

**SAMPLE AGREEMENT FOR SERVICES**

**CONSULTANT**

THIS AGREEMENT FOR SERVICES (“Agreement”), made and entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the **County of Imperial**, a political subdivision of the State of California, by and through its Public Health Department (“COUNTY”) and **CONSULTANT**, an active California corporation, (“CONSULTANT”) (individually, “Party;” collectively, “Parties”) shall be as follows:

**RECITALS**

**WHEREAS**, COUNTY desires to retain a qualified individual, firm or business entity to provide professional services for preparation of a NAME OF PROJECT (“Project”); and

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

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

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

**1. INCORPORATION OF RECITALS.**

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

**2. DEFINITIONS.**

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

**2.2.** “Proposal” shall mean CONSULTANT’s document entitled, “TITLE OF PROPOSAL,” dated \_\_\_\_\_, and submitted to COUNTY’s Department of Public Health. The

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

2 **3. CONTRACT COORDINATION.**

3 **3.1.** The Director of Public Health, or his/her designee, shall be the representative of  
4 COUNTY for all purposes under this Agreement. The Director of Public Health, 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 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 **Amount of Bid**,  
28 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           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           **10.    METHOD OF PAYMENT.**

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

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

21           The Parties agree that time is of the essence in the performance of this Agreement. Program  
22 scheduling shall be as described in the Exhibits unless revisions are approved by both COUNTY's  
23 Contract Manager and CONSULTANT's Contract Manager. Time extensions may be allowed for delays  
24 caused by COUNTY, other governmental agencies or factors not directly brought about by the  
25 negligence or lack of due care on the part of CONSULTANT.

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

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



1 binding upon the Parties.

2 **15. INSPECTION.**

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

8 **16. OWNERSHIP OF MATERIALS.**

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

14 **17. INTEREST OF CONSULTANT.**

15 **17.1.** CONSULTANT covenants that it presently has no interest, and shall not acquire any  
16 interest, direct or indirect, financial or otherwise, which would conflict in any manner or  
17 degree with the performance of the services hereunder.

18 **17.2.** CONSULTANT covenants that, in the performance of this Agreement, no sub-contractor  
19 or person having such an interest shall be employed.

20 **17.3.** CONSULTANT certifies that no one who has or will have any financial interest under  
21 this Agreement is an officer or employee of COUNTY.

22 **18. INDEMNIFICATION.**

23 CONSULTANT shall hold harmless, defend, and indemnify COUNTY and its officers, officials,  
24 employees and volunteers from and against any and all liability, loss, damage, expense, costs (including  
25 without limitation costs and fees of litigation) of every nature arising out of or in connection with  
26 CONSULTANT's performance of work hereunder or its failure to comply with any of its obligations  
27 contained in this Agreement, except such loss or damage which was caused by the sole negligence or  
28 willful misconduct of COUNTY. Notwithstanding the foregoing, with respect to any professional

1 liability claim or lawsuit, CONSULTANT shall be responsible for COUNTY's defense costs to the  
2 extent such costs are incurred as a result of CONSULTANT's negligence, recklessness or willful  
3 misconduct.

4 **19. INDEPENDENT CONTRACTOR.**

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

8 **19.1.** CONSULTANT is not an employee or agent of COUNTY and is only responsible for the  
9 requirements and results specified by this Agreement or any other agreement.

10 **19.2.** CONSULTANT shall be responsible to COUNTY only for the requirements and results  
11 specified by this Agreement and except as specifically provided in this Agreement, shall  
12 not be subject to COUNTY's control with respect to the physical actions or activities of  
13 CONSULTANT in fulfillment of the requirements of this Agreement.

14 **19.3.** CONSULTANT is not, and shall not be, entitled to receive from, or through, COUNTY,  
15 and COUNTY shall not provide, or be obligated to provide, CONSULTANT with  
16 Workers' Compensation coverage or any other type of employment or worker insurance  
17 or benefit coverage required or provided by any Federal, State or local law or regulation  
18 for, or normally afforded to, an employee of COUNTY.

19 **19.4.** CONSULTANT shall not be entitled to have COUNTY withhold or pay, and COUNTY  
20 shall not withhold or pay, on behalf of CONSULTANT, any tax or money relating to the  
21 Social Security Old Age Pension Program, Social Security Disability Program, or any  
22 other type of pension, annuity, or disability program required or provided by any Federal,  
23 State or local law or regulation.

24 **19.5.** CONSULTANT shall not be entitled to participate in, nor receive any benefit from, or  
25 make any claim against any COUNTY fringe program, including, but not limited to,  
26 COUNTY's pension plan, medical and health care plan, dental plan, life insurance plan,  
27 or any other type of benefit program, plan, or coverage designated for, provided to, or  
28 offered to COUNTY's employees.





1 this contract.”

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

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

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

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

12 (ii) Should this status change, CONSULTANT shall immediately  
13 notify COUNTY in writing and comply with the insurance  
14 requirements above.

15 **20.1.5. Employers Liability.**

16 (a) Coverage, if applicable, in the minimum amount of one million dollars  
17 (\$1,000,000) per accident for bodily injury and disease.

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

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

23 (ii) Should this status change, CONSULTANT shall immediately  
24 notify COUNTY in writing and comply with the insurance  
25 requirements above.

26 **20.2. Special Insurance Requirements. All insurance required shall:**

27 **20.2.1.** Be procured from California admitted insurers (licensed to do business in  
28 California) with a current rating by Best’s Key Rating Guide, acceptable to

1 COUNTY. A rating of at least A-VII shall be acceptable to COUNTY; lesser  
2 ratings must be approved in writing by COUNTY.

3 **20.2.2.** Be primary coverage as respects COUNTY and any insurance or self-insurance  
4 maintained by COUNTY shall be in excess of CONSULTANT's insurance  
5 coverage and shall not contribute to it.

6 **20.2.3.** Name the County of Imperial and its officers, employees, and volunteers as  
7 additional insured on all policies, except Workers' Compensation insurance and  
8 Errors & Omissions insurance, and provide that COUNTY may recover for any  
9 loss suffered by COUNTY due to CONSULTANT's negligence.

10 **20.2.4.** State that it is primary insurance and regards COUNTY as an additional insured  
11 and contains a cross-liability or severability of interest clause.

12 **20.2.5.** Not be canceled, non-renewed or reduced in scope of coverage until after thirty  
13 (30) days written notice has been given to COUNTY. CONSULTANT may not  
14 terminate such coverage until it provides COUNTY with proof that equal or better  
15 insurance has been secured and is in place. Cancellation or change without prior  
16 written consent of COUNTY shall, at the option of COUNTY, be grounds for  
17 termination of this Agreement.

18 **20.2.6.** If this Agreement remains in effect more than one (1) year from the date of its  
19 original execution, COUNTY may, at its sole discretion, require an increase to  
20 liability insurance to the level then customary in similar COUNTY Agreements  
21 by giving sixty (60) days notice to CONSULTANT.

22 **20.3. Additional Insurance Requirements.**

23 **20.3.1.** COUNTY is to be notified immediately of all insurance claims. COUNTY is also  
24 to be notified if any aggregate insurance limit is exceeded.

25 **20.3.2.** The comprehensive or commercial general liability shall contain a provision of  
26 endorsements stating that such insurance:

27 (a) Includes contractual liability;

28 (b) Does not contain any exclusions as to loss or damage to property caused

1 by explosion or resulting from collapse of buildings or structures or  
2 damage to property underground, commonly referred to by insurers as the  
3 “XCU Hazards;”

- 4 (c) Does not contain a “pro rata” provision which looks to limit the insurer’s  
5 liability to the total proportion that its policy limits bear to the total  
6 coverage available to the insured;
- 7 (d) Does not contain an “excess only” clause which require the exhaustion of  
8 other insurance prior to providing coverage;
- 9 (e) Does not contain an “escape clause” which extinguishes the insurer’s  
10 liability if the loss is covered by other insurance;
- 11 (f) Includes COUNTY as an additional insured; and
- 12 (g) States that it is primary insurance and regards COUNTY as an additional  
13 insured and contains a cross-liability or severability of interest clause.

14 **20.4. Deposit of Insurance Policy.** Promptly on issuance, reissuance, or renewal of any  
15 insurance policy required by this Agreement, CONSULTANT shall, if requested by  
16 COUNTY, provide COUNTY satisfactory evidence that insurance policy premiums have  
17 been paid together with a duplicate copy of the policy or a certificate evidencing the  
18 policy and executed by the insurance company issuing the policy or its authorized agent.

19 **20.5. Certificates of Insurance.**

20 **20.5.1.** CONSULTANT agrees to provide COUNTY with the following insurance  
21 documents on or before the effective date of this Agreement:

- 22 (a) Complete copies of certificates of insurance for all required coverages  
23 including additional insured endorsements shall be attached hereto as  
24 **Exhibit “C”** and incorporated herein.
- 25 (b) The documents enumerated in this Paragraph shall be sent to the  
26 following:

27 County of Imperial  
28 Risk Management Department  
940 Main Street, Suite 101

El Centro, CA 92243

County of Imperial  
Public Health Department  
935 Broadway  
El Centro, CA 92243

1  
2  
3  
4  
5  
6 **20.6.** Additional Insurance. Nothing in this, or any other provision of this Agreement, shall be  
7 construed to preclude CONSULTANT from obtaining and maintaining any additional  
8 insurance policies in addition to those required pursuant to this Agreement.

9 **21.** PREVAILING WAGE.

10 **21.1.** CONSULTANT acknowledges that any work that qualifies as a “public work” within the  
11 meaning of California Labor Code section 1720 shall cause CONSULTANT, and its sub-  
12 consultants, to comply with the provisions of California Labor Code sections 1775 et seq.

13 **21.2.** When applicable, copies of the prevailing rate of per diem wages shall be on file at  
14 COUNTY’s Department of Public Health and available to CONSULTANT and any other  
15 interested party upon request. CONSULTANT shall post copies of the prevailing wage  
16 rate of per diem wages at the Project site.

17 **21.3.** CONSULTANT hereby acknowledges and stipulates to the following:

18 **21.3.1.** CONSULTANT has reviewed and agrees to comply, when applicable, with the  
19 provisions of Labor Code section 1776 regarding retention and inspection of  
20 payroll records and noncompliance penalties; and

21 **21.3.2.** CONSULTANT has reviewed and agrees to comply, when applicable, with the  
22 provisions of Labor Code section 1777.5 regarding employment of registered  
23 apprentices; and

24 **21.3.3.** CONSULTANT has reviewed and agrees to comply, when applicable, with the  
25 provisions of Labor Code section 1810 regarding the legal day’s work; and

26 **21.3.4.** CONSULTANT has reviewed and agrees to comply, when applicable, with the  
27 provisions of Labor Code section 1813 regarding forfeiture for violations of the  
28 maximum hours per day and per week provisions contained in the same chapter.

1           **21.3.5.** CONSULTANT has reviewed and agrees to comply, when applicable, with any  
2           applicable provisions for those Projects subject to Department of Industrial  
3           Relations (DIR) Monitoring and Enforcement of prevailing wages. COUNTY  
4           hereby notifies CONSULTANT that CONSULTANT is responsible for  
5           complying with the requirements of Senate Bill 854 (SB854) regarding certified  
6           payroll record reporting. Further information concerning the requirements of  
7           SB854 is available on the DIR website located at: [http://www.dir.ca.gov/Public-  
8           Works/PublicWorksEnforcement.html](http://www.dir.ca.gov/Public-Works/PublicWorksEnforcement.html).

9   **22.    ASSIGNMENT.**

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

13   **23.    NON-DISCRIMINATION.**

14           **23.1.** During the performance of this Agreement, CONSULTANT and its subcontractors shall  
15           not unlawfully discriminate, harass or allow harassment against any employee or  
16           applicant for employment because of sex, race, color, ancestry, religious creed, national  
17           origin, physical disability (including HIV and AIDS), mental disability, medical  
18           condition (cancer), age (over forty (40)), marital status and denial of family care leave.

19           **23.2.** CONSULTANT and its subcontractors shall insure that the evaluation and treatment of  
20           their employees and applicants for employment are free from such discrimination and  
21           harassment.

22           **23.3.** CONSULTANT and its subcontractors shall comply with the provisions of the Fair  
23           Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable  
24           regulations promulgated thereunder (California Code of Regulations, Title 2, §7285 et  
25           seq.).

26           **23.4.** The applicable regulations of the Fair Employment and Housing Commission  
27           implementing Government Code §12990 (a-f), set forth in Chapter 5 of Division 4 of  
28           Title 2 of the California Code of Regulations, are incorporated into this Agreement by

reference and made a part hereof as if set forth in full.

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

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

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

24. **NOTICES AND REPORTS.**

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

<b>COUNTY</b>	<b>CONSULTANT</b>
Public Health Department	XXXXXX
935 Broadway	XXXXXX
El Centro, CA 92243	XXXXXX
	XXXXXX

County of Imperial  
Clerk of the Board of Supervisors  
940 W. Main Street, Suite 209  
El Centro, CA 92243

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

24.3. 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.

25. **ENTIRE AGREEMENT.**

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

4 **26. MODIFICATION.**

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

7 **27. CAPTIONS.**

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

10 **28. PARTIAL INVALIDITY.**

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

14 **29. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.**

15 **29.1.** As used in this Agreement and whenever required by the context thereof, each number,  
16 both singular and plural, shall include all numbers, and each gender shall include a  
17 gender.

18 **29.2.** CONSULTANT as used in this Agreement or in any other document referred to in or  
19 made a part of this Agreement shall likewise include the singular and the plural, a  
20 corporation, a partnership, individual, firm or person acting in any fiduciary capacity as  
21 executor, administrator, trustee or in any other representative capacity or any other entity.

22 **29.3.** All covenants herein contained on the part of CONSULTANT shall be joint and several  
23 if more than one person, firm or entity executes the Agreement.

24 **30. WAIVER.**

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

28 **31. CHOICE OF LAW.**



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

4 **32. AUTHORITY.**

5 **32.1.** Each individual executing this Agreement on behalf of CONSULTANT represents and  
6 warrants that:

7 **32.1.1.** He/She is duly authorized to execute and deliver this Agreement on behalf of  
8 CONSULTANT;

9 **32.1.2.** Such execution and delivery is in accordance with the terms of the Articles of  
10 Incorporation or Partnership, any by-laws or Resolutions of CONSULTANT and;

11 **32.1.3.** This Agreement is binding upon CONSULTANT accordance with its terms.

12 **32.2.** CONSULTANT shall deliver to COUNTY evidence acceptable to COUNTY of the  
13 foregoing within thirty (30) days of execution of this Agreement.

14 **33. COUNTERPARTS.**

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

19 **34. REVIEW OF AGREEMENT TERMS.**

20 **34.1.** Each Party has had the opportunity to receive independent legal advice from its attorneys  
21 with respect to the advisability of making the representations, warranties, covenants and  
22 agreements provided for herein, and with respect to the advisability of executing this  
23 Agreement.

24 **34.2.** Each Party represents and warrants to and covenants with the other Party that:

25 **34.2.1.** This Agreement in its reduction to final written form is a result of extensive good  
26 faith negotiations between the Parties and/or their respective legal counsel; and

27 **34.2.2.** The Parties and their legal counsel have had the opportunity to carefully review  
28 and examine this Agreement for execution by said Parties.

