

EXHIBIT 3
SAMPLE AGREEMENT

AGREEMENT FOR SERVICES

THIS AGREEMENT FOR SERVICES ("Agreement"), is made and entered into effective the _____ day of _____, 20____, by and between the IMPERIAL VALLEY FOREIGN TRADE ZONE - JOINT POWERS AUTHORITY hereinafter referred to as "GRANTEE" by and through the IMPERIAL COUNTY WORKFORCE & ECONOMIC DEVELOPMENT DEPARTMENT (ICWED) and [NAME OF CONSULTANT], [form of business entity] ("CONSULTANT") (individually, "Party;" collectively, "Parties").

W I T N E S S E T H

WHEREAS, ICCED is in need of _____ services for the _____

Projects (PROJECT); and

WHEREAS, GRANTEE 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 required services for the PROJECT on the terms and in the manner set forth herein;

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

1. **TERM.**

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

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

2. **CONTRACT COORDINATION.**

2.1. The IMPERIAL COUNTY WORKFORCE & ECONOMIC DEVELOPMENT DIRECTOR ("the DIRECTOR") shall be the representative of GRANTEE for all purposes under this Agreement. The DIRECTOR or his/her designated representative, is hereby designated as the CONTRACT MANAGER for GRANTEE. He/She shall supervise the progress and execution of this Agreement.

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

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

3. DESCRIPTION OF WORK.

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

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

4. WORK TO BE PERFORMED BY CONSULTANT.

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

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

CONSULTANT shall:

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

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

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

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

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

5. REPRESENTATIONS BY CONSULTANT.

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

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

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

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

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

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

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

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

12 6. RETENTION AND ACCESS OF BOOKS AND RECORDS.

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

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

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

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

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

3 7. COMPENSATION.

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

7 8. PAYMENT.

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

14
15 9. METHOD OF PAYMENT.

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

22 10. TIME FOR COMPLETION OF THE WORK.

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

11. SUSPENSION OF AGREEMENT.

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

12. TERMINATION.

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

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

13. INSPECTION.

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

14. OWNERSHIP OF MATERIALS.

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

15. INTEREST OF CONSULTANT.

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

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

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

16. INDEMNIFICATION.

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

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

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

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

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

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

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

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

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

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

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17. INDEPENDENT CONTRACTOR.

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

- 17.1. CONSULTANT is not an employee or agent of GRANTEE and is only responsible for the requirements and results specified by this Agreement or any other Agreement.
- 17.2. CONSULTANT shall be responsible to GRANTEE only for the requirements and results specified by this Agreement and except as specifically provided in this Agreement, shall not be subject to GRANTEE's control with respect to the physical actions or activities of CONSULTANT in fulfillment of the requirements of this Agreement.
- 17.3. CONSULTANT is not, and shall not be, entitled to receive from, or through, GRANTEE, and GRANTEE shall not provide, or be obligated to provide, CONSULTANT with Worker's Compensation coverage or any other type of employment or worker insurance or benefit coverage required or provided by any Federal, State or local law or regulation for, or normally afforded to, an employee of GRANTEE.
- CONSULTANT shall not be entitled to have GRANTEE withhold or pay, and GRANTEE shall not withhold or pay, on behalf of CONSULTANT, any tax or money relating to the Social Security Old Age Pension Program, Social Security Disability Program, or any other type of pension, annuity, or disability program required or provided by any Federal, State or local law or regulation.
- 17.5. CONSULTANT shall not be entitled to participate in, or receive any benefit from, or make any claim against any GRANTEE fringe program, including, but not limited to, GRANTEE's pension plan, medical and health care plan, dental plan, life insurance plan, or any other type of benefit program, plan, or coverage designated for, provided to, or offered to GRANTEE's employee.
- 17.6. GRANTEE shall not withhold or pay, on behalf of CONSULTANT, any Federal, State, or local tax, including, but not limited to, any personal income tax, owed by CONSULTANT.

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

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

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

18. INSURANCE.

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

<u>Insurance</u>	<u>Minimum Limit</u>
Errors & Omissions Coverage	[TBD by Scope of Work] [where applicable]
Worker's Compensation, Coverage A	Statutory
Employers Liability, Coverage B	[TBD by Scope of Work] [where applicable]
Commercial General Liability (Including Contractual Liability):	
Bodily Injury	[TBD by Scope of Work] per occurrence
Property Damage	[TBD by Scope of Work] aggregate
	[TBD by Scope of Work] per occurrence
Commercial Automobile Liability (owned, hired & non-owned vehicles)	[TBD by Scope of Work] aggregate

Bodily Injury [TBD by Scope of Work] per occurrence
Property Damage [TBD by Scope of Work] per occurrence

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

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

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

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

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

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

18.3. Additional Insurance Requirements.

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

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

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

A. Includes contractual liability;

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

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

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

19 19. WORKERS’ COMPENSATION CERTIFICATION.

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

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

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

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

5 20. ASSIGNMENT.

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

9 21. NON-DISCRIMINATION.

10 21.1 During the performance of this Agreement, CONSULTANT and its subcontractors shall not
11 unlawfully discriminate, harass or allow harassment against any employee or applicant for
12 employment because of sex, race, color, ancestry, religious creed, national origin, physical
13 disability (including HIV and AIDS), mental disability, medical condition (cancer), age
14 (over forty (40)), marital status and denial of family care leave. CONSULTANT and its
15 subcontractors shall insure that the evaluation and treatment of their employees and
16 applicants for employment are free from such discrimination and harassment.
17 CONSULTANT and its subcontractors shall comply with the provisions of the Fair
18 Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable
19 regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285
20 et seq.). The applicable regulations of the Fair Employment and Housing Commission
21 implementing Government Code §12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2
22 of the California Code of Regulations, are incorporated into this Agreement by reference
23 and made a part hereof as if set forth in full. The applicable regulations of Section 504 of
24 the Rehabilitation Act of 1973 (29 U.S.C. §794 (a)) are incorporated into this Agreement by
25 reference and made a part hereof as if set forth in full. CONSULTANT and its
26 subcontractors shall give written notice of their obligations under this clause to labor
27 organizations with which they have a collective bargaining or other agreement.
28

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

21.4. State Nondiscrimination Clause:

21.4.1. During the performance of this Agreement, CONSULTANT and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status and denial of family care leave. CONSULTANT and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONSULTANT and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7258.0 et seq.) The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. CONSULTANT and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

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

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

22. “SECTION 3” CLAUSE.

1 CONSULTANT will comply with Section 3 of the Housing and Urban Development Act of
2 1968 (12 U.S.C. 1701u), and implementing Regulations at 24 CFR, Part 135.

3 23. NOTICES AND REPORTS.

4 23.1. Any notice to be given pursuant to this Agreement shall be in writing and personally
5 delivered or sent by United States First Class Mail, postage prepaid, return receipt
6 requested or by overnight carrier, priority overnight delivery, postage and delivery
7 charges prepaid, addressed to each Party at the following address:

8 **COUNTY**

9 Esperanza M. Colio,
10 Community & Economic Development Manager
11 County of Imperial
12 940 Main St Suite 203
13 El Centro, CA 92243

CONSULTANT

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

23.2. 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.

23.3. The addressees and addresses for purposes of this paragraph 21 may be changed to any other addressee and address by giving written notice of such change in the manner provided in paragraph 21.1. Unless and until written notice of change of addressee and/or address is delivered in the manner provided in paragraph 21.1, 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 the Party against whom the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

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.

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. CONSULTANT as used in this Agreement or in any other document referred to in or made a part of this Agreement shall likewise include both the singular and the plural, a corporation, a partnership, individual, firm or person

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

4 29. WAIVER.

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

8 30. DISPUTE RESOLUTION PROCESS.

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

12 31. CHOICE OF LAW.

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

16 32. ATTORNEY'S FEES.

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

20 33. AUTHORITY.

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

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

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

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

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

34. COUNTERPARTS.

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

35. REVIEW OF AGREEMENT TERMS.

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

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

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

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

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

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36. NON-APPROPRIATION.

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

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

COUNTY OF IMPERIAL:

CONSULTANT:

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

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

ATTEST:

[Name], Clerk of the Board,
County of Imperial, State of California

APPROVED AS TO FORM:

MICHAEL ROOD
County Counsel

By: _____
[ATTORNEY NAME]
[Title]

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EXHIBIT E

ANTI-LOBBYING CERTIFICATION

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

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

CONSULTANT:

By: _____

[Designee Name]

[Business, Title]

EXHIBIT 4

CERTIFICATION REGARDING LOBBYING

Applicants should also review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 15 CFR Part 28, "New Restrictions on Lobbying." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Commerce determines to award the covered transaction, grant, or cooperative agreement.

LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over \$100,000 or a loan or loan guarantee over \$150,000 as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

Statement for Loan Guarantees and Loan Insurance

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

In any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification.

NAME OF APPLICANT

AWARD NUMBER AND/OR PROJECT NAME

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE

DATE