



# CITY COUNCIL STAFF REPORT

DATE: September 21, 2011 CONSENT CALENDAR

SUBJECT: ACCEPT A CONTRIBUTION OF \$25,000 FROM THE COUNTY OF RIVERSIDE AND APPROVE A CONSULTING SERVICES AGREEMENT WITH ITC DILIGENCE IN THE AMOUNT OF \$55,000 TO PROVIDE ADMINISTRATIVE AND BOUNDARY MODIFICATION SERVICES FOR THE PALM SPRINGS FOREIGN TRADE ZONE #236

FROM: David H. Ready, City Manager

BY: Community & Economic Development Department

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## SUMMARY

This action is to accept a contribution of \$25,000 from the County of Riverside and approve a Consulting Services Agreement with ITC Diligence, Inc. in the amount of \$55,000 for the administration and boundary modification of the Palm Springs Foreign Trade Zone #236.

## RECOMMENDATION:

1. Accept \$25,000 contribution from the County of Riverside.
2. Approve the Consulting Services Agreement in the amount of \$55,000 for the administration and boundary modification of Foreign Trade Zone #236.
3. Authorize the City Manager to execute all necessary documents.

## STAFF ANALYSIS:

### **FTZ #236 History**

In 1999, the City of Palm Springs received a Grant of Authority establishing Foreign Trade Zone #236. As Grantee of FTZ #236, the City's responsibility includes operating and maintaining the zone pursuant to its grant from the Foreign Trade Zones Board. The City has met the activation requirements and is in compliance with the Foreign Trade Zones Board and U.S. Customs and Border Protection regulations.

ITC Diligence has provided FTZ consulting services to the City since 2002. Past services include activating a site at the City Yard to comply with FTZ regulations; conducting evaluations and feasibility analysis for potential zone users; prepare annual reports; conducting educational seminars, and participating in City and valley wide "red team" meetings. ITC Diligence has also acted as the Zone's Operator since the activation of the zone in 2005, at no cost to the City. The City and ITC have marketed the FTZ widely throughout the Coachella Valley since the original designation. Any business that would have qualified, however, would have had to wait for boundary modification to be processed to get in the zone.

### **Alternative Site Framework (ASF)**

During the past several months the City of Palm Springs and County of Riverside EDA – Office of Foreign Trade staff discussed expanding the Zone boundaries under the new Department of Commerce – FTZ Boards Alternative Site Framework Program (ASF). The goal of the ASF program is to improve the Grantee's (City of Palm Springs) ability to bring the benefits of the FTZ to a broad range of companies, and to develop a zone-site management structure that is flexible, focused and feasible for everyone's benefit.

A new ASF "plan" involves a public process that will result in a more simplified procedure for future site designations across a broad geographic area. In short, the ASF program is like a bank account with acreage that can be allotted to "zone operators" in a service area. If a zone operator does not activate in accordance to FTZ Board Policy, the acreage goes back into the account for future zone prospects.

Currently, a business located within 60 miles or a 90-minute commute from the zone boundaries can apply for zone status. Processing a boundary modification can take up to 18 months. Under the ASF structure, processing times are greatly reduced for companies located within the service area. This will allow prompt activation for operation of a general purpose zone offering zone services for multiple users.

The City proposes utilizing the ASF program to reorganize the zone boundaries to capture businesses in the cities and unincorporated areas to the east and west of the current zone boundaries. The County has recently completed a similar ASF modification with the FTZ in San Diego, which benefitted businesses in the Western portion of Riverside County. (Article attached)

### **ASF Application**

The ASF application is approximately 300-500 pages and is equivalent in work and scope to the State Enterprise Zone Application, which the City participated in last year. It will include a transmittal letter to the Department of Commerce FTZ Board, an executive summary, and numerous exhibits. The exhibits include required

documentation, such as legal authority, site description, operation and financing, economic justification, maps, site plans and letters of local support, as well as concurrence letters from land owners.

As stated above ITC Diligence has been the City of Palm Springs' consultant for the Foreign Trade Zone Program since 2002. The County of Riverside EDA-Office of Foreign Trade has also used ITC Diligence as their consultant on matters pertaining to foreign trade zones in the western region of the County. The County expressed their comfort with the City's choice of consultant for the ASF reorganization. The cost to engage a consultant to prepare the Alternative Site Framework Application typically ranges from \$50,000 to \$100,000, depending on the size and complexity of the zone.

### **Regional Asset**

This is a valley-wide effort to maximize the potential benefits for businesses involved in International Trade currently located outside the current FTZ #236 boundaries to the east and west and within the City's own geographic boundaries. Although the FTZ #236 has always been a regional asset, and has been promoted as such, very little activity has occurred under the current structure.

The ASF Program will help to organize the FTZ in a way to make the program more accessible to a wider range of businesses involved in international trade. The expansion under the ASF Program is not a competitive application in the sense that ASF applications are reviewed on their own merits and not competitively against one another. There are also not a limited number of ASF approvals, such as the case of the State Enterprise Zone Application. Since August 2011 – 43 ASF Applications have been approved in the Country and 16 are pending FTZ Board approval. The program is designed to strengthen and enhance the Grantees' business attraction efforts in their regions.


Once the work under the Contract is underway staff will return to Council for approval of the proposed timeline, geographic service area and proposed magnet sites.


### **FISCAL IMPACT:**

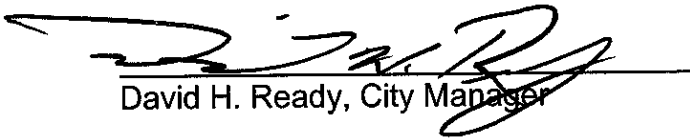
The County has committed to participate in paying \$25,000 toward the Consultant's fee for the ASF boundary reorganization. The total cost for the ASF boundary reorganization is \$50,000. The additional \$5,000 cost within the Consulting Services Agreement is for the administration of other zone activity, such as the annual report and prospect feasibility reviews.

The City's \$25,000 contribution toward the ASF Application will be paid out of continuing

appropriations from the 2010-11 Fiscal Year from the Economic Recovery Plan Account. The \$5,000 ongoing scope for administrative services is in the 2011-12 Economic Development budget. Plus, there will be \$25,000 reimbursement from the County of Riverside EDA – Office of Foreign Trade.

  
Cathy Van Horn, Economic Development  
Administrator

  
John Raymond, Director

  
David H. Ready, City Manager

  
Tom Wilson, Assistant City Manager

Attachments:

- Consulting Services Agreement
- Current FTZ Boundary Maps
- County of Riverside concurrence letter
- Press Enterprise Article – San Diego FTZ Expands to Riverside County
- List of Zones Approved Under the ASF
- ASF Application and Instructions

## CONSULTING SERVICES AGREEMENT

*ITC Diligence  
Foreign Trade Zone #236*

THIS AGREEMENT FOR CONSULTING SERVICES ("Agreement") is made and entered into on \_\_\_\_\_, 2011, by and between the City of Palm Springs, a California charter city and municipal corporation ("City"), and ITC Diligence, Inc., a California Corporation ("Consultant"). City and Consultant are individually referred to as "Party" and are collectively referred to as the "Parties".

### RECITALS

A. City requires the services of a consultant for the Palm Springs Foreign Trade Zone #236 – Alternative Site Framework and General Zone Management Services ("Project").

B. Consultant has submitted to City a proposal to provide consulting and management services to City under the terms of this Agreement.

C. Based on its experience, education, training, and reputation, Consultant is qualified and desires to provide the necessary services to City for the Project.

D. City desires to retain the services of Consultant for the Project.

In consideration of these promises and mutual agreements, City agrees as follows:

### AGREEMENT

#### 1. CONSULTANT SERVICES

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall provide consultant services to City as described in the Scope of Services/Work attached to this Agreement as Exhibit "A" and incorporated by reference (the "services" or "work"). Exhibit "A" includes the agreed upon schedule of performance and the schedule of fees. Consultant warrants that all services and work shall be performed in a competent, professional, and satisfactory manner consistent with prevailing industry standards. In the event of any inconsistency between the terms contained in the Scope of Services/Work and the terms set forth in this Agreement, the terms set forth in this Agreement shall govern.

1.2 Compliance with Law. Consultant services rendered under this Agreement shall comply with all applicable federal, state, and local laws, statutes and ordinances and all lawful orders, rules, and regulations.

1.3 Licenses and Permits. Consultant shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by this Agreement.

**1.4 Familiarity with Work.** By executing this Agreement, Consultant warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

## **2. TIME FOR COMPLETION**

The time for completion of the services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the work of this Agreement according to the agreed upon schedule of performance set forth in Exhibit "A." Consultant shall not be accountable for delays in the progress of its work caused by any condition beyond its control and without the fault or negligence of Consultant. Delays shall not entitle Consultant to any additional compensation regardless of the party responsible for the delay.

## **3. COMPENSATION OF CONSULTANT**

**3.1 Compensation of Consultant.** Consultant shall be compensated and reimbursed for the services rendered under this Agreement in accordance with the schedule of fees set forth in Exhibit "A". The total amount of Compensation shall not exceed \$55,000.00.

**3.2 Method of Payment.** In any month in which Consultant wishes to receive payment, Consultant shall submit to City an invoice for services rendered prior to the date of the invoice, no later than the first working day of such month, in the form approved by City's finance director. Payments shall be based on the hourly rates set forth in Exhibit "A" for authorized services performed. City shall pay Consultant for all expenses stated in the invoice that are approved by City and consistent with this Agreement, within thirty (30) days of receipt of Consultant's invoice.

**3.3 Changes.** In the event any change or changes in the Scope of Services/Work is requested by City, Parties shall execute a written amendment to this Agreement, specifying all proposed amendments, including, but not limited to, any additional fees. An amendment may be entered into:

A. To provide for revisions or modifications to documents, work product, or work, when required by the enactment or revision of any subsequent law; or

B. To provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Consultant's profession.

**3.4 Appropriations.** This Agreement is subject to, and contingent upon, funds being appropriated by the City Council of City for each fiscal year. If such appropriations are not made, this Agreement shall automatically terminate without penalty to City.

## **4. PERFORMANCE SCHEDULE**

**4.1 Time of Essence.** Time is of the essence in the performance of this Agreement.

**4.2 Schedule of Performance.** All services rendered under this Agreement shall be performed under the agreed upon schedule of performance set forth in Exhibit "A." Any time period extension must be approved in writing by the Contract Officer.

**4.3 Force Majeure.** The time for performance of services to be rendered under this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, if Consultant notifies the Contract Officer within ten (10) days of the commencement of such condition. Unforeseeable causes include, but are not limited to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather. After Consultant notification, the Contract Officer shall investigate the facts and the extent of any necessary delay, and extend the time for performing the services for the period of the enforced delay when and if, in the Contract Officer's judgment, such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

**4.4 Term.** Unless earlier terminated in accordance with Section 4.5 of this Agreement, this Agreement shall continue in full force and effect for a period of 12 months, commencing on \_\_\_\_\_, 2011, and ending on \_\_\_\_\_, 2011, unless extended by mutual written agreement of the parties.

**4.5 Termination Prior to Expiration of Term.** City may terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Consultant. Where termination is due to the fault of Consultant and constitutes an immediate danger to health, safety, and general welfare, the period of notice shall be such shorter time as may be determined by the City. Upon receipt of the notice of termination, Consultant shall immediately cease all services except such as may be specifically approved by the Contract Officer. Consultant shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer after such notice. Consultant may terminate this Agreement, with or without cause, upon thirty (30) days written notice to City.

## **5. COORDINATION OF WORK**

**5.1 Representative of Consultant.** The following principal of Consultant is designated as being the principal and representative of Consultant authorized to act and make all decisions in its behalf with respect to the specified services and work: David Harlow, President. It is expressly understood that the experience, knowledge, education, capability, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services under this Agreement. The foregoing principal may not be changed by Consultant without prior written approval of the Contract Officer.

**5.2 Contract Officer.** The Contract Officer shall be the City Manager or his/her designee ("Contract Officer"). Consultant shall be responsible for keeping the Contract Officer fully informed of the progress of the performance of the services. Consultant shall refer any

decisions that must be made by City to the Contract Officer. Unless otherwise specified, any approval of City shall mean the approval of the Contract Officer.

**5.3 Prohibition Against Subcontracting or Assignment.** The experience, knowledge, education, capability, and reputation of Consultant, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Consultant shall not contract with any other individual or entity to perform any services required under this Agreement without the City's express written approval. In addition, neither this Agreement nor any interest may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City.

**5.4 Independent Contractor.** Neither City nor any of its employees shall have any control over the manner, mode, or means by which Consultant, its agents or employees, perform the services required, except as otherwise specified. Consultant shall perform all required services as an independent contractor of City and shall not be an employee of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role; however, City shall have the right to review Consultant's work product, result, and advice. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City.

**5.5 Personnel.** Consultant agrees to assign the following individuals to perform the services in this Agreement. Consultant shall not alter the assignment of the following personnel without the prior written approval of the Contract Officer. Acting through the City Manager, the City shall have the unrestricted right to order the removal of any personnel assigned by Consultant by providing written notice to Consultant.

<u>Name:</u>	<u>Title:</u>
David Harlow	President

## 6. INSURANCE

Consultant shall procure and maintain, at its sole cost and expense, policies of insurance as set forth in the attached Exhibit "B", incorporated herein by reference.

## 7. INDEMNIFICATION.

**7.1 Indemnification.** To the fullest extent permitted by law, Consultant shall defend (at Consultant's sole cost and expense), indemnify, protect, and hold harmless City, its elected officials, officers, employees, agents, and volunteers (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (Consultant's employees included), for damage to property, including property owned by City, from any violation of any federal, state,



or local law or ordinance, and from errors and omissions committed by Consultant, its officers, employees, representatives, and agents, that arise out of or relate to Consultant's performance under this Agreement. This indemnification clause excludes Claims arising from the sole negligence or willful misconduct of the City, its elected officials, officers, employees, agents, and volunteers. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Consultant's indemnification obligation or other liability under this Agreement. Consultant's indemnification obligation shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified are fully and finally barred by the applicable statute of limitations or, if an action is timely filed, until such action is final. This provision is intended for the benefit of third party Indemnified Parties not otherwise a party to this Agreement.

**7.2 Design Professional Services Indemnification and Reimbursement.** If the Agreement is determined to be a "design professional services agreement" and Consultant is a "design professional" under California Civil Code Section 2782.8, then:

A. To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole cost and expense), protect and hold harmless City and its elected officials, officers, employees, agents and volunteers and all other public agencies whose approval of the project is required, (individually "Indemnified Party"; collectively "Indemnified Parties") against any and all liabilities, claims, judgments, arbitration awards, settlements, costs, demands, orders and penalties (collectively "Claims"), including but not limited to Claims arising from injuries or death of persons (Consultant's employees included) and damage to property, which Claims arise out of, pertain to, or are related to the negligence, recklessness or willful misconduct of Consultant, its agents, employees, or subcontractors, or arise from Consultant's negligent, reckless or willful performance of or failure to perform any term, provision, covenant or condition of this Agreement ("Indemnified Claims"), but Consultant's liability for Indemnified Claims shall be reduced to the extent such Claims arise from the negligence, recklessness or willful misconduct of the City and its elected officials, officers, employees, agents and volunteers.

B. The Consultant shall require all non-design-professional sub-contractors, used or sub-contracted by Consultant to perform the Services or Work required under this Agreement, to execute an Indemnification Agreement adopting the indemnity provisions in subsection 7.1 in favor of the Indemnified Parties. In addition, Consultant shall require all non-design-professional sub-contractors, used or sub-contracted by Consultant to perform the Services or Work required under this Agreement, to obtain insurance that is consistent with the Insurance provisions as set forth in this Agreement, as well as any other insurance that may be required by Contract Officer.

## **8. RECORDS AND REPORTS**

**8.1 Reports.** Consultant shall periodically prepare and submit to the Contract Officer reports concerning the performance of the services required by this Agreement, or as the Contract Officer shall require.

**8.2 Records.** Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Consultant shall keep such books and records as shall be necessary to properly perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

**8.3 Ownership of Documents.** All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of this Agreement shall be the property of City. Consultant shall deliver all above-referenced documents to City upon request of the Contract Officer or upon the termination of this Agreement. Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights or ownership of the documents and materials. Consultant may retain copies of such documents for Consultant's own use. Consultant shall have an unrestricted right to use the concepts embodied in such documents.

**8.4 Release of Documents.** All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

**8.5 Cost Records.** Consultant shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred while performing under this Agreement. Consultant shall make such materials available at its offices at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment for inspection by City and copies shall be promptly furnished to City upon request.

## **9. ENFORCEMENT OF AGREEMENT**

**9.1 California Law.** This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

**9.2 Interpretation.** This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The terms of this Agreement are contractual and the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

**9.3 Waiver.** No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of City shall be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Consultant. Any waiver by either party of any default must be in writing. No such waiver shall be a waiver of any other default concerning the same or any other provision of this Agreement.

**9.4 Rights and Remedies are Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative. The exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

**9.5 Legal Action.** In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment, or any other remedy consistent with the purposes of this Agreement.

## **10. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

**10.1 Non-Liability of City Officers and Employees.** No officer or employee of City shall be personally liable to the Consultant, or any successor-in-interest, in the event of any default or breach by City or for any amount which may become due to the Consultant or its successor, or for breach of any obligation of the terms of this Agreement.

**10.2 Conflict of Interest.** No officer or employee of the City shall have any direct or indirect financial interest in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects their financial interest or the financial interest of any corporation, partnership, or association in which he/she is, directly or indirectly, interested in violation of any state statute or regulation. Consultant warrants that Consultant has not paid or given, and will not pay or give, any third party any money or other consideration in exchange for obtaining this Agreement.

**10.3 Covenant Against Discrimination.** Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination or segregation in the performance of or in connection with this Agreement regarding any person or group of persons on account of race, color, creed, religion, sex, marital status, disability, sexual orientation, national origin, or ancestry.

## **11. MISCELLANEOUS PROVISIONS**

**11.1 Notice.** Any notice, demand, request, consent, approval, or communication that either party desires, or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set forth below. Notice shall be deemed communicated seventy-two (72) hours from the time of mailing if mailed as provided in this Section. Either party may change its address by notifying the other party of the change of address in writing.

**To City:** City of Palm Springs  
Community & Economic Development  
3200 E. Tahquitz Canyon Way  
Palm Springs, California 92262

**To Consultant:** David Harlow, President  
ITC Diligence, Inc.  
15354 Stafford Street  
City of Industry, CA 91748

**11.2 Integrated Agreement.** This Agreement contains all of the agreements of the parties and supersedes all other written agreements.

**11.3 Amendment.** No amendments or other modifications of this Agreement shall be binding unless through written agreement by all Parties.

**11.4 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties.

**11.5 Successors in Interest.** This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

**11.6 Third Party Beneficiary.** Except as may be expressly provided for in this Agreement, nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as a third-party beneficiary or otherwise, upon any entity or person not a party to this Agreement.

**11.7 Recitals.** The above-referenced Recitals are hereby incorporated into the Agreement as though fully set forth in this Agreement and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

**11.8 Authority.** The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement on behalf of Parties and that by so executing this Agreement the Parties are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates stated below.

**“CITY”  
City of Palm Springs**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David H. Ready  
City Manager

**APPROVED AS TO FORM:**

**ATTEST**

By: \_\_\_\_\_  
Douglas C. Holland,  
City Attorney

By: \_\_\_\_\_  
James Thompson,  
City Clerk

**“CONSULTANT”  
(ITC Diligence, Inc)**

Date: \_\_\_\_\_

By : \_\_\_\_\_  
David Harlow, President

Date: \_\_\_\_\_

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(secretary)

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
 County of \_\_\_\_\_ }

On \_\_\_\_\_ before me, \_\_\_\_\_  
Date Here Insert Name and Title of the Officer  
 personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above \_\_\_\_\_ Signature \_\_\_\_\_  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

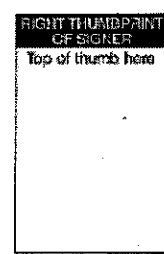
Title or Type of Document: \_\_\_\_\_  
 Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_  
 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
 Individual  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Attorney in Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_



Signer's Name: \_\_\_\_\_  
 Individual  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Attorney in Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_



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# **EXHIBIT “A”**

## **Scope of Services**

ITC Diligence shall provide professional consulting service to further the goals of the Foreign Trade Zone Program and international trade in the City of Palm Springs. ITC services shall include, but are not be limited to the following:

### **General Zone Management Services**

- Annual Reports: Prepare annual report in compliance with Foreign Trade Zones Regulations
- Zone Operation: Operate activated zone space in compliance with Custom and Border Protection Regulations.
- Users Agreement and Tariff Schedule: review and recommend changes to update to current rate standards
- Zone Prospects: Interface with potential zone users and conduct cost benefits analysis to determine FTZ feasibility.
- Sub-Zone Prospects: Interface with sub-zone prospects applying for FTZ Sub-zone status.
- Special meetings: From time to time participate in special meetings on behalf of or with the City (Grantee) to further the goals of the foreign trade zones program.
- Technical Representation: Interface with US Customs and Border Project Agency and Foreign Trade Zones Board as needed.
- Quarterly Audits: Conduct quarterly audits of all operators to ensure compliance, if necessary.

### **Alternative Site Framework**

- Boundary Expansions Considerations: Conduct training session with other valley Cities on benefits of the new Alternative Site Framework (ASF) Program, a streamline process for boundary expansions.
- Work with City of Palm Springs, Coachella Valley Economic Partnership, all eight Cities in the valley and County of Riverside to collaborate on ASF and identify ASF Service Area and Magnet Sites for the boundary expansions.
- Prepare ASF application for FTZ Board review, including Letter of Transmittal; Executive Summary, Exhibits 1-5 (Legal authority, site description, operation and financing, economic justification, manufacturing, maps, blueprints, site plans, and local support.
  - Identify, map, and outline the FTZ 236's service area
  - Identify, map, and obtain letters of interest and support with landowners and businesses for “Magnet Sites”.

- Lobby representatives of the FTZ Board and Customs for support of the ASF Application.
  - Work with the County of Riverside to secure a County Support Letter.
  - Create and develop the Executive Summary and Economic Snapshot of the Coachella Valley.
  - Obtain Grantee authority documentation such as City Charter, FTZ Board Order, etc...
  - Draft Executive Summary, Transmittal Letter and additional exhibits
  - Draft of Part One: Scope of authority to expand and justification for expansion.
  - Draft of Part Two: Scope of authority to create and justify magnet sites along with supporting documentation.
  - Draft of Part Three: Scope of authority to create and justify usage driven sites along with supporting documentation.
  - Draft of Conclusion: Further identify and substantiate the operation, financing of the economic justification for distribution and manufacturing of the zone project.
- Submission of application to the FTZ Board for review and approval with ITC representing Palm Springs as Liaison of application process.
    - 60-day period for review between FTZB and ITC/Palm Springs
    - 90-day public comment period / rebuttal to positive and negative comments effecting the application
    - Request / Receipt of Customs Concurrence Letter
    - 60-day period of final review with FTZ Board Staff and ITC/Palm Springs
    - 30-day period for FTZB to vote on final approval of application
  - Coordinate Receipt of approval letter from FTZ Board.
  - Advise and Assist as necessary.



## **Fee Structure**

### **General Zone Management**

Consultant shall be paid on a per occurrence basis, billed within 30-days of services provided, based on \$150.00 per hour; not to exceed \$5,000 during contract year.

### **Alternative Site Framework (ASF)**

Consultant shall be paid 50% of the contract fee upon execution of the Consultants Service Agreement.

Consultant shall be paid 25% of the contract fee upon submittal of the ASF Application to the Department of Commerce-Foreign Trade Zones Board. Timeline to complete the application, including obtaining all documents and support letters is six months or less.

Consultant shall be paid the remaining 25% up formal notification of ASF Application approval by the Department of Commerce-Foreign Trade Zones Board.

ASF consultant fee total shall not exceed \$50,000.00.

### **Other Charges**

Additional services beyond the scope of this agreement will be agreed upon in advance and charged at a rate not to exceed \$150.00 per hour.

Out-of-pocket expenses will be reimbursable at cost.

All print production of materials and related costs will be billed directly to the City by either the service provider or consultant. The City shall approve all costs prior to services.

# **EXHIBIT “B”**

## **INSURANCE PROVISIONS**

**Including**

**Verification of Coverage,**

**Sufficiency of Insurers,**

**Errors and Omissions Coverage,**

**Minimum Scope of Insurance,**

**Deductibles and Self-Insured Retentions, and**

**Severability of Interests (Separation of Insureds)**

## INSURANCE

1. **Procurement and Maintenance of Insurance.** Consultant shall procure and maintain public liability and property damage insurance against all claims for injuries against persons or damages to property resulting from Consultant's performance under this Agreement. Consultant shall procure and maintain all insurance at its sole cost and expense, in a form and content satisfactory to the City, and submit concurrently with its execution of this Agreement. Consultant shall also carry workers' compensation insurance in accordance with California workers' compensation laws. Such insurance shall be kept in full force and effect during the term of this Agreement, including any extensions. Such insurance shall not be cancelable without thirty (30) days advance written notice to City of any proposed cancellation. Certificates of insurance evidencing the foregoing and designating the City, its elected officials, officers, employees, agents, and volunteers as additional named insureds by original endorsement shall be delivered to and approved by City prior to commencement of services. The procuring of such insurance and the delivery of policies, certificates, and endorsements evidencing the same shall not be construed as a limitation of Consultant's obligation to indemnify City, its elected officials, officers, agents, employees, and volunteers.

2. **Minimum Scope of Insurance.** The minimum amount of insurance required under this Agreement shall be as follows:

1. Comprehensive general liability and personal injury with limits of at least one million dollars (\$1,000,000.00) combined single limit coverage per occurrence and two million dollars (\$2,000,000) general aggregate;

2. Automobile liability insurance with limits of at least one million dollars (\$1,000,000.00) per occurrence;

3. Professional liability (errors and omissions) insurance with limits of at least one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000) annual aggregate is:

\_\_\_\_\_ required

\_\_\_ x \_\_\_ is not required;

4. Workers' Compensation insurance in the statutory amount as required by the State of California and Employer's Liability Insurance with limits of at least one million dollars \$1 million per occurrence. If Consultant has no employees, Consultant shall complete the City's Request for Waiver of Workers' Compensation Insurance Requirement form.

3. **Primary Insurance.** For any claims related to this Agreement, Consultant's insurance coverage shall be primary with respect to the City and its respective elected officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by City and its respective elected officials, officers, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it. For Workers' Compensation and Employer's Liability Insurance only, the insurer shall waive all rights of subrogation and

contribution it may have against City, its elected officials, officers, employees, agents, and volunteers.

4. **Errors and Omissions Coverage.** If Errors & Omissions Insurance is required, and if Consultant provides claims made professional liability insurance, Consultant shall also agree in writing either (1) to purchase tail insurance in the amount required by this Agreement to cover claims made within three years of the completion of Consultant's services under this Agreement, or (2) to maintain professional liability insurance coverage with the same carrier in the amount required by this Agreement for at least three years after completion of Consultant's services under this Agreement. Consultant shall also be required to provide evidence to City of the purchase of the required tail insurance or continuation of the professional liability policy.

5. **Sufficiency of Insurers.** Insurance required in this Agreement shall be provided by authorized insurers in good standing with the State of California. Coverage shall be provided by insurers admitted in the State of California with an A.M. Best's Key Rating of B++, Class VII, or better, unless otherwise acceptable to the City.

6. **Verification of Coverage.** Consultant shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, effecting all of the coverages required by this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to be received and approved by the City before work commences. City reserves the right to require Consultant's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for Errors and Omissions and Workers' Compensation policies.

Verification of Insurance coverage may be provided by: (1) an approved General and/or Auto Liability Endorsement Form for the City of Palm Springs or (2) an acceptable Certificate of Liability Insurance Coverage with an approved Additional Insured Endorsement with the following endorsements stated on the certificate:

1. *"The City of Palm Springs, its officials, employees, and agents are named as an additional insured..." ("as respects City of Palm Springs Contract No. \_\_\_" or "for any and all work performed with the City" may be included in this statement).*

2. *"This insurance is primary and non-contributory over any insurance or self-insurance the City may have..." ("as respects City of Palm Springs Contract No. \_\_\_" or "for any and all work performed with the City" may be included in this statement).*

3. *"Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the Certificate Holder named." Language such as, "endeavor to" mail and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative" is not acceptable and must be crossed out.*

4. Both the Workers' Compensation and Employers' Liability policies shall contain the insurer's waiver of subrogation in favor of City, its elected officials, officers, employees, agents, and volunteers.

In addition to the endorsements listed above, the City of Palm Springs shall be named the certificate holder on the policies.

All certificates of insurance and endorsements are to be received and approved by the City before work commences. All certificates of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Failure to obtain the required documents prior to the commencement of work shall not waive the Consultant's obligation to provide them.

7. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City prior to commencing any work or services under this Agreement. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its elected officials, officers, employees, agents, and volunteers; or (2) Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses. Certificates of Insurance must include evidence of the amount of any deductible or self-insured retention under the policy. Consultant guarantees payment of all deductibles and self-insured retentions.

8. **Severability of Interests (Separation of Insureds).** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

Site Description  
FTZ 236  
Palm Springs, California  
A(27f)-27-2002

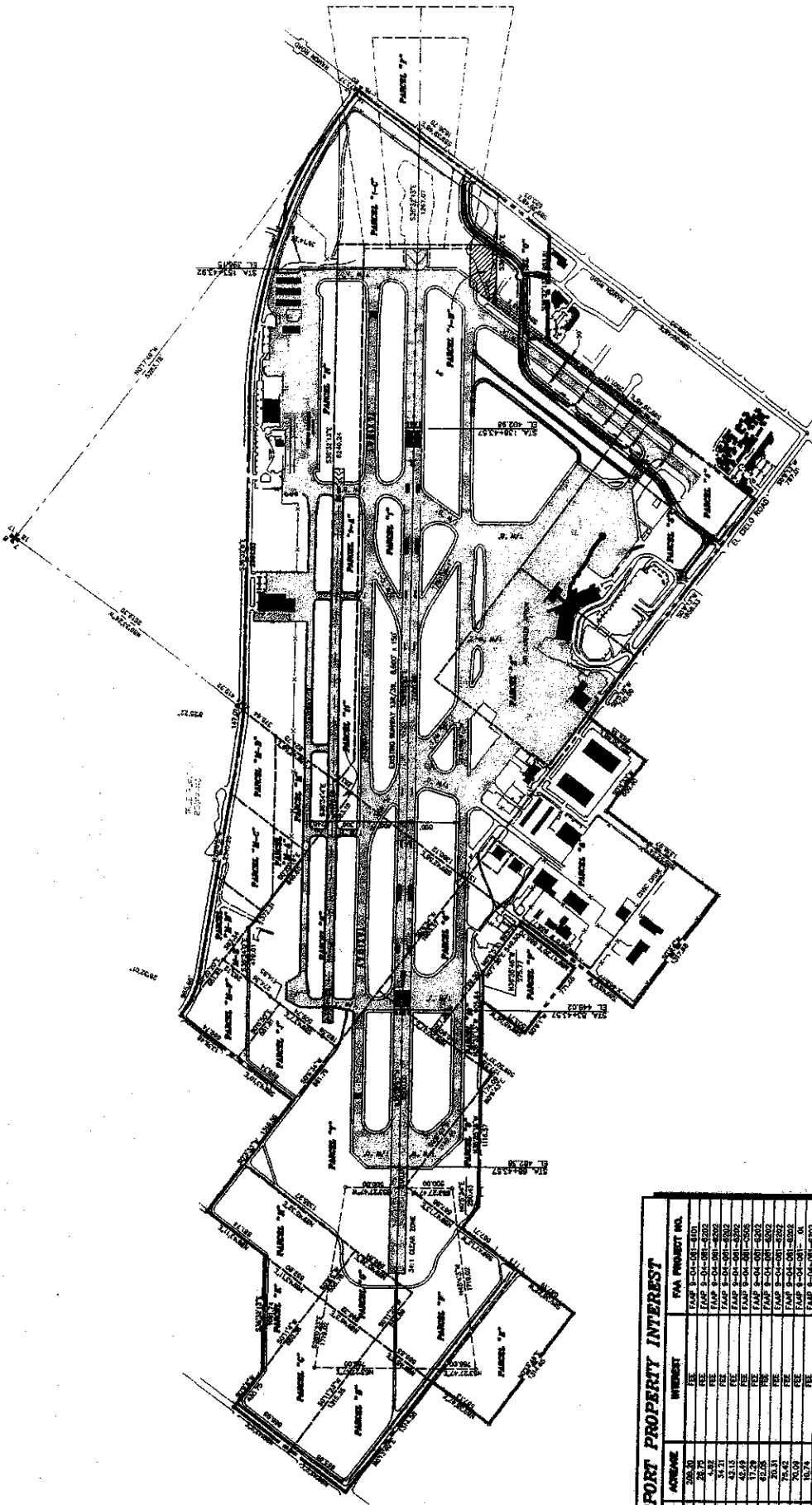
Site 1: (902 acres) - Palm Springs International Airport, 3400 E. Tahquitz Canyon Way, Palm Springs; includes two parcels (39 acres) as follows:

- 4 acre parcel adjacent to the northwestern boundary of the airport site, which includes two warehouses located on 2 acres at 410 N. Farrell Drive and 2 acres on 820 Research Drive; \*

- 35-acre Gene Autry Trail Business Park, immediately adjacent to the southeastern boundary of the airport. Both parcels are owned by private entities. \*

Site 2: (14 acres) - industrial development area within the 18-acre Palm Springs Rail Station, 63950 Palm Springs Station Road, Palm Springs.

\*indicates changes made through this action.



**ISBILL ASSOCIATES**  
 AIRPORT CONSULTANTS • DENVER, COLORADO  
**PALM SPRINGS REGIONAL AIRPORT**  
**PALM SPRINGS, CALIFORNIA**

EXHIBIT "A"

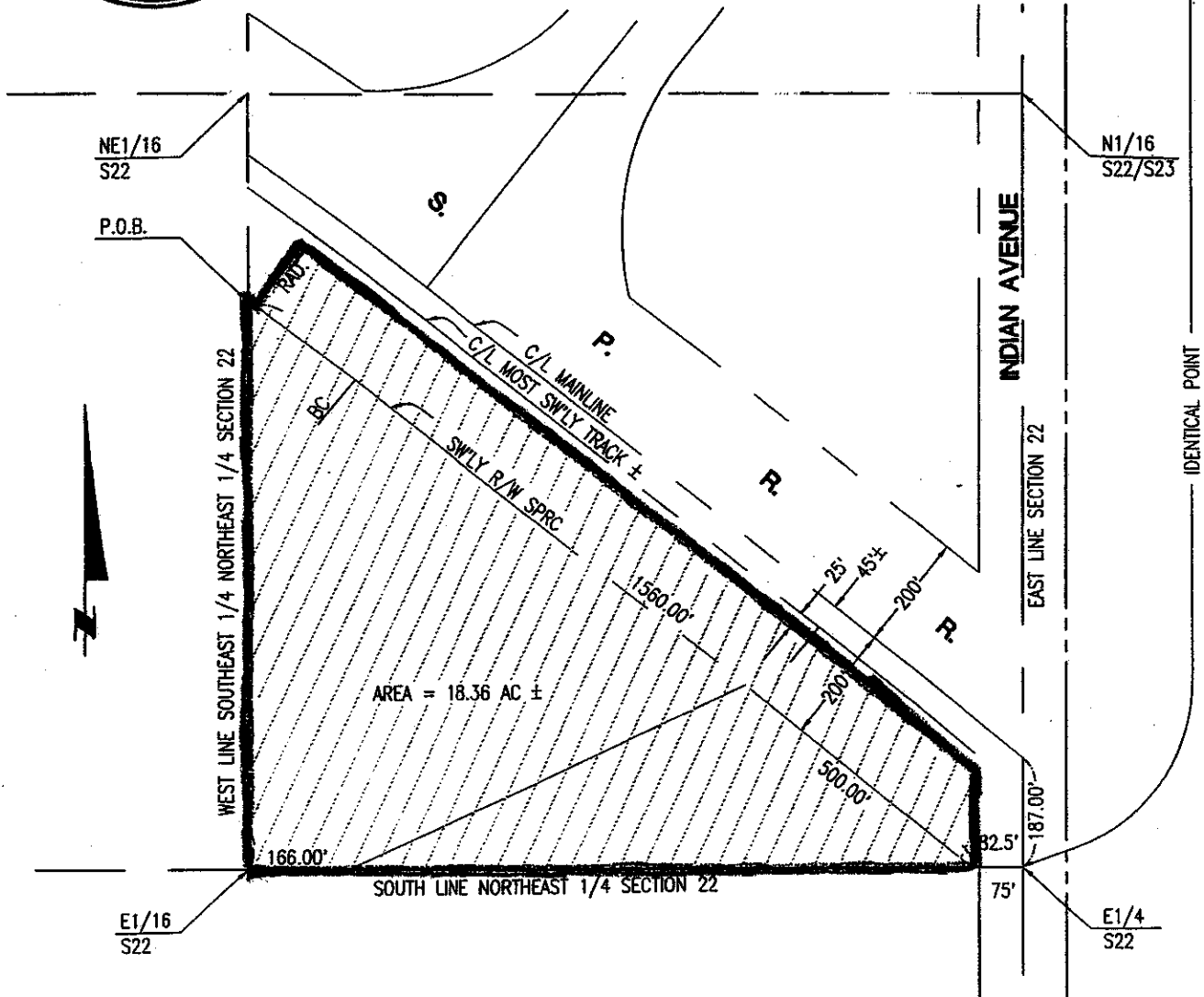
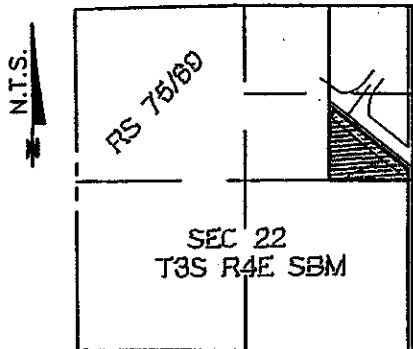
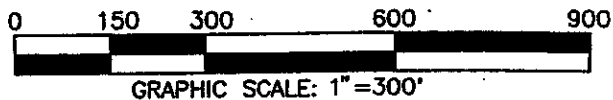
DATE: OCTOBER 1985 SHEET 1 OF 1

TRACT	PARCEL	ACREAGE	FVA PROJECT NO.	INTEREST
	1-A	26.30	FAMP 8-01-081-110	FE
	1-B	24.82	FAMP 8-01-081-020	FE
	1-C	24.82	FAMP 8-01-081-020	FE
	1-D	24.82	FAMP 8-01-081-020	FE
	2	43.13	FAMP 8-01-081-020	FE
	3	17.79	FAMP 8-01-081-020	FE
	4	20.28	FAMP 8-01-081-020	FE
	5	20.31	FAMP 8-01-081-020	FE
	6	76.42	FAMP 8-01-081-020	FE
	7	10.09	FAMP 8-01-081-020	FE
	8	14.85	FAMP 8-01-081-020	FE
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	10	14.85	FAMP 8-01-081-020	FE
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	99	14.85	FAMP 8-01-081-020	FE
	100	14.85	FAMP 8-01-081-020	FE

# EXHIBIT "B"

**NOTE:**

This plat was prepared from record data only and does not represent a survey of the property shown hereon. This map has been approved upon the expressed condition that building permits shall not be issued for any development within this adjustment plat until necessary dedications if any have occurred.



**ASL Consulting Engineers**

3001 EAST TAHQUITZ CANYON WAY, #200, PALM SPRINGS, CA 92282-8801

CARMELLO	(905) 388-2344
OWNE	(714) 727-7999
PALM SPRINGS	(951) 328-6229
POSDEN	(619) 483-0082
SAN BERNARDINO	(909) 381-3888
SAN DIEGO	(619) 673-5505

**PALM SPRINGS RAILROAD SITE**



# COUNTY OF RIVERSIDE



## Board of Supervisors

<b>District 1</b> <i>Vice-Chairman</i>	<b>Bob Buster</b> 951-955-1010
<b>District 2</b>	<b>John F. Tavaglione</b> 951-955-1020
<b>District 3</b>	<b>Jeff Stone</b> 951-955-1030
<b>District 4</b>	<b>John J. Benoit</b> 951-955-1040
<b>District 5</b> <i>Chairman</i>	<b>Marion Ashley</b> 951-955-1050

August 16, 2011

The Honorable Steve Pougnet  
Mayor of the City of Palm Springs  
and members of the city council  
3200 East Tahquitz Canyon Way  
Palm Springs, CA 92262

Dear Mayor and members of the city council:

Please be advised that the Riverside County Board of Supervisors have taken formal action to support the expansion of your Foreign Trade Zone 236. The action of the Board of Supervisors also directs we convey this letter and attached legislative documents to your attention.

Additionally, the Board has directed our agency to allocate \$25,000.00 to assist the city in its effort to expand the Foreign Trade Zone.

Thank you for your willingness to expand your Foreign Trade Zone and we look forward to working with you and your staff.

Sincerely,

Thomas L. Freeman  
Commissioner, Office of Foreign Trade  
County of Riverside/EDA

cc: Supervisor John Benoit  
Supervisor Marion Ashley  
John Raymond, Director/EDD City of Palm Springs

1 Attach: Form 11A-Foreign Trade Zone Expansion

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



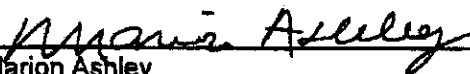
**FROM:** Supervisor Marion Ashley  
Supervisor John J. Benoit  
**SUBJECT:** Expansion of Foreign Trade Zone 236

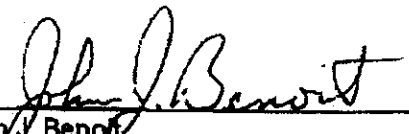
**SUBMITTAL DATE:**  
August 8, 2011

**RECOMMENDED MOTION:** That the Board of Supervisors:

- 1) Direct the EDA Office of Foreign Trade to advocate for the expansion of Foreign Trade Zone 236 within the federal and state governments and to utilize legislative advocates as necessary
- 2) Direct the Assistant County Executive Officer-EDA, Managing Director EDA, and the Commissioner of Foreign Trade-EDA to convey the formal support of this board to the mayor, council, city manager and staff of the City of Palm Springs
- 3) Direct our Economic Development Agency to contribute \$ 25,000.00 from existing funds to the City of Palm Springs to offset the cost in preparation and submittal of the Foreign Trade Zone application to the federal government
- 4) Direct the Assistant County Executive Officer-EDA, Managing Director EDA, and the Commissioner of Foreign Trade to work with the City of Palm Springs to ensure the Foreign Trade Zone expands westward to include the corporate limits of the City of Banning and eastward to include the City of Coachella. With the intent of creating a FTZ that encompasses the majority of the Coachella Valley and significant portions of Cabazon, Whitewater, and Morongo tribal lands.

**BACKGROUND:** Commences on Page 2

  
Marion Ashley  
County Supervisor, 5<sup>th</sup> District

  
John J. Benoit  
County Supervisor, 4<sup>th</sup> District

Prev. Agn. Ref.:

District: 4, 5

Agenda Number:

3.6

Departmental Concurrence

**BACKGROUND:** Foreign Trade Zones are a tremendous benefit to our local business community. They provide duty and excise tax deferral, duty and excise tax avoidance, and re-exports pay no customs duties. Zone to zone transfers of products are duty free, businesses are eligible for inverted tariffs and duty fee reductions. Business benefits from reduced merchandise fee processing; they pay no inventory taxes, and enjoy quota timing advantages. Since March 2009 the County of Riverside has worked aggressively to add to existing foreign trade zones and worked cooperatively with the City of San Diego to expand into Southwest County. We advocated for the expansion and proper staffing of Foreign Trade Zone 244 and have aided business in the process. The expansion of Foreign Trade Zone 236, the oldest FTZ in the county, will be of benefit to businesses in the unincorporated areas of the county and all nine Coachella Valley cities. The expansion also includes a westward push to include the entire corporate limits of the City of Banning, the Morongo tribal lands, Cabazon, and Whitewater. Expansions are limited at this time by the availability of a Department of Homeland Security inspector to service businesses within the FTZ. Expanding this FTZ will assist in business attraction and retention efforts across both the 4<sup>th</sup> and 5 Supervisorial Districts.

09:41 AM PDT on Wednesday, June 8, 2011

By JACK KATZANEK  
The Press-Enterprise

San Diego has agreed to expand its Foreign Trade Zone to southwest Riverside County, a move that could give the cities in that area advantages in recruiting manufacturers and other businesses.

The move, which was announced by county officials Monday, will allow Temecula, Murrieta and Lake Elsinore to offer financial incentives to companies that import and export products. Riverside County, which has been trying to make it easier for companies to operate internationally, now has three trade zones.

"We sort of look at this as a golden triangle for manufacturers," said Tom Freeman, the county's commissioner for the Office of Foreign Trade.

Foreign Trade Zones essentially allow cities and counties to move customs facilities away from ports and airports, where they're typically located. The advantage for manufacturers is that they can import raw materials straight to a facility within a zone and assemble them for export without paying import duties and other fees.

That could encourage these companies to look at the southwest cities when considering a new location.

Freeman said companies that want to be part of a Foreign Trade Zone usually have to pay a membership fee of between \$5,000 and \$8,000.

"I haven't heard about anyone complaining about the fee. It's easily offset by the cost savings," Freeman said. "Also, it's believed it stops businesses that might be considering relocation to take advantage of Foreign Trade Zones in other cities."

There are close to 400 such zones in the country. The one at the former March Air Force Base will have a federally provided U.S. Customs and Border Protection agent. Other zones are in the Palm Springs and Victorville areas.

Freeman said Abbott Laboratories, which had wanted to be part of the March zone, made the approach to San Diego officials, and the company will probably be the first participant to sign up. Abbott manufactures stents used to treat heart ailments and its Temecula factory -- the Inland area's largest in terms of employment -- exports the stents across the Western Hemisphere.

San Diego was willing to share its Foreign Trade Zone with the southwest cities because many of its residents commute to southwest Riverside County, said Lydia Moreno, business incentive program manager for the mayor's office.

"This will secure not only jobs, but it will help advance a regional approach to trade," Moreno said.

The move was popular in Murrieta because the city has been expanding its reach to include international commerce and because it could not participate in the March zone, said Bruce Coleman, the economic development director.

"We'll get together with Temecula and San Diego to see how this works," Coleman said. "We'll want companies we talk to to know the specific benefits."

*Reach Jack Katzanek at 951-368-9553 or at [jkatzanek@PE.com](mailto:jkatzanek@PE.com)*

## **INSTRUCTIONS AND DEFINITIONS FOR GENERAL-PURPOSE ZONE REORGANIZATION/EXPANSION APPLICATIONS**

**After having read these instructions, if you have questions on any aspect of the application process, do not hesitate to contact the FTZ Staff at (202) 482-2862.**

General: The application format consists of a series of questions to answer. (For ease of use, each part of the format is provided as a MS Word document.) Leave each question in place in the document (including its identifying number) and provide your response directly below each question.

Submission of Draft Application: We advise all applicants to send us a complete draft of their application. Complete drafts must include all required answers and documents. The only documents that may be omitted from the draft application – if they are not yet ready – are the final versions of the grantee's resolution and application (transmittal) letter. However, the draft application should include draft copies of the resolution and application (transmittal) letter so that they can be checked for adequacy. We are happy to receive drafts via e-mail ([ftz@trade.gov](mailto:ftz@trade.gov)) to expedite the feedback process.

Confirm Your Existing Sites: All applicants should contact the FTZ Staff at an early stage in the process of drafting an application to confirm that the grantee's records regarding existing FTZ sites match the FTZ Board's records (including the descriptions of the individual sites).

Sites versus Parcels: A "site" is comprised of one or more parcels of land that share an identity (for example, parcels that are within a single industrial park or port/airport complex). If parcels do not share an identity, then they must be treated as separate sites.

Zoning: Sites with inappropriate zoning – such as agricultural, retail, or residential – are not eligible for FTZ status and should not be proposed in any application.

Site Ownership: If the grantee or proposed operator does not own the proposed site, provide either evidence of the proposed operator's right to use the property (such as a signed letter from the proposed operator on its letterhead attesting to its right to use the property) or a letter from the owner of the property concurring on the proposed FTZ designation.

Adjacency Requirement: The FTZ Act and Regulations require each zone site to be within or adjacent to a U.S. Customs and Border Protection (CBP) port of entry (as listed and defined in part 101 of the CBP Regulations - 19 CFR 101.3). That requirement can be satisfied if the zone site is: 1) within the limits of a CBP port of entry

or 2) within 60 statute miles or within 90 minutes' driving time from the outer limits of the boundaries of a CBP port of entry, as verified by the CBP port director.

**Site Numbering:** Use new numbers for wholly new sites. For example, if your FTZ no longer has a Site 2, do not use number 2 for a new site - use the next number in the sequence of unused numbers. However, modification of an existing site can use the number the site has already been assigned.

**Certified copy of state legislation:** The application formats require a "certified copy of the state enabling legislation regarding FTZs" – this is to satisfy the requirement in Section 400.24(d)(1)(i) of the FTZ Board's regulations. There are two options to satisfy this requirement. You may submit either 1) a copy certified by an appropriate state official or 2) a copy printed from the web site that is the state's official source for such information. For option # 2, the grantee must clearly indicate -- in the application (transmittal) letter for example -- that the copy provided is of the relevant legislation in effect at the time of the application's submission to the FTZ Board.

**Pertinent Sections of Grantee's Charter:** The application formats require a copy of the "sections of the grantee's charter (or organization papers) that are pertinent to FTZs" – this is to satisfy the requirement in Section 400.24(d)(1)(ii) of the FTZ Board's regulations. While some grantee organizations' charters have sections specific to FTZs, other grantee organizations' charters only have general or broader authority (that is, nothing specific to FTZs). In that case, the applicant should provide a copy of the section(s) of the grantee's charter that establish the general authority under which the organization applied for its grant of authority to establish a FTZ.

**Certified copy of grantee resolution:** The application formats require "a certified copy of a resolution authorizing the grantee official to sign the application letter" – this is to satisfy the requirement in Section 400.24(d)(1)(iii) of the FTZ Board's regulations. The resolution must be certified by an official of the grantee organization who is in an appropriate position of responsibility to make such a certification.

**Evidence of current legal standing (only applicable to non-public grantees):** If the application involves one of the small number of grantees that are non-public corporations, it also will need to include evidence of the corporation's current legal standing.

**Format of Final Version of Application:** Hard copies of the final version of your application can be stapled or - if the application is too thick to be stapled - submitted in a three-ring binder (not spiral-bound). Use of a three-ring binder greatly facilitates replacement of pages, when necessary.

**Number of Copies:** Please submit one original, three paper copies and an electronic copy (Adobe PDF format preferred). If you cannot submit a PDF-format copy, you may submit a MS Word-format copy. The electronic copy must have all pages in black and white (including scans of the signed versions of all letters) except for maps, which must

be in color. If you have any questions, please contact Elizabeth Whiteman at Elizabeth.Whiteman@trade.gov or (202) 482-0473.

**Filing Fees:** The FTZ Regulations require a \$1,600 filing fee for an "Expansion application. However, the \$1,600 fee is not applicable to an ASF reorganization application that simply proposes to establish the grantee's "Service Area" while maintaining or reducing existing sites (in other words, does not propose at this time to bring FTZ designation to any specific previously undesignated land/building). If the application does request FTZ designation for any specific previously undesignated land/building, then the \$1,600 fee applies. The check should be made payable to "U.S. Department of Commerce ITA." The Federal Tax ID number is 91-2014781.

## **INSTRUCTIONS SPECIFIC TO THE ALTERNATIVE SITE FRAMEWORK**

### Introduction:

The standard format for an application to reorganize an existing FTZ under the Alternative Site Framework (ASF) includes several relatively straightforward steps. It has been designed to minimize the burden on a grantee (particularly for new documentation). Because justification for existing FTZ sites was provided in a prior application(s), you generally will not be asked to rejustify existing sites.

The ASF application format is comprised of three parts:

- Part One is all you will need to complete if the proposed reorganization of your FTZ only involves existing sites -- with no proposed changes to boundaries -- for which you will now be requesting Magnet designation (see definitions below).
- Part Two is needed only if you propose Magnet designation for sites that are new or that involve modifications to the boundaries of existing sites.
- Part Three is used only if you propose Usage-Driven designation for one or more sites.

If you have questions on any aspect of the application process, do not hesitate to contact the FTZ Staff at (202) 482-2862.

### Definition of Key ASF-related Terms:

"Service Area" is the geographic area (such as specific counties) where you intend to be able to propose future FTZ sites. If approved under the ASF, your zone could serve sites throughout the Service Area based on companies' needs for FTZ designation.

"Magnet" sites are sites intended to attract multiple potential FTZ operators/users.



“Usage-Driven” sites are designated to meet a specific operator/user’s present need for FTZ designation (rather than to attract potential future operators/users). A Usage-Driven site is tied to the specific operator/user for which it was designated and could not be used by any other entity. However, a site vacated by one operator/user could easily be designated as a Usage-Driven site for another operator/user through an additional simple minor boundary modification (MBM) action.

“Activation Limit” is a cap on the amount of space that can be in CBP “activated” status simultaneously. The FTZ Board’s practice involves a 2,000-acre activation limit for any FTZ grantee.

A “Sunset Limit” for a site means FTZ designation self-removes if there is no FTZ activity at the site before the sunset date. For Magnet sites, the default sunset period is 5 years (with variation possible based on circumstances, including possible permanent designation for one Magnet site). Usage-Driven sites have a three-year sunset period. FTZ activity at a site during the sunset period resets the sunset date for an additional 5 years (Magnet) or additional 3 years (Usage-Driven).

“Transitional Phase” is an initial period allowed for any grantee with more than six existing sites (the general goal for maximum number of Magnet sites under the ASF). The Transitional Phase enables a grantee to bring any number of existing FTZ sites into the ASF as Magnet sites without having to justify exceeding the ASF’s general goals. “Sunset” limits (with a five-year default period) would result in the automatic removal of sites which had not been used during the Transitional Phase.

### Major Steps in Drafting Your ASF Application:

#### **Step # 1: Define the geographic “Service Area” your zone will serve.**

The most straightforward approach to a Service Area for many grantees would be to name the counties in which they intend to be able to propose FTZ sites. Once approved under the ASF, your zone could then serve sites throughout the Service Area based on operator/user needs for FTZ designation. Any proposed Service Area must be consistent with the state enabling legislation and the grantee organization’s charter and comply with the “adjacency” requirement of the FTZ Board’s regulations – within 60 miles/90 minutes driving time from CBP Port of Entry boundaries. (Note that if there are other FTZs in your CBP Port of Entry, the FTZ Board’s evaluation of your proposal may involve questions of the “convenience of commerce” -- 19 U.S.C. 81b(b).)

#### **Step # 2: Indicate specific FTZ sites to be served initially by your FTZ.**

Magnet sites: At the time that you reorganize your FTZ under the ASF, you will detail any specific Magnet sites proposed for your zone. Although there is a general long-term goal for each zone of no more than six Magnet sites, a grantee can propose Magnet designation for more than six existing sites during an initial Transitional Phase.

At the end of the Transitional Phase, a standard "sunset" test would remove sites which had not been used for FTZ activity.

Usage-Driven sites (optional at time of reorganization): If you have one or more specific companies ready to pursue the use of FTZ procedures, you can also request Usage-Driven designation(s) at the time of your reorganization. Otherwise, you will be able to use a simple minor boundary modification (MBM) mechanism to designate Usage-Driven sites at any point after approval of your ASF reorganization application.

SITE INDEX

## IMPORT ADMINISTRATION

SEARCH IA

## List of Zones Under the Alternative Site Framework (ASF)

(August 16, 2011)

## APPROVED

State	Zone Number	Location	Service Area
Arizona	75	Phoenix	Maricopa County and portions of Pinal and Yavapai Counties
	174	Tucson	Pima County
Arkansas	14	Little Rock	Clark, Conway, Dallas, Faulkner, Garland, Grant, Hot Spring, Jefferson, Lonoke, Montgomery, Nevada, Pike, Pulaski, Pope, Saline, Yell and White Counties
California	3	San Francisco	City and County of San Francisco and San Mateo County
	50	Long Beach	Orange County and portions of Los Angeles and San Bernardino Counties
	153	San Diego	City and County of San Diego and the western portion of Riverside County
	244	Riverside	Western Riverside County
Florida	64	Jacksonville	Baker, Clay, Columbia, Duval and Nassau Counties
Georgia	26	Atlanta	Haralson, Paulding, Polk, Floyd, Bartow, Chattooga, Gordon, Pickens, Gilmer, Walker, Whitfield, Murray, Forsyth, Dawson, Hall, Banks, Lumpkin, Fulton, DeKalb, Gwinnett,

			Cobb, Douglas, Clayton, Henry, Fayette, Rockdale, Cherokee, Carroll, Coweta, Heard, Troup, Meriwether, Pike, Spalding, Butts, Lamar, Upson, Jasper, Newton, Morgan, Greene, Walton, Oconee, Clarke, Barrow, Jackson, Bibb, Crawford, Jones, Monroe, Putnam, Richmond, Harris, Talbot and Muscogee in their entirety and portions of White, Franklin, Peach, Houston, and Twiggs Counties
	104	Savannah	Bulloch, Bryan, Chatham, Effingham, Evans, Liberty, Long and Screven Counties
	144	Brunswick	Appling, Atkinson, Brantley, Camden, Charlton, Coffee, Glynnm Jeff Davis, McIntosh, Ware and Wayne Counties
<b>Illinois</b>	22	Chicago	Cook, Du Page, Grundy, Kankakee, Kendall, Lake and Will Counties and portions of McHenry and Kane Counties
	176	Rockford	Winnebago, Stephenson, Ogle, Lee, DeKalb, and Boone Counties, and portions of Bureau, McHenry, Kane, Putnam and LaSalle Counties
<b>Indiana</b>	72	Indianapolis	Bartholomew, Benton, Boone, Carroll, Cass, Clay, Clinton, Decatur, Delaware, Fayette, Fountain, Franklin, Grant, Greene, Hamilton, Hancock,

			Hendricks, Henry, Howard, Jennings, Johnson, Lawrence, Madison, Marion, Miami, Mouroe, Montgomery, Morgan, Owen, Parke, Putnam, Rush, Shelby, Tippecanoe, Tipton, Vigo, Warren, Wayne and White Counties, Indiana
	125	South Bend	St. Joseph, Elkhart, Kosciusko, Marshall, LaPorte and Starke Counties
	152	Burns Harbor	Lake, Porter, La Porte, Newton, Jasper, Starke, Pulaski and Fulton Counties
	170	Clark County	Jackson, Washington, Harrison, Floyd, Clark and Scott Counties
	177	Evansville	Vanderburgh, Dubois, Pike, Gibson, Knox, Daviess, Spencer, Warrick, Posey Sullivan, Perry, Crawford, Orange and Martin Counties
	182	Fort Wayne	Adams, Allen, DeKalb, Huntington, Noble, Wabash, Wells and Whitley Counties
<b>Kansas</b>	17	Kansas City	Wyandotte, Johnson, Douglas, Shawnee, Leavenworth and Miami Counties
<b>Kentucky</b>	47	Boone County	Boone, Kenton and Campbell Counties
<b>Louisiana</b>	2	New Orleans	Orleans, Jefferson and St. Bernard Parishes
	279	Terrebonne Parish	Terrebonne Parish
<b>Minnesota</b>	51	Duluth	Carlton County and portions of Itasca, Lake, and St. Louis Counties

<b>Missouri</b>	102	St. Louis	City of St. Louis and St. Louis County
<b>Montana</b>	274	Butte-Silver Bow	Butte-Silver Bow County
<b>Nevada</b>	126	Reno	Reno
<b>New York</b>	37	Orange County	Orange County
	54	Clinton County	Clinton County
	121	Albany	Albany, Columbia, Greene, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Warren, and Washington Counties
<b>Ohio</b>	46	Cincinnati	Hamilton, Butler, Warren, Brown and Clermont Counties
	138	Columbus	Champaign, Clark, Coshocton, Crawford, Delaware, Fairfield, Franklin, Hocking, Knox, Licking, Logan, Madison, Marion, Morrow, Muskingum, Perry, Pickaway, Pike, Ross, Union, Vinton and Wyandot Counties, as well as portions of Guemsey, Athens and Highland Counties
	181	Akron/Canton	Ashtabula, Trumbull, Mahoning, Columbiana, Portage, Summit, Stark, Medina, Wayne and Richland Counties
<b>South Carolina</b>	38	Spartanburg County	Greenville, Spartanburg, Cherokee, Oconee, Union, Anderson and Laurens Counties
<b>Texas</b>	39	Dallas/Fort Worth	Dallas, Tarrant, Kaufman, Collin, Grayson and Denton Counties
	113	Ellis County	Ellis County

	196	Fort Worth	Alliance Corridor area of Denton and Tarrant Counties
	234	Gregg County	Gregg County
	260	Lubbock	Garza, Hale, Hockley, Lubbock and Terry Counties
<b>Washington</b>	5	Seattle	King and Snohomish Counties
	86	Tacoma	Pierce County
	203	Moses Lake	Benton, Chelan, Columbia, Douglas, Franklin, Grant, Kittitas, Lincoln, Walla Walla, and portions of Okanogan and Yakima Counties
	216	Olympia	Thurston County and portions of Lewis, Mason and Kitsap Counties

PENDING

State	Zone Number	Location	Proposed Service Area
<b>Arizona</b>	277	Western Maricopa County	Western Maricopa County
<b>California</b>	205	Port Hueneme	Ventura County
<b>Florida</b>	136	Brevard County	Brevard County
	215	Sebring	DeSoto, Glades, Hardee, Hendry, Highlands and Okeechobee Counties and the Cities of Belle Glade and Pahokee, Florida
<b>Kansas</b>	161	Sedgwick County	Butler, Harvey, McPherson, Reno, Saline, Sedgwick and Sumner Counties
<b>Louisiana</b>	124	Gramercy	St. Charles, St. John the Baptist, St. James, La Fourche and St. Mary Parishes

<b>Maryland</b>	74	Baltimore	City of Baltimore and the Counties of Anne Arundel, Baltimore, Cecil and Harford, Maryland
<b>Minnesota</b>	119	Minneapolis-St. Paul	Isanti, Chisago, Sherburne, Wright, Anoka, Washington, Ramsey, Hennepin, McLeod, Carver, Scott, Dakota, Sibley, LeSueur, and Rice Counties
<b>Missouri</b>	225	Springfield	Barry, Barton, Cedar, Christian, Dade, Dallas, Douglas, Greene, Hickory, Howell (partial), Jasper, Laclede, Lawrence, McDonald, Newton, Ozark, Polk, Stone, Taney, Texas (partial), Vernon, Webster and Wright Counties
<b>Nebraska</b>	59	Lincoln	Lancaster, Otoe and Seward Counties
<b>New York</b>	141	Monroe County	Monroe County
<b>Oklahoma</b>	53	Rogers County	Rogers County
	106	Oklahoma City	Blaine, Caddo, Canadian, Cleveland, Comanche, Custer, Garfield, Garvin, Grady, Kay, Kingfisher, Lincoln, Logan, McClain, Noble, Oklahoma, Payne, Pontotoc, Pottawatomie, Seminole and Stephens Counties
<b>Tennessee</b>	77	Memphis	Shelby County
<b>Virginia</b>	137	Washington Dulles International Airport	Frederick, Clarke, Loudoun, Fairfax, Fauquier, Prince William, and Arlington Counties and the City of Alexandria



<b>Wisconsin</b>	<b>41</b>	<b>Milwaukee</b>	<b>Kenosha, Milwaukee and Racine Counties</b>
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