MEMORANDUM OF UNDERSTANDING

BETWEEN IMPERIAL COUNTY FREE LIBRARY
AND HEBER ELEMENTARY SCHOOL DISTRICT

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), made and entered into effective the___ day of __________, 2017, by and between the COUNTY OF IMPERIAL, a political subdivision of the State of California, by and through the Imperial County Free Library ("COUNTY") and HEBER ELEMENTARY SCHOOL DISTRICT ("HESD") (individually, “PARTY;” collectively, “PARTIES”) shall be as follows:

RE bâtALS

WHEREAS, COUNTY desires to partner with HESD in participating in the United States Department of Agriculture’s ("USDA") Summer Food Service Program ("SFSP"); and

WHEREAS, COUNTY is to become a summer meal site at the Heber library location; and

WHEREAS, HESD wishes to sponsor the library to distribute free meals to children ages 0 – 18 in the summer and act as the administrative and fiscal agent for SFSP; and

WHEREAS, HESD shall receive funding from the USDA to prepare meals and report data back to the USDA; and

WHEREAS, COUNTY and HESD shall not exchange any monies for this work.

NOW THEREFORE, and in consideration of the covenants and conditions hereinafter contained, it is agreed between the PARTIES as follows:

1. SCOPE OF WORK.

1.1. COUNTY shall be responsible for providing services as contained in “County Responsibilities”, attached hereto as Exhibit “A” and incorporated by reference as though fully set forth herein.

1.2. HESD shall be responsible for providing services as contained in “HESD Responsibilities”, attached hereto as Exhibit “B” and incorporated by reference as though fully set forth herein.
2. **PROGRAM COORDINATION.**

2.1. The County Librarian, or his/her designee, shall be the representative of COUNTY for all purposes under this MOU. The County Librarian, or his/her designee, is hereby designated as the Program Manager for COUNTY. He/she shall supervise the progress and execution of this MOU.

2.2. HESD shall assign a single Program Manager to have overall responsibility for the progress and execution of this MOU.

2.3. Should circumstances or conditions subsequent to the execution of this MOU require a substitute Program Manager for any reason, the Party requesting such substitution shall give notice the other as described under Paragraph 11.

3. **SCHEDULE OF SERVICES.**

3.1. PARTIES shall adhere to a mutually agreed upon schedule for providing the services. Said schedule is attached hereto as Exhibit “C,” and incorporated by this reference as though fully set forth herein.

3.2. Any changes or amendments to the schedule of services shall be made upon mutual consent of both PARTIES.

4. **TERM.**

4.1. Unless otherwise terminated or extended by written notice, this MOU shall become effective upon the signing by both parties of this MOU and shall continue in effect for one (1) year.

4.2. The term of this MOU may be extended for an additional one (1) year period, upon mutual written agreement of both PARTIES.

5. **REPRESENTATIONS BY HESD.**

5.1. HESD represents and warrants that the person executing this MOU on its behalf has the authority of HESD to sign the MOU and bind HESD to the performance of all duties and obligations assumed by HESD herein.

5.2. HESD represents and warrants that any employee, contractor, or agent who will be performing any of the duties and obligations of HESD, as set forth herein, possesses all
5.3. HESD represents that the services provided herein shall be performed in a professional and lawful manner and shall be of high professional quality.

5.4. HESD understands that COUNTY considers the representations made herein to be material and would not enter into this MOU with HESD if such representations were not made.

5.5. HESD represents and warrants that it has not been engaged by, nor will it be engaged by, and owes no duty of performance to any other person or entity that would constitute a conflict.

5.6. HESD will, at all times during the course of this MOU, comply with all applicable federal, state and local laws, statutes, ordinances and regulations. It is understood that in the event COUNTY is investigated or audited by any State or Federal Governmental Agency, or any other recognized investigative/auditing entity, HESD shall fully cooperate with such agencies’ reasonable and lawful request for information.

6. **INDEPENDENT CONTRACTOR.**

6.1. In all situations and circumstances arising out of the terms and conditions of this MOU, HESD is an independent contractor.

6.1.1. HESD shall be responsible to COUNTY only for the requirements and results specified by this MOU.

6.1.2. Except as specifically provided in this MOU, HESD shall not be subject to COUNTY’s control with respect to the physical actions or activities of HESD in fulfillment of the requirements of this MOU.

6.2. HESD is not, and shall not be, entitled to receive from or through COUNTY, and COUNTY shall not provide, or be obligated to provide HESD 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 HESD.
7. **INSURANCE REQUIREMENTS**

PARTIES agree to procure and maintain insurance coverages sufficient to cover their respective risks.

8. **ASSIGNMENT.**

Neither this MOU nor any rights, duties, or obligations hereunder shall be assignable by any PARTY without the prior written consent of the other.

9. **FAIR EMPLOYMENT PRACTICES.**

9.1. During the performance of this MOU, HESD shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of:

- 9.1.1. Age (forty (40) and over);
- 9.1.2. Ancestry;
- 9.1.3. Color;
- 9.1.4. Religious creed, including religious dress and grooming practices;
- 9.1.5. Denial of family and medical care leave;
- 9.1.6. Disability, both mental and physical, including HIV and AIDS;
- 9.1.7. Marital status;
- 9.1.8. Medical condition, including cancer and genetic characteristics;
- 9.1.9. Genetic information;
- 9.1.10. Military and veteran status;
- 9.1.11. National origin, including language use restrictions;
- 9.1.12. Race;
- 9.1.13. Sex, which includes pregnancy, childbirth, breastfeeding, and medical conditions related to pregnancy, childbirth, or breastfeeding;
- 9.1.14. Gender, gender identity, and gender expression; and
- 9.1.15. Sexual orientation.

9.2. HESD shall ensure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment.
9.3. HESD shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285 et seq.).

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

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

9.6. HESD shall give written notice of its obligations under Paragraph 9 to labor organizations with which it has collective bargaining or other agreements. HESD shall include the nondiscrimination and compliance provisions of Paragraph 9 in all subcontracts to perform work under this MOU.

10. **INDEMNIFICATION.**

HESD shall indemnify, hold harmless, and defend the COUNTY and any and all of its officers, agents, servants, or employees against any and all claims, loss, damage, charge or expense, including reasonable attorney’s fees, to which the COUNTY or such officers, agents, servants, or employees may be put or subject to, by reason of any damage, loss or injury of any kind or nature whatever to persons or property to the extent caused by the negligent act or action, or any neglect, or failure to act, when under a duty to act, on the part of HESD, or either of them, in its performance hereunder. In the event claims, losses, damages, charges, or expenses are caused by the joint or concurrent negligence of COUNTY and HESD, they shall be borne by each party in proportion to its negligence.

11. **NOTICES AND COMMUNICATIONS.**

Any notice by either party to the others shall be personally delivered to the party or sent by certified mail, return receipt requested, to the addresses set forth below, or to such other addresses as any party may from time to time notify the others in writing:

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COUNTY: Imperial County Free Library
Crystal Duran, County Librarian
1125 Main Street
El Centro, CA 92243

LOCATION: Heber Elementary School District
Anel Navarro, Food Service Director
1052 Heber Avenue
Heber, CA 92249

12. **BINDING.**

This MOU shall be binding upon and shall inure to the benefit of the heirs, successors, and assigns of the PARTIES hereto.

13. **AMENDMENTS.**

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

14. **WAIVER.**

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

15. **CHOICE OF LAW.**

15.1. This MOU shall be governed by the laws of the State of California.

15.2. This MOU is made and entered into in Imperial County, California. Any action brought by any Party with respect to this MOU shall be brought in a court of competent jurisdiction within said County.

16. **TERMINATION.**

16.1. **Without Cause.** Either PARTY may terminate this MOU without cause by giving thirty (30) days advanced written notice of its intention to terminate to the other PARTY.

16.2. **With Cause.**

16.2.1. In the event COUNTY fails to perform on a material term of this MOU, HESD has the right to terminate this MOU upon seven (7) days written notice.

16.2.2. In the event HESD fails to perform on a material term of this MOU, COUNTY has the right to terminate this MOU upon seven (7) days written notice.
17. **PARTIAL INVALIDITY.**

If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

18. **ENTIRE MOU.**

18.1. This MOU constitutes the sole and complete agreement between the PARTIES.

18.2. Any and all agreements or services respecting this MOU or any other matters pertaining to this MOU are null and void.

19. **COUNTERPARTS.**

This MOU may be executed in counterparts.

20. **AUTHORITY.**

Each individual executing this MOU on behalf of HESD represents and warrants that:

20.1. He/She is duly authorized to execute and deliver this MOU on behalf of HESD;

20.2. Such execution and delivery is in accordance with the terms of the Articles of Incorporation or Partnership, any by-laws or Resolutions of HESD, if applicable, and;

20.3. This MOU is binding upon HESD in accordance with its terms.

21. **GENDER AND INTERPRETATION OF TERMS.**

21.1. As used in this MOU and whenever required by the context thereof, each number, both singular and plural, shall include all numbers, and each gender shall include both genders.

21.2. HESD, as used in this MOU or in any other document referred to in or made a part of this MOU, 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.

21.3. All covenants herein contained on the part of HESD shall be joint and several if more than one person, firm or entity executes the MOU.
22. **NON-APPROPRIATION.**

This MOU 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 MOU, the MOU shall be terminated without penalty after written notice to HESD of the unavailability and/or non-appropriation of funds.

**IN WITNESS WHEREOF**, the parties have executed this MOU on the day and year first above written.

**COUNTY OF IMPERIAL**

By: ___________________________
   Michael W. Kelley, Chairman
   Imperial County Board of Supervisors

**HEBER ELEMENTARY SCHOOL DISTRICT**

By: ___________________________
   Juan Cruz, Superintendent
   Heber Elementary School District

**ATTEST:**

______________________________
Blanca Acosta, Clerk of the Board,
County of Imperial, State of California

**APPROVED AS TO FORM:**

Katherine Turner,
County Counsel

By: ___________________________
   Sarah A. Sauer,
   Deputy County Counsel
EXHIBIT A

County Responsibilities

As a meal service site, the following are the responsibilities and duties of COUNTY:

1. Attend the sponsor’s training;
2. Supervise activities and meal service at the site;
3. Manage volunteers;
4. Distribute meals by following Summer Food Service Program guidelines;
5. Keep daily records of meals served;
6. Store food appropriately;
7. Keep the site clean and sanitary; and
8. Help the sponsor promote the program in the community.
EXHIBIT B

HESD Responsibilities

As the sponsor, the following are the responsibilities and duties of HESD:

1. Maintain State’s agency training requirement;
2. Train and supervise staff and volunteers;
3. Arrange for meals to be prepared and delivered;
4. Monitor the site;
5. Prepare claims for reimbursement; and
6. Promote the new site as a program in the community.
EXHIBIT C

Schedule of Services

Between ____________, 2017 and ____________, 2017 meals shall be served every Monday, Tuesday, and Thursday from 12:00 p.m. until 2:00 p.m.