**County of Imperial**

**SAMPLE AGREEMENT**



Department of Procurement

1125 Main Street

El Centro, CA 92243

Phone: (442) 265-1866

Contact Name: SAMPLE AGREEMENT

 **PROFESSIONAL SERVICES AGREEMENT**

 THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into effective the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2023, by and between the **County of Imperial**, a political subdivision of the State of California, hereinafter referred to as (“COUNTY”) and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_hereinafter referred to as (“CONTRACTOR”) (individually, “Party”; collectively, “Parties”).

**RECITALS**

**WHEREAS**, COUNTY desires to retain a qualified individual, firm or business entity to provide professional services for COUNTY; and

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

**WHEREAS**, California Government Code section 31000 authorizes contracting for services with persons specially trained, experienced, and competent to perform those services; and

**WHEREAS**, COUNTY desires to engage CONTRACTOR to provide services by reason of its qualifications and experience for performing such services and CONTRACTOR has offered to provide the required services on the terms and in the manner as set forth herein.

**NOW THEREFORE**, it is agreed by and between the Parties:

1. TERM

 **1.1** Initial Term. This Agreement shall commence on \_\_\_\_\_\_\_\_\_\_\_\_, and shall continue in effect until \_\_\_\_\_\_\_\_\_\_\_\_, or until terminated pursuant to this Agreement, whichever is earlier.

 **1.2** Option to Renew. COUNTY and CONTRACTOR shall have the option to extend this Agreement thirty (30) days prior to termination date, on the same terms and conditions as set forth in this Agreement. Parties shall have the option to renew for up to four (4) one-year extensions, by the mutual agreement of both Parties in writing. Such agreement shall be in writing and shall be effective only upon signature by the Imperial County Director of Behavioral Health Services (“DIRECTOR”) and CONTRACTOR.

 **1.3** Nothing in this Agreement shall be construed to give either Party the right to an automatic renewal of this Agreement, nor shall any future renewal guarantee any further renewals of this or any subsequent agreement.

 **1.4** Renewal shall not require additional authorization from the Board of Supervisors (“BOARD”) upon the same terms and conditions set forth in this Agreement. Any modifications to this Agreement or extensions outside the approved periods as stated in this Section will require BOARD approval.

# TERMINATION AND INSUFFICIENT FUNDS

* 1. Termination. This Agreement may be terminated by either Party, without cause, by providing thirty (30) days written notice to the other Party. Either Party may immediately terminate this Agreement when the other Party has failed or refused to comply with a term or condition of this Agreement.
	2. Insufficient Funds. This Agreement is valid and enforceable subject to sufficient funds being made available to the COUNTY for the period of time covered by this contract as stated in Section 1 of this Agreement and subject to authorization and appropriation of sufficient funds pursuant to the California State Budget Agreement. In the event the United States Government and/or the State government do not authorize and appropriate sufficient funds for the State to allocate amounts to the COUNTY to enable it to comply with the payment provisions of the Agreement, it is mutually agreed that:
		1. The Agreement shall be amended to reflect any reduction in the payment provisions and the performance provisions.
		2. Termination of this Agreement shall have no effect upon the rights and obligations of the Parties arising out of any transactions occurring prior to the effective date of such termination.
		3. CONTRACTOR shall report to COUNTY all outstanding invoices for reimbursement no later than thirty (30) days after the date of termination.

# SERVICES TO BE PERFORMED

In consideration of the payments hereinafter set forth, CONTRACTOR, under the general direction of the Imperial County Sheriff’s Office, or his authorized representative, with respect to the product or result of CONTRACTOR’s services, shall perform services for COUNTY in accordance with the terms, conditions, and specifications set forth in the Scope of Work, which is attached hereto as **Exhibit “A” and** the Request for Proposal, which is also incorporated by reference herein, as Exhibit “E”.

# PAYMENT

* 1. Maximum Compensation. The total compensation payable under this Agreement shall not exceed **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_\_\_\_\_\_\_\_\_)** unless otherwise previously agreed to in writing by COUNTY. COUNTY shall not be responsible to pay CONTRACTOR any compensation, out of pocket expenses, fees, reimbursement of expenses or other remuneration.
	2. Rate of Payment. The rate and terms of payment under this Agreement shall be as specified in **Exhibit “B”**. In the event that COUNTY makes any advance payments, CONTRACTOR shall refund any amounts in excess of the amount owed by COUNTY at the time of contract termination. COUNTY reserves the right to withhold payment in the event COUNTY determines that the quantity or quality of the work performed is not satisfactory according to the Scope of Service detailed in **Exhibit “A”**.
	3. Time Limit for Submitting Invoices. CONTRACTOR shall submit individual invoices for services

provided to COUNTY for payment in accordance with the provisions set forth herein. COUNTY shall not be obligated to pay CONTRACTOR for the services invoiced in excess of one hundred eighty (180) days after rendered services. In the event of termination, CONTRACTOR shall submit invoices within ninety (90) days.

* 1. Shortfall of Funds. In no event shall COUNTY be responsible to pay the CONTRACTOR funds

in excess of the amount received from the State of California by Imperial County for this Agreement.

* 1. Method of Payment. CONTRACTOR may expect to receive payment within a reasonable

time thereafter and in any event in the normal course of business within thirty (30) days after the invoice is submitted.

1. INDEMNITY

To the extent permitted by law, CONTRACTOR agrees to indemnify, defend, and hold harmless COUNTY from and against any and all claims, actions, demands, liabilities, damages, losses, and expenses of whatever kind, which are caused or contributed to in any manner in whole or in part, or which are claimed to be caused or contributed to in whole or in part even though such claims may be groundless, false, or fraudulent, by any willful misconduct or negligence, whether active or passive of CONTRACTOR, or anyone acting under its direction in connection with or incident to the services provided hereunder, unless the same is found by a court of law to be caused by the sole or concurrent negligence or willful misconduct of the COUNTY.

1. NON-DISCRIMINATION

During the performance of the Agreement, CONTRACTOR and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race; color; age; religion (including religious dress and grooming practices); national origin or ancestry (including language use restrictions and possession of a driver's license issued under Vehicle Code section 12801.9); physical and/or mental disability; medical condition; genetic information; gender; gender identity (a person's identification as male, female, a gender different from the person's sex at birth, or transgender); gender expression (a person's gender-related appearance or behavior, whether or not stereotypically associated with the person's sex at birth); sex (including but not limited to pregnancy, childbirth, breastfeeding, and any related medical conditions), sexual orientation, marital/domestic partner status, military and veteran status, or any other protected characteristic. Where applicable, CONTRACTOR shall not discriminate in the admission of clients or assignment of accommodation. CONTRACTOR and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. CONTRACTOR and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12940 et seq.) and the applicable regulation promulgated thereunder (California Code of Regulations, Title 2, section 7286.7 et seq.). The applicable regulations of the Fair Employment Housing Commission implementing Government Code, section 12990 (a-f), set forth in Chapter 5 of Division 4 of 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. CONTRACTOR shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act. CONTRACTOR shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

1. NOTICES

**7.1** 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:

 **COUNTY** **CONTRACTOR**

 County Executive Office XXXXXXXXXXXXXX

 940 W. Main Street, Suite 208 XXXXXXXXXXXXXX

 El Centro, CA 92243 XXXXXXXXXXXXXX

 County of Imperial

 Clerk of the Board of Supervisors

 940 W. Main Street, Suite 209

 El Centro, CA 92243

**7.2** Notice shall be deemed to have been delivered upon seventy-two (72) hours after deposit in the

United States mail or twenty-four (24) hours after deposit with an overnight carrier.

**7.3** The addressees and addresses for purposes of this paragraph may be changed 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 paragraph, the addressee and address set forth in this Agreement shall continue in effect for all purposes hereunder.

1. INDEPENDENT CONTRACTOR

In all situations and circumstances arising out of the terms and conditions of this Agreement,

CONTRACTOR is an independent contractor, the following shall apply:

* 1. CONTRACTOR is not an employee or agent of COUNTY and is only responsible for the

requirements and results specified by this Agreement or any other Agreement.

* 1. CONTRACTOR shall be responsible to COUNTY only for the requirements and results specified

by this Agreement and except as specifically provided in this Agreement, shall not be subject to COUNTY’s control with respect to the physical actions or activities of CONTRACTOR in fulfillment of the requirements of this Agreement.

* 1. CONTRACTOR is not, and shall not be, entitled to receive from, or through, COUNTY, and

COUNTY shall not provide, or be obligated to provide, CONTRACTOR with Workers’ 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 COUNTY.

* 1. CONTRACTOR shall not be entitled to have COUNTY withhold or pay, and COUNTY shall not

withhold or pay, on behalf of CONTRACTOR, 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.

* 1. CONTRACTOR shall not be entitled to participate in, or receive any benefit from, or make any

claim against any COUNTY fringe program, including, but not limited to, COUNTY 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 COUNTY employees.

* 1. COUNTY shall not withhold or pay, on behalf of CONTRACTOR, any Federal, State, or local tax,

including, but not limited to, any personal income tax, owed by CONTRACTOR.

* 1. CONTRACTOR 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 COUNTY.

* 1. CONTRACTOR shall not have the authority, express or implied, to act on behalf of, bind or

obligate COUNTY in any way without the written consent of COUNTY.

1. CONFLICT OF INTEREST

No COUNTY employee whose position in COUNTY enables him/her to influence the award of this Agreement or any competing Agreement, and no spouse or economic dependent of such an employee, shall be employed in any capacity by CONTRACTOR or its related organizations herein, or have any other direct or indirect financial interest in this Agreement.

1. LICENSING AND CERTIFICATION

CONTRACTOR shall obtain, prior to the commencement of the term of this Agreement, and during the term of this Agreement, all appropriate licenses, permits and certificates required by all applicable State, local and Federal law for the operation of this facility and for the provision of services hereunder. A copy of each license permit and certificate shall be sent to: Imperial County Department of Purchasing, 1125 Main St, El Centro, CA 92243 The obligation of the COUNTY under this Agreement is contingent upon CONTRACTOR holding such status.

* 1. CONTRACTOR shall operate continuously throughout the term of this Agreement with all

licenses, certifications and/or permits as are necessary to the performance hereunder. Failure to maintain a required license or permit may result in immediate termination of this contract.

# RECORDS AND AUDITS

CONTRACTOR shall maintain a record of all direct services and indirect services rendered by all professional, para-professional, interns, student, volunteer and other personnel under this Agreement in sufficient detail to permit an evaluation and audit of such services. All such records shall be retained, maintained, and made available within three (3) business days for inspection, review and/or audit by authorized representatives and designees of County, State, and /or federal governments during the term of this Agreement and during the applicable period of records retention. In the event any records are located outside Imperial County, CONTRACTOR shall pay COUNTY for all travel, per diem, and other costs incurred by COUNTY for any inspection, review, and/or audit at such other location.

1. AMENDMENT AND 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.

1. COMPLIANCE WITH APPLICABLE LAW

 In the performance of services under this Agreement, CONTRACTOR shall comply with all applicable provisions of Federal, State and local laws.

1. CONFIDENTIALITY

CONTRACTOR and COUNTY agree to maintain the confidentiality of its records in accordance, where applicable, with California Welfare and Institutions Code sections 5328 through 5330 and all other applicable State and Federal laws relating to confidentiality of patient/client records and information.

1. INSURANCE

CONTRACTOR shall comply with all insurance provisions set forth in **Exhibit “C”**.Copies of certificates of insurance shall be attached hereto as **Exhibit “D”**.

1. JOINT AND SEVERAL LIABILITY

If any Party consists of more than one person or entity, the liability of each person or entity signing shall be joint and several.

1. ASSIGNMENT

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

1. WAIVER OF DEFAULT

No waiver of any default by any Party to this Agreement shall be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless stated to be such, in writing, executed by all Parties. COUNTY’s consent to or approval of any act shall not be deemed to render unnecessary the obtaining of COUNTY’s consent to or approval of any subsequent act by CONTRACTOR.

1. SEVERABILITY

If any portion of this Agreement or the application thereof to any person or circumstances, shall be declared invalid by a court of competent jurisdiction, or be found in contravention of any Federal, State or COUNTY statute, ordinance or regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby and shall remain in full force and effect, and to the extent the provisions of this Agreement are declared severable.

1. ENTIRE AGREEMENT

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

1. 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 hereof.

1. CHOICE OF LAW

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

1. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS

 As used in this Agreement and whenever required by the context thereof, each number, both singular or plural, shall include all numbers, and each gender shall include a gender. CONTRACTOR as used in this Agreement or in any other document referred to in or made a part of this Agreement shall likewise include both 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. All covenants herein contained on the part of CONTRACTOR shall be joint and several if more than one person, firm or entity executes the Agreement.

1. AUTHORITY

24.1 Each individual executing this Agreement on behalf of CONTRACTOR represents and warrants

that:

24.1.1 He/She is duly authorized to execute and deliver this Agreement on behalf of

CONTRACTOR;

24.1.2 Such execution and delivery is in accordance with the terms of the Articles of Incorporation or Partnership, any by-laws or Resolutions of CONTRACTOR; and

24.1.3 This Agreement is binding upon CONTRACTOR accordance with its terms.

**24.2** CONTRACTOR shall deliver to COUNTY evidence acceptable to COUNTY of the foregoing within thirty (30) days of execution of this Agreement.

1. HIPAA COMPLIANCE

CONTRACTOR warrants that CONTRACTOR is in compliance with all applicable Health Insurance Portability and Accountability Act regulations, and Subtitle D of Title XIII of the American Recovery and Reinvestment Act of 2009 (HITECH Act).

**IN WITNESS THEREOF**, the Parties hereto have executed this Agreement the day and year first written above by their duly authorized representatives, having full authority to so act and on behalf of the Parties thereto, and in a manner fully binding upon them, and each of them.

**COUNTY OF IMPERIAL** **CONTRACTOR**

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

Ryan E. Kelley, Chairman NAME

Imperial County Board of Supervisors TITLE

**ATTEST**

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

Blanca Acosta

Clerk of the Board of Supervisors

**APPROVED AS TO CONTENT** **APPROVED AS TO FORM**

 Eric R. Havens

County Counsel

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

Fred Miramontes, Sheriff Kelly Ranasinghe

Imperial County Sheriff’s Office Deputy County Counsel

# EXHIBIT “A” – “SCOPE OF SERVICES”

# EXHIBIT “B” – “DETAILED PAYMENT SCHEDULE”

# EXHIBIT “C” – “INSURANCE PROVISIONS”

1. CONTRACTOR 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 COUNTY 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:
2. Professional Liability (E & O) $1,000,000
3. Worker’s Compensation, Coverage A Statutory
4. Employers Liability, Coverage B $1,000,000
5. Commercial General Liability (Including Contractual Liability)
	1. Bodily Injury $1,000,000 per occurrence

$2,000,000 aggregate

* 1. Property Damage $1,000,000 per occurrence

$2,000,000 aggregate

1. Commercial Automobile Liability (Owned, Hired & Non-Owned Vehicles)
	1. Bodily Injury $1,000,000
	2. Property Damage $1,000,000
2. Special Insurance Requirements. All insurance required under paragraph 1 shall:
	1. Be procured from California admitted insurers (licensed to do business in California) with a current rating by Best’s Key Rating Guide, acceptable to COUNTY. A rating of at least A-VII shall be acceptable to COUNTY; lesser ratings must be approved in writing by COUNTY.
	2. Be primary coverage as respects the COUNTY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by COUNTY shall be in excess of CONSULTANT’s insurance coverage and shall not contribute to it.
	3. Name COUNTY as an additional insured on all policies, except Workers’ Compensation, and Errors and Omissions and provide that COUNTY may recover for any loss suffered by COUNTY by reason of CONTRACTOR’s negligence.
	4. State that it is primary insurance and regards COUNTY as an additional insured and contains a cross-liability or severability of interest clause.
	5. Not be canceled, non-renewed or reduced in scope of coverage until after thirty (30) days written notice has been given to COUNTY. However, CONTRACTOR may not terminate such coverage until it provides COUNTY with proof that equal or better insurance has been secured and is in place. Cancellation or change without the prior written consent of COUNTY shall, at the option of COUNTY, be grounds for termination of this Agreement.
3. Additional Insurance Requirements
	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.
	2. COUNTY is to be notified immediately of all insurance claims. COUNTY is also to be notified if any aggregate insurance limit is exceeded.
	3. Prior to CONTRACTOR rendering services provided by this Agreement, and immediately upon acquiring additional insurance coverage, for example, excess professional malpractice insurance coverage, during the term of this Agreement as may be required, CONTRACTOR shall deliver a certificate of insurance describing the insurance coverages and endorsements to the County of Imperial, Human Resources/Risk Management, 940 W. Main Street, Suite 101, El Centro, CA 92243, and County of Imperial, Behavioral Health Services Department, 202 N. Eighth Street, Suite 232, El Centro, CA 92243.
	4. The comprehensive or commercial general liability shall contain a provision of endorsements stating that such insurance: i) includes contractual liability; ii) does not contain a “pro rata” provision which looks to limit the insurer’s liability to the total proportion that its policy limits bear to the total coverage available to the insured; iii) does not contain an “excess only” clause which requires the exhaustion of other insurance prior to providing coverage; iv) does not contain an “escape clause” which extinguishes the insurer’s liability if the loss is covered by other insurance; v) includes COUNTY as additional insured; vii) states that it is primary insurance and regards COUNTY as an additional insured and contains a cross-liability or severability of interest clause.
	5. Deposit of Insurance Policy. Promptly on issuance, reissuance, or renewal of any insurance policy required by this Agreement, CONTRACTOR shall, if requested by COUNTY, cause to be given to COUNTY satisfactory evidence that insurance policy premiums have been paid together with a duplicate copy of the policy or a certificate evidencing the policy and executed by the insurance company issuing the policy or its authorized agent.
	6. Additional Insurance. Nothing in this, or any other provision of this Agreement, shall be construed to preclude CONTRACTOR from obtaining and maintaining any additional insurance policies in addition to those required pursuant to this Agreement.

 g. Workers’ Compensation.

 Prior to the commencement of work, CONTRACTOR shall sign and file with COUNTY the following certification: “I am aware of the provisions of California Labor Code §§3700 et seq. which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.” This certification is included in this Agreement and signature of the Agreement shall constitute signing and filing of the certificate. CONTRACTOR understands and agrees that any and all employees, regardless of hire date, shall be covered by Workers’ Compensation pursuant to statutory requirements prior to beginning work on the Project. If CONTRACTOR has no employees, initial here: \_\_\_\_\_\_\_\_\_\_.

**EXHIBIT “D” – “CERTIFICATE OF INSURANCE”**

**EXHIBIT “E” – REQUEST FOR PROPOSAL.**