

1 **AGREEMENT**

2 (Superior Court Felony Contract – _____)

3
4 THIS AGREEMENT (“Agreement”) is made and entered into this _____ day of
5 _____, 201_, by and between the **County of Imperial**, a political subdivision of the State
6 of California (“County”) and _____ (State Bar Number _____), a licensed attorney duly
7 admitted to practice before all the Courts of the State of California (“Contractor”) (individually, “Party;”
8 collectively, “Parties”).

9 **WITNESSETH:**

10 **WHEREAS**, persons charged with commission of a crime have a constitutional right to be
11 represented by competent defense counsel; and

12 **WHEREAS**, California Penal Code section 987 provides that if a defendant is unable to employ
13 counsel, the Court shall assign counsel to defend him or her; and

14 **WHEREAS**, County employs a Public Defender and deputies for representation of indigents
15 charged with the commission of crimes; and

16 **WHEREAS**, Penal Code section 987.2(a)(3) provides that in a case where the Court determines
17 that because of a conflict of interest or other reasons, the Public Defender is unable to represent
18 defendants in a criminal trial, proceeding or appeal, the Court shall assign other counsel to represent the
19 defendant; and

20 **WHEREAS**, Penal Code section 987.2(b) provides that counsel assigned pursuant to Penal Code
21 section 987.2(a) shall receive a reasonable sum for compensation and for necessary expenses, the
22 amount of which shall be determined by the Court and paid out of the general fund of the County in
23 which the criminal case is pending; and

24 **WHEREAS**, the sum provided for in Penal Code section 987.2(a) may be determined by
25 contract between the Court and one or more responsible attorneys after consultation with the County’s
26 Board of Supervisors as to the amount of compensation and expenses to be paid, which shall be within
27 the amount of funds allocated by the Board of Supervisors for the cost of assigned counsel in those
28 cases; and

1 **WHEREAS**, under California Government Code section 31000, County is authorized to enter
2 into a contract for legal services of attorneys; and

3 **WHEREAS**, Contractor is willing to and does possess requisite qualifications including, but not
4 limited to, training and experience and County wishes to employ Contractor to render legal services to
5 indigents where the Public Defender has a conflict of interest or cannot otherwise represent defendants;
6 and

7 **WHEREAS**, in Phillips v. Seeley, 43 Cal. App. 3d 104 (1974), the Appellate Court held that the
8 judicial act of assigning an attorney to represent an indigent defendant with knowledge of the
9 compensation contract between the Board of Supervisors and the attorney constitutes judicial approval
10 and ratification of the contract and recognition that the contract provides reasonable compensation to the
11 attorney;

12 NOW THEREFORE, BE IT AGREED AS FOLLOWS:

13 **1. SCOPE OF SERVICES.**

14 1.1. Contractor shall provide professional services, advice and legal representation to indigent
15 defendants charged with a felony in cases set before the Superior Court in which he/she is
16 appointed during the term of this Agreement.

17 1.2. It is agreed that Contractor shall provide these services through one or more of its
18 attorneys who are properly licensed to practice law in California, who are competent to
19 represent defendants facing felony criminal charges, and who meet the minimum
20 qualifications as set forth in the Administrative Policy Memorandum issued by the
21 Superior Court of California County of Imperial on May 22, 2005 and as revised on
22 March 7, 2008 and January 15, 2013 entitled “Criteria for Court Appointment of Indigent
23 Defense Counsel”.

24 1.3. In cases where Contractor represents a defendant who enters a plea of guilty to a felony
25 charge before preliminary hearing, it shall be the responsibility of Contractor to continue
26 to represent such defendant up to, and including, sentencing or other disposition
27 proceedings.

28 1.4. **Designated Complex Cases.** For cases designated as complex, Contractor shall receive

1 the additional compensation outlined in paragraph 5.1. Complex cases shall include the
2 following: murder, rape, molestation, wiretap (involving a minimum of 2,000 pages of
3 discovery) and cases involving the potential of a life sentence.

4 1.5. In addition to felony cases, Contractor shall accept responsibility for representation in the
5 following instances:

6 1.5.1. Indigent adults, minors and parents in cases set before the Superior or Juvenile
7 Courts (including proceedings pursuant to California Welfare and Institutions
8 Code section 600 *et seq.* and California Government Code section 27706) and in
9 all other instances where the Public Defender is by law required to provide such
10 representation, where he/she is appointed by the Court to represent said adults,
11 minors or parents.

12 1.5.2. Misdemeanor cases as provided for in Section 3.2.

13 1.5.3. PROBATION VIOLATIONS. Any and all matters relating to the violation of the
14 terms and conditions of Probation, when the Public Defender's Office is relieved
15 from representation by declaration of conflict of interest or by any other means.

16 1.5.4. POST RELEASE COMMUNITY SUPERVISION VIOLATIONS. Any and all
17 matters relating to the violation of the terms and conditions of Post Release
18 Community Supervision (PRCS), when the Public Defender's Office is relieved
19 from representation by declaration of conflict of interest or by any other means.

20 1.5.5. PAROLE VIOLATIONS. Any and all matters relating to the violation of the
21 terms and conditions of Parole, when the Public Defender's Office is relieved
22 from representation by declaration of conflict of interest or by any other means.

23 1.5.6. COMPETENCY. Any and all matters relating to a defendant's competency to
24 stand trial and any mental health and/or restoration to competency hearings.

25 1.6. Contractor shall perform legal services competently. To perform legal services
26 competently means diligently to apply the learning and skill necessary to perform the
27 duties of a member of the State Bar of California arising from employment or
28 representation. Contractor shall be mentally, emotionally and physically able to perform

1 legal services. All legal services must be provided in a manner fully consistent with all
2 applicable laws regarding the provision of competent legal defense and with the Rules of
3 Professional Conduct and other statutes, regulations and rules of practice applicable to
4 members of the State Bar of California.

5 1.7. Contractor shall be available to appear at any branch of the Imperial County Superior
6 Court on any day in which the Superior Court is open, from 8:30 a.m. until 5:00 p.m.
7 Contractor shall timely appear at all scheduled hearings in cases to which Contractor has
8 been appointed.

9 1.8. Contractor shall fully comply with all representations made by Contractor in Contractor's
10 Qualification Statement submitted to County in response to County's Request For
11 Qualifications Level 2 Misdemeanor and Felony Flat-Rate Contract Attorneys".
12 Contractor's Qualification Statement is attached hereto as **Attachment 1** and
13 incorporated by this reference.

14 1.9. ANCILLARY SERVICE REQUESTS. Contractor shall prepare any requests for
15 investigative services utilizing the form provided on the Office of County Counsel
16 website. All requests shall be prepared by Contractor and submitted directly to County
17 Counsel through electronic mail, fax, or personal delivery.

18 **2. APPOINTMENTS.**

19 **2.1.** The Public Defender or his/her deputies will notify the Court if he/she has a conflict of
20 interest. Upon being appointed to represent a defendant, Contractor shall notify the Court
21 Executive Officer in writing of the name of the client and case number within a
22 reasonable time after the appointment.

23 **2.2 Conflicts.**

24 2.2.1 Upon appointment by the Court, Contractor shall promptly conduct a due
25 diligence search of its records to determine whether any potential conflicts exist.

26 2.2.2 When Contractor is of the opinion that an actual conflict of interest exists that
27 would prohibit Contractor's representation of an indigent client that the
28 Contractor has been appointed to represent or the Court wishes to appoint

1 Contractor to represent, Contractor may ask the Court to be relieved from further
2 representation of the indigent client or not be appointed to represent the indigent
3 client.

4 2.2.3 Grounds for relief from further representation shall be based on grounds for
5 declaring a conflict of interest as set forth in the California State Bar's Rules of
6 Professional Conduct ("Bar Rules").

7 2.2.4 In the rare and unlikely event that disclosure to the County Counsel of the factual
8 nature of the conflict will violate the attorney-client privilege, Contractor may
9 describe the conflict in general terms. However, the applicable section and
10 subsection of the Bar Rules must still be included.

11 2.3 Contractor shall notify the Office of the County Counsel of the Contractor's declaration of a conflict
12 pursuant to Section 2.2. within two (2) business days. The notice to the Office of the County
13 Counsel shall be in the form of a written declaration signed under penalty of perjury and in the
14 format provided in **Attachment 2**. The declaration shall be submitted electronically. Contractor
15 shall retain the original declaration for three (3) years following the termination of this agreement.
16 Contractor recognizes that assignment of conflict indigent defense cases to attorneys is a matter
17 entirely within the discretion of the Court. This Agreement is based on the understanding that the
18 Court will endeavor to assign cases to those attorneys who have contracted with County to provide
19 conflict indigent defense services proportionately.

20 2.4 Contractor agrees to accept his/her proportionate share of conflict indigent defense
21 assignments in the Superior Court in return for the monthly flat rate of compensation
22 provided herein, and agrees that this Agreement provides reasonable compensation in
23 each such case.

24 2.5 When notice of termination of this agreement is given by either party, no new
25 appointments will be made to Contractor following 30 days before the designated
26 termination date.

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28 **3. ORDER OF APPOINTMENT.**

1 3.1. **FELONY CASES.** In felony cases (both prior to and after preliminary examination), the
2 following procedure has been set up for the appointment of counsel:

3 3.1.1. When the Court decides that an indigent defendant in a felony case is entitled to
4 representation by a court-appointed attorney, the Court will first appoint the
5 Public Defender to represent that defendant.

6 3.1.2. If the Public Defender has a conflict of interest or other reason that prevents
7 representation of such defendant by the Public Defender, the Court has retained
8 independent attorneys to be available for appointments to represent that defendant
9 in those cases (individually, “Felony Contract Attorney;” collectively, “Felony
10 Contract Attorneys”). The Court will make a reasonable effort to appoint each of
11 the Felony Contract Attorneys such that each receives an equal caseload when the
12 Public Defender has a conflict. If, for any reason, any attorney ceases to be
13 appointed by the Court in these cases, then the Court may replace that attorney
14 with another attorney.

15 3.2. **MISDEMEANOR CASES.** In misdemeanor cases the following procedure has been set
16 up for the appointment of counsel:

17 3.2.1. Where the Court decides that an indigent defendant in a misdemeanor case is
18 entitled to representation by a court-appointed attorney, the Court will first
19 appoint the Public Defender to represent the defendant.

20 3.2.2. If the Public Defender has a conflict of interest or other reason that prevents
21 representation of such defendant by the Public Defender, the Court will appoint
22 one (1) or more of the attorneys contracted by the court to handle misdemeanor
23 cases (“Misdemeanor Contract Attorneys”) to represent that defendant.

24 3.2.3. If the Public Defender and the Misdemeanor Contract Attorneys are
25 unable to represent the defendant because of a conflict of interest, the
26 Court will then appoint a Felony Contract Attorney.

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28 **4. RECORDS.**

1 4.1. Contractor shall keep records of services provided on a form approved by the Court
2 Executive Officer. Such records shall include the number of cases worked on during the
3 month and a total of the hours expended during that month on work that falls within the
4 scope of this Agreement.

5 4.2. Contractor shall provide County's Office of the County Counsel a duplicate of each
6 report given to the Court Executive Officer. Said duplicate can be submitted at 940 West
7 Main Street, Suite 205, El Centro, California.

8 **5. PAYMENT.**

9 5.1. Except as provided below at paragraph 5.4, County will pay to CONTRACTOR as
10 follows:

11 5.1.1. MONTHLY COMPENSATION: A total of _____ dollars (\$____.00) per
12 month for services rendered pursuant to this Agreement. Payment will be made
13 monthly, in arrears.

14 5.1.2. COMPLEX CASE OFFSET: A lump sum payment of **Two Thousand Dollars**
15 **(\$2,000.00)** upon final termination of the case.

16 5.1.3. COMPLEX CASE TRIAL OFFSET: **Two Hundred Fifty Dollars (\$250.00)** for
17 each half-day Contractor is in trial.

18 **5.2. Invoice and Payment of Complex Cases.** Contractor shall submit an invoice and minute
19 order reflecting the date of final termination of the case to the Office of County Counsel
20 for payment processing. Invoices will not be considered complete if not accompanied by
21 minute order. Contractor shall receive payment within thirty (30) days of receipt of
22 invoice and minute order.

23 **5.3. Contractor shall bear all his/her own costs, including but not limited to, general**
24 **office expenses, phone costs, duplicating/copying costs, travel costs and professional**
25 **and general liability costs. Contractor agrees not to request these services through**
26 **Ancillary Service Requests and understands that County will not consider such**
27 **requests.**

28 5.4. When either Contractor or County gives notice of its intention to terminate this contract

1 under paragraph 11, no new appointments to Contractor may be made following thirty
2 (30) days before the designated termination date. In addition, payments from County to
3 Contractor described above at paragraph 5.1 will consequently be reduced 25% each
4 week of last four weeks preceding the termination date, e.g. week four = 100% of pay;
5 week three = 75% of pay; week two = 50%; week one = 25%.

6 **6. SUPPLIES AND DUPLICATING.**

7 6.1. It being understood that all criminal files will ultimately be the property of County,
8 Contractor shall to pay for the supplies that make up the file. Contractor may purchase
9 said supplies from County if CONTRACTOR so desires.

10 6.2. COUNTY agrees to provide Contractor with one (1) copy of all documents and police
11 reports that are relevant to this Agreement at no cost to Contractor.

12 **7. TERM.**

13 7.1. The term of this Agreement shall be from _____ through _____ unless
14 terminated sooner pursuant to this agreement as set forth in paragraph 11.

15 7.2. Renewal. The term shall be automatically renewed for five (5) consecutive one (1) year
16 terms, unless either party gives written notice of their intent to terminate the agreement at
17 least sixty (60) days before the termination date, in accordance with the terms of this
18 agreement.

19 **8. INDEPENDENT CONTRACTOR.**

20 8.1. The Parties expressly intend and agree that Contractor is acting as an independent
21 contractor and not as an employee of County. Contractor retains sole and absolute
22 discretion, control and judgment in the manner and means of carrying out Contractor's
23 responsibilities for the provision of services under this Agreement.

24 8.2. Contractor understands and agrees that Contractor shall not be entitled to any of the rights
25 and privileges established for County's employees (if any) including but not limited to
26 the following: retirement benefits, medical insurance coverage, severance pay benefits,
27 paid vacation and sick pay and overtime pay.

28 8.3. Contractor understands and agrees that County will not pay or withhold from the

1 compensation paid to Contractor pursuant to this Agreement any sums customarily paid
2 or withheld on behalf of employees for income tax, employment insurance, social
3 security, worker's compensation or any other withholding tax, insurance or payment
4 pursuant to any law or governmental requirement and all such payments as may be
5 required by law are the sole responsibility of Contractor.

6 8.4. This Agreement shall not be construed as a partnership, and County shall have no
7 responsibility for any of Contractor's debts, liabilities or other obligations whatsoever.
8 Contractor is an independent contractor and at all times during the term of this
9 Agreement shall represent and conduct himself/herself as an independent contractor, not
10 as an agent or employee of County. Contractor shall not have the authority, express or
11 implied, to bind or obligate County in any way.

12 **9. INSURANCE.**

13 9.1. Contractor hereby agrees at its own cost and expense to procure and maintain commercial
14 general liability insurance, employer's liability insurance, commercial automobile
15 liability insurance, professional liability insurance and property damage insurance during
16 the entire term of this Agreement in a sum acceptable to County and adequate to cover
17 potential liabilities arising in connection with the performance of this Agreement and in
18 any event not less than the minimum limit set forth as follows:

<u>Insurance</u>	<u>Minimum Limit</u>
Minimum Errors & Omissions Coverage	\$250,000
Worker's Compensation, Coverage A	Statutory
Automobile Liability	
Bodily Injury	\$100,000/\$300,000 aggregate
Property Damage	\$50,000 per occurrence

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25 9.2. **Special Insurance Requirements.** All insurance required under paragraph 9 shall:
26 9.2.1. Be procured from an insurer authorized to do business in California.
27 9.2.2. Be primary coverage as respects County and any insurance or self-insurance
28 maintained by County shall be in excess of Contractor's insurance coverage and

1 shall not contribute to it.

2 9.2.3. Name County as an additional insured on all policies, except Workers'
3 Compensation, and provide that County may recover for any loss suffered by
4 County by reason of Contractor's negligence.

5 9.2.4. State that it is primary insurance and regards County as an additional insured and
6 contains a cross-liability or severability of interest clause.

7 9.2.5. Not be canceled, non-renewed or reduced in scope of coverage until after thirty
8 (30) days written notice has been given to County. However, Contractor may not
9 terminate such coverage until it provides County with proof that equal or better
10 insurance has been secured and is in place. Cancellation or change without the
11 prior written consent of County shall, at the option of County, be grounds for
12 termination of this Agreement.

13 9.3. **Additional Insurance Requirements.**

14 9.3.1. Complete copies of certificates of insurance for all required coverages including
15 additional insured endorsements and thirty (30) day notice of cancellation clause
16 endorsements shall be attached hereto as Exhibit A and incorporated herein.

17 9.3.2. County is to be notified immediately of all insurance claims. County is also to be
18 notified if any aggregate insurance limit is exceeded.

19 9.3.3. The comprehensive or commercial general liability shall contain a provision of
20 endorsements stating that such insurance:

- 21 A. Includes contractual liability;
- 22 B. Does not contain any exclusions as to loss or damage to property caused
23 by explosion or resulting from collapse of buildings or structures or
24 damage to property underground, commonly referred to by insurers as the
25 "XCU Hazards;"
- 26 C. Does not contain a "pro rata" provision which looks to limit the insurer's
27 liability to the total proportion that its policy limits bear to the total
28 coverage available to the insured; and

1 D. Does not contain an “excess only” clause which requires the exhaustion of
2 other insurance prior to providing coverage.

3 9.4. **Deposit of Insurance Policy.** Promptly on issuance, reissuance, or renewal of any
4 insurance policy required by this Agreement, Contractor shall, if requested by County,
5 cause to be given to County satisfactory evidence that insurance policy premiums have
6 been paid together with a duplicate copy of the policy or a certificate evidencing the
7 policy and executed by the insurance company issuing the policy or its authorized agent.

8 9.5 Additional Insurance. Nothing in this, or any other provision of this Agreement, shall be
9 construed to preclude Contractor from obtaining and maintaining any additional
10 insurance policies in addition to those required pursuant to this Agreement.

11 **10. INDEMNIFICATION.**

12 10.1. Contractor agrees to the fullest extent permitted by law to indemnify, defend, protect and
13 hold COUNTY and its representatives, officers, directors, designees, employees, agents,
14 successors and assigns harmless from any and all claims, expenses, liabilities, causes of
15 action, demands, losses, penalties, attorneys fees and costs, in law or equity, of every
16 kind and nature whatsoever arising out of or in connection with Contractor’s negligent
17 acts and omissions or willful misconduct under this Agreement (“Claims”), whether or
18 not arising from the passive negligence of County, but does not include Claims that are
19 finally determined to be the result of the sole negligence or willful misconduct of County.

20 10.2. Contractor agrees to defend with counsel acceptable to County, indemnify and hold
21 County harmless from all Claims, including but not limited to:

22 10.2.1. Personal injury, including but not limited to bodily injury, emotional injury,
23 sickness or disease or death to persons including but not limited to County’s
24 representatives, officers, directors, designees, employees, agents, successors and
25 assigns, subcontractors and other third parties and/or damage to property of
26 anyone (including loss of use thereof) arising out of Contractor’s negligent
27 performance of, or willful misconduct surrounding, any of the terms contained in
28 this Agreement, or anyone directly or indirectly employed by Contractor or

1 anyone for whose acts Contractor may be liable;

2 10.2.2. Liability arising from injuries to Contractor and/or any of Contractor's employees
3 or agents arising out of Contractor's negligent performance of, or willful
4 misconduct surrounding, any of the terms contained in this Agreement, or anyone
5 directly or indirectly employed by Contractor or anyone for whose acts Contractor
6 may be liable;

7 10.2.3. Penalties imposed upon account of the violation of any law, order, citation, rule,
8 regulation, standard, ordinance or statute caused by the negligent action or
9 inaction, or willful misconduct of Contractor or anyone directly or indirectly
10 employed by Contractor or anyone for whose acts Contractor may be liable;

11 10.2.4. Infringement of any patent rights which may be brought against County arising
12 out of Contractor's work;

13 10.2.5. Any violation or infraction by Contractor of any law, order, citation, rule,
14 regulation, standard, ordinance or statute in any way relating to the occupational
15 health or safety of employees; and

16 10.2.6. Any breach by Contractor of the terms, requirements or covenants of this
17 Agreement.

18 10.3. The indemnification provisions above shall extend to Claims occurring after this
19 Agreement is terminated, as well as while it is in force.

20 **11. TERMINATION.**

21 11.1. **TERMINATION FOR CAUSE:** Upon material breach of this Agreement, County or
22 Contractor shall have the right to terminate this Agreement by giving written notice to the
23 other Party of such termination and specifying the effective date of such termination.

24 11.2. **TERMINATION FOR CONVENIENCE:** County or Contractor may terminate this
25 Agreement at any time, with or without cause, by giving written notice to Contractor of
26 such termination and specifying the effective date thereof at least sixty (60) days before
27 the effective date of such termination. In that event, it is expressly agreed and understood
28 that Contractor shall provide assistance and advice to Contractor's successor to facilitate

1 the transition caused by such termination.

2 **12. UNFINISHED CASES.**

3 12.1. Should this contract be terminated for cause, Contractor shall be entitled to receive
4 compensation after the effective termination date for work performed on unfinished cases
5 at a rate of Forty Dollars (\$40.00) per hour.

6 12.2. Should this contract be terminated for convenience, by either party, Contractor shall be
7 entitled to receive compensation after the effective termination date for work performed
8 on unfinished cases at a rate of Thirty Dollars (\$30.00) per hour.

9 12.3 Both parties will attempt to achieve a smooth transition if notice of termination of
10 services is given by either Contractor or County. Contractor will attempt to transfer all
11 unfinished cases to other counsel by the date designated for termination in said notice.

12 **13. ASSIGNMENT.**

13 Contractor shall not assign any interest in this Agreement, and shall not transfer any interest
14 therein (whether by assignment or novation) without the prior written consent of County thereto.

15 **14. EQUAL OPPORTUNITY.**

16 Contractor will not discriminate against any employee, or against any applicant for such employment
17 because of age, race, color, religion, physical handicap, ancestry, sex, sexual orientation or national
18 origin. This provision shall include, but not be limited to, the following: employment upgrading,
19 demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other
20 forms of compensation; and the selection for training including apprenticeship.

21 **15. CHANGES.**

22 County and Contractor may from time to time require changes in the scope of the services of
23 Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount
24 of Contractor's compensation which are mutually agreed upon by and between County and Contractor ,
25 shall be effective when incorporated in written amendments to this Agreement.

26 **16. INTEREST OF CONTRACTOR.**

27 16.1. Contractor covenants that it presently has no interest, and shall not acquire any interest,
28 direct or indirect, financial or otherwise, which would conflict in any manner or degree

1 with the performance of the services hereunder.

2 16.2. Contractor covenants that, in the performance of this Agreement, no subcontractor or
3 person having such an interest shall be employed.

4 16.3. Contractor certifies that no one who has or will have any financial interest under this
5 Agreement is an officer or employee of County.

6 **17. SHARING OFFICE SPACE/CONFLICT OF INTEREST.**

7 If Contractor shares office space with another attorney, Contractor must maintain
8 professional independence. Contractor's office must be structured and managed in a way that
9 does not allow for confidences to be shared or conflicts to arise as a result of sharing office
10 space.

11 **18. NOTICES AND REPORTS.**

12 18.1. All notices and reports under this Agreement shall be in writing and may be given by
13 personal delivery or by mailing by U.S. mail, addressed as follows:

<p>14 COUNTY Imperial County Clerk of the Board 940 W. Main Street 16 El Centro, CA 92243</p>	<p>CONTRACTOR _____ _____ _____ _____</p>
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17 and

18 Imperial County
19 Office of County Counsel
940 W. Main Street, Suite 205
20 El Centro, CA 92243

21 18.2. All notices and reports under this Agreement may be given by personal delivery or by
22 mailing by U.S. mail at such other address as either Party may designate in a notice to the
23 other Party given in such manner.

24 18.3. Any notice given by mail shall be considered given when deposited in the United State
25 Mail, postage prepaid, addressed as provided herein.

26 **19. ENTIRE AGREEMENT.**

27 This Agreement contains the entire Agreement between County and Contractor relating to the
28 transactions contemplated hereby and supersedes all prior or contemporaneous agreements,

1 understandings, provisions, negotiations, representations, or statements, either written or oral.

2 **20. CAPTIONS.**

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

5 **21. PARTIAL INVALIDITY.**

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

9 **22. WAIVER.**

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

13 **23. CHOICE OF LAW.**

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

17 **24. ATTORNEY'S FEES.**

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

21 **25. AUTHORITY.**

22 25.1. Each individual executing this Agreement on behalf of Contractor represents and
23 warrants that:

24 25.1.1. He/She is duly authorized to execute and deliver this Agreement on behalf of
25 Contractor;

26 25.1.2. Such execution and delivery is in accordance with the terms of the Articles of
27 Incorporation or Partnership, any by-laws or Resolutions of Contractor; and

28 25.1.3. This Agreement is binding upon Contractor in accordance with its terms.

1 25.2. Contractor shall deliver to County evidence acceptable to County of the foregoing within
2 thirty (30) days of execution of this Agreement.

3 **26. COUNTERPARTS.**

4 This Agreement may be executed in counterparts.

5 **27. REVIEW OF AGREEMENT TERMS.**

6 This Agreement has been reviewed and revised by legal counsel for both County and Contractor,
7 and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to
8 the interpretation or enforcement of the same or any subsequent amendments thereto.

9 IN WITNESS THEREOF, County and Contractor have executed this Agreement as of the date
10 first above written.

11 County of Imperial:

12
13 By: _____
14 Katherine Turner
15 County Counsel

16 Contractor:

17
18 By: _____
19

20 Approved as to form:

21
22 By: _____
23 Geoffrey P. Holbrook
24 Assistant County Counsel
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