

**IMPERIAL VALLEY FOREIGN TRADE ZONE #257
REQUEST FOR PROPOSALS
FOR SERVICES TO PREPARE AN
ALTERNATIVE SITE FRAMEWORK APPLICATION**



**Funded by the
Imperial Valley Foreign Trade Zone – Joint Powers Authority
(IVFTZ-JPA)**

Issued Tuesday September 16, 2014

DUE DATE AND SUBMISSION REQUIREMENTS:

One (1) Original and Five (5) Copies of Proposals must be received by **5:00 P.M.** on **Monday, October 6, 2014**

Point of Contact:

Jade Padilla
Community & Economic Development Coordinator
940 W. Main Street, Ste. 203
El Centro, CA 92243
(760) 482-4981
jadepadilla@co.imperial.ca.us

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Exhibit 1

IMPRIAL VALLEY FOREIGN TRADE ZONE #257 **REQUEST FOR PROPOSALS TO** **PREPARE AN ALTERNATIVE SITE FRAMEWORK APPLICATION**

NOTICE IS HEREBY GIVEN that the Imperial Valley Foreign Trade Zone (IVFTZ) #257 will receive up to, but no later than **5:00 p.m. on October 6, 2014**, sealed PROPOSALS for negotiation and award of a contract concerning **SERVICES TO PREPARE AN ALTERNATIVE SITE FRAMWORK APPLICATION**.

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, and Attention: Esperanza Colio Warren, Community & Economic Development Manager**, by the time specified above.

Proposals shall be evaluated by a selection committee. It is Imperial Valley Foreign Trade Zone-Joint Powers Authority (IVFTZ-JPA)'s intention to select the Consultant whose proposal is deemed most advantageous to IVFTZ-JPA in accordance with the evaluation criteria set forth in this Request for Proposals (RFP). A Selection Committee appointed by the IVFTZ-JPA will review and score the qualifications and recommend the most responsive and responsible firm(s) to receive the contract award. IVFTZ-JPA reserves the right to select more than one firm under this RFP. The Selection Committee's recommendation will be forwarded to the IVFTZ-JPA for final determination.

Each Proposal must conform and be responsive to the Governing Agreement, a sample of which is attached as Exhibit 3. This Governing 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.

IVFTZ-JPA reserves the right to reject any or all PROPOSALS, or to waive any irregularities or informalities in any statement of qualifications or in the qualification 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

IVFTZ-JPA, through the Imperial County Community & Economic Development (ICCED) Department, is soliciting qualifications from consultants and consulting firms for services to prepare an Alternate Site Framework (ASF) application.

These consultant services may include, but will not be limited to, preparing the ASF application and converting the IVFTZ's current site management and designation procedures to the new ASF. Final selection of a Consultant(s) will be contingent upon approval from the state funding agency.

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 IVFTZ or 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 statement of qualifications with the point of contact or any other staff prior to proposal evaluation. Failure to comply with this section may result in IVFTZ-JPA'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. The COUNTY assumes no responsibility for lost or misrouted mail.

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

2.0 PRE-PROPOSAL CONFERENCE

2.1 A pre-proposal conference will be held on **September 29, 2014**, at **10:30 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 their proposals.

3.0 CALENDAR OF EVENTS

3.1	RFP sent out to consultants	September 16, 2014
3.2	Deadline for County to receive written questions	September 25, 2014 5:00 P.M.
3.3	Pre-proposal conference	September 29, 2014 10:30 A.M.
3.4	Deadline to submit qualifications: package, references, and other documentation must be <u>received</u> by County on or before	October 6, 2014 5:00 P.M.

4.0 SCOPE OF SERVICES

The Consultant will perform these services under the supervision and direction of the IVFTZ-JPA and the Manager of Imperial County Community & Economic Development Department. The IVFTZ-JPA wishes to contract with a consultant to provide the following services:

- 4.1 Consultant shall provide services for a time period of one year. Contract may be extended if deemed necessary through a detailed explanation.
- 4.2 Consultant shall gather all required documentation and information for the ASF application.
- 4.3 Consultant shall draft the supplemental documents required for the ASF application, including documents related to the potential expansion or inclusion of additional magnet sites.
- 4.4 Consultant shall create the consultation strategy and materials for the ASF application process.
- 4.5 The outreach strategy should include, but is not limited to:
 - A. Customs and Border Patrol
 - B. Existing FTZ Operators/Users
- 4.6 Consultant shall perform other tasks necessary and proper to assist the IVFTZ-JPA with the project.

5.0 MANDATORY REQUIREMENTS FOR ALL PROPOSALS

- 5.1 All proposals must demonstrate that the consultant has a willingness and ability to comply with all documents, including but not limited to, the Governing Agreement, a sample of which is identified as Exhibit 3.
- 5.2 All proposals must be accompanied with the name(s), title(s) and resume(s) of the individual(s) who will be performing the services should the contract be awarded.
- 5.3 All parties submitting proposals 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 3, Governing Agreement. The attached Exhibit 3 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 PROPOSALS

All proposals must include one (1) original and five (5) 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 proposals are submitted. It is the sole responsibility of respondent to ensure that the proposals are received by COUNTY in the proper time. Any proposal 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 proposal 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 proposal 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 proposal or modifications received after the scheduled closing time for receipt of proposals 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 proposal.

11.0 WITHDRAWAL OF PROPOSAL

Respondents may withdraw their proposal 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. Preference will be given to individuals/firms with Foreign Trade Zones and Alternative Site Framework 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. If a contract was completed with grant funds, include the funding source and grant.
- 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. A brief statement of your policy regarding affirmative action.
- e. 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.
- f. Detailed description of the Consultant's approach to the ASF application preparation.
- g. Detailed plan for converting the IVFTZ to ASF that should include information gathering methods, estimated timelines, associated graphics, maps, and supporting materials.

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.

13.0 SELECTION PROCESS

A selection committee comprised of IVFTZ-JPA members will review the proposals 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 Foreign Trade Zones, Alternative Site Framework, and/or other related grant programs:	20 points
3. Specific experience as it pertains to the Scope of Work 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:	5 points
7. Cost of Services	20 points
Total Value:	100 points

Additional questions may be asked of those submitting proposals 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 qualification and review process, as long as COUNTY procedures remain consistent with procurement requirements. The COUNTY may select one consulting firm or a combination of consulting firms to provide the range of services requested.

14.0 PROHIBITION AS SUBCONTRACTORS UNDER COMPETITIVE SEALED PROPOSALS

No party submitting a proposal who is permitted to withdraw the 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.

EXHIBIT 3
SAMPLE AGREEMENT

AGREEMENT FOR SERVICES

1 THIS AGREEMENT FOR SERVICES (“Agreement”), is made and entered into effective the _____
2 _____ day of _____, 20___, 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 [NAME OF CONSULTANT], [form of business entity] (“CONSULTANT”) (individually, “Party;”
6 collectively, “Parties”).
7

WITNESSETH

8 **WHEREAS**, ICCED is in need of _____ services for the _____
9 _____ Projects (PROJECT); and
10

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

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

16 1. **TERM.**

17 1.1. The term of this Agreement shall be from date first executed above for a period of _____
18 year(s).

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

21 2. **CONTRACT COORDINATION.**

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

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

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

6 3. DESCRIPTION OF WORK.

7 3.1. CONSULTANT shall provide all materials and labor to perform this Agreement as detailed
8 in the [Name of Document] dated [date] ("PROPOSAL") attached as "Exhibit A". In the
9 event of a conflict among this Agreement and the Request for _____ ("RF
10 _____"), the Agreement shall take precedence. In the event of a conflict between any Task
11 Order or the Agreement, the Agreement will take precedence.

12 3.2. The RF__ titled "[Name of Document] dated [date] [and includes Addendum NO (#)]" is
13 attached as "Exhibit B".

14 4. WORK TO BE PERFORMED BY CONSULTANT.

15 4.1. CONSULTANT shall comply with all terms, conditions and requirements of the
16 PROPOSAL and this Agreement.

17 4.2. CONSULTANT shall perform such other tasks as necessary and proper for the full
18 performance of the obligations assumed by CONSULTANT hereunder.

19 CONSULTANT shall:

20 4.2.1. Procure all permits and licenses, pay all charges and fees, and give all notices that
21 may be necessary and incidental to the due and lawful prosecution of the services to
22 be performed by CONSULTANT under this agreement;

23 4.2.2. Make every reasonable effort to keep itself fully informed of all applicable Federal,
24 State and local laws, ordinances, regulations, orders and decrees which may affect
25 those engaged or employed under this Agreement, any materials used in
26 CONSULTANT's performance under this Agreement or the conduct of the services
27 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 [Funding Source] agreements between the COUNTY
5 through ICCED and the State of California that are incorporated into this Agreement
6 including but not limited to the Davis-Bacon Act (40 U.S.C 3141-3148; 24 CFR Part 85.36),
7 the Anti-Kickback Act of 1986 (41 U.S.C. 51-58), Contract Work Hours and Safety
8 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 as "Exhibit C", or as agreed upon under any
6 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 as "Exhibit C", or as agreed upon under any
10 approved Task Order. COUNTY shall pay CONSULTANT for completed and approved services upon
11 presentation of its itemized billing. COUNTY shall retain ten percent (10%) of the total compensation
12 until the Work to be Performed by Consultant has been completed in accordance with this Agreement,
13 as determined by COUNTY, and payment in full of all subcontractors of CONTRACTOR has been
14 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.

1 11. SUSPENSION OF AGREEMENT.

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

6 12. TERMINATION.

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

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

20 13. INSPECTION.

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

1 14. OWNERSHIP OF MATERIALS.

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

6 15. INTEREST OF CONSULTANT.

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

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

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

14 16. INDEMNIFICATION.

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

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

26 16.2.1. Personal injury, including but not limited to bodily injury, emotional injury,
27 sickness or disease or death to persons including but not limited to COUNTY's
28 representatives, officers, managers, designees, employees, agents, successors and

1 assigns, subcontractors and other third parties and/or damage to property of anyone
2 (including loss of use thereof) to the extent caused by CONSULTANT's negligent
3 performance, or willful misconduct under this Agreement, or anyone directly or
4 indirectly employed by CONSULTANT or anyone for whose acts CONSULTANT
5 may be liable;

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

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

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

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

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

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

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25 //

1 17. INDEPENDENT CONTRACTOR.

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

5 17.1. CONSULTANT is not an employee or agent of COUNTY and is only responsible for the
6 requirements and results specified by this Agreement or any other Agreement.

7 17.2. CONSULTANT shall be responsible to COUNTY only for the requirements and results
8 specified by this Agreement and except as specifically provided in this Agreement, shall
9 not be subject to COUNTY's control with respect to the physical actions or activities of
10 CONSULTANT in fulfillment of the requirements of this Agreement.

11 17.3. CONSULTANT is not, and shall not be, entitled to receive from, or through, COUNTY,
12 and COUNTY shall not provide, or be obligated to provide, CONSULTANT with
13 Worker's Compensation coverage or any other type of employment or worker insurance
14 or benefit coverage required or provided by any Federal, State or local law or regulation
15 for, or normally afforded to, an employee of COUNTY.

16 17.4. CONSULTANT shall not be entitled to have COUNTY withhold or pay, and COUNTY
17 shall not withhold or pay, on behalf of CONSULTANT, any tax or money relating to the
18 Social Security Old Age Pension Program, Social Security Disability Program, or any
19 other type of pension, annuity, or disability program required or provided by any Federal,
20 State or local law or regulation.

21 17.5. CONSULTANT shall not be entitled to participate in, or receive any benefit from, or
22 make any claim against any COUNTY fringe program, including, but not limited to,
23 COUNTY's pension plan, medical and health care plan, dental plan, life insurance plan,
24 or any other type of benefit program, plan, or coverage designated for, provided to, or
25 offered to COUNTY's employee.

26 17.6. COUNTY shall not withhold or pay, on behalf of CONSULTANT, any Federal, State, or
27 local tax, including, but not limited to, any personal income tax, owed by
28 CONSULTANT.

1 17.7. CONSULTANT is, and at all times during the term of this Agreement, shall represent
2 and conduct itself as an independent contractor, not as an employee of COUNTY.

3 17.8. CONSULTANT shall not have the authority, express or implied, to act on behalf of, bind
4 or obligate COUNTY in any way without the written consent of COUNTY.

5 17.9 Without receiving CONSULTANT's written permission, COUNTY agrees not to
6 actively solicit the hiring, or contracting with any employee of CONSULTANT who
7 performs services for COUNTY under this AGREEMENT for a period of one year from
8 the date this AGREEMENT is terminated.

9 18. INSURANCE.

10 18.1. CONSULTANT hereby agrees at its own cost and expense to procure and maintain
11 during the entire term of this Agreement, and any extended term thereof, commercial
12 general liability insurance (bodily injury and property damage), employer's liability
13 insurance, commercial automobile liability insurance (bodily injury and property
14 damage) and professional liability insurance in a sum acceptable to COUNTY and
15 adequate to cover potential liabilities arising in connection with the performance of this
16 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	[TBD by Scope of Work] [where applicable]
Worker's Compensation, Coverage A	Statutory
Employers Liability, Coverage B	[TBD by Scope of Work] [where applicable]
Commercial General Liability (Including Contractual Liability):	
Bodily Injury	[TBD by Scope of Work] per occurrence
	[TBD by Scope of Work] aggregate
Property Damage	[TBD by Scope of Work] per occurrence
	[TBD by Scope of Work] aggregate
Commercial Automobile Liability (owned, hired & non-owned vehicles)	

1 Bodily Injury [TBD by Scope of Work] per occurrence

2 Property Damage [TBD by Scope of Work] per occurrence

3 18.2. Special Insurance Requirements. All insurance required under paragraph 18 shall:

4 18.2.1. Be procured from an insurer authorized to do business in California.

5 18.2.2. Be primary coverage as respects COUNTY and any insurance or self-insurance
6 maintained by COUNTY shall be in excess of CONSULTANT's insurance
7 coverage and shall not contribute to it.

8 18.2.3. Name COUNTY as an additional insured on all policies, except Workers'
9 Compensation, and Professional Liability and provide that COUNTY may recover
10 for any loss suffered by COUNTY by reason of CONSULTANT's negligence.

11 18.2.4. State that it is primary insurance and regards COUNTY as an additional insured
12 and contains a cross-liability or severability of interest clause.

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

19 18.3. Additional Insurance Requirements.

20 18.3.1. Complete copies of certificates of insurance for all required coverages including
21 additional insured endorsements and 30-day notice of cancellation clause
22 endorsements shall be attached hereto as "**Exhibit D**" and incorporated herein.

23 18.3.2. COUNTY is to be notified immediately of all insurance claims. COUNTY is also
24 to be notified if any aggregate insurance limit is exceeded.

25 18.3.3. The comprehensive or commercial general liability shall contain a provision of
26 endorsements stating that such insurance:

27 A. Includes contractual liability;

- 1 B. Does not contain any exclusions as to loss or damage to property caused
2 by explosion or resulting from collapse of buildings or structures or
3 damage to property underground, commonly referred to by insurers as the
4 “XCU Hazards;”
- 5 C. Does not contain a “pro rata” provision which looks to limit the insurer’s
6 liability to the total proportion that its policy limits bear to the total
7 coverage available to the insured; and
- 8 D. Does not contain an “excess only” clause which requires the exhaustion of
9 other insurance prior to providing coverage.

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

16 18.5 Additional Insurance. Nothing in this, or any other provision of this Agreement, shall be
17 construed to preclude CONSULTANT from obtaining and maintaining any additional
18 insurance policies in addition to those required pursuant to this Agreement.

19 19. WORKERS’ COMPENSATION CERTIFICATION.

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

26 19.2. This certification is included in this Agreement and signature of the Agreement shall
27 constitute signing and filing of the certificate.
28

1 19.3. CONSULTANT understands and agrees that any and all employees, regardless of hire
2 date, shall be covered by Workers' Compensation according to the statutory requirements
3 prior to beginning work on the Project.

4 19.4. If CONTRACTOR has no employees, initial here: _____.

5 20. ASSIGNMENT.

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

9 21. NON-DISCRIMINATION.

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

1 CONSULTANT shall include the nondiscrimination and compliance provisions of this
2 clause in all subcontracts to perform Work under this Agreement.

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

4 21.2 During the performance of this Agreement, the GRANTEE assures that no otherwise
5 qualified person shall be excluded from participation or employment, denied program
6 benefits, or be subjected to discrimination based on race, color, national origin, sex, age, or
7 handicap, under any program or activity funded by this contract, as required by Title VI of
8 the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of
9 1974, as amended, and the Age Discrimination Act of 1975, and all implementing
10 regulations.

11 21.3 The Training, Employment, and Contracting Opportunities for Business and Lower Income
12 Persons Assurance of Compliance:

13 21.3.1. The work to be performed under this Agreement is on a project assisted under a
14 program providing direct Federal financial assistance from the Department of
15 Housing and Urban Development and is subject to the requirements of Section 3 of
16 the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u.
17 Section 3 requires that to the greatest extent feasible, opportunities for training and
18 employment be given lower income residents of the project area and contracts for
19 Work in connection with the project be awarded to business concerns which are
20 located in, or owned in substantial part by persons residing in the area of the project.

21 21.3.2. The parties to this Agreement will comply with the provisions of said Section 3 and
22 the regulations issued pursuant thereto by the Secretary of Housing and Urban
23 Development set forth in 24 CFR Part 135, and all applicable rules and orders of the
24 Department issued there under prior to the execution of this contract. The parties to
25 this contract certify and agree that they are under no contractual or other disability
26 which would prevent them from complying with these requirements.

27 21.3.3. The GRANTEE will send to each labor organization or representative of workers
28 with which he has a collective bargaining agreement or other contract or

1 understanding, if any, a notice advertising the said labor organization or worker's
2 representative of his commitments under this Section 3 clause and shall post copies
3 of the notice in conspicuous places available to employees and applicants for
4 employment or training.

5 21.3.4. The GRANTEE will include these Section 3 clauses in every contract and
6 subcontract for Work in connection with the project and will, at the direction of the
7 State, take appropriate action pursuant to the contract upon a finding that the
8 CONSULTANT or any contractor or subcontractor is in violation of regulations
9 issued by the Secretary of Housing and Urban Development, 24 CFR Part 135 and,
10 will not let any contract unless the CONSULTANT or contractor or subcontractor
11 has first provided it with a preliminary statement of ability to comply with the
12 requirements of these regulations.

13 21.3.5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR
14 Part 135, and all applicable rules and orders of the Department issued thereunder
15 prior to the execution of the Agreement shall be a condition of the Federal financial
16 assistance provided to the project, binding upon the CONSULTANT, its successors,
17 and assigns. Failure to fulfill these requirements shall subject the CONSULTANT,
18 its contractors and subcontractors, its successors, and assigns to those sanctions
19 specified by the grant or contract through which Federal assistance is provided, and
20 to such sanctions as are specified by 24 CFR Part 135.

21 21.4. State Nondiscrimination Clause:

22 21.4.1. During the performance of this Agreement, CONSULTANT and its subcontractors
23 shall not unlawfully discriminate, harass, or allow harassment against any employee
24 or applicant for employment because of sex, race, color, ancestry, religious creed,
25 national origin, physical disability (including HIV and AIDS), mental disability,
26 medical condition (cancer), age (over 40), marital status and denial of family care
27 leave. CONSULTANT and subcontractors shall ensure that the evaluation and
28 treatment of their employees and applicants for employment are free from such

1 discrimination and harassment. CONSULTANT and subcontractors shall comply
2 with the provisions of the Fair Employment and Housing Act (Government Code,
3 Section 12900 et seq.) and the applicable regulations promulgated thereunder
4 (California Code of Regulations, Title 2, Section 7258.0 et seq.) The applicable
5 regulations of the Fair Employment and Housing Commission implementing
6 Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of
7 the California Code of Regulations are incorporated into this contract by reference
8 and made a part hereof as if set forth in full. CONSULTANT and its subcontractors
9 shall give written notice of their obligations under this clause to labor organizations
10 with which they have a collective bargaining or other agreement.

11 21.4.2. This CONSULTANT shall include the nondiscrimination and compliance
12 provisions of this clause in all subcontracts to perform work under the contract.

13 “The CONSULTANT hereby agrees to abide by the requirement of executive order
14 11246 and all implement regulations of the Department of Labor.”

15 22. “SECTION 3” CLAUSE.

16 CONSULTANT will comply with Section 3 of the Housing and Urban Development Act of
17 1968 (12 U.S.C. 1701u), and implementing Regulations at 24 CFR, Part 135.

18 23. NOTICES AND REPORTS.

19 23.1. Any notice to be given pursuant to this Agreement shall be in writing and personally
20 delivered or sent by United States First Class Mail, postage prepaid, return receipt
21 requested or by overnight carrier, priority overnight delivery, postage and delivery
22 charges prepaid, addressed to each Party at the following address:

23 **COUNTY**
24 Esperanza M. Colio,
25 Community & Economic Development Manager
26 County of Imperial
27 940 Main St Suite 203
28 El Centro, CA 92243

CONSULTANT
[Business Name]
[Street Address or PO Box]
[City, State ZIP]

1 23.2. Notice shall be deemed to have been delivered only upon receipt by the Party, seventy-two
2 (72) hours after deposit in the United States mail or twenty-four (24) hours after deposit with
3 an overnight carrier.

4 23.3. The addressees and addresses for purposes of this paragraph 21 may be changed to any
5 other addressee and address by giving written notice of such change in the manner provided
6 in paragraph 21.1. Unless and until written notice of change of addressee and/or address is
7 delivered in the manner provided in paragraph 21.1, the addressee and address set forth in
8 this Agreement shall continue in effect for all purposes hereunder.

9 24. ENTIRE AGREEMENT.

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

13 25. MODIFICATION.

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

17 26. CAPTIONS.

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

20 27. PARTIAL INVALIDITY.

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

24 28. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.

25 As used in this Agreement and whenever required by the context thereof, each number, both
26 singular and plural, shall include all numbers, and each gender shall include a gender. CONSULTANT
27 as used in this Agreement or in any other document referred to in or made a part of this Agreement shall
28 likewise include both the singular and the plural, a corporation, a partnership, individual, firm or person

1 acting in any fiduciary capacity as executor, administrator, trustee or in any other representative capacity
2 or any other entity. All covenants herein contained on the part of CONSULTANT shall be joint and
3 several if more than one person, firm or entity executes this Agreement.

4 29. WAIVER.

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

8 30. DISPUTE RESOLUTION PROCESS.

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

12 31. CHOICE OF LAW.

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

16 32. ATTORNEY'S FEES.

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

20 33. AUTHORITY.

21 33.1. Each individual executing this Agreement on behalf of CONSULTANT represents that:

22 33.1.1. He/She is duly authorized to execute and deliver this Agreement on behalf of
23 CONSULTANT;

24 33.2.2. Such execution and delivery is in accordance with the terms of the Articles of
25 Incorporation or Partnership, any by-laws or Resolutions of CONSULTANT and;

26 33.2.3. This Agreement is binding upon CONSULTANT accordance with its terms.

27 33.2.4 CONSULTANT shall deliver to COUNTY evidence acceptable to COUNTY of
28 the foregoing within thirty (30) days of execution of this Agreement.

1 34. COUNTERPARTS.

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

6 35. REVIEW OF AGREEMENT TERMS.

7 35.1. Each Party has received independent legal advice from its attorneys with respect to the
8 advisability of making the representations, warranties, covenants and agreements
9 provided for herein, and with respect to the advisability of executing this Agreement.

10 35.2. Each Party represents and covenants with the other Party that:

11 35.2.1. This Agreement in its reduction to final written form is a result of extensive good
12 faith negotiations between the Parties and/or their respective legal counsel;

13 35.2.2. The Parties and their legal counsel have carefully reviewed and examined this
14 Agreement for execution by said Parties; and

15 35.2.3. Any statute or rule of construction that ambiguities are to be resolved against the
16 drafting party shall not be employed in the interpretation of this Agreement.

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1 36. NON-APPROPRIATION.

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

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

8 **COUNTY OF IMPERIAL:**

CONSULTANT:

9 By: _____
10 [Name], Chairman
11 Imperial County Board of Supervisors

By: _____
[Designee Name]
[Business, Title]

12 **ATTEST:**

13 _____
14 [Name], Clerk of the Board,
15 County of Imperial, State of California

16 **APPROVED AS TO FORM:**

17 MICHAEL ROOD
18 County Counsel

19 By: _____
20 [ATTORNEY NAME]
21 [Title]

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EXHIBIT E

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: _____

[Designee Name]

[Business, Title]