

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and Alcatel-Lucent USA Inc. with an address at 600 Mountain Avenue, Murray Hill, NJ 07974 (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, County has requested Contractor to provide Services to the County; and

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. 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. Jay Sungu at phone number (559) 360-7971 is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advance written notice to the other party.

2. 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 facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY:	Carl Thornton, General Services/Communications, 4568 Calle Real Bldg C, Santa Barbara CA, 93110, Fax: (805) 681-5610
To CONTRACTOR:	Alcatel-Lucent USA Inc., Attn: Contract Management, 601 Data Drive, Plano, TX 75075

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.

3. SCOPE OF SERVICES

CONTRACTOR agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference. CONTRACTOR and COUNTY agree that this Agreement shall be used in lieu of a purchase order.

4. TERM

CONTRACTOR shall commence performance on October 22, 2014 and end performance upon completion, but no later than June 30, 2015 unless otherwise directed by COUNTY or unless earlier terminated.

5. COMPENSATION OF CONTRACTOR

In full consideration for CONTRACTOR's services, CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. 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 2 NOTICES above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

5.1 Delivery, Title, and Risk of Loss.

5.1.1 Delivery is FCA CONTRACTOR 's designated dock (Incoterms® 2010). CONTRACTOR shall pack each Product for shipment according to CONTRACTOR's commercial standards, except as the Parties may otherwise agree in writing.

5.1.2. Risk of loss and damage to any product pass to COUNTY upon shipment. CONTRACTOR and its licensors retain title to all Licensed Materials, CONTRACTOR Confidential Information, and other data delivered to Customer and all copies of same. Title to equipment passes to the COUNTY upon CONTRACTOR's receipt of payment for the equipment.

5.2 Acceptance and Verification Testing.

5.2.1 Products are deemed accepted upon shipment to COUNTY, unless CONTRACTOR is obligated to install the products under this Agreement.

5.2.2 When CONTRACTOR is required to install a product, CONTRACTOR will perform its standard verification tests after the installation service for that product is complete, and upon successful completion, CONTRACTOR shall advise COUNTY that the installation has been verified. Upon the earlier of COUNTY's commercial or beneficial use of a product or receipt of such advice (a) the product will be deemed accepted by COUNTY and (b) any failure by CONTRACTOR to perform the related installation services will be deemed waived by COUNTY. If COUNTY's actions cause a delay in CONTRACTOR's installation for more than 15 days (in aggregate) following delivery, COUNTY's acceptance will be deemed to occur on the 16th day after the delivery date.

5.2.3 Acceptance of services is deemed to occur as services are completed.

5.3 Billing and Shipping Information.

5.3.1 The equipment and products under this Agreement shall be delivered to the following address(es):
ITD/Radio
4568 Calle Real, Bldg. C
Santa Barbara, CA 93110
Phone: (805) 681-5880

5.3.2 The invoices shall be sent as follows:
ITD/Radio
4568 Calle Real, Bldg. C
Santa Barbara, CA 93110
Phone: (805) 681-5880

6. 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.

7. 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.

8. DEBARMENT AND SUSPENSION

CONTRACTOR certifies to COUNTY that it and its 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 contract with a subcontractor that is so debarred or suspended.

9. 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 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.

10. 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 be employed by CONTRACTOR. 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.

11. LICENSED MATERIALS

- 11.1 COUNTY shall use all Licensed Materials in accordance with this Section 11. The term "Licensed Materials" refers to software and/or documentation. Upon delivery of any Licensed Material and subject to COUNTY's payment of the applicable fees for such Licensed Material and compliance with the other terms and conditions of this Agreement, CONTRACTOR grants to COUNTY, and COUNTY accepts, a personal, nonexclusive, nontransferable license to use the portions of the Licensed Material for which activation has been authorized by CONTRACTOR, solely on or with the single unit or arrangement of Equipment for which the Licensed Material was delivered, for COUNTY's internal use in the United States.

- 11.2 COUNTY acknowledges and agrees that: (a) CONTRACTOR may have encoded within the Software optional functionality, features and/or capacity, which may be accessed only through the purchase of the applicable license extension from CONTRACTOR at an additional Price (no licenses are granted to such functionality, features and/or capacity unless COUNTY purchases the applicable license extension); and (b) COUNTY may need to obtain a new or additional application key from CONTRACTOR to use such Software.
- 11.3 This Agreement applies to all updates, upgrades, maintenance releases, revisions and enhancements for the Licensed Materials which CONTRACTOR may supply to COUNTY from time to time.
- 11.4 COUNTY may copy Licensed Materials as reasonably necessary for backup and archival purposes if the copies contain all of the CONTRACTOR proprietary notices contained in the original Licensed Materials. All copies of all Licensed Materials (including partial copies) are CONTRACTOR Confidential Information. All rights, title and interest in and to the Licensed Materials, including all intellectual property rights, remain vested in CONTRACTOR, its suppliers and licensors, and COUNTY is granted only a limited license to use the Licensed Materials in conjunction with the Equipment, as set out in this Section 11.
- 11.5. COUNTY shall not directly or indirectly: (a) modify, copy, transmit, alter, merge, decompile, disassemble, reverse engineer or adapt any Licensed Material or portion thereof; (b) encumber, time-share, rent or lease the rights granted herein; (c) manufacture, adapt, create derivative works of, localize, port or otherwise modify any Licensed Material or portion thereof; (d) disclose or otherwise make available any Licensed Material or portion thereof to any third party, except as required by law; (e) enable any Software functionality, feature or capacity which CONTRACTOR licenses as a separate product, without CONTRACTOR's prior written consent; (f) take any action that may result in the Software becoming subjected to the terms of a license that requires it to be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, or (iii) redistributable at no charge; or (g) use any Licensed Material or portion thereof except in accordance with this Section 11.
- 11.6. Upon reasonable prior written notice, and subject to reasonable restriction by COUNTY, CONTRACTOR may inspect and audit COUNTY's compliance with this Section 11 during normal business hours. COUNTY shall cooperate with the audit and shall grant assistance and access to applicable records, materials, personnel, Equipment, and any other information or products which may reasonably enable CONTRACTOR to determine whether the use, copying and disclosure of the Licensed Materials comply with this Agreement. In addition, COUNTY shall provide remote access to its systems to enable CONTRACTOR to electronically audit COUNTY's compliance with this Section 11. If an audit reveals that COUNTY possesses or at any time possessed unlicensed copies of any Licensed Materials, or used any Licensed Materials beyond the licensed functionality, features or capacity restrictions or beyond the terms stated herein, then COUNTY shall pay CONTRACTOR the applicable license fees (plus interest) and the costs incurred in the audit immediately upon request.
- 11.7. Certain Software may be delivered with its own specific license ("Additional License"). In such a case, the terms of the Additional License will be delivered to COUNTY, such as in a separate license.txt file or as part of a tear-open document, and will govern use of the Software by COUNTY to the extent CONTRACTOR does not have a right to supersede them in this Agreement.
- 11.8. If COUNTY's license or Additional License is cancelled or terminated, or when COUNTY no longer uses the Licensed Materials, COUNTY shall return or destroy the Licensed Materials and all copies and certify to CONTRACTOR that it has done so.

12. 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. 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.

13. 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.

14. 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 or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), 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.

15. INDEMNIFICATION AND INSURANCE

CONTRACTOR agrees to the indemnification and insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

16. 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.

17. 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.

18. 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.

19. TERMINATION

- A. **By COUNTY.** COUNTY may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience, for non-appropriation 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.
 2. **For Non-appropriation 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.
 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. Upon receipt of notice, 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 EXHIBIT B, 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.
- C. 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 for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. 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.

20. LIMITATION OF LIABILITY

20.1. CONTRACTOR and COUNTY acknowledge that they have negotiated the Price (among other things) in consideration of their agreement to limit certain Alcatel-Lucent's liabilities. Neither party will be liable for breach-of-contract damages that the breaching party could not reasonably have foreseen on entry into this agreement.

20.2. Except for a claim for personal injury proximately caused by CONTRACTOR, CONTRACTOR's liability for any claim arising out of this Agreement will be limited to actual, provable direct damages not to exceed \$1,000,000.00; and IN NO EVENT WILL CONTRACTOR'S CUMULATIVE LIABILITY FOR ALL CLAIMS, LOSSES, DAMAGES AND EXPENSES OF COUNTY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED \$2,000,000.00.

21. 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.

22. 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.

23. 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.

24. EXPORT CONTROL

The Parties acknowledge that Products, Licensed Materials and Confidential Information may be subject to the export laws and regulations of the United States, the European Union and/or other countries (cumulatively, "Export Laws"). COUNTY shall not use, distribute, export, re-export, transfer, or transmit the Products, Licensed Materials or Confidential Information (even if incorporated into other items) in violation of the Export Laws. If requested by CONTRACTOR, COUNTY will sign written assurances and other export-related documents as may be required for CONTRACTOR to comply with the Export Laws.

25. 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.

26. 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.

27. 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.

28. COMPLIANCE WITH LAW

CONTRACTOR 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 CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY is a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

29. 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.

30. 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.

31. 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.

32. 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.

33. PRECEDENCE

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

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Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **Alcatel-Lucent USA, Inc.**

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:

General Services

CONTRACTOR:

Alcatel-Lucent USA Inc.

By: Math Pouts
Department Head

By: Pat Dowd
Authorized Representative

Name: Patrick Dowd

Title: Senior Contract Manager

"Signed with permission by Jay Singsu on behalf of Pat Dowd"

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

APPROVED AS TO ACCOUNTING FORM:

Robert W. Geis, CPA
Auditor-Controller

By: Brian [Signature]
Deputy County Counsel

By: Kate [Signature]
Deputy

APPROVED AS TO FORM:

Risk Management

By: [Signature]
Risk Management

EXHIBIT A

STATEMENT OF WORK

CONTRACTOR shall render services in accordance with the Statement of Work included in Attachment A-1, and the Quote included as Attachment A-2, both of which are incorporated herein by reference.”

Chad Brenning shall be the individual(s) personally responsible for providing all services hereunder. CONTRACTOR may not substitute other persons without the prior written approval of CONTRACTOR’s Designated Representative.

Suspension for Convenience. COUNTY may, without cause, order CONTRACTOR in writing to suspend, delay, or interrupt the services under this Agreement in whole or in part for up to 30 days. COUNTY shall incur no liability for suspension under this provision and suspension shall not constitute a breach of this Agreement.

EXHIBIT B

PAYMENT ARRANGEMENTS Compensation Upon Completion

- A. For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, not to exceed \$ **159,284.52**.
- B. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY.
- C. Upon completion of the work detailed in **EXHIBIT A** and/or delivery to COUNTY of item(s) specified therein, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed. This invoice or claim must cite the assigned Board Contract Number. COUNTY DESIGNATED REPRESENTATIVE shall evaluate the quality of the service performed and/or the item(s) delivered and if found to be satisfactory shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of receipt of correct and complete invoices or claims from CONTRACTOR.
- D. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.

EXHIBIT C

INDEMNIFICATION AND INSURANCE REQUIREMENTS

INDEMNIFICATION

The PARTIES agree that CONTRACTOR's duty to indemnify COUNTY against any claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement brought against COUNTY alleging an infringement or misappropriation of any United States patent, copyright, trade secret or other intellectual property right shall be governed by Exhibit C.1 ("Infringement Indemnity"), attached hereto and incorporated herein by reference. CONTRACTOR's duty to indemnify COUNTY against all other claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement brought against COUNTY shall be governed by this Exhibit C.

CONTRACTOR agrees to indemnify, defend, and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all third party claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law, provided that: (i) COUNTY gives CONTRACTOR prompt written notice of the Claim, (ii) COUNTY grants to CONTRACTOR the sole authority to assume the defense, and the sole right to settle the Claim, through counsel chosen by CONTRACTOR, and (iii) COUNTY furnishes all information and assistance requested by CONTRACTOR and reasonably cooperates with CONTRACTOR to facilitate the defense and settlement of the Claim. CONTRACTOR's indemnification obligation applies to COUNTY's active as well as passive negligence but does not apply to COUNTY's sole negligence or willful misconduct.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions) Insurance** appropriate to the CONTRACTOR'S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
3. **Notice of Cancellation** – CONTRACTOR will notify COUNTY in advance of any cancellation.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
6. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
7. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.

8. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors.
9. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least one (1) year after completion of contract work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
10. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.

EXHIBIT C1

INFRINGEMENT INDEMNITY

- A. Subject to the conditions and exceptions stated below, CONTRACTOR: (a) shall defend COUNTY against any claim, action or proceeding brought against COUNTY alleging an infringement or misappropriation of any United States patent, copyright, trade secret or other intellectual property right of any third party (other than an affiliate of COUNTY) because of use, consistent with CONTRACTOR's specifications, of any Equipment manufactured by CONTRACTOR or Software owned by CONTRACTOR (a "Claim") and provided to COUNTY under this Agreement; and (b) shall indemnify COUNTY against, and hold COUNTY harmless from, any and all costs and damages assessed against COUNTY in a final judgment on such Claim, if: (i) COUNTY gives CONTRACTOR prompt written notice of the Claim, (ii) COUNTY grants to CONTRACTOR the sole authority to assume the defense, and the sole right to settle the Claim, through counsel chosen by CONTRACTOR, and (iii) COUNTY furnishes all information and assistance requested by CONTRACTOR and reasonably cooperates with CONTRACTOR to facilitate the defense and settlement of the Claim.
- B. If COUNTY's use of any Product is enjoined as a result of any Claim, is subject to a Claim, or in CONTRACTOR's opinion is likely to be enjoined or to be subject to a Claim, then, at its expense, CONTRACTOR may: (a) procure for COUNTY the right to continue to use the Product; or (b) replace or modify the Product with a functionally-equivalent or better Product so that COUNTY's use is not subject to a Claim. If CONTRACTOR determines that it cannot accomplish either of the foregoing in a commercially reasonable manner, then, upon CONTRACTOR's request, (c) COUNTY shall deliver the Product to CONTRACTOR, and (d) CONTRACTOR shall promptly credit to COUNTY the Price of the Product less a reasonable allowance for use.
- C. CONTRACTOR has no obligations under this Exhibit C with respect to a Claim to the extent that it: (a) arises from adherence to design modifications, specifications, drawings or written instructions which COUNTY directs CONTRACTOR to follow, (b) relates to uses of any Product in combination with any item not provided directly by CONTRACTOR, if use of the Product alone would not have resulted in such infringement, (c) relates to the use of any Product in a manner not contemplated by this Agreement, or (d) relates to a modification of any Product by any person other than CONTRACTOR. Furthermore, COUNTY shall defend CONTRACTOR against any such Claim, and indemnify CONTRACTOR against, and hold CONTRACTOR harmless from, any and all costs and damages incurred by CONTRACTOR arising from any such Claim.
- D. The rights and remedies set forth in this Exhibit C are COUNTY's exclusive rights and remedies with respect to third party claims of infringement and misappropriation.