerrero, Assistant to the City Manager, with the City of Imperial, City Manager’s Office at (760) 355-1153, or via electronic mail to jguerrero@imperial.ca.gov.



EXHIBIT A

PROPOSAL ACKNOWLEDGEMENT FORM

The Proposer hereby acknowledges receipt of addenda number(s) _____, if any.

By signing below, the Proposer agrees to all terms and conditions in this RFP, except where expressly described in the Proposer's Services Proposal.

Original Signature by Authorized
Officer/Agent

Vendor's Tax ID Number (FEIN)

Type/Print Name of Signatory

Company Name

Title

Phone Number

Consultant Mailing Address

Fax Number

Website Address

E-mail Address

Form of Business (mark one of the following):

- Sole Proprietor/Individual
- Partnership
- Corporation
- Limited Liability Company (LLC)

If a corporation, the State where it is incorporated: _____



EXHIBIT B
SAMPLE PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICE AGREEMENT (“AGREEMENT”), is made and entered by and between the City of Imperial, a municipal corporation of the State of California (“Agency”) and _____ (“CONSULTANT”).

RECITALS

WHEREAS, Agency desires to engage Consultant to perform certain professional services, as provided herein; and

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

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

I. **TERM** This AGREEMENT shall commence on ____ day of _____ 2024 and shall remain and continue in effect until tasks described herein are completed, but in no event later than _____ 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/her 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 City Manager shall represent AGENCY in all matters pertaining to the administration of this AGREEMENT, review and approval of all products submitted by CONSULTANT. Agency’s City 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 V hereof.

V. PAYMENT

- A. 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 Agency Manager. CONSULTANT shall be compensated for any additional services in the amounts and in the manner as agreed to by Agency Manager and CONSULTANT at the time AGENCY's written authorization is given to CONSULTANT for the performance of said services. The Agency 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 Agency City Council.
- B. CONSULTANT shall submit an invoice in an amount not to exceed _____ 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 AGENCY 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.

VI. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

- A. The AGENCY may at any time, for any reason, with or without cause, suspend or terminate this AGREEMENT, or any portion hereof, by serving upon the CONSULTANT at least five (5) days prior written notice. Upon receipt of said notice, the CONSULTANT shall immediately cease all work under this AGREEMENT, unless the notice provides otherwise. If the AGENCY suspends or terminates a portion of this AGREEMENT such suspension or termination shall not make void or invalidate the remainder of this AGREEMENT.
- B. In the event this AGREEMENT is terminated pursuant to this Section, the AGENCY shall pay to CONSULTANT the actual value of the work performed up to the time of termination, provided that the work performed is of value to the AGENCY. Upon termination of the AGREEMENT pursuant to this Section, the CONSULTANT will submit an invoice to the AGENCY pursuant to Section V.

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/she shall cause to be served upon the CONSULTANT a written notice of the default. The CONSULTANT shall have five (5) 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. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible.
- 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 Attachment D 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 subagreement, 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.

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 South Imperial Avenue
Imperial, CA 92251
Attention: City Manager’s Office

To CONSULTANT: (CONSULTANT NAME)

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. CONSULTANT may use assistants, under his/her direct supervision, to perform some of the services under this AGREEMENT. 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. CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL

CONSULTANT is bound by the contents of AGENCY's Request for Proposal, Attachment "A" hereto and incorporated herein by this reference, and the contents of the proposal submitted by the CONSULTANT, Exhibit "D" hereto. 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.

XXII. 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.

City of Imperial A Municipal Corporation

(CONSULTANT NAME)

By: _____
Dennis H. Morita, City Manager

By: _____

ATTEST:

Kristina Shields, City Clerk

APPROVED AS TO FORM:

By: _____
Katherine Turner, City Attorney



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. [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 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. Page

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.

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. 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.