

Attachment 1

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PSRN System and Installation Contract

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

THIS AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR (hereafter "Agreement") is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter "COUNTY") and E.F. Johnson Company, a Minnesota corporation, with an address at 1440 Corporate Drive, Irving, TX 75038 (hereafter "CONTRACTOR") wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, CONTRACTOR represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and COUNTY desires to retain the services of CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. EXHIBITS

The Exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement will take precedence over the Exhibits and any inconsistency between Exhibits A through J will be resolved in the order in which they are listed below.

- Exhibit A Scope of Services (Inclusive of Exhibits A-1 and A-2)
 - Exhibit A-1 Revised Proposal Documents dated May 1, 2021 (Volumes I – V)
 - Exhibit A-2 Proposal Documents dated May 14, 2020
- Exhibit B Compensation of Contractor (Inclusive of Exhibits B-1 and B-2)
 - Exhibit B-1 Payment Arrangements
 - Exhibit B-2 Pricing Workbook
- Exhibit C Santa Barbara Public Safety Radio Network Request for Proposal (RFP) #810131
- Exhibit D Indemnification and Insurance Requirements
- Exhibit E Performance Bond
- Exhibit F D/MBE/WBE Implementation Guidelines
- Exhibit G Federal Terms and Conditions
- Exhibit H Applicability
- Exhibit I Final Design Acceptance Certificate for Phase I
- Exhibit J Final System Acceptance

2. DEFINITIONS

Capitalized terms used in this Agreement shall have the following meaning:

"Agreement Price" means the price for the System, exclusive of any applicable sales or similar taxes.

"Beneficial Use" means when the COUNTY accepts the System in accordance with Section 8.C herein, which then commences the COUNTY's responsibility for the System. Alternatively, Beneficial Use can occur when the COUNTY and the CONTRACTOR mutually agree that the Equipment, Software and services for the System have been furnished, delivered, installed and the acceptance tests including the coverage acceptance test, functional acceptance test, thirty (30) day performance test with public safety radio users have passed, but the CONTRACTOR has not yet completed all punch list items.

"Change Order" means a written order signed by the COUNTY and CONTRACTOR issued after Final Detailed Design, authorizing a change in the Work or an adjustment in the Agreement Price or a change in the Implementation Schedule or any other amendment to this Agreement

"Final Detailed Design" or "Critical Design Review" occurs in Phase I of the Work when the parties have agreed-upon the Scope of Services in accordance with Section 8 herein and the final System design has been completed.

“CONTRACTOR Software” means Software that CONTRACTOR owns.

“Effective Date” means that date upon which the COUNTY has signed the Agreement.

“Equipment” means the hardware incorporated in the System or Subscriber Equipment.

“Final System Acceptance” means acceptance in accordance with Section 8.C. herein and the implementation sections of Exhibits A-1, A-2 and Exhibit C.

“Non-CONTRACTOR Software” means Software that a party other than CONTRACTOR owns.

“Proprietary Rights” means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to CONTRACTOR’s Products and software and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from software whether made by CONTRACTOR or another party.

“Software” means the CONTRACTOR and/or Non-CONTRACTOR Software in object code format that is furnished with the System or Equipment and which may be listed on the Equipment list.

“Staging Acceptance Test” means testing in accordance with Section 8.B. herein and the Implementation Plan section of the Proposal.

“Subscriber Equipment” means the portable and mobile radios that operate on the System Infrastructure.

“System” means the System Infrastructure, System Infrastructure Software and services, including programming, combined together into a system as more fully described in the Scope of Services.

“System Infrastructure” means the RF and data transport mechanism, including repeaters, consoles and interconnect equipment.

“Work” means providing all labor and incidentals, such as equipment, tools, materials and transportation, necessary to design, construct, ship, optimize and test the System required by this Agreement.

3. DESIGNATED REPRESENTATIVE

Carl Thornton at phone number 805-681-5581 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Gregory Senter at phone number 972-819-0863 is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advance written notice to the other party.

4. NOTICES

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or electronic mail or facsimile by proof of receipt, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY: Carl Thornton, Communications Manager, 4568 Calle Real, Bldg. C, Santa Barbara, CA 93110.
cth Thornton@co.santa-barbara.ca.us

To CONTRACTOR: E.F. Johnson Company, Attn: VP, Systems Engineering 1440 Corporate Drive, Irving, TX 75038 with a copy to General Counsel, 1440 Corporate Drive, Irving, TX 75038.

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be

received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

5. SCOPE OF SERVICES

CONTRACTOR agrees to provide services to COUNTY in accordance with the Agreement and Exhibits attached hereto and incorporated herein by reference.

6. TERM

CONTRACTOR shall commence performance in accordance with the schedule for the Work ("Implementation Schedule") to be preliminarily provided by CONTRACTOR and finalized at Final Detailed Design, subject to any agreed-upon Change Order and shall end performance upon completion, but not later than the end of the warranty period unless otherwise directed by COUNTY or unless earlier terminated. The Implementation Schedule shall set forth milestones beginning from the Effective Date. Utilizing this Agreement as a purchasing vehicle, COUNTY and/or agencies within the State of California may order CONTRACTOR equipment, software, or services provided it is then available at any time during the Term. It is agreed and acknowledged that such orders may be placed with CONTRACTOR directly or through CONTRACTOR's then current authorized dealers, and an updated list of such dealers shall be provided to the COUNTY from time to time. Any additional items not included in the Agreement Price and contained in CONTRACTOR's then current CONTRACTOR price book shall be offered under this Agreement at pricing that is twenty percent (20%) off list price. CONTRACTOR may also provide additional promotional offers from time to time. Each order must refer to this Agreement and must specify the pricing and delivery terms which are subject to the acceptance of CONTRACTOR. The applicable provisions of this Agreement (except for pricing, delivery, passage of title and risk of loss to equipment, and payment terms) will govern the purchase and sale of the additional equipment, software or services. Title and risk of loss to additional equipment will pass at shipment except title to software will not pass at any time. CONTRACTOR will send the end user customer an invoice as the additional equipment is shipped, software is licensed or service is performed, and payment is due thirty (30) days from invoice date.

7. COMPENSATION OF CONTRACTOR

In full consideration for CONTRACTOR's services, CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms set forth below. The aggregate not to exceed, purchase price to be paid by the COUNTY to CONTRACTOR for the System Infrastructure and Subscriber Equipment shall be paid in accordance with Exhibit B. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 4 NOTICES above following completion of the increments identified. The COUNTY shall provide advance written notice to CONTRACTOR should any portion of the Agreement be funded by federal funds. Upon such written notice, Exhibits G and H shall be affected.

CONTRACTOR shall issue COUNTY invoices in connection with each of the foregoing installments, and COUNTY shall pay such invoices in full, without set off, holdback, deduction or delay, within thirty (30) days of the date of each such invoice. Undisputed invoices that remain unpaid forty-five (45) days from the date of invoice will bear simple interest at the rate of twelve percent (12%) per annum, unless such rate exceeds the maximum allowed by law, in which case it will be reduced to the maximum allowable rate. The interest rate does not apply to COUNTY disputed/incorrect invoices from CONTRACTOR.

Title to the Equipment will pass to COUNTY upon payment, except that title to Software will not pass to County at any time. Risk of loss of Subscriber Equipment or other supplies purchased hereunder and not immediately installed, integrated, or used by COUNTY shall pass upon its receipt and acknowledgement of delivery. Risk of loss of the System Infrastructure at each site shall pass upon the corresponding installation of the System Infrastructure at each such site. E.F. Johnson will pack and ship all Equipment in accordance with good commercial practices.

8. PROJECT MILESTONES

- A. Final Detailed Design. As mutually agreed-upon by the parties, a Final Detailed Design will be held between the parties. At Final Detailed Design, the parties will finalize the completed detailed design

of the System and will finalize the Scope of Services comprising Exhibit A of the Agreement. At the completion of Final Detailed Design, the parties shall duly execute Exhibit I. Equipment orders shall be placed and building and staging of the System Infrastructure begins. Any changes to the System after Final Detailed Design will be processed by Change Order in accordance with Section 9.

- B. Staging Acceptance. CONTRACTOR shall propose a Staging Acceptance test plan which shall be mutually agreed upon by the parties. Staging Acceptance will occur at CONTRACTOR's site located in Irving, Texas. This Staging Acceptance test process will ensure the Equipment is fully functional, COUNTY representative(s) have knowledge of the System's operational components assuming the COUNTY attends the Staging Acceptance at its option, and the System is compliant with mutually agreed-upon requirements prior to leaving the CONTRACTOR staging facility. Upon successful completion of the Staging Acceptance, the Equipment and applicable Software will be shipped to the COUNTY staging site.
- C. Final System Acceptance. Final System Acceptance shall occur when the Equipment and Software for the System, documentation deliverables and services have been furnished, delivered, installed and the acceptance tests including the coverage test, functional acceptance test, and thirty (30) day performance test with public safety radio users have passed, and the CONTRACTOR has completed all punch list items. Upon the earlier of Final System Acceptance or Beneficial Use, the COUNTY's responsibility for the use and operation of the System commences. When Final System Acceptance occurs, the parties will memorialize this event by promptly executing the Final System Acceptance Certificate attached hereto as Exhibit J. After completion of the Final System Acceptance tests, if the COUNTY believes that the System fails the acceptance tests, the COUNTY will provide to CONTRACTOR within thirty (30) days after completion of the tests a written notice that includes the specific details of such failure. If no notice is provided by the COUNTY within thirty (30) days, or if the COUNTY makes Beneficial Use of the System at any time, Final System Acceptance will be deemed to have occurred.

9. CHANGE ORDERS

- A. Change Orders. Either party may request changes to the Work after the Effective Date within the general scope of this Agreement by written Change Order request. If a requested change causes an increase or decrease in the cost or time required to complete the System, the COUNTY and CONTRACTOR shall make a good faith effort to agree to an equitable adjustment of the Agreement Price (per Exhibit B-2 Pricing Workbook), Implementation Schedule, or both, and will reflect such adjustment in a Change Order.
- B. Withdrawal of Change Order Request. If agreement on an equitable adjustment of the Agreement Price, Implementation Schedule, or both, cannot be reached, the requesting party shall advise the other in writing of its desire to withdraw the Change Order request. The Change Order request shall then have no effect.
- C. Execution of Change Order Request. If the requesting party advises that it desires to execute a Change Order consistent with the request and equitable adjustment agreed upon by the parties, then the parties shall promptly execute a Change Order. Neither party is obligated to perform requested changes unless an authorized signatory from both parties executes a written Change Order. No oral statement of any party shall modify, otherwise change or affect the terms, conditions or requirements stated in the Agreement.

10. SITES AND SITE CONDITIONS

- A. Access to Sites. In addition to its responsibilities described elsewhere in this Agreement, the COUNTY will provide (i) a designated Project Manager; (ii) all necessary construction and building permits, zoning variances, licenses, and the like; and (iii) access to the work sites as reasonably requested by CONTRACTOR so that it may perform its duties in accordance with the Scope of Services.
- B. Site Conditions. The COUNTY will ensure that all work sites it provides will be safe, secure, and in compliance with all applicable industry and OSHA standards. To the extent applicable and unless the Scope of Services specifically states to the contrary, the COUNTY will ensure that these work sites will have (i) adequate physical space for the installation, use and maintenance of the System; (ii) adequate air conditioning and other environmental conditions; (iii) adequate electrical power outlets, distribution and equipment for the installation, use and maintenance of the System; and (iv) adequate telephone or other communication lines for the installation, use and maintenance of the System, including modem access, and adequate interfacing networking capabilities. Before installing the Equipment at a work site, CONTRACTOR will inspect the work site and advise the COUNTY of any apparent deficiency or non-conformity with the requirements of this Section.
- C. Site Issues. Subject to a Force Majeure event or some other occurrence outside of CONTRACTOR's reasonable control including, but not limited to, impediments in the leasing process and/or unforeseen issues arising through the zoning process, this Section 10.C. applies for the period: (i) through Final Detailed Design regarding the sites existing at the time of the Agreement for which CONTRACTOR shall perform site readiness in accordance with the Implementation Schedule; and (ii) throughout the term of the Agreement for all other sites to be constructed by the COUNTY's contracted civils contractor. If CONTRACTOR or the COUNTY determines that a site(s) identified in the exhibits is no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated on the specifications as necessary, CONTRACTOR and the COUNTY will promptly investigate the conditions and will select a replacement site or adjust the installation plans and specifications as necessary. If such change in sites or adjustment to the installation plans and specifications causes a change in the cost or time to perform, the parties will equitably amend the Agreement Price, by a written Change Order.
- D. Interference. CONTRACTOR shall design the System to provide adequate interference protection to prevent disruptive interference caused to other radio system; however, it is recognized that CONTRACTOR may not have control over the generation of interference by other systems. If an external source(s) of interference exists, CONTRACTOR shall, to the extent technically possible, assist the COUNTY with identification of the condition, component or equipment generating interference at an additional expense to the COUNTY not exceeding then current industry standard fees and out-of-pocket expenses. Interference is defined herein to mean a situation that results, on a demonstrable basis, in material performance degradation to the System.
- E. Substitutions. With prior COUNTY approval, at no additional cost to the COUNTY, CONTRACTOR reserves the right to substitute any Equipment, Software, or services to be provided by CONTRACTOR, but only if the substitute meets the specifications and is of equivalent or better quality and value than the original Equipment. Any such substitution may be reflected in a Change Order.

11. REPRESENTATIONS AND WARRANTIES

- A. Equipment Warranty. Subject to the terms herein, the System Infrastructure and Subscriber Equipment shall be covered by the warranty statements set forth in Exhibit A-1 of this Agreement attached hereto.

- B. Software Warranty. Subject to the terms herein, CONTRACTOR Software shall be licensed in accordance with the Contractor Software License Agreement set forth in Exhibit A-1 of this Agreement attached hereto.

12. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that CONTRACTOR (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to COUNTY and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions hereof. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

13. STANDARD OF PERFORMANCE

CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

14. DEBARMENT AND SUSPENSION

CONTRACTOR certifies to COUNTY and shall require its subcontractors to certify that it and its respective employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR certifies that it shall not knowingly contract with a subcontractor that is so debarred or suspended.

15. TAXES

CONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions for its employees in performance under this Agreement required by law. COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

16. CONFLICT OF INTEREST

CONTRACTOR covenants that CONTRACTOR presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall knowingly be employed by CONTRACTOR. CONTRACTOR must promptly disclose to COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.

17. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

COUNTY shall be the owner of the following items directly related to the Work and to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any of such items to other parties except after prior written approval of COUNTY.

Unless otherwise specified under this Agreement, CONTRACTOR hereby assigns to COUNTY all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by CONTRACTOR specifically for the Work provided to the COUNTY pursuant to this Agreement (collectively referred to as "Copyrightable Works"). COUNTY shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works. CONTRACTOR agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. CONTRACTOR warrants that any Copyrightable Works and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party under United States law. CONTRACTOR at its own expense shall defend, indemnify, and hold harmless COUNTY against any claim that any Copyrightable Works or other items provided by CONTRACTOR hereunder infringe upon intellectual or other proprietary rights of a third party under United States law, and CONTRACTOR shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by COUNTY in connection with any such claims.

CONTRACTOR will have no duty to defend or indemnify for any infringement claim that is based upon (i) the combination of the Equipment or CONTRACTOR Software with any software, apparatus or device not furnished by CONTRACTOR; (ii) the use of ancillary equipment or software not furnished by CONTRACTOR and that is attached to or used in connection with the Equipment or CONTRACTOR Software; (iii) any Equipment that is not CONTRACTOR's design or formula; (iv) a modification of the CONTRACTOR Software by a party other than CONTRACTOR; or (v) the failure by the County to install an enhancement release to the CONTRACTOR Software that is intended to correct the claimed infringement. The foregoing states the entire liability of CONTRACTOR with respect to infringement of patents and copyrights by the Equipment and CONTRACTOR Software or any parts thereof. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

18. PRESERVATION OF PROPRIETARY RIGHTS.

CONTRACTOR owns and retains all of its Proprietary Rights (as defined in Section 2) in the Equipment and Software; however, the COUNTY shall own and retain all rights in the deliverables provided by CONTRACTOR to COUNTY developed specifically to the COUNTY regarding the System. The third party manufacturer of any Equipment and the copyright owner of any Non-CONTRACTOR Software own and retain all of their Proprietary Rights in the Equipment and Software. Nothing in this Agreement is intended to restrict the Proprietary Rights of CONTRACTOR, any copyright owner of Non-CONTRACTOR Software, or any third party manufacturer of Equipment. Subject to Section 17, all intellectual property developed, originated, or prepared by CONTRACTOR in connection with providing to the COUNTY the Equipment, Software, or related services remain vested exclusively in CONTRACTOR, and this Agreement does not grant to the COUNTY any shared development rights of intellectual property. This Agreement does not involve any Software that is a "work made for hire."

Except as explicitly provided in Section 17 above and/or in the Software License Agreement, nothing in this Agreement will be deemed to grant, either directly or by implication, estoppel, or otherwise, any right, title or interest in CONTRACTOR's Proprietary Rights. Concerning both the CONTRACTOR Software and the Non-CONTRACTOR Software, the COUNTY agrees not to modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so.

19. NO PUBLICITY OR ENDORSEMENT

CONTRACTOR shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. CONTRACTOR shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of COUNTY without the prior written approval of COUNTY. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects, without obtaining the prior written approval of COUNTY.

20. COUNTY PROPERTY AND INFORMATION

All of COUNTY's property, documents, and information provided for CONTRACTOR's use in connection with the services shall remain COUNTY's property, and CONTRACTOR shall return any such items whenever requested by COUNTY and whenever required according to the Termination section of this Agreement. CONTRACTOR may use such items only in connection with providing the services. CONTRACTOR shall not disseminate any COUNTY property, documents, or information without COUNTY's prior written consent.

21. CONFIDENTIAL INFORMATION

During the term of this Agreement, the parties may provide the other with Confidential Information. For the purposes of this Agreement, "Confidential Information" is any information disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent; or if in verbal form is identified as confidential or proprietary at the time of disclosure and confirmed in writing within thirty (30) days of such disclosure. Notwithstanding any other provisions of this Agreement, confidential information shall not include any information that: (i) is or becomes publicly known through no wrongful act of the receiving party; (ii) is already known to the receiving party without restriction when it is disclosed; (iii) is, or subsequently becomes, rightfully and without breach of this Agreement, in the receiving party's possession without any obligation restricting disclosure; (iv) is independently developed by the receiving party without breach of this Agreement; or (v) is explicitly approved for release by written authorization of the disclosing party.

Subject to the California Public Records Act, concerning the Confidential Information provided to it by the other party, each party will: (i) maintain the confidentiality of such Confidential Information and not disclose it to any third party, except as authorized by the disclosing party in writing or as required by a court of competent jurisdiction; (ii) restrict disclosure of Confidential Information to its employees who have a "need to know" and not copy or reproduce such Confidential Information; (iii) take necessary and appropriate precautions to guard the confidentiality of Confidential Information, including informing its employees who handle such Confidential Information that it is confidential and not to be disclosed to others, but such precautions shall be at least the same degree of care that the receiving party applies to its own confidential information and shall not be less than reasonable care; and (iv) use such Confidential Information only in furtherance of the performance of this Agreement. Confidential Information is and shall at all times remain the property of the disclosing party, and no grant of any proprietary rights in the Confidential Information is hereby given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement.

22. RECORDS, AUDIT, AND REVIEW

CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours with reasonable notice. In addition, CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.

If federal, state or COUNTY audit exceptions are made relating to this Agreement, CONTRACTOR shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions

or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, CONTRACTOR shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

23. INDEMNIFICATION, INSURANCE, PERFORMANCE BOND AND LIMITATION OF LIABILITY

- A. Indemnification and Insurance. CONTRACTOR agrees to the indemnification and insurance provisions as set forth in Exhibit D attached hereto and incorporated herein by reference.
- B. Performance Bond. CONTRACTOR shall provide a performance bond in the form set forth in Exhibit E within ten (10) calendar days from the Effective Date. The performance bond will be issued in the amount of the not-to-exceed total contract amount set forth in Exhibit B-1. The performance bond will decrease in amounts commensurate with each applicable milestone reached and corresponding payment made by COUNTY, including Contingency and Sales Tax, as set forth in Exhibit B-1. The performance bond will be released in full at Final System Acceptance.
- C. Limitation of Liability. Although the parties acknowledge the possibility of such losses or damages, neither party (nor any of its officers, directors, employees, shareholders, agents and representatives) will be liable to the other party for special, incidental, indirect, or consequential damages in any way related to or arising from the contract or the performance of services by CONTRACTOR pursuant to the AGREEMENT.

In no event shall CONTRACTOR have any liability (whether in contract, tort (including negligence)), indemnification or otherwise for any damages for lost profits, lost savings, loss of use, business interruption, lost or damaged files or data, or otherwise for any special, incidental or consequential damages in connection with this transaction even if contractor has been advised of the possibility of such damages. Either party's liability for damages, from any cause whatsoever, and regardless of the form of action, will be limited to the actual damages proven, in no event to exceed the aggregate purchase price of the products or services forming the basis of the complaint. Notwithstanding anything herein to the contrary, neither CONTRACTOR nor any of their respective officers, directors, employees, or agents shall be liable for losses constituting treble, exemplary, or punitive damages.

This limitation of liability will survive the expiration or termination of this Agreement. No action for breach of this Agreement or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of such cause of action, except for money due upon an open account.

24. NONDISCRIMINATION

COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

25. NONEXCLUSIVE AGREEMENT

CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires.

26. NON-ASSIGNMENT

CONTRACTOR shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

27. TERMINATION

- A. **By COUNTY.** COUNTY may, by thirty (30) days' written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience, for nonappropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein.
1. **For Convenience.** COUNTY may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, CONTRACTOR shall, as directed by COUNTY, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on COUNTY from such winding down and cessation of services. Upon such termination, the COUNTY's liability will be limited to: (i) the portion of the Equipment delivered and/or Work expended to/or for the COUNTY; and (ii) the price of Equipment delivered and/or Work expended in CONTRACTOR's premises designated and staged for the COUNTY.
 2. **For Nonappropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or COUNTY governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then COUNTY will notify CONTRACTOR of such occurrence and COUNTY may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term with the exception of; (i) the portion of the Equipment delivered and/or Work expended to/or for the COUNTY; and (ii) the price of Equipment delivered and/or Work expended in CONTRACTOR's premises designated and staged for the COUNTY.
 3. **For Cause.** Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate or suspend this Agreement in whole or in part by written notice shall give the defaulting party written notice of such default, and specify in writing a reasonable amount of time that is in no event less than thirty (30) days during which the defaulting party has to cure such default or provide a cure plan prior to any penalties assessed under this Agreement. The amount of time to cure specified shall take into consideration the gravity and nature of the default. Upon receipt of notice and expiration of cure notice, if applicable, CONTRACTOR shall immediately discontinue all services affected (unless the notice directs otherwise) and notify COUNTY as to the status of its performance. The date of termination shall be the date the notice is received by CONTRACTOR, unless the notice directs otherwise.
- B. **By CONTRACTOR.** Should COUNTY fail to pay CONTRACTOR all or any part of the payment set forth in Section 7 or otherwise be in default, CONTRACTOR may, at CONTRACTOR's option terminate this Agreement if such failure is not remedied by COUNTY within thirty (30) days of written notice to COUNTY of such late payment and/or default. Upon termination, CONTRACTOR shall deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process, except such items as COUNTY may, by written permission, permit CONTRACTOR to retain. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR; (i) the portion of the Equipment delivered and/or Work expended to/or for the COUNTY; and (ii) the price of Equipment delivered and/or Work expended in CONTRACTOR's premises designated and staged for the COUNTY. In no event shall CONTRACTOR be paid an amount in excess of

the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of COUNTY shall be final. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

28. SECTION HEADINGS

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

29. SEVERABILITY

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

30. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

31. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement and each covenant and term is a condition herein. Notwithstanding the foregoing, neither party will be liable for its non-performance or delayed performance if caused by a "Force Majeure" which means an event, circumstance, or act of a third party that is beyond a party's reasonable control, such as an act of God, omissions of Federal, State, and local governmental authorities and regulatory agencies, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, pandemics, embargoes, war, riots, supplier shortages or any other similar cause. Each party will notify the other if it becomes aware of any Force Majeure that will significantly delay performance. The notifying party will give such notice promptly (but in no event later than fifteen (15) days) after it discovers the Force Majeure. If a Force Majeure occurs, the parties will execute a Change Order to extend the Implementation Schedule for a time period that is reasonable under the circumstances.

Further, the parties agree that successful performance of the Implementation Schedule will require cooperation between the parties. Because it is impractical to provide for every contingency which may arise during the course of performance of this Agreement, the parties agree to notify the other if they become aware that any condition will significantly delay performance. The parties hereby agree to negotiate in good faith reasonable extensions of the Implementation Schedule caused by such contingencies. If the COUNTY delays CONTRACTOR's performance of its responsibilities, CONTRACTOR's performance set forth in the Implementation Schedule will be automatically extended without penalty, and CONTRACTOR reserves the right to invoice the COUNTY for all reasonable charges incurred because of the delay. If the CONTRACTOR delays COUNTY's performance of its responsibilities, COUNTY reserves the right to invoice the CONTRACTOR for all reasonable charges incurred because of the delay. Delay charges may be assessed after notice and time to cure is provided to the other party under the Agreement and may include costs incurred including, but not limited to, freight, warehousing, and handling of Equipment, travel, suspending and re-mobilizing the Work and additional services required due to such delay.

32. NO WAIVER OF DEFAULT

No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence

therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

33. ENTIRE AGREEMENT AND AMENDMENT

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

34. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

35. COMPLIANCE WITH LAW

Each party shall, at its sole cost and expense, comply with all COUNTY, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of either party in any action or proceeding against a party, whether the other party is a party thereto or not, that the accused party has violated any such ordinance or statute, shall be conclusive of that fact as between the parties. The acquisition of all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation, and use of the System and respective activities and responsibilities of the parties related thereto shall be in accordance with Exhibit A-1 and shall commence upon final site configuration and receipt of necessary construction approvals. The parties agree and acknowledge that the ultimate frequencies issued by the FCC are outside of the control of CONTRACTOR. Should issued frequencies be different from those set forth in CONTRACTOR's design parameters in Exhibit A-1, CONTRACTOR shall prepare revised coverage maps and predictions based on the final frequencies licensed, and CONTRACTOR coverage guarantee is subject to change based on the results of such revisions.

36. CALIFORNIA LAW AND JURISDICTION

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

37. EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

38. AUTHORITY

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

39. SURVIVAL

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

County of Santa Barbara

Purchasing Division

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **E.F. Johnson Company**.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

COUNTY OF SANTA BARBARA:

By: _____
Deputy Clerk

By: _____
Chair, Board of Supervisors

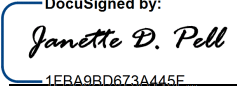
Date: _____

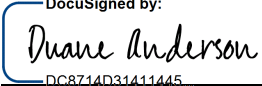
RECOMMENDED FOR APPROVAL:

Department of General Services

CONTRACTOR:

E.F. Johnson Company

By: 
1EBA9BD673A445E
Janette D. Pell

By: 
DC8714D31411445
Authorized Representative

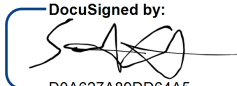
Name: Duane Anderson
Title: President and CEO

APPROVED AS TO FORM:

Rachel Van Mullem
County Counsel

APPROVED AS TO FORM:

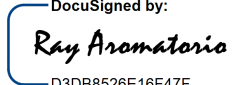
Betsy M. Schaffer, CPA
Auditor-Controller

By: 
D0A627A89DD64A5
Deputy County Counsel

By: 
A99ED5BD71D04EB
Deputy

APPROVED AS TO FORM:

Risk Management

By: 
D3DB8526F16F47E
Risk Management