

**IMPERIAL COUNTY
COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT
REQUEST FOR PROPOSALS
TO PROVIDE A COMPREHENSIVE RETAIL ANALYSIS**



**Funded by
U.S. Department of Commerce
Economic Development Administration**

Issued Friday, April 11, 2014

DUE DATE AND SUBMISSION REQUIREMENTS:

**One (1) Original and Five (5) Copies of Proposals must be received by 5:00 P.M. on
Friday, May 02, 2014**

Point of Contact:
Jade Padilla
Economic Development Coordinator
940 W. Main Street, Suite 203
El Centro, CA 92243
(760) 482-4981
jadepadilla@co.imperial.ca.us

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Exhibit 1

COUNTY OF IMPERIAL **REQUEST FOR PROPOSALS**

NOTICE IS HEREBY GIVEN that the County of Imperial, acting by and through its Board of Supervisors, hereinafter referred to as the "COUNTY", will receive up to, but no later than **5:00 p.m. on May 02, 2014**, sealed PROPOSALS for negotiation and award of a contract concerning the **Comprehensive Retail Analysis for Imperial County Community and Economic Development**.

To be considered, **one original and five copies of PROPOSALS** must be received in the office of the **Imperial County Purchasing Department, 1125 Main Street, El Centro, California, 92243, Attention: Esperanza M. Colio, Community & Economic Development Manager**, by the time specified above.

Proposals shall be evaluated by a selection committee. It is the County's intention to select the Consultant whose proposal is deemed most advantageous to the County in accordance with the evaluation criteria set forth in this Request for Proposals. A Selection Committee appointed by the Economic Development Manager will review and score the proposals and recommend the most responsive and responsible firm to receive the contract award. The Selection Committee's recommendation will be forwarded to the Imperial County Board of Supervisors for final determination.

Each proposal must conform and be responsive to the Standard Agreement, a sample of which is attached as Exhibit 4. This Standard Agreement may also be obtained at the office of the Community & Economic Development Department located at 940 W. Main Street, Ste. 203, El Centro, California, 92243.

The COUNTY reserves the right to reject any or all PROPOSALS, or to waive any irregularities or informalities in any proposals or in the proposal and selection process.

Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), Women Business Enterprises (WBE), and Veteran Owned Businesses (VOB) are encouraged to participate.

Exhibit 2

INFORMATION FOR PROPOSERS

1.0 PURPOSE

The COUNTY, through the Imperial County Community & Economic Development (ICCED) Department, is soliciting proposals from qualified consultants and consulting firms to provide consultant services to provide a comprehensive retail analysis for the County of Imperial.

A portion of the comprehensive retail analysis currently exists for the cities of Calipatria, Brawley, Imperial, and Westmorland. This RFP pertains to the completion of the analysis for the aforementioned cities as well as providing an analysis for the cities of Calexico, El Centro, Holtville, and the unincorporated areas of the County.

All communications relating to this RFP must be directed to the contact person named below and **only** through email or written correspondence. Any communications between a respondent and COUNTY staff concerning this RFP are prohibited. In no instance is a respondent to discuss cost information, quality of responses, names of additional respondents, or any other information requested by or contained in a proposal with the point of contact or any other staff prior to proposal evaluation. Failure to comply with this section may result in COUNTY's disqualification of the proposal. The respondent is responsible for ensuring the response is received before the deadline. Copies or faxed responses will **not** be accepted. COUNTY assumes no responsibility for lost or misrouted mail.

The term of the Agreement for services will be for a period of up to 6 months from the date of an executed agreement.

2.0 PRE-PROPOSAL CONFERENCE

2.1 A pre-proposal conference will be held on **April 24, 2014**, at **10:00 a.m.** at:

County of Imperial Administration Building
Conference Room C&D
940 W. Main Street
El Centro, CA 92243
Contact: Jade Padilla at (760) 482-4981

Attendance at the pre-proposal conference **is not** a mandatory requirement for those interested in submitting a proposal.

3.0 CALENDAR OF EVENTS

| | | |
|-----|--|--------------------------------------|
| 3.1 | RFP sent out to consultants | April 11, 2014 |
| 3.2 | Deadline for County to receive written questions | April 23, 2014 5:00 P.M. |
| 3.3 | Pre-proposal conference | April 24, 2014 10:00 A.M. |
| 3.4 | Deadline to submit proposals | May 02, 2014 5:00 P.M. |
| 3.5 | First Draft: A draft of the documentation must be <u>received</u> by County for review on or before | July 16, 2014 5:00 P.M. |
| 3.6 | Final Product: Package, references, and other documentation must be <u>received</u> by County on or before | July 31, 2014 5:00 P.M. |

4.0 SCOPE OF SERVICES

The Consultant will perform these services under the supervision and direction of the Manager of Imperial County Community & Economic Development Department. The County wishes to contract with a consultant to provide the **SCOPE OF SERVICES** attached as **EXHIBIT 3**.

5.0 MANDATORY REQUIREMENTS FOR ALL PROPOSALS

- 5.2 All proposals must demonstrate that the consultant has the willingness and ability to comply with all documents, including but not limited to, the Standard Agreement, a sample of such is identified as Exhibit 4.
- 5.3 All proposals must be accompanied with the name(s), title(s) and resume(s) of the individual(s) who will be performing the services should the contract be awarded.
- 5.4 All parties submitting a proposal shall include with their proposals at least three (3) current references, including name, address, and telephone number.

6.0 CONTRACT TERMS AND CONDITIONS

Please refer to the attached Exhibit 4, Standard Agreement. The attached Exhibit 4 is a sample of the agreement that the winning party will be expected to sign. It is not the final agreement and there may be additional or different terms included in the final agreement.

7.0 PREPARATION OF PROPOSAL

All statements of proposals must include one original and five copies to be submitted in sealed envelopes bearing on the outside the name of the consultant, address, and the title of the RFP for which the qualifications are submitted. It is the sole responsibility of respondent to ensure that the proposals are received by COUNTY in the proper time. Any proposals received after the

scheduled closing time for receipt will be returned to the consultant unopened. Proposals may not be submitted by facsimile, telegraph, electronic mail or any other means other than by personal delivery, United States Mail or other delivery services such as Federal Express or United Parcel Service.

8.0 SIGNATURE

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

9.0 MODIFICATIONS

Any modification of any proposals submitted must be in writing and received by COUNTY prior to the closing time for proposals. Modifications may not be submitted by facsimile, telegraph, electronic mail or any other means other than by personal delivery, United States Mail or other delivery services such as Federal Express or United Parcel Service. Any qualifications or modifications received after the scheduled closing time for receipt of statement of qualifications will be returned to the consultant unopened.

10.0 ERASURES

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

11.0 WITHDRAWAL OF PROPOSALS

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

12.0 PROPOSAL ELEMENTS

Proposals must address each of the elements in this section.

12.1 Qualifications

- a. Relevant Experience: Applicant's demonstration of adequate, meaningful and relevant experience with projects of a similar/comparable type including experience in wastewater treatment plant engineering services with CEQA and NEPA. Preference will be given to individuals/firms with State Housing and Community Development (HCD) experience. Include the names, addresses and phone numbers of contact persons for several contracts for which you have performed services as solicited in this RFP.
- b. Relevant Education: Applicant's demonstration of certification and training required to perform services, including licensing requirements (i.e. engineer,

architect, or contractor).

- c. Responsiveness to Project Requirements: Applicant's demonstrated success in completing projects on time and responsiveness to meeting changing requirements. Attentiveness to and compliance with RFP instructions, interview requirements, and other aspects of the selection process will be considered as an indication of responsiveness.
- d. Proximity to Project: Applicant's residing in Imperial County will be given preference.
- e. A brief statement of your policy regarding affirmative action.
- f. The Consultant shall carry not less than the following insurance and shall provide verification to the County upon request:
 - 1. Professional Liability Insurance: Errors and Omissions Insurance in an amount of at least \$1,000,000 single limit coverage, covering all personnel employed by the Consultant in the capacity of acting as an Agent of the municipality.
 - 2. General Liability Insurance: General Liability Insurance in an amount of at least \$1,000,000, single limit coverage, covering all personnel employed by the Building Office in the capacity of acting as an Agent of the municipality.
 - 3. Worker's Compensation: Worker's Compensation Coverage in full compliance with California statutory requirements for all personnel employed by the Consultant in the capacity of acting as an Agent of the municipality.
 - 4. Automobile Liability Insurance: Automobile Liability Insurance in an amount of at least \$1,000,000 combined single limit coverage including owned, non-owned and hired vehicles.

12.2 Proposed Scope of Work

A prospective consultant should indicate an understanding of the requested services as described in Section 4, Scope of Services, and describe how it proposes to service the County in these aspects.

12.3 Project Personnel and Their Availability

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

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

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

12.4 Cost of Proposed Services

Consultant must include a not-to-exceed cost to complete the report.

13.0 Scoring Criteria

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

| | |
|---|-------------------|
| 1. General firm and individual experience: | 10 points |
| 2. Specific experience as it pertains to Economic Development Administration and/or other grant programs: | 20 points |
| 3. Specific experience as it pertains to the Scope of Services above mentioned in Item 4.0: | 25 points |
| 4. Capacity to perform the Scope of Work and ability to conclude the work in a timely manner: | 10 points |
| 5. Quality of staff and their availability: | 10 points |
| 6. Overall quality of qualifications, especially thoroughness and appearance: | 5 points |
| 7. Cost of Services | 20 points |
| Total Value: | 100 points |

Additional questions may be asked of those submitting a proposal and formal interviews may be conducted as well. Respondents will be notified of any additional required information or interviews after written proposals have been evaluated.

The COUNTY reserves the right to reject any and all proposals submitted; to request clarification of services submitted; to request additional information; and to waive any irregularity in the proposal and review process, as long as COUNTY procedures remain consistent with HCD procurement requirements. The COUNTY may select one consulting firm or a combination of consulting firms to provide the range of services requested.

14.0 PROHIBITIONS AS SUBCONTRACTORS UNDER COMPETITIVE SEALED PROPOSALS

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

15.0 FEDERAL REGULATIONS

15.1 Affirmative Action

The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the UNITED States Department of Housing and Urban Development (HUD) and subject to 24 CFR 85.36(e). County hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged, minority and women's business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, religious creed, sex, or national origin in consideration for an award. Minority- and women-owned and operated businesses are encouraged to apply.

15.2 Section 3

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

15.3 Federal Terms and Conditions

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

A. Equal Opportunity

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

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

3. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
4. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to this books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order N. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States or enter into such litigation to protect the interests of the United States.
8. The contractor shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.
9. Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of the Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance

reports prior to or as an initial part of their bid or negotiation of a contract.

10. Whenever the Contractor or subcontractor has a collective bargaining agreement or other Contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, that to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the Contractor, the Contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he/she has made to obtain such information.
11. The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent of behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provision of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set fourth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.
12. The Contractor will cause the forgoing provision to be inserted in all subcontracts for work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the forgoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

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

1. The Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
2. Affirmative steps shall include:
 - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- e. Using the Services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

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

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

D. Compliance with Labor Standard Provisions

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

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

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

F. Requirements and Regulations pertaining to Data and Design

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

G. Requirements and Regulations pertaining to Reporting

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

H. Compliance with Clean Air Act and Clean Water Act

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

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

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

D/MBE/WBE Implementation Guidelines

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

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

EXHIBIT 3

County of Imperial

Comprehensive Retail Analysis

(Cities of Calexico, El Centro, Holtville, and County Unincorporated Areas)

Request for Proposals

The County of Imperial is in need of a Comprehensive Retail Analysis to improve the existing retail market by increasing retail tax revenues and attracting new retailers without negatively affecting current retailers in the county.

Tasks

1. The consultant shall complete an analysis of the retail market and sales performance in Imperial County using a gap analysis. The retail market in Imperial County includes retail stores, entertainment venues, and restaurants.
2. The consultant shall identify all key retail opportunity areas (site-specific) in Imperial County.
3. The consultant shall identify all the consumers supporting Imperial County's retail market, including:
 - a. Domestic consumers (Imperial County)
 - b. Interstate consumers (e.g. Yuma, Arizona)
 - c. International consumers (e.g. Mexicali, Mexico)
4. The consultant shall identify and analyze retail and service leakage of sales from the transient population (e.g. "winter visitors").
5. The consultant shall explore market assets and obstacles (e.g. accessibility to public transit, pedestrian, and bicycle traffic) for the following:
 - a. Existing retail establishments in Imperial County,
 - b. The key retail opportunity areas in Imperial County as identified in Task 2.
6. Based on the gap analysis, the consultant shall provide recommendations and an analysis of potential strategies to increase retail activity within the existing areas and key retail opportunity areas in Imperial County.
7. The consultant shall complete Tasks 3b, 3c, 4, and 5 for the Cities of Brawley, Calipatria, Imperial, and Westmorland.

Deliverables

1. Final Comprehensive Retail Analysis.
2. Presentation to the Imperial County Board of Supervisors summarizing the results of the analysis and recommendations.

EXHIBIT 4
SAMPLE AGREEMENT

AGREEMENT FOR SERVICES

1 THIS AGREEMENT FOR SERVICES (“Agreement”), is made and entered into effective the _____
2 _____ day of _____, 2013, by and between the COUNTY OF IMPERIAL, a political
3 subdivision of the State of California, hereinafter referred to as “COUNTY/GRANTEE” by and through the
4 IMPERIAL COUNTY COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT (ICCED) and
5 _____,
6 _____, a California Corporation (“CONSULTANT”).

WITNESSETH

7
8 **WHEREAS**, ICCED is in need of _____ services for the _____
9 _____ Projects (PROJECT); and

10 **WHEREAS**, COUNTY desires to engage CONSULTANT to provide services by reason of its
11 qualifications and experience for performing such services, and CONSULTANT has offered to provide the
12 required services for the PROJECT on the terms and in the manner set forth herein;

13 **NOW, THEREFORE**, in consideration of their mutual covenants, COUNTY and CONSULTANT
14 have and hereby agree to the following:

15 1. **TERM.**

16 1.1. The term of this Agreement shall be from date first executed above for a period of three
17 years.

18 1.2. COUNTY and CONSULTANT agree that time is of the essence as it relates to the terms
19 and conditions of this AGREEMENT.

20 2. **CONTRACT COORDINATION.**

21 2.1. The IMPERIAL COUNTY COMMUNITY & ECONOMIC DEVELOPMENT
22 MANAGER (“the MANAGER”) shall be the representative of COUNTY for all purposes
23 under this Agreement. The MANAGER or his/her designated representative, is hereby
24 designated as the CONTRACT MANAGER for COUNTY. He/She shall supervise the
25 progress and execution of this Agreement.

26 2.2. CONSULTANT shall assign a single PROJECT MANAGER to have overall responsibility
27 for the progress and execution of this Agreement. _____, _____, is
28 hereby designated as the PROJECT MANAGER for CONSULTANT. Should

1 circumstances or conditions subsequent to the execution of this Agreement require a
2 substitute PROJECT MANAGER for any reason, the PROJECT MANAGER designee
3 shall be subject to the prior written acceptance and approval of COUNTY's CONTRACT
4 MANAGER.

5 3. DESCRIPTION OF WORK.

6 3.1. CONSULTANT shall provide all materials and labor to perform this Agreement as detailed
7 in the _____ dated January 28, 2013 ("PROPOSAL")
8 attached as "**Exhibit A**" and under any approved Task Order. In the event of a conflict
9 among this Agreement and the Request for _____ ("RF__"), the Agreement
10 shall take precedence. In the event of a conflict between any Task Order or the Agreement,
11 the Agreement will take precedence.

12 3.2. The _____ titled "Imperial County Community and Economic Development
13 Department Request for _____ Services for_
14 _____" is attached as "**Exhibit B**".

15 4. WORK TO BE PERFORMED BY CONSULTANT.

16 4.1. CONSULTANT shall comply with all terms, conditions and requirements of the
17 PROPOSAL and this Agreement.

18 4.2. CONSULTANT shall perform such other tasks as necessary and proper for the full
19 performance of the obligations assumed by CONSULTANT hereunder.

20 CONSULTANT shall:

21 4.2.1. Procure all permits and licenses, pay all charges and fees, and give all notices that
22 may be necessary and incidental to the due and lawful prosecution of the services to
23 be performed by CONSULTANT under this agreement;

24 4.2.2. Make every reasonable effort to keep itself fully informed of all applicable Federal,
25 State and local laws, ordinances, regulations, orders and decrees which may affect
26 those engaged or employed under this Agreement, any materials used in
27 CONSULTANT's performance under this Agreement or the conduct of the services
28 under this Agreement;

1 4.2.3. At all times make every reasonable effort observe and comply with, and cause all of
2 its employees to observe and comply with all of said laws, ordinances, regulations,
3 orders and decrees mentioned above; and

4 4.2.4. Immediately report to COUNTY's CONTRACT MANAGER in writing any
5 discrepancy or inconsistency it discovers in said laws, ordinances, regulations,
6 orders and decrees mentioned above in relation to any plans, drawings,
7 specifications or provisions of this Agreement.

8 4.3. Any videotape, reports, information, data or other material given to, or prepared or
9 assembled by, CONSULTANT under this Agreement shall be the property of COUNTY
10 and shall not be made available to any individual or organization by CONSULTANT
11 without the prior written approval of COUNTY's CONTRACT MANAGER.

12 5. REPRESENTATIONS BY CONSULTANT.

13 5.1. CONSULTANT understands and agrees that COUNTY has limited knowledge in the
14 multiple areas specified in the PROPOSAL. CONSULTANT has represented itself to be
15 qualified in these fields and understands that COUNTY is relying upon such representation.

16 5.2. CONSULTANT represents that it is a lawful entity possessing all required licenses and
17 authorities to do business in the State of California and perform all aspects of this
18 Agreement.

19 5.3. CONSULTANT shall not commence any work under this Agreement or provide any other
20 services, or materials, in connection therewith until CONSULTANT has received written
21 authorization from COUNTY's CONTRACT MANAGER to do so.

22 5.4. CONSULTANT represents that the people executing this Agreement on behalf of
23 CONSULTANT have the authority of CONSULTANT to sign this Agreement and bind
24 CONSULTANT to the performance of all duties and obligations assumed by
25 CONSULTANT herein.

26 5.5. CONSULTANT represents that any employee, contractor and/or agent who will be
27 performing any of the duties and obligations of CONSULTANT herein possess all required
28 licenses and authorities, as well as the experience and training, to perform such tasks.

1 5.6. CONSULTANT represents that the allegations contained in the PROPOSAL are true and
2 correct.

3 5.7 CONSULTANT is familiar with the State and Federal requirements that may be applicable
4 to CONSULTANT pursuant to the State of California's _____ agreements
5 between the COUNTY through ICCED and the State of California that are incorporated into
6 this Agreement including but not limited to the Davis-Bacon Act (40 U.S.C 3141-3148; 24
7 CFR Part 85.36), the Anti-Kickback Act of 1986 (41 U.S.C. 51-58), Contract Work Hours
8 and Safety Standards Act-CWHSSA (40 U.S.C. 3702.)

9 5.8. CONSULTANT understands that COUNTY considers the representations made herein to
10 be material and would not enter into this Agreement with CONSULTANT if such
11 representations were not made.

12 6. RETENTION AND ACCESS OF BOOKS AND RECORDS.

13 6.1 CONSULTANT represents that it shall maintain books, records, documents, reports and
14 other materials developed under this AGREEMENT as follows:

15 6.1.1. CONSULTANT shall maintain all ledgers, books of accounts, invoices, vouchers,
16 cancelled checks, and other records relating to CONSULTANT's charges for
17 services or expenditures and disbursements charged to COUNTY for a minimum
18 period of five (5) years, or for any longer period required by law, from the date of
19 final payment to CONSULTANT pursuant to this AGREEMENT.

20 6.1.2. CONSULTANT shall maintain all reports, documents and records which
21 demonstrate performance under this AGREEMENT for a minimum period of five
22 (5) years, or for any longer period required by law, from the date of termination or
23 completion of this AGREEMENT.

24 6.1.3. Any records or documents required to be maintained by CONSULTANT pursuant
25 to this AGREEMENT shall be made available to COUNTY for inspection or audit,
26 at any time during CONSULTANT's regular business hours provided COUNTY
27 provides CONSULTANT with seven (7) days advanced written or oral notice.
28 Copies of such documents shall at no cost to COUNTY, be provided to COUNTY

1 for inspection at CONSULTANT's address indicated for receipt of notice under this
2 AGREEMENT.

3 7. COMPENSATION.

4 The total compensation payable under this Agreement shall be at the hourly rates identified in the
5 Hourly Rate Schedule for identified employees as set forth on Page 39 of the Proposal ("Exhibit A"), or as
6 agreed upon under any approved Task Order.

7 8. PAYMENT.

8 CONSULTANT will bill COUNTY on a time and material basis at the hourly rates identified in the
9 Hourly Rate Schedule for identified employees as set forth on Page 39 of the Proposal ("Exhibit A"), or as
10 agreed upon under any approved Task Order. COUNTY shall pay CONSULTANT for completed and
11 approved services upon presentation of its itemized billing. COUNTY shall retain ten percent (10%) of
12 the total compensation until the Work to be Performed by Consultant has been completed in accordance
13 with this Agreement, as determined by COUNTY, and payment in full of all subcontractors of
14 CONTRACTOR has been certified.

15 9. METHOD OF PAYMENT.

16 CONSULTANT shall at any time prior to the fifteenth (15th) day of any month, submit to the
17 MANAGER a written claim for compensation for services performed the prior month under any approved
18 Task Order. The claim shall be in a format approved by COUNTY. No payment shall be made by
19 COUNTY prior to the claims being approved in writing by the MANAGER or his/her designee.
20 CONSULTANT may expect to receive payment within a reasonable time thereafter and in any event in the
21 normal course of business within thirty (30) days after the claim is submitted.

22 10. TIME FOR COMPLETION OF THE WORK.

23 Both Parties agree that time is of the essence in the performance of this Agreement.
24 CONSULTANT acknowledges that the services called for herein are on an "as needed" basis. Time
25 extensions under any approved Task Order may be allowed for delays caused by COUNTY, other
26 governmental agencies or factors not directly brought about by the negligence or lack of due care on the
27 part of CONSULTANT.

28 11. SUSPENSION OF AGREEMENT.

1 COUNTY's CONTRACT MANAGER shall have the authority to suspend this Agreement, wholly
2 or in part, for such period as deemed necessary due to unfavorable conditions or to the failure on the part of
3 CONSULTANT to perform any provision of this Agreement. CONSULTANT will be paid the
4 compensation due and payable to the date of suspension.

5 12. TERMINATION.

6 12.1. COUNTY retains the right to terminate this Agreement for any reason by notifying
7 CONSULTANT in writing seven (7) days prior to termination and by paying the
8 compensation due and payable to the date of termination; provided, however, if this
9 Agreement is terminated for fault of CONSULTANT, COUNTY shall be obligated to
10 compensate CONSULTANT only for that portion of CONSULTANT's services which
11 have been completed in accordance with this Agreement. Said compensation is to be
12 arrived at by mutual agreement between COUNTY and CONSULTANT; should the Parties
13 fail to agree on said compensation, an independent arbitrator shall be appointed and the
14 decision of the arbitrator shall be binding upon the Parties.

15 12.2. Upon such termination, CONSULTANT shall immediately turn over to COUNTY any and
16 all copies of videotapes, studies, sketches, drawings, computations and other data, whether
17 or not completed, prepared by CONSULTANT in connection with this Agreement. Such
18 materials shall become the permanent property of COUNTY.

19 13. INSPECTION.

20 CONSULTANT shall furnish COUNTY with every reasonable opportunity for COUNTY to
21 ascertain that the services of CONSULTANT are being performed in accordance with the requirements and
22 intentions of this Agreement. All work done and materials furnished, if any, shall be subject to COUNTY's
23 CONTRACT MANAGER's inspection and approval. The inspection of such work shall not relieve
24 CONSULTANT of any of its obligations to fulfill its Agreement as prescribed. CONSULTANT shall also
25 permit monitoring and auditing by the U.S. Department of Housing and Urban Development, the California
26 Department of Housing and Community Development and/or a similar agency, if applicable.

27 14. OWNERSHIP OF MATERIALS.

1 All original drawings, videotapes and other materials prepared by or in possession of
2 CONSULTANT pursuant to this Agreement shall become the permanent property of COUNTY and shall
3 be delivered to COUNTY upon demand. CONSULTANT shall not be held liable for any reuse of such
4 COUNTY-owned materials for purposes outside this Agreement.

5 15. INTEREST OF CONSULTANT.

6 15.1. CONSULTANT covenants that it presently has no interest, and shall not acquire any
7 interest, direct or indirect, financial or otherwise, which would conflict in any manner or
8 degree with the performance of the services hereunder.

9 15.2. CONSULTANT covenants that, in the performance of this Agreement, no subcontractor or
10 person having such an interest shall be employed.

11 15.3. CONSULTANT certifies that no one who has or will have any financial interest under this
12 Agreement is an officer or employee of COUNTY.

13 16. INDEMNIFICATION.

14 16.1. CONSULTANT agrees to the fullest extent permitted by law to indemnify, defend, protect
15 and hold COUNTY and its representatives, officers, managers, designees, employees,
16 agents, successors and assigns harmless from any and all claims, expenses, liabilities, causes
17 of action, demands, losses, penalties, attorneys fees and costs, in law or equity, of every kind
18 and nature whatsoever arising out of or in connection with CONSULTANT's negligent acts
19 and omissions or willful misconduct under this Agreement ("Claims"), whether or not
20 arising from the passive negligence of COUNTY, but does not include Claims that are
21 finally determined to be the result of the gross negligence or willful misconduct of
22 COUNTY.

23 16.2. CONSULTANT agrees to defend with counsel mutually acceptable, indemnify and hold
24 COUNTY harmless from all Claims, including but not limited to:

25 16.2.1. Personal injury, including but not limited to bodily injury, emotional injury,
26 sickness or disease or death to persons including but not limited to COUNTY's
27 representatives, officers, managers, designees, employees, agents, successors and
28 assigns, subcontractors and other third parties and/or damage to property of anyone

1 (including loss of use thereof) to the extent caused by CONSULTANT's negligent
2 performance, or willful misconduct under this Agreement, or anyone directly or
3 indirectly employed by CONSULTANT or anyone for whose acts CONSULTANT
4 may be liable;

5 16.2.2. Liability arising from injuries to CONSULTANT and/or any of CONSULTANT's
6 employees or agents to the extent caused by CONSULTANT's negligent
7 performance or willful misconduct under this Agreement, or anyone directly or
8 indirectly employed by CONSULTANT or anyone for whose acts CONSULTANT
9 may be liable;

10 16.2.3. Penalties imposed upon account of the violation of any law, order, citation, rule,
11 regulation, standard, ordinance or statute caused by the negligent action or inaction,
12 or willful misconduct of CONSULTANT or anyone directly or indirectly employed
13 by CONSULTANT or anyone for whose acts CONSULTANT may be liable;

14 16.2.4. Infringement of any patent rights which may be brought against COUNTY arising
15 out of CONSULTANT's work;

16 16.2.5. Any violation or infraction by CONSULTANT of any law, order, citation, rule,
17 regulation, standard, ordinance or statute in any way relating to the occupational
18 health or safety of employees; and

19 16.2.6. Any breach by CONSULTANT of the terms, requirements or covenants of this
20 Agreement.

21 16.3. The indemnification provisions of Paragraphs 16.2.1 through 16.2.6 above shall extend to
22 Claims occurring after this Agreement is terminated, as well as while it is in force.

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25 17. INDEPENDENT CONTRACTOR.

26 In all situations and circumstances arising out of the terms and conditions of this Agreement,
27 CONSULTANT is an independent contractor, and as an independent contractor, the following shall
28 apply:

- 1 17.1. CONSULTANT is not an employee or agent of COUNTY and is only responsible for the
2 requirements and results specified by this Agreement or any other Agreement.
- 3 17.2. CONSULTANT shall be responsible to COUNTY only for the requirements and results
4 specified by this Agreement and except as specifically provided in this Agreement, shall
5 not be subject to COUNTY's control with respect to the physical actions or activities of
6 CONSULTANT in fulfillment of the requirements of this Agreement.
- 7 17.3. CONSULTANT is not, and shall not be, entitled to receive from, or through, COUNTY,
8 and COUNTY shall not provide, or be obligated to provide, CONSULTANT with
9 Worker's Compensation coverage or any other type of employment or worker insurance
10 or benefit coverage required or provided by any Federal, State or local law or regulation
11 for, or normally afforded to, an employee of COUNTY.
- 12 17.4. CONSULTANT shall not be entitled to have COUNTY withhold or pay, and COUNTY
13 shall not withhold or pay, on behalf of CONSULTANT, any tax or money relating to the
14 Social Security Old Age Pension Program, Social Security Disability Program, or any
15 other type of pension, annuity, or disability program required or provided by any Federal,
16 State or local law or regulation.
- 17 17.5. CONSULTANT shall not be entitled to participate in, or receive any benefit from, or
18 make any claim against any COUNTY fringe program, including, but not limited to,
19 COUNTY's pension plan, medical and health care plan, dental plan, life insurance plan,
20 or any other type of benefit program, plan, or coverage designated for, provided to, or
21 offered to COUNTY's employee.
- 22 17.6. COUNTY shall not withhold or pay, on behalf of CONSULTANT, any Federal, State, or
23 local tax, including, but not limited to, any personal income tax, owed by
24 CONSULTANT.
- 25 17.7. CONSULTANT is, and at all times during the term of this Agreement, shall represent
26 and conduct itself as an independent contractor, not as an employee of COUNTY.
- 27 17.8. CONSULTANT shall not have the authority, express or implied, to act on behalf of, bind
28 or obligate COUNTY in any way without the written consent of COUNTY.

1 17.9 Without receiving CONSULTANT's written permission, COUNTY agrees not to
2 actively solicit the hiring, or contracting with any employee of CONSULTANT who
3 performs services for COUNTY under this AGREEMENT for a period of one year from
4 the date this AGREEMENT is terminated.

5 18. INSURANCE.

6 18.1. CONSULTANT hereby agrees at its own cost and expense to procure and maintain
7 during the entire term of this Agreement, and any extended term thereof, commercial
8 general liability insurance (bodily injury and property damage), employer's liability
9 insurance, commercial automobile liability insurance (bodily injury and property
10 damage) and professional liability insurance in a sum acceptable to COUNTY and
11 adequate to cover potential liabilities arising in connection with the performance of this
12 Agreement and in any event not less than the minimum limit set forth as follows:

| <u>Insurance</u> | <u>Minimum Limit</u> |
|--|----------------------------|
| Errors & Omissions Coverage | \$1,000,000 |
| Worker's Compensation, Coverage A | Statutory |
| Employers Liability, Coverage B | \$1,000,000 |
| Commercial General Liability (Including Contractual Liability): | |
| Bodily Injury | \$1,000,000 per occurrence |
| | \$2,000,000 aggregate |
| Property Damage | \$1,000,000 |
| | \$2,000,000 aggregate |
| Commercial Automobile Liability (owned, hired & non-owned vehicles) | |
| Bodily Injury | \$1,000,000 per occurrence |
| Property Damage | \$1,000,000 per occurrence |

17 18.2. Special Insurance Requirements. All insurance required under paragraph 18 shall:

18 18.2.1. Be procured from an insurer authorized to do business in California.

1 18.2.2. Be primary coverage as respects COUNTY and any insurance or self-insurance
2 maintained by COUNTY shall be in excess of CONSULTANT's insurance
3 coverage and shall not contribute to it.

4 18.2.3. Name COUNTY as an additional insured on all policies, except Workers'
5 Compensation, and Professional Liability and provide that COUNTY may recover
6 for any loss suffered by COUNTY by reason of CONSULTANT's negligence.

7 18.2.4. State that it is primary insurance and regards COUNTY as an additional insured
8 and contains a cross-liability or severability of interest clause.

9 18.2.5. Not be canceled, non-renewed or reduced in scope of coverage until after thirty
10 (30) days written notice has been given to COUNTY. However, CONSULTANT
11 may not terminate such coverage until it provides COUNTY with proof that equal
12 or better insurance has been secured and is in place. Cancellation or change
13 without the prior written consent of COUNTY shall, at the option of COUNTY,
14 be grounds for termination of this Agreement.

15 18.3. Additional Insurance Requirements.

16 18.3.1. Complete copies of certificates of insurance for all required coverages including
17 additional insured endorsements and 30-day notice of cancellation clause
18 endorsements shall be attached hereto as "**Exhibit C**" and incorporated herein.

19 18.3.2. COUNTY is to be notified immediately of all insurance claims. COUNTY is also
20 to be notified if any aggregate insurance limit is exceeded.

21 18.3.3. The comprehensive or commercial general liability shall contain a provision of
22 endorsements stating that such insurance:

23 A. Includes contractual liability;

24 B. Does not contain any exclusions as to loss or damage to property caused
25 by explosion or resulting from collapse of buildings or structures or
26 damage to property underground, commonly referred to by insurers as the
27 "XCU Hazards;"
28

1 C. Does not contain a “pro rata” provision which looks to limit the insurer’s
2 liability to the total proportion that its policy limits bear to the total
3 coverage available to the insured; and

4 D. Does not contain an “excess only” clause which require the exhaustion of
5 other insurance prior to providing coverage.

6 18.4. Deposit of Insurance Policy. Promptly on issuance, reissuance, or renewal of any
7 insurance policy required by this Agreement, CONSULTANT shall, if requested by
8 COUNTY, cause to be given to COUNTY satisfactory evidence that insurance policy
9 premiums have been paid together with a duplicate copy of the policy or a certificate
10 evidencing the policy and executed by the insurance company issuing the policy or its
11 authorized agent.

12 18.5 Additional Insurance. Nothing in this, or any other provision of this Agreement, shall be
13 construed to preclude CONSULTANT from obtaining and maintaining any additional
14 insurance policies in addition to those required pursuant to this Agreement.

15 19. WORKERS’ COMPENSATION CERTIFICATION.

16 19.1. CONSULTANT shall sign and file with COUNTY the following certification prior to
17 performing the Work: “I am aware of the provisions of California Labor Code §§3700 *et*
18 *seq.* which require every employer to be insured against liability for Workers’
19 Compensation or to undertake self-insurance in accordance with the provisions of that
20 code, and I will comply with such provisions before commencing the performance of the
21 work of this contract.”

22 19.2. CONSULTANT understands and agrees that any and all employees, regardless of hire
23 date, shall be covered by Workers’ Compensation according to the statutory requirements
24 prior to beginning work on the Project.

25 20. ASSIGNMENT.

26 Neither this Agreement nor any duties or obligations hereunder shall be assignable by
27 CONSULTANT without the prior written consent of COUNTY. CONSULTANT may employ other
28 specialists to perform services as required with prior approval by COUNTY.

1 21. NON-DISCRIMINATION.

2 21.1 During the performance of this Agreement, CONSULTANT and its subcontractors shall not
3 unlawfully discriminate, harass or allow harassment against any employee or applicant for
4 employment because of sex, race, color, ancestry, religious creed, national origin, physical
5 disability (including HIV and AIDS), mental disability, medical condition (cancer), age
6 (over forty (40)), marital status and denial of family care leave. CONSULTANT and its
7 subcontractors shall insure that the evaluation and treatment of their employees and
8 applicants for employment are free from such discrimination and harassment.
9 CONSULTANT and its subcontractors shall comply with the provisions of the Fair
10 Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable
11 regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285
12 et seq.). The applicable regulations of the Fair Employment and Housing Commission
13 implementing Government Code §12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2
14 of the California Code of Regulations, are incorporated into this Agreement by reference
15 and made a part hereof as if set forth in full. The applicable regulations of Section 504 of
16 the Rehabilitation Act of 1973 (29 U.S.C. §794 (a)) are incorporated into this Agreement by
17 reference and made a part hereof as if set forth in full. CONSULTANT and its
18 subcontractors shall give written notice of their obligations under this clause to labor
19 organizations with which they have a collective bargaining or other agreement.
20 CONSULTANT shall include the nondiscrimination and compliance provisions of this
21 clause in all subcontracts to perform Work under this Agreement.

22 The Civil Rights, HCD, and Age Discrimination Acts Assurances:

23 21.2 During the performance of this Agreement, the GRANTEE assures that no otherwise
24 qualified person shall be excluded from participation or employment, denied program
25 benefits, or be subjected to discrimination based on race, color, national origin, sex, age, or
26 handicap, under any program or activity funded by this contract, as required by Title VI of
27 the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of
28

1 1974, as amended, and the Age Discrimination Act of 1975, and all implementing
2 regulations.

3 21.3 The Training, Employment, and Contracting Opportunities for Business and Lower Income
4 Persons Assurance of Compliance:

5 21.3.1. The work to be performed under this Agreement is on a project assisted under a
6 program providing direct Federal financial assistance from the Department of
7 Housing and Urban Development and is subject to the requirements of Section 3 of
8 the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u.
9 Section 3 requires that to the greatest extent feasible, opportunities for training and
10 employment be given lower income residents of the project area and contracts for
11 Work in connection with the project be awarded to business concerns which are
12 located in, or owned in substantial part by persons residing in the area of the project.

13 21.3.2. The parties to this Agreement will comply with the provisions of said Section 3 and
14 the regulations issued pursuant thereto by the Secretary of Housing and Urban
15 Development set forth in 24 CFR Part 135, and all applicable rules and orders of the
16 Department issued there under prior to the execution of this contract. The parties to
17 this contract certify and agree that they are under no contractual or other disability
18 which would prevent them from complying with these requirements.

19 21.3.3. The GRANTEE will send to each labor organization or representative of workers
20 with which he has a collective bargaining agreement or other contract or
21 understanding, if any, a notice advertising the said labor organization or worker's
22 representative of his commitments under this Section 3 clause and shall post copies
23 of the notice in conspicuous places available to employees and applicants for
24 employment or training.

25 21.3.4. The GRANTEE will include these Section 3 clauses in every contract and
26 subcontract for Work in connection with the project and will, at the direction of the
27 State, take appropriate action pursuant to the contract upon a finding that the
28 CONSULTANT or any contractor or subcontractor is in violation of regulations

1 issued by the Secretary of Housing and Urban Development, 24 CFR Part 135 and,
2 will not let any contract unless the CONSULTANT or contractor or subcontractor
3 has first provided it with a preliminary statement of ability to comply with the
4 requirements of these regulations.

5 21.3.5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR
6 Part 135, and all applicable rules and orders of the Department issued thereunder
7 prior to the execution of the Agreement shall be a condition of the Federal financial
8 assistance provided to the project, binding upon the CONSULTANT, its successors,
9 and assigns. Failure to fulfill these requirements shall subject the CONSULTANT,
10 its contractors and subcontractors, its successors, and assigns to those sanctions
11 specified by the grant or contract through which Federal assistance is provided, and
12 to such sanctions as are specified by 24 CFR Part 135.

13 21.4. State Nondiscrimination Clause:

14 21.4.1. During the performance of this Agreement, CONTRACTOR and its subcontractors
15 shall not unlawfully discriminate, harass, or allow harassment against any employee
16 or applicant for employment because of sex, race, color, ancestry, religious creed,
17 national origin, physical disability (including HIV and AIDS), mental disability,
18 medical condition (cancer), age (over 40), marital status and denial of family care
19 leave. CONTRACTOR and subcontractors shall ensure that the evaluation and
20 treatment of their employees and applicants for employment are free from such
21 discrimination and harassment. CONTRACTOR and subcontractors shall comply
22 with the provisions of the Fair Employment and Housing Act (Government Code,
23 Section 12900 et seq.) and the applicable regulations promulgated thereunder
24 (California Code of Regulations, Title 2, Section 7258.0 et seq.) The applicable
25 regulations of the Fair Employment and Housing Commission implementing
26 Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of
27 the California Code of Regulations are incorporated into this contract by reference
28 and made a part hereof as if set forth in full. CONTRACTOR and its subcontractors

1 shall give written notice of their obligations under this clause to labor organizations
2 with which they have a collective bargaining or other agreement.

3 21.4.2. This CONTRACTOR shall include the nondiscrimination and compliance
4 provisions of this clause in all subcontracts to perform work under the contract.

5 “The CONSULTANT hereby agrees to abide by the requirement of executive order
6 11246 and all implement regulations of the Department of Labor.”

7 22. CDBG REQUIRED “SECTION 3” CLAUSE.

8 CONSULTANT will comply with Section 3 of the Housing and Urban Development Act of
9 1968 (12 U.S.C. 1701u), and implementing Regulations at 24 CFR, Part 135.

10 23. NOTICES AND REPORTS.

11 23.1. Any notice to be given pursuant to this Agreement shall be in writing and personally
12 delivered or sent by United States First Class Mail, postage prepaid, return receipt
13 requested or by overnight carrier, priority overnight delivery, postage and delivery
14 charges prepaid, addressed to each Party at the following address:

15 **COUNTY**

16 Esperanza M. Colio,
17 Community & Economic Development Manager
18 County of Imperial
19 940 Main St Suite 203
20 El Centro, CA 92243

CONSULTANT

21 23.2. Notice shall be deemed to have been delivered only upon receipt by the Party, seventy-two
22 (72) hours after deposit in the United States mail or twenty-four (24) hours after deposit with
23 an overnight carrier.

24 23.3. The addressees and addresses for purposes of this paragraph 21 may be changed to any
25 other addressee and address by giving written notice of such change in the manner provided
26 in paragraph 21.1. Unless and until written notice of change of addressee and/or address is
27 delivered in the manner provided in paragraph 21.1, the addressee and address set forth in
28 this Agreement shall continue in effect for all purposes hereunder.

24. ENTIRE AGREEMENT.

1 This Agreement contains the entire Agreement between COUNTY and CONSULTANT relating
2 to the transactions contemplated hereby and supersedes all prior or contemporaneous agreements,
3 understandings, provisions, negotiations, representations, or statements, either written or oral.

4 25. MODIFICATION.

5 No modification, waiver, amendment, discharge, or change of this Agreement shall be valid
6 unless the same is in writing and signed by the Party against whom the enforcement of such
7 modification, waiver, amendment, discharge, or change is or may be sought.

8 26. CAPTIONS.

9 Captions in this Agreement are inserted for convenience of reference only and do not define,
10 describe or limit the scope or the intent of this Agreement or any of the terms thereof.

11 27. PARTIAL INVALIDITY.

12 If any provision in this Agreement is held by a court of competent jurisdiction to be invalid,
13 void, or unenforceable, the remaining provisions will nevertheless continue in full force without being
14 impaired or invalidated in any way.

15 28. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.

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

23 29. WAIVER.

24 No Waiver of any breach or of any of the covenants or conditions of this Agreement shall be
25 construed to be a waiver of any other breach or to be consent to any further or succeeding breach of the
26 same or any other covenant or condition.

27 30. DISPUTE RESOLUTION PROCESS.

28

1 The parties shall attempt to resolve any dispute arising out of or relating to this contract through
2 negotiations between the Contract Manager for COUNTY and the Project Manager for CONSULTANT,
3 who have authority to settle the same.

4 31. CHOICE OF LAW.

5 This Agreement shall be governed by the laws of the State of California. This Agreement is
6 made and entered into in Imperial County, California. Any action brought by either Party with respect
7 to this agreement shall be brought in a court of competent jurisdiction within said County.

8 32. ATTORNEY'S FEES.

9 If either Party herein brings an action to enforce the terms thereof or declare rights hereunder, the
10 prevailing Party in any such action, on trial or appeal, shall be entitled to its reasonable attorney's fees
11 and actual costs to be paid by the losing Party as fixed by the court.

12 33. AUTHORITY.

13 33.1. Each individual executing this Agreement on behalf of CONSULTANT represents that:

14 33.1.1. He/She is duly authorized to execute and deliver this Agreement on behalf of
15 CONSULTANT;

16 33.2.2. Such execution and delivery is in accordance with the terms of the Articles of
17 Incorporation or Partnership, any by-laws or Resolutions of CONSULTANT and;

18 33.2.3. This Agreement is binding upon CONSULTANT accordance with its terms.

19 33.2.4 CONSULTANT shall deliver to COUNTY evidence acceptable to COUNTY of
20 the foregoing within thirty (30) days of execution of this Agreement.

21 34. COUNTERPARTS.

22 This Agreement (as well as any amendments hereto) may be executed in any number of
23 counterparts, each of which when executed shall be an original, and all of which together shall constitute
24 one and the same Agreement. No counterparts shall be effective until all Parties have executed a
25 counterpart hereof.

26 //

27 35. REVIEW OF AGREEMENT TERMS.

1 35.1. Each Party has received independent legal advice from its attorneys with respect to the
2 advisability of making the representations, warranties, covenants and agreements
3 provided for herein, and with respect to the advisability of executing this Agreement.

4 35.2. Each Party represents and covenants with the other Party that:

5 35.2.1. This Agreement in its reduction to final written form is a result of extensive good
6 faith negotiations between the Parties and/or their respective legal counsel;

7 35.2.2. The Parties and their legal counsel have carefully reviewed and examined this
8 Agreement for execution by said Parties; and

9 35.2.3. Any statute or rule of construction that ambiguities are to be resolved against the
10 drafting party shall not be employed in the interpretation of this Agreement.

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28 36. NON-APPROPRIATION.

1 This Agreement is based upon the availability of public funding. In the event that public funds
2 are unavailable and not appropriated for the performance of the services set forth in this Agreement, this
3 Agreement shall be terminated without penalty after written notice to CONSULTANT of the
4 unavailability and/or non-appropriation of funds.

5 **IN WITNESS WHEREOF**, the Parties have executed this Agreement on the day and year first
6 above written.

7 **COUNTY OF IMPERIAL:**

CONSULTANT:

8
9 By: _____

By: _____

10 RAYMOND R. CASTILLO, Chairman
11 Board of Supervisors

Principal Engineer / Secretary / CFO

12 **ATTEST:**

13
14 By: _____

15 BLANCA ACOSTA, Interim Clerk of the Board,
16 County of Imperial, State of California

17 **APPROVED AS TO FORM:**

18 MICHAEL ROOD
19 County Counsel

20 By: _____

21 ROSARIO GONZALEZ
22 Deputy County Counsel

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EXHIBIT D

ANTI-LOBBYING CERTIFICATION

The undersigned certifies, to the best of his or her knowledge or belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

CONSULTANT:

By: _____

Principal Engineer / Secretary / CFO