

1 **AGREEMENT FOR SERVICES**

2 **CONSULTANT**

3 THIS AGREEMENT FOR SERVICES (“Agreement”), made and entered into effective the  
4 \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the **County of Imperial**, a political subdivision of  
5 the State of California, by and through its Executive Office, (“COUNTY”) and **CONSULTANT, XXXX**  
6 licensed to do business within the state of California, (“CONSULTANT”) (individually, “Party;”  
7 collectively, “Parties”) shall be as follows:

8 **RECITALS**

9 **WHEREAS**, COUNTY desires to retain a qualified individual, firm or business entity to provide  
10 professional services for the 2021 redistricting of Imperial County supervisorial districts following the 2020  
11 federal decennial census (“Project”); and

12 **WHEREAS**, CONSULTANT represents that it is qualified and experienced to perform the Project  
13 services; and

14 **WHEREAS**, COUNTY desires to engage CONSULTANT to provide services by reason of its  
15 qualifications and experience for performing such services, and CONSULTANT has offered to provide the  
16 services required for the Project.

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

19 **1. INCORPORATION OF RECITALS.**

20 Parties hereby certify that to the best of their knowledge, the above recitals are true and correct. The  
21 above recitals are hereby adopted and incorporated within this Agreement.

22 **2. DEFINITIONS.**

23 **2.1.** “Request for Proposal” or “RFP” shall mean that document that describes the Project and  
24 project requirements to prospective bidders entitled, “RFP NAME” dated DATE OF RFP.  
25 The Request for Proposal is attached hereto as **Exhibit “A”** and incorporated herein by this  
26 reference.

27 **2.2.** “Proposal” shall mean CONSULTANT’s document entitled, “PROPOSAL NAME,” dated  
28 DATE OF PROPOSAL, and submitted to COUNTY’s Executive Office. The Proposal is

1 attached hereto as **Exhibit “B”** and incorporated herein by reference.

2 **3. CONTRACT COORDINATION.**

3 **3.1.** COUNTY’s Executive Officer, or his/her designee, shall be the representative of  
4 COUNTY for all purposes under this Agreement. COUNTY’s Executive Officer, or  
5 his/her designee, is hereby designated as the Contract Manager for COUNTY. He/she  
6 shall supervise the progress and execution of this Agreement.

7 **3.2.** CONSULTANT shall assign a single Contract Manager to have overall responsibility for  
8 the progress and execution of this Agreement. Should circumstances or conditions  
9 subsequent to the execution of this Agreement require a substitute Contract Manager for any  
10 reason, the Contract Manager designee shall be subject to the prior written acceptance and  
11 approval of COUNTY’s Contract Manager.

12 **4. DESCRIPTION OF WORK.**

13 CONSULTANT shall provide all materials and labor to perform this Agreement consistent with the  
14 RFP and Proposal, as set forth in **Exhibits “A” and “B.”** In the event of a conflict amongst this Agreement,  
15 the RFP and the Proposal, the RFP shall take precedence over the Proposal, and the Agreement shall take  
16 precedence over both.

17 **5. WORK TO BE PERFORMED BY CONSULTANT.**

18 **5.1.** CONSULTANT shall comply with all terms, conditions, and requirements of the RFP, the  
19 Proposal, and this Agreement.

20 **5.2.** CONSULTANT shall perform such other tasks as necessary and proper for the full  
21 performance of the obligations assumed by CONSULTANT hereunder.

22 **5.3.** CONSULTANT shall:

23 **5.3.1.** Procure all permits and licenses, pay all charges and fees, and give all notices that  
24 may be necessary and incidental to the due and lawful prosecution of the services  
25 to be performed by CONSULTANT under this agreement;

26 **5.3.2.** Keep itself fully informed of all existing and proposed federal, state and local laws,  
27 ordinances, regulations, orders and decrees which may affect those engaged or  
28 employed under this Agreement;

1           **5.3.3.** At all times observe and comply with, and cause all of its employees to observe and  
2   comply with all of said laws, ordinances, regulations, orders and decrees mentioned  
3   above; and

4           **5.3.4.** Immediately report to COUNTY’s Contract Manager in writing any discrepancy  
5   or inconsistency it discovers in said laws, ordinances, regulations, orders and  
6   decrees mentioned above in relation to any plans, drawings, specifications or  
7   provisions of this Agreement.

8   **6.   REPRESENTATIONS BY CONSULTANT.**

9           **6.1.** CONSULTANT understands and agrees that COUNTY has limited knowledge in the  
10   multiple areas specified in the Proposal. CONSULTANT has represented itself to be an  
11   expert in these fields and understands that COUNTY is relying upon such representation.

12           **6.2.** CONSULTANT represents and warrants that it is a lawful entity possessing all required  
13   licenses and authorities to do business in the State of California and perform all aspects  
14   of this Agreement.

15           **6.3.** CONSULTANT shall not commence any work under this Agreement or provide any  
16   other services, or materials, in connection therewith until CONSULTANT has received  
17   written authorization from COUNTY’s Contract Manager to do so.

18           **6.4.** CONSULTANT represents and warrants that the people executing this Agreement on behalf  
19   of CONSULTANT have the authority of CONSULTANT to sign this Agreement and bind  
20   CONSULTANT to the performance of all duties and obligations assumed by  
21   CONSULTANT herein.

22           **6.5.** CONSULTANT represents and warrants that any employee, subcontractor, and/or agent  
23   who will be performing any of the duties and obligations of CONSULTANT herein possess  
24   all required licenses and authorities, as well as the experience and training, to perform such  
25   tasks.

26           **6.6.** CONSULTANT represents and warrants that the allegations contained in the Proposal are  
27   true and correct.

28           **6.7.** CONSULTANT understands that COUNTY considers the representations made herein

1 to be material and would not enter into this Agreement with CONSULTANT if such  
2 representations were not made.

3 **6.8.** CONSULTANT understands and agrees not to discuss this Agreement or work performed  
4 pursuant to this Agreement with anyone not a party to this Agreement without the prior  
5 permission of COUNTY. CONSULTANT further agrees to immediately advise  
6 COUNTY of any contacts or inquiries made by anyone not a party to this Agreement with  
7 respect to work performed pursuant to this Agreement.

8 **6.9.** Prior to accepting any work under this Agreement, CONSULTANT shall perform a due  
9 diligence review of its files and advise COUNTY of any conflict or potential conflict  
10 CONSULTANT may have with respect to the work requested.

11 **6.10.** CONSULTANT understands and agrees that in the course of performance of this  
12 Agreement, CONSULTANT may be provided with information or data considered by the  
13 owner or the COUNTY to be confidential. COUNTY shall clearly identify such  
14 information and/or data as confidential. CONSULTANT shall take all necessary steps  
15 necessary to maintain such confidentiality including but not limited to restricting the  
16 dissemination of all material received to those required to have such data in order for  
17 CONSULTANT to perform under this Agreement.

18 **6.11.** CONSULTANT represents that the personnel dedicated to this project, as identified in  
19 CONSULTANT's Proposal, will be the people to perform the tasks identified therein.  
20 CONSULTANT will not substitute other personnel or engage any contractors to work on  
21 any tasks identified herein without prior written notice to COUNTY.

22 **7. TERM OF AGREEMENT.**

23 This Agreement shall commence on the date first written above and shall remain in effect until  
24 the services provided as outlined in Section 4, ("DESCRIPTION OF WORK"), have been completed,  
25 unless otherwise modified or terminated as provided for in this Agreement.

26 **8. COMPENSATION.**

27 **8.1.** The total compensation payable under this Agreement shall not exceed **COMPENSATION**  
28 **(\$XXX)**, unless otherwise previously agreed to in writing by COUNTY.

1           **8.2.** The fee for any additional services required by COUNTY will be computed either on a  
2 negotiated lump sum basis or upon actual hours and expenses incurred by  
3 CONSULTANT and based on CONSULTANT's current standard rates as set forth in the  
4 Proposal. Additional services or costs will not be paid without a prior written agreement  
5 between the Parties.

6           **8.3.** Except as provided under Paragraphs 8.1 and 8.2, COUNTY shall not be responsible to  
7 pay CONSULTANT any compensation, out of pocket expenses, fees, reimbursement of  
8 expenses or other remuneration.

9           **9.     PAYMENT.**

10           **9.1.** CONSULTANT shall bill COUNTY on a time and material basis as set forth in **Exhibit**  
11 **"B."** COUNTY shall pay CONSULTANT for completed and approved services upon  
12 presentation of its itemized billing.

13           **9.2.** COUNTY shall have the right to retain five percent (5%) of the total of amount of each  
14 invoice, not to exceed five percent (5%) of the total compensation amount of the completed  
15 project. "Completion of the Project" is when the work to be performed has been completed  
16 in accordance with this Agreement, as determined by COUNTY, and all subcontractors, if  
17 any, have been paid in full by CONSULTANT. Upon completion of the Project,  
18 CONSULTANT shall bill COUNTY the retention for payment by COUNTY.

19           **10.   METHOD OF PAYMENT.**

20           CONSULTANT shall at any time prior to the fifteenth (15<sup>th</sup>) day of any month, submit to COUNTY  
21 a written claim for compensation for services performed. The claim shall be in a format approved by  
22 COUNTY. No payment shall be made by COUNTY prior to the claims being approved in writing by  
23 COUNTY's Contract Manager or his/her designee. CONSULTANT may expect to receive payment within  
24 a reasonable time thereafter and in any event in the normal course of business within thirty (30) days after  
25 the claim is submitted.

26           **11.   TIME FOR COMPLETION OF THE WORK.**

27           The Parties agree that time is of the essence in the performance of this Agreement. Program  
28 scheduling shall be as described in the Exhibits unless revisions are approved by both COUNTY's

1 Contract Manager and CONSULTANT's Contract Manager. Time extensions may be allowed for delays  
2 caused by COUNTY, other governmental agencies or factors not directly brought about by the  
3 negligence or lack of due care on the part of CONSULTANT.

4 **12. MAINTENANCE AND ACCESS OF BOOKS AND RECORDS.**

5 CONSULTANT shall maintain books, records, documents, reports and other materials developed  
6 under this Agreement as follows:

7 **12.1.** CONSULTANT shall maintain books, records, documents, reports and other materials  
8 developed under this Agreement as follows:

9 **12.2.** CONSULTANT shall maintain all ledgers, books of accounts, invoices, vouchers,  
10 canceled checks, and other records relating to CONSULTANT's charges for services or  
11 expenditures and disbursements charged to COUNTY for a minimum period of three (3)  
12 years, or for any longer period required by law, from the date of final payment to  
13 CONSULTANT pursuant to this Agreement.

14 **12.3.** CONSULTANT shall maintain all reports, documents, and records, which demonstrate  
15 performance under this Agreement for a minimum period of five (5) years, or for any  
16 longer period required by law, from the date of termination or completion of this  
17 Agreement.

18 **12.4.** Any records or documents required to be maintained by CONSULTANT pursuant to this  
19 Agreement shall be made available to COUNTY for inspection or audit at any time during  
20 CONSULTANT's regular business hours provided that COUNTY provides  
21 CONSULTANT with seven (7) days advanced written or e-mail notice. Copies of such  
22 documents shall, at no cost to COUNTY, be provided to COUNTY for inspection at  
23 CONSULTANT's address indicated for receipt of notices under this Agreement.

24 **13. SUSPENSION OF AGREEMENT.**

25 COUNTY's Contract Manager shall have the authority to suspend this Agreement, in whole or  
26 in part, for such period as deemed necessary due to unfavorable conditions or to the failure on the part  
27 of CONSULTANT to perform any provision of this Agreement. CONSULTANT will be paid the  
28 compensation due and payable to the date of suspension.

1 **14. TERMINATION.**

2 COUNTY retains the right to terminate this Agreement for any reason by notifying  
3 CONSULTANT in writing twenty (20) days prior to termination and by paying the compensation due  
4 and payable to the date of termination; provided, however, if this Agreement is terminated for fault of  
5 CONSULTANT, COUNTY shall be obligated to compensate CONSULTANT only for that portion of  
6 CONSULTANT's services which are of benefit to COUNTY. Said compensation is to be arrived at by  
7 mutual agreement between COUNTY and CONSULTANT; should the Parties fail to agree on said  
8 compensation, an independent arbitrator shall be appointed and the decision of the arbitrator shall be  
9 binding upon the Parties.

10 **15. INSPECTION.**

11 CONSULTANT shall furnish COUNTY with every reasonable opportunity for COUNTY to  
12 ascertain that the services of CONSULTANT are being performed in accordance with the requirements  
13 and intentions of this Agreement. All work done and materials furnished, if any, shall be subject to  
14 COUNTY's Contract Manager's inspection and approval. The inspection of such work shall not relieve  
15 CONSULTANT of any of its obligations to fulfill its Agreement as prescribed.

16 **16. OWNERSHIP OF MATERIALS.**

17 All original drawings, videotapes, studies, sketches, computations, reports, information, data and  
18 other materials given to or prepared or assembled by or in the possession of CONSULTANT pursuant  
19 to this Agreement shall become the permanent property of COUNTY and shall be delivered to COUNTY  
20 upon demand, whether or not completed, and shall not be made available to any individual or  
21 organization without the prior written approval of COUNTY.

22 **17. INTEREST OF CONSULTANT.**

23 **17.1.** CONSULTANT covenants that it presently has no interest, and shall not acquire any  
24 interest, direct or indirect, financial or otherwise, which would conflict in any manner or  
25 degree with the performance of the services hereunder.

26 **17.2.** CONSULTANT covenants that, in the performance of this Agreement, no sub-contractor  
27 or person having such an interest shall be employed.

28 **17.3.** CONSULTANT certifies that no one who has or will have any financial interest under

1 this Agreement is an officer or employee of COUNTY.

2 **18. INDEMNIFICATION.**

3 CONSULTANT shall hold harmless, defend, and indemnify COUNTY and its officers, officials,  
4 employees and volunteers from and against any and all liability, loss, damage, expense, costs (including  
5 without limitation costs and fees of litigation) of every nature arising out of or in connection with  
6 CONSULTANT's performance of work hereunder or its failure to comply with any of its obligations  
7 contained in this Agreement, except such loss or damage which was caused by the sole negligence or  
8 willful misconduct of COUNTY.

9 **19. INDEPENDENT CONTRACTOR.**

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

- 13 **19.1.** CONSULTANT is not an employee or agent of COUNTY and is only responsible for the  
14 requirements and results specified by this Agreement or any other agreement.
- 15 **19.2.** CONSULTANT shall be responsible to COUNTY only for the requirements and results  
16 specified by this Agreement and except as specifically provided in this Agreement, shall  
17 not be subject to COUNTY's control with respect to the physical actions or activities of  
18 CONSULTANT in fulfillment of the requirements of this Agreement.
- 19 **19.3.** CONSULTANT is not, and shall not be, entitled to receive from, or through, COUNTY,  
20 and COUNTY shall not provide, or be obligated to provide, CONSULTANT with  
21 Workers' Compensation coverage or any other type of employment or worker insurance  
22 or benefit coverage required or provided by any Federal, State or local law or regulation  
23 for, or normally afforded to, an employee of COUNTY.
- 24 **19.4.** CONSULTANT shall not be entitled to have COUNTY withhold or pay, and COUNTY  
25 shall not withhold or pay, on behalf of CONSULTANT, any tax or money relating to the  
26 Social Security Old Age Pension Program, Social Security Disability Program, or any  
27 other type of pension, annuity, or disability program required or provided by any Federal,  
28 State or local law or regulation.



1           **19.5.** CONSULTANT shall not be entitled to participate in, nor receive any benefit from, or  
2           make any claim against any COUNTY fringe program, including, but not limited to,  
3           COUNTY's pension plan, medical and health care plan, dental plan, life insurance plan,  
4           or any other type of benefit program, plan, or coverage designated for, provided to, or  
5           offered to COUNTY's employees.

6           **19.6.** COUNTY shall not withhold or pay, on behalf of CONSULTANT, any Federal, State, or  
7           local tax, including, but not limited to, any personal income tax, owed by  
8           CONSULTANT.

9           **19.7.** CONSULTANT is, and at all times during the term of this Agreement, shall represent  
10          and conduct itself as an independent contractor, not as an employee of COUNTY.

11          **19.8.** CONSULTANT shall not have the authority, express or implied, to act on behalf of, bind  
12          or obligate COUNTY in any way without the written consent of COUNTY.

13 **20. INSURANCE.**

14          **20.1.** CONSULTANT hereby agrees, at its sole cost and expense, to obtain and maintain in full  
15          force during the entire Term of this Agreement (or extended term thereof) the following  
16          types of insurance as detailed below:

17               **20.1.1. Commercial General Liability.** Coverage in a minimum amount of one million  
18               dollars (\$1,000,000) combined single limit to any one person, and two million  
19               dollars (\$2,000,000) aggregate for any one accident, including personal injury,  
20               death, and property damage.

21               **20.1.2. Professional Liability.** Errors and Omissions coverage in a minimum amount of  
22               two million dollars (\$2,000,000) per person, per occurrence.

23               **20.1.3. Automobile Liability.** Coverage in a minimum amount of one million dollars  
24               (\$1,000,000), including owned, non-owned, and hired vehicles.

25               **20.1.4. Workers' Compensation.**

26                       **(a)** Coverage, if applicable, in full compliance with California statutory  
27                       requirements, for all employees of CONSULTANT.

28                       **(b)** Prior to the commencement of work, CONSULTANT shall sign and file

1 with COUNTY the following certification: “I am aware of the provisions  
2 of California Labor Code §§3700 et seq. which require every employer to  
3 be insured against liability for workers’ compensation or to undertake self-  
4 insurance in accordance with the provisions of that code, and I will comply  
5 with such provisions before commencing the performance of the work of  
6 this contract.”

7 (c) This certification is included in this Agreement and signature of the  
8 Agreement shall constitute signing and filing of the certificate.

9 (d) CONSULTANT understands and agrees that any and all employees,  
10 regardless of hire date, shall be covered by Workers’ Compensation  
11 pursuant to statutory requirements prior to beginning work on the Project.

12 (e) Workers’ Compensation coverage shall not be required if CONSULTANT  
13 does not, at any time, have any employees during the term of this  
14 Agreement, and any extension thereof.

15 (i) If CONSULTANT does not have any employees, initial  
16 here\_\_\_\_\_.

17 (ii) Should this status change, CONSULTANT shall immediately  
18 notify COUNTY in writing and comply with the insurance  
19 requirements above.

20 **20.1.5. Employers Liability.**

21 (a) Coverage, if applicable, in the minimum amount of one million dollars  
22 (\$1,000,000) per accident for bodily injury and disease.

23 (b) Employer’s Liability coverage shall not be required if CONSULTANT  
24 does not, at any time, have any employees during the term of this  
25 Agreement, and any extension thereof.

26 (i) If CONSULTANT does not have any employees, initial  
27 here\_\_\_\_\_.

28 (ii) Should this status change, CONSULTANT shall immediately

1 notify COUNTY in writing and comply with the insurance  
2 requirements above.

3 **20.2. Special Insurance Requirements.** All insurance required shall:

4 **20.2.1.** Be procured from California admitted insurers (licensed to do business in  
5 California) with a current rating by Best's Key Rating Guide, acceptable to  
6 COUNTY. A rating of at least A-VII shall be acceptable to COUNTY; lesser  
7 ratings must be approved in writing by COUNTY.

8 **20.2.2.** Be primary coverage as respects COUNTY and any insurance or self-insurance  
9 maintained by COUNTY shall be in excess of CONSULTANT's insurance  
10 coverage and shall not contribute to it.

11 **20.2.3.** Name the County of Imperial and its officers, employees, and volunteers as  
12 additional insured on all policies, except Workers' Compensation insurance and  
13 Errors & Omissions insurance, and provide that COUNTY may recover for any  
14 loss suffered by COUNTY due to CONSULTANT's negligence.

15 **20.2.4.** State that it is primary insurance and regards COUNTY as an additional insured  
16 and contains a cross-liability or severability of interest clause.

17 **20.2.5.** Not be canceled, non-renewed or reduced in scope of coverage until after thirty  
18 (30) days written notice has been given to COUNTY. CONSULTANT may not  
19 terminate such coverage until it provides COUNTY with proof that equal or better  
20 insurance has been secured and is in place. Cancellation or change without prior  
21 written consent of COUNTY shall, at the option of COUNTY, be grounds for  
22 termination of this Agreement.

23 **20.2.6.** If this Agreement remains in effect more than one (1) year from the date of its  
24 original execution, COUNTY may, at its sole discretion, require an increase to  
25 liability insurance to the level then customary in similar COUNTY Agreements  
26 by giving sixty (60) days notice to CONSULTANT.

27 **20.3. Additional Insurance Requirements.**

28 **20.3.1.** COUNTY is to be notified immediately of all insurance claims. COUNTY is also

1 to be notified if any aggregate insurance limit is exceeded.

2 **20.3.2.** The comprehensive or commercial general liability shall contain a provision of  
3 endorsements stating that such insurance:

- 4 (a) Includes contractual liability;
- 5 (b) Does not contain any exclusions as to loss or damage to property caused  
6 by explosion or resulting from collapse of buildings or structures or  
7 damage to property underground, commonly referred to by insurers as the  
8 “XCU Hazards;”
- 9 (c) Does not contain a “pro rata” provision which looks to limit the insurer’s  
10 liability to the total proportion that its policy limits bear to the total  
11 coverage available to the insured;
- 12 (d) Does not contain an “excess only” clause which require the exhaustion of  
13 other insurance prior to providing coverage;
- 14 (e) Does not contain an “escape clause” which extinguishes the insurer’s  
15 liability if the loss is covered by other insurance;
- 16 (f) Includes COUNTY as an additional insured; and
- 17 (g) States that it is primary insurance and regards COUNTY as an additional  
18 insured and contains a cross-liability or severability of interest clause.

19 **20.4.** Deposit of Insurance Policy. Promptly on issuance, reissuance, or renewal of any  
20 insurance policy required by this Agreement, CONSULTANT shall, if requested by  
21 COUNTY, provide COUNTY satisfactory evidence that insurance policy premiums have  
22 been paid together with a duplicate copy of the policy or a certificate evidencing the  
23 policy and executed by the insurance company issuing the policy or its authorized agent.

24 **20.5.** Certificates of Insurance.

25 **20.5.1.** CONSULTANT agrees to provide COUNTY with the following insurance  
26 documents on or before the effective date of this Agreement:

- 27 (a) Complete copies of certificates of insurance for all required coverages  
28 including additional insured endorsements shall be attached hereto as

1                                   **Exhibit “C”** and incorporated herein.

2                   **(b)** The documents enumerated in this Paragraph shall be sent to the  
3 following:

4   County of Imperial  
5   Risk Management Department  
6   940 Main Street, Suite 101  
7   El Centro, CA 92243

8   County of Imperial  
9   County Executive Office  
10    940 Main Street, Suite 208  
11    El Centro, CA 92243

12           **20.6.** Additional Insurance. Nothing in this, or any other provision of this Agreement, shall be  
13 construed to preclude CONSULTANT from obtaining and maintaining any additional  
14 insurance policies in addition to those required pursuant to this Agreement.

15   **21.**   ASSIGNMENT.

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

19   **22.**   NON-DISCRIMINATION.

20           **22.1.** During the performance of this Agreement, CONSULTANT and its subcontractors shall  
21 not unlawfully discriminate, harass or allow harassment against any employee or  
22 applicant for employment because of sex, race, color, ancestry, religious creed, national  
23 origin, physical disability (including HIV and AIDS), mental disability, medical  
24 condition (cancer), age (over forty (40)), marital status and denial of family care leave.

25           **22.2.** CONSULTANT and its subcontractors shall insure that the evaluation and treatment of  
26 their employees and applicants for employment are free from such discrimination and  
27 harassment.

28           **22.3.** CONSULTANT and its subcontractors shall comply with the provisions of the Fair  
Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable

1 regulations promulgated thereunder (California Code of Regulations, Title 2, §7285 et  
2 seq.).

3 **22.4.** The applicable regulations of the Fair Employment and Housing Commission  
4 implementing Government Code §12990 (a-f), set forth in Chapter 5 of Division 4 of  
5 Title 2 of the California Code of Regulations, are incorporated into this Agreement by  
6 reference and made a part hereof as if set forth in full.

7 **22.5.** The applicable regulations of §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794 (a))  
8 are incorporated into this Agreement by reference and made a part hereof as if set forth  
9 in full.

10 **22.6.** CONSULTANT and its subconsultants shall give written notice of their obligations under  
11 this clause to labor organizations with which they have a collective bargaining or other  
12 agreement.

13 **22.7.** CONSULTANT shall include the nondiscrimination and compliance provisions of this  
14 clause in all subcontracts to perform work under this Agreement.

15 **23. NOTICES AND REPORTS.**

16 **23.1.** Any notice and reports under this Agreement shall be in writing and may be given by  
17 personal delivery or by mailing by certified mail, addressed as follows:

<b>COUNTY</b>	<b>CONSULTANT</b>
County of Imperial	CONSULTANT
ATTN: Executive Office	ADDRESS
940 Main Street, Suite 208	CITY STATE ZIP CODE
El Centro, CA 92243	

22 County of Imperial  
23 ATTN: Clerk of the Board of Supervisors  
24 940 Main Street, Suite 209  
El Centro, CA 92243

25 **23.2.** Notice shall be deemed to have been delivered only upon receipt by the Party, seventy-  
26 two (72) hours after deposit in the United States mail or twenty-four (24) hours after  
27 deposit with an overnight carrier.

28 **23.3.** The addressees and addresses for purposes of this Section may be changed to any other

addressee and address by giving written notice of such change. Unless and until written notice of change of addressee and/or address is delivered in the manner provided in this Section, the addressee and address set forth in this Agreement shall continue in effect for all purposes hereunder.

**24. ENTIRE AGREEMENT.**

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

**25. MODIFICATION.**

No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by both Parties.

**26. CAPTIONS.**

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

**27. PARTIAL INVALIDITY.**

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

**28. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.**

**28.1.** As used in this Agreement and whenever required by the context thereof, each number, both singular and plural, shall include all numbers, and each gender shall include a gender.

**28.2.** CONSULTANT as used in this Agreement or in any other document referred to in or made a part of this Agreement shall likewise include the singular and the plural, a corporation, a partnership, individual, firm or person acting in any fiduciary capacity as executor, administrator, trustee or in any other representative capacity or any other entity.

**28.3.** All covenants herein contained on the part of CONSULTANT shall be joint and several if more than one person, firm or entity executes the Agreement.

1 **29. WAIVER.**

2 No waiver of any breach or of any of the covenants or conditions of this Agreement shall be  
3 construed to be a waiver of any other breach or to be a consent to any further or succeeding breach of  
4 the same or any other covenant or condition.

5 **30. CHOICE OF LAW.**

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

9 **31. AUTHORITY.**

10 **31.1.** Each individual executing this Agreement on behalf of CONSULTANT represents and  
11 warrants that:

12 **31.1.1.** He/She is duly authorized to execute and deliver this Agreement on behalf of  
13 CONSULTANT;

14 **31.1.2.** Such execution and delivery is in accordance with the terms of the Articles of  
15 Incorporation or Partnership, any by-laws or Resolutions of CONSULTANT and;

16 **31.1.3.** This Agreement is binding upon CONSULTANT accordance with its terms.

17 **31.2.** CONSULTANT shall deliver to COUNTY evidence acceptable to COUNTY of the  
18 foregoing within thirty (30) days of execution of this Agreement.

19 **32. COUNTERPARTS.**

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

24 **33. REVIEW OF AGREEMENT TERMS.**

25 **33.1.** Each Party has had the opportunity to receive independent legal advice from its attorneys  
26 with respect to the advisability of making the representations, warranties, covenants and  
27 agreements provided for herein, and with respect to the advisability of executing this  
28 Agreement.



1           **33.2.** Each Party represents and warrants to and covenants with the other Party that:

2                   **33.2.1.** This Agreement in its reduction to final written form is a result of extensive good  
3                                   faith negotiations between the Parties and/or their respective legal counsel; and

4                   **33.2.2.** The Parties and their legal counsel have had the opportunity to carefully review  
5                                   and examine this Agreement for execution by said Parties.

6           **33.3.** Any statute or rule of construction that ambiguities are to be resolved against the drafting  
7                                   party shall not be employed in the interpretation of this Agreement.

8   **34.   NON-APPROPRIATION.**

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

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19                                   [Signatures on Following Page]  
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1           **IN WITNESS WHEREOF**, the Parties have executed this Agreement on the day and year first  
2 above written.

3  
4 **COUNTY OF IMPERIAL**

**CONSULTANT**

5  
6 By: \_\_\_\_\_  
7     Michael W. Kelley, Chairman  
8     Imperial County Board of Supervisors

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

9 **ATTEST:**

10  
11 By: \_\_\_\_\_  
12     Blanca Acosta, Clerk of the Board,  
13     County of Imperial, State of California

14 **APPROVED AS TO FORM:**

15 Adam G. Crook,  
16 County Counsel

17  
18 By: \_\_\_\_\_  
19     Faye Winkler,  
20     Deputy County Counsel

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