

1 **AGREEMENT FOR CONSULTANT SERVICES**

2 **Name of Consultant**

3
4 THIS AGREEMENT FOR SERVICES (“Agreement”), made and entered into this _____ day of
5 _____, 2023, by and between the COUNTY OF IMPERIAL, a political subdivision of the
6 State of California, by and through its DEPARTMENT OF PUBLIC HEALTH (“COUNTY”) and
7 _____ (“CONSULTANT”) (individually, “Party;” collectively, “Parties”), shall be as follows:

8 **RECITALS**

9 **WHEREAS**, COUNTY desires to retain a qualified individual to assist in the design,
10 implementation, evaluation, and promotion of community and public health nutritional programs; and

11 **WHEREAS**, COUNTY desires to retain a consultant to perform said services; and

12 **WHEREAS**, CONSULTANT represents that he/she is qualified, experienced, and competent to
13 perform the desired services.

14 **NOW, THEREFORE**, in consideration of their mutual covenants, the Parties have and hereby
15 agree to the following:

16 **1. PARTIES TO AGREEMENT.**

17 1.1 This Agreement is by and between COUNTY and CONSULTANT.

18 1.2 It is not the intent of the Parties to this Agreement to create, and nothing in this Agreement
19 shall be construed as creating a joint venture or partnership or any other relationship
20 between the Parties. Neither COUNTY nor CONSULTANT authorizes the other to act
21 as its agent or representative.

22 **2. TERM OF AGREEMENT.**

23 This Agreement shall commence on _____ and shall remain in effect until _____, or
24 until terminated pursuant to this Agreement, whichever is earlier.

25 **3. WORK TO BE PERFORMED BY CONSULTANT.**

26 3.1 CONSULTANT shall perform and be responsible for services as detailed in the Scope of
27 Work attached hereto as **Exhibit “A”** and incorporated herein by this reference.
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1 3.2 CONSULTANT shall perform such other tasks as necessary and proper for the full
2 performance of the obligations assumed by CONSULTANT hereunder.

3 3.3 CONSULTANT shall:

4 3.4.1 Procure all permits and licenses, pay all charges and fees, and give all notices that
5 may be necessary and incidental to the due and lawful prosecution of the services
6 to be performed by CONSULTANT under this agreement;

7 3.4.2 Keep him/herself fully informed of all existing and proposed federal, state, and
8 local laws, ordinances, regulations, orders and decrees which may affect those
9 engaged or employed under this Agreement; and

10 3.4.3 At all times observe and comply with, and cause all of his/her employees to
11 observed and comply with all of said laws, ordinances, regulations, orders, and
12 decrees mentioned above.

13 **4. REPRESENTATIONS BY CONSULTANT.**

14 4.1 CONSULTANT understands and agrees that COUNTY has limited knowledge in the areas
15 specified in the Scope of Work. CONSULTANT has represented him/herself to be an expert
16 in these fields and understands that COUNTY is relying upon such representation.

17 4.2 CONSULTANT represents and warrants that CONSULTANT has all required licenses and
18 authorities to do business in the State of California and perform all aspects of this Agreement.

19 4.3 CONSULTANT shall not commence any work under this Agreement or provide any other
20 services, or materials, in connection therewith until CONSULTANT has received written
21 authorization from COUNTY to do so.

22 4.4 CONSULTANT represents and warrants that the person executing this Agreement on
23 behalf of CONSULTANT has the authority of CONSULTANT to sign this Agreement
24 and bind CONSULTANT to the performance of all duties and obligations assumed by
25 CONSULTANT herein.

26 4.5 CONSULTANT represents and warrants that any employee, contractor, and/or agent who
27 will be performing any of the duties and obligations of CONSULTANT herein possesses
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1 all required licenses and authorities, as well as the experience, training, and competency,
2 to perform such tasks.

3 4.6 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 4.7 CONSULTANT understands and agrees that in the course of performance of this
9 Agreement CONSULTANT may be provided with information or data considered by the
10 owner or the COUNTY to be confidential. CONSULTANT shall take all necessary steps
11 necessary to maintain such confidentiality, including but not limited to restricting the
12 dissemination of all material received to those required to have such data in order for
13 CONSULTANT to perform under this Agreement.

14 4.8 Prior to accepting any work under this Agreement, CONSULTANT shall perform a due
15 diligence review of his/her files and advise COUNTY of any conflict or potential conflict
16 CONSULTANT may have with respect to the work requested.

17 4.9 CONSULTANT represents and warrants that he/she shall perform all obligations under this
18 Agreement in accordance with generally accepted professional standards and in an
19 expeditious and economical manner consistent with sound professional practices.

20 4.10 CONSULTANT understands that COUNTY considers the representations made herein to
21 be material and would not enter into this Agreement with CONSULTANT if such
22 representations were not made.

23 **5. COMPENSATION.**

24 5.1 COUNTY shall pay CONSULTANT compensation for the services required to be
25 performed under this Agreement _____. The total
26 compensation payable under this Agreement shall not exceed
27 _____(\$0) unless otherwise previously agreed to in writing by
28 COUNTY.

1 5.2 Except as provided under this section, COUNTY shall not be responsible to pay
2 CONSULTANT any compensation, out-of-pocket expenses, fees, or other remuneration.

3 5.3 CONSULTANT acknowledges COUNTY is under no obligation to compensate
4 CONSULTANT for services rendered under this Agreement not authorized by COUNTY.

5 5.4 This Agreement is valid and enforceable only if sufficient funds are made available by the
6 appropriate budget act for the purposes of this Agreement. If sufficient funds are not
7 appropriated for this Agreement, it shall be invalid and of no further force and effect. In
8 that event, COUNTY shall have no liability to pay any funds to CONSULTANT and
9 CONSULTANT shall not be obligated to perform any provisions of this Agreement.
10 CONSULTANT will be due the share of compensation represented by the proportion of
11 work completed and reimbursement of expenses incurred, if any, at the time of termination
12 once a final billing is approved by COUNTY.

13 **6. PAYMENT.**

14 6.1 COUNTY shall compensate CONSULTANT for completed and approved services upon
15 presentment of its itemized billing submitted in a format approved by the COUNTY.

16 6.2 CONSULTANT shall at any time prior to the fifteenth (15th) day of any month, submit to
17 COUNTY a written claim for compensation for services performed. The claim shall be
18 in a format approved by COUNTY. No payment shall be made by COUNTY prior to the
19 claims being approved in writing by COUNTY. CONSULTANT may expect to receive
20 payment within a reasonable time thereafter and in any event in the normal course of
21 business within thirty (30) days after the claim is submitted.

22 **7. MAINTENANCE AND ACCESS OF BOOKS AND RECORDS.**

23 CONSULTANT represents and warrants that he/she shall maintain books, records, documents,
24 reports and other materials developed under this Agreement as follows:

25 7.1 CONSULTANT shall maintain all ledgers, books of accounts, invoices, vouchers,
26 canceled checks, and other records relating to CONSULTANT'S charges for services or
27 expenditures and disbursements charged to COUNTY for a minimum period of seven (7)
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1 years, or for any longer period required by law, from the date of final payment to
2 CONSULTANT pursuant to this Agreement.

3 7.2 CONSULTANT shall maintain all reports, documents and records which demonstrate
4 performance under this Agreement for a minimum period of seven (7) years, or for any longer
5 period required by law, from the date of termination or completion of this Agreement.

6 7.3 Any records or documents required to be maintained by CONSULTANT pursuant to this
7 Agreement shall be made available to COUNTY for inspection or audit at any time during
8 CONSULTANT's regular business hours provided that COUNTY provides
9 CONSULTANT with seven (7) days advanced written or e-mail notice. Copies of such
10 documents shall, at no cost to COUNTY, be provided to COUNTY for inspection at
11 CONSULTANT's address indicated for receipt of notices under this Agreement.

12 **8. INDEPENDENT CONTRACTOR.**

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

15 8.1 CONSULTANT shall only be responsible to COUNTY for the requirements and results
16 specified by this Agreement and except as specifically provided in this Agreement, shall
17 not be subject to COUNTY's control with respect to the physical actions or activities of
18 CONSULTANT in fulfillment of the requirements of this Agreement.

19 8.2 CONSULTANT is not, and shall not be, entitled to receive from, or through, COUNTY,
20 and COUNTY shall not provide, or be obligated to provide, CONSULTANT with
21 Workers' Compensation coverage or any other type of employment or worker insurance
22 or benefit coverage required or provided by any federal, state or local law or regulation
23 for, or normally afforded to, an employee of COUNTY.

24 8.3 CONSULTANT shall not be entitled to have COUNTY withhold or pay, and COUNTY
25 shall not withhold or pay, on behalf of CONSULTANT, any tax or money relating to the
26 Social Security Old Age Pension Program, Social Security Disability Program, or any
27 other type of pension, annuity, or disability program required or provided by any Federal,
28 State, or local law or regulation.

1 8.4 CONSULTANT shall not be entitled to participate in, or receive any benefit from, or make
2 any claim against any COUNTY fringe benefit program, including, but not limited to,
3 COUNTY's pension plan, medical and health care plan, dental and eye care plan, life
4 insurance plan, or any other type of benefit program, plan, or coverage designated for,
5 provided to, or offered to COUNTY's employees.

6 8.5 COUNTY shall not withhold or pay, on behalf of CONSULTANT, any Federal, State, or
7 local tax, including, but not limited to, any personal income tax, owed by CONSULTANT.

8 8.6 CONSULTANT is, and at all times during the term of this Agreement, shall represent and
9 conduct itself as an independent contractor, not as an employee of COUNTY.

10 8.7 CONSULTANT shall not have the authority, express or implied, to act on behalf of, bind
11 or obligate COUNTY in any way without the written consent of COUNTY.

12 **9. INSURANCE.**

13 9.1 COUNTY shall maintain at its expense professional liability coverage naming
14 CONSULTANT as an "Additional Insured." Such coverage shall be from an insurer of
15 COUNTY's choice, or COUNTY's self-insurance program, at COUNTY's discretion.
16 Said coverage shall apply to CONSULTANT only during the term of this Agreement and
17 while performing services on behalf of the COUNTY.

18 9.2 CONSULTANT hereby agrees, at his/her sole cost and expense, to obtain and maintain
19 in full force during the entire term of this Agreement (or extended term thereof) the
20 following types of insurance as detailed below:

21 9.2.1 General Liability. Coverage in a minimum of one million dollars (\$1,000,000.00)
22 per occurrence, two million dollars (\$2,000,000.00) aggregate.

23 9.2.2 Automobile Liability. Coverage in a minimum of one million dollars
24 (\$1,000,000.00) combined single limit, including owned, non-owned, and hired
25 vehicles.

26 9.2.3 Workers' Compensation.

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

1 (b) Prior to the commencement of work, CONSULTANT shall sign and file
2 with COUNTY the following certification: "I am aware of the provisions of
3 California Labor Code §§ 3700 et seq. which require every employer to be
4 insured against liability for workers' compensation or to undertake self-
5 insurance in accordance with the provisions of that code, and I will comply
6 with such provisions before commencing the performance of the work of
7 this contract."

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

10 (d) CONSULTANT understands and agrees that any and all employees,
11 regardless of hire date, shall be covered by workers' compensation
12 pursuant to statutory requirements prior to beginning work.

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

16 (i) If CONSULTANT does not have any employees, initial here:
17 _____.

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

21 9.2.4 Employer's Liability.

22 (a) Coverage, if applicable, in the amount of one million dollars
23 (\$1,000,000.00) per accident for bodily injury and disease.

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

27 (i) If CONSULTANT does not have any employees, initial here:
28 _____.

1 (ii) Should this status change, CONSULTANT shall immediately
2 notify COUNTY in writing and comply with the insurance
3 requirements above.

4 9.2.5 Professional Liability Commercial General Liability (Including
5 Contractual Liability) Bodily Injury one million dollars (\$1,000,000.00) per
6 occurrence and two million dollars (\$2,000,000.00) aggregate; Property Damage
7 one million dollars (\$1,000,000.00) per occurrence and two million dollars
8 (\$2,000,000.00) aggregate.

9 9.3 Special Insurance Requirements.

10 All insurance required shall:

11 9.3.1 Be procured from California admitted insurers (licensed to do business in
12 California) with a current rating by Best's Key Rating Guide, acceptable to
13 COUNTY. A rating of at least A-VII shall be acceptable to COUNTY; lesser
14 ratings must be approved in writing by COUNTY.

15 9.3.2 Be primary coverage as respects to COUNTY and any insurance or self- insurance
16 maintained by COUNTY shall be in excess of CONSULTANT's insurance
17 coverage and shall not contribute to it.

18 9.3.3 Name Imperial County Department of Public Health and the County of Imperial
19 and their officers, employees, and volunteers as additional insured on all policies,
20 except workers' compensation insurance and Errors & Omissions insurance, and
21 provide that COUNTY may recover for any loss suffered by COUNTY due to
22 CONSULTANT's negligence.

23 9.3.4 State that it is primary insurance, regards COUNTY as an additional insured, and
24 contains a cross-liability or severability of interest clause.

25 9.3.5 Not be canceled, non-renewed, or reduced in scope of coverage until after thirty
26 (30) days written notice has been given to COUNTY. CONSULTANT may not
27 terminate such coverage until it provides COUNTY with proof that equal or better
28 insurance has been secured and is in place. Cancellation or change without prior

1 written consent of COUNTY shall, at the option of COUNTY, be grounds for
2 termination of this Agreement.

3 9.3.6 If this Agreement remains in effect more than one (1) year from the date of its
4 original execution, COUNTY may, at its sole discretion, require an increase to
5 liability insurance to the level customary at such future date in similar COUNTY
6 Agreements by giving sixty (60) days notice to CONSULTANT.

7 9.4 Additional Insurance Requirements.

8 9.4.1 COUNTY is to be notified immediately of all insurance claims. COUNTY is also
9 to be notified if any aggregate insurance limit is exceeded.

10 9.4.2 The comprehensive or commercial general liability shall contain a provision of
11 endorsements stating that such insurance:

- 12 (i) Includes contractual liability;
- 13 (ii) Does not contain any exclusions as to loss or damage to property caused
14 by explosion or resulting from collapse of buildings or structures or
15 damage to property underground, commonly referred to by insurers as the
16 "XCU Hazards;"
- 17 (iii) Does not contain a "pro rata" provision which looks to limit the insurer's
18 liability to the total proportion that its policy limits bear to the total
19 coverage available to the insured;
- 20 (iv) Does not contain an "excess only" clause which requires the exhaustion of
21 other insurance prior to providing coverage;
- 22 (v) Does not contain an "escape clause" which extinguishes the insurer's
23 liability if the loss is covered by other insurance;
- 24 (vi) Includes COUNTY as an additional insured; and
- 25 (vii) States that it is primary insurance and regards COUNTY as an additional
26 insured and contains a cross-liability or severability of interest clause.

27 9.5 Deposit of Insurance Policy. Promptly on issuance, reissuance, or renewal of any insurance
28 policy required by this Agreement, CONSULTANT shall, if requested by COUNTY,

1 provide COUNTY satisfactory evidence that insurance policy premiums have been paid
2 together with a duplicate copy of the policy or a certificate evidencing the policy and
3 executed by the insurance company issuing the policy or its authorized agent.

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5 9.6 Certificates of Insurance. CONSULTANT agrees to provide COUNTY with the following
6 insurance documents on or before the effective date of this Agreement:

7 9.6.1 Complete copies of certificates of insurance for all required coverages including
8 additional insured endorsements, which shall be attached hereto as **Exhibit "B"**
9 and incorporated herein.

10 9.6.2 The documents enumerated in this Paragraph shall be sent to the following:

11 County of Imperial
12 Attn: Director, Risk Management Department
13 940 Main Street, Suite 101
14 El Centro, CA 92243

15 and

16 County of Imperial
17 Attn: Director, Public Health Department
18 935 Broadway Street
19 El Centro, CA 92243

20 9.7 Additional Insurance. Nothing in this, or any other provision of this Agreement, shall be
21 construed to preclude CONSULTANT from obtaining and maintaining any additional
22 insurance policies in addition to those required pursuant to this Agreement.

23 **10. SUSPENSION OF AGREEMENT.**

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

28 **11. TERMINATION.**

COUNTY retains the right to terminate this Agreement for any reason by notifying
CONSULTANT in writing twenty (20) days prior to termination and by paying the compensation due

1 and payable to the date of termination; provided, however, if this Agreement is terminated for fault of
2 CONSULTANT, COUNTY shall be obligated to compensate CONSULTANT only for that portion of
3 CONSULTANT's services which are of benefit to COUNTY. Said compensation is to be arrived at by
4 mutual agreement between COUNTY and CONSULTANT; should the Parties fail to agree on said
5 compensation, an independent arbitrator shall be appointed and the decision of the arbitrator shall be
6 binding upon the Parties.

7 **12. INSPECTION.**

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

13 **13. OWNERSHIP OF MATERIALS.**

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

19 **14. INTEREST OF CONSULTANT.**

20 14.1 CONSULTANT covenants that it presently has no interest, and shall not acquire any
21 interest, direct or indirect, financial or otherwise, which would conflict in any manner or
22 degree with the performance of the services hereunder.

23 14.2 CONSULTANT covenants that, in the performance of this Agreement, no sub- contractor
24 or person having such an interest shall be employed.

25 14.3 CONSULTANT certifies that no one who has or will have any financial interest under
26 this Agreement is an officer or employee of COUNTY.

27 **15. INDEMNIFICATION.**

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

9 **16. ASSIGNMENTS AND SUBCONTRACTS.**

10 16.1 Neither this Agreement nor any rights, duties, or obligations hereunder shall be assignable
11 and/or subcontracted by CONSULTANT without the prior written consent of COUNTY.

12 16.2 Consent by COUNTY to an assignment or subcontract shall not release CONSULTANT from
13 its primary liability under this Agreement, and COUNTY's consent to one (1) assignment or
14 subcontract, shall not be deemed a consent to other assignments and/or subcontracts.

15 16.3 Any attempt by CONSULTANT to assign or otherwise transfer any interest in this
16 Agreement without obtaining the prior written consent of COUNTY shall be void.

17 **17. NON-DISCRIMINATION.**

18 17.1 During the performance of the Agreement, CONSULTANT and its subcontractors shall not
19 unlawfully discriminate, harass, or allow harassment against any employee or applicant for
20 employment because of sex, race, color, religion, gender, gender identity, gender expression,
21 sexual orientation, marital status, national origin, ancestry, mental disability, physical
22 disability (including HIV and AIDS), medical condition, age, military or veteran status,
23 pregnancy, denial of medical and family care leave, pregnancy or disability leave.

24 17.2 CONSULTANT and its subcontractors shall take affirmative action to ensure that the
25 evaluation and treatment of their employees and applicants for employment are free from
26 such discrimination and harassment.

27 17.3 CONSULTANT and its subcontractors shall comply with the provisions of the California
28 Fair Employment and Housing Act (Gov. Code Sections 12990 (a-f) et seq.) and the

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

3 17.4 CONSULTANT and its subcontractors shall comply with Title VII of the Civil Rights Act
4 of 1964 and the Americans with Disabilities Act Amendments Act of 2008.

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6 17.5 The applicable regulations of the Fair Employment and Housing Commission
7 implementing Government Code Sections 12990 (a-f), set forth in Chapter 5 of Division
8 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement
9 by reference and made a part hereof as if set forth in full.

10 17.6 The applicable regulations of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §
11 794(a)) are incorporated into this Agreement by reference and made a part hereof as if set
12 forth in full. CONSULTANT and its subcontractors shall give written notice of their
13 obligations under this clause to labor organizations with which they have a collective
14 bargaining or other agreement.

15 17.7 CONSULTANT shall include the nondiscrimination and compliance provisions of the
16 Paragraph in all subcontracts to perform work under this Agreement.

17 **18. NOTICES AND REPORTS.**

18 18.1 Any notice and report under this Agreement shall be in writing and may be given by
19 personal delivery or by mailing by certified mail, addressed as follows:

20	CONSULTANT:	COUNTY:
21	NAME	County of Imperial
22	Street	Attn: Director, Department of Public Health
23	City, State ZIP	935 Broadway Street
	Email address	El Centro, CA 92243

24 And

25 County of Imperial
26 Attn: Clerk of the Board of Supervisors
27 940 W. Main Street, Suite 209
28 El Centro, CA 92243

1 18.2 Notice shall be deemed to have been delivered only upon receipt by the Party, seventy-
2 two (72) hours after deposit in the United States mail, or twenty-four (24) hours after
3 deposit with an overnight carrier.

4 18.3 The addressees and addresses for purposes of this paragraph may be changed to any other
5 addressee and address by giving written notice of such change. Unless and until written
6 notice of change of addressee and/or address is delivered in the manner provided in this
7 paragraph, the addressee and address set forth in this Agreement shall continue in effect
8 for all purposes hereunder.

9 **19. ENTIRE AGREEMENT.**

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

13 **20. MODIFICATION.**

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

16 **21. CAPTIONS.**

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

19 **22. PARTIAL INVALIDITY.**

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

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

24 As used in this Agreement and whenever required by the context thereof, each number, both singular
25 and plural, shall include all numbers, and each gender shall include both genders. CONSULTANT as used
26 in this Agreement or in any other document referred to in or made a part of this Agreement shall likewise
27 include the singular and the plural, a corporation, a partnership, individual, firm, or person acting in any
28 fiduciary capacity as executor, administrator, trustee, or in any other representative capacity, or any other

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

3 **24. WAIVER.**

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

7 **25. CHOICE OF LAW.**

8 This Agreement shall be governed by the laws of the State of California. This Agreement is made
9 and entered into in Imperial County, California. To the extent permitted by law, any action brought by
10 either Party with respect to this Agreement shall be brought in a court of competent jurisdiction within
11 Imperial County, California. CONSULTANT waives his/her right under California Code of Civil
12 Procedure Section 394 to file a motion to transfer any action or proceeding arising out of this Agreement
13 to another venue.

14 **26. AUTHORITY.**

15 26.1 Each individual executing this Agreement on behalf of CONSULTANT represents and
16 warrants that:

17 26.1.1 He/She is duly authorized to execute and deliver this Agreement on behalf of
18 CONSULTANT;

19 26.1.2 Such execution and delivery is in accordance with the terms of the Articles of
20 Incorporation or Partnership, any By-laws or Resolutions of CONSULTANT; and

21 26.1.3 This Agreement is binding upon CONSULTANT accordance with its terms.

22 26.2 CONSULTANT shall deliver to COUNTY evidence acceptable to COUNTY of the
23 foregoing within thirty (30) days of execution of this Agreement.

24 **27. COUNTERPARTS.**

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

1 **28. HIPAA COMPLIANCE.**

2 28.1 CONSULTANT warrants that he/she is in compliance with all applicable HIPAA and
3 HITECH Act regulations.

4 28.2 CONSULTANT agrees to abide by the terms and provisions of “Imperial County Public
5 Health Department – HIPAA Business Associate Agreement,” attached hereto as **Exhibit**
6 “C” and incorporated by this reference as though fully set forth herein.

7 **29. REVIEW OF AGREEMENT TERMS.**

8 29.1 Each party has received the opportunity to obtain independent legal advice from its
9 attorneys with respect to the advisability of making the representations, warranties,
10 covenants, and agreements provided for herein, and with respect to the advisability of
11 executing this Agreement.

12 29.2 Each Party represents and warrants to and covenants with the other Party that:

13 29.2.1 This Agreement in its reduction to final written form is a result of extensive good
14 faith negotiations between the Parties and/or their respective legal counsel; and

15 29.2.2 The Parties and/or their legal counsel have carefully reviewed and examined this
16 Agreement for execution by said Parties.

17 29.3 Any statute or rule of construction that ambiguities are to be resolved against the drafting
18 Party shall not be employed in the interpretation of this Agreement.

19 **IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed the
20 day and year first above written.

21 **COUNTY OF IMPERIAL:**

CONSULTANT:

22
23 By: _____
24 RYAN E. KELLEY, Chairman
25 Imperial County Board of Supervisors

By: _____
NAME

26 **ATTEST:**

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28 By: _____
BLANCA ACOSTA

Clerk of the Board of Supervisors

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APPROVED AS TO FORM:

ERIC R. HAVENS
County Counsel

By: _____

Deputy County Counsel