

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 NEC Corporation of America dba NEC (NEW) Corporation of America (NEC), with an address at 3929 West John Carpenter Freeway, Irving, Texas 75063 (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. DESIGNATED REPRESENTATIVE

Laura Mejia at phone number (805) 614-1252 is the representative of COUNTY for the Department of Social Services and will administer this Agreement for and on behalf of COUNTY. Roberto Zampiglia at phone number (562) 506-2311 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: Laura Mejia, 2125 South Centerpointe Parkway, Santa Maria, CA 93454

To CONTRACTOR: NEC Corporation of America, 3929 West John Carpenter Freeway,
Irving, Texas 75063.
Attn: Legal Division – Contract Administration Department

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.

4. TERM

CONTRACTOR shall commence performance on July 1, 2018 and end performance upon completion, but no later than June 30, 2019 unless otherwise directed by COUNTY or unless earlier terminated. The CONTRACTOR has been performing the contract since the expiry date of the maintenance renewal term, which actions and obligations are ratified by both parties and made subject to this Agreement. COUNTY has the option to renew this Agreement for a period of one additional year beginning on July 1 and ending on June 30 of the following year. COUNTY shall exercise the option by providing sixty (60) days' written notice to CONTRACTOR. COUNTY shall have four one-year options to

renew the Agreement. The terms of the Agreement shall remain the same for each renewal period subject to the yearly cost reimbursement adjustments identified on EXHIBIT B.

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.

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. The foregoing provision does not apply to sale taxes and/or similar taxes applied to the sale of products or services provided under this agreement.

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. CONTRACTOR must promptly disclose to the 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.

11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

COUNTY shall be the owner of the following items incidental 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, except for NEC's Pre-Existing IP. CONTRACTOR shall not release any of such items to other parties except after prior written approval of COUNTY.

The COUNTY acknowledges that the products provided by CONTRACTOR hereunder are commercial in nature and all intellectual property rights for those products are owned exclusively by CONTRACTOR or its licensors, notwithstanding any other provision of this Agreement to the contrary, all of CONTRACTOR's pre-existing practices, procedures, materials, development tools and reusable components, including, but not limited to the CONTRACTOR's or its vendors' library of generic, reusable software code, procedures, manuals and business practices as well as any modification or extension of them are and remain the sole property of the CONTRACTOR and the COUNTY will have no interest in or claim to them except to the limited extent that may be necessary to exercise its rights under this Agreement. Pre-existing practices, procedures, materials, development tools and reusable components include any routines, libraries, tools, methodologies, processes or technologies created, adapted or used by the CONTRACTOR in its business generally, including generic, reusable software code components and related documentation, which contain the basic components of software architecture and which are used in most software projects delivered by the CONTRACTOR plus all associated intellectual property rights. In addition, notwithstanding any provision of this Agreement to the contrary, CONTRACTOR is free to use any ideas, concepts or know-how developed or acquired by CONTRACTOR during the performance under this Agreement to the extent obtained and retained by CONTRACTOR's personnel as impressions and general learning provided that such ideas, concepts or know-how shall not include the use of confidential COUNTY information.

To the extent that the products or services provided hereunder contain, embody or are based on, patented or patentable inventions, trade secrets, copyrights and other intellectual property rights owned or controlled by CONTRACTOR or the applicable manufacturer, CONTRACTOR, or the manufacturer, respectively shall continue to be the sole owner of all intellectual property rights in such products and services.

12. LIMITATION OF LIABILITY

EXCEPT FOR INDEMNITY OBLIGATIONS UNDER EXHIBIT C BELOW; OR AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, OR FOR EITHER PARTY'S LIABILITIES ARISING FROM USE OF INTELLECTUAL PROPERTY BEYOND THE SCOPE PERMITTED BY THIS AGREEMENT; OR FOR CLAIMS THAT THE CONTRACTOR IS INSURED; OR FOR CLAIMS FOR BODILY INJURY, OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY SUSTAINED AS A RESULT OF CONTRACTOR'S PERFORMANCE OF ITS OBLIGATION IN THE AGREEMENT; OR FOR CLAIMS OF GROSS NEGLIGENCE AND WILLFUL MISCONDUCT: IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR DAMAGES EXCEEDING THE FEES PAID AND OWED TO THE OTHER PARTY HEREUNDER; AND NEITHER PARTY SHALL HAVE ANY LIABILITY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE), ARISING OUT OF THIS AGREEMENT, (INCLUDING ANY DAMAGES ARISING UNDER NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY), EVEN IF THE PARTY INCURRING SUCH DAMAGES HAS ADVISED THE OTHER PARTY OF THE POSSIBILITY OF SUCH DAMAGES.

13. SERVICES WARRANTY

CONTRACTOR represents and warrants that all Services provided to the COUNTY pursuant to this Agreement shall be performed by competent personnel, with professional diligence and skill, consistent with industry standards, and will conform in all material respects to the specifications and requirements set forth, and for the period stated or incorporated herein.

EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT AND THE APPLICABLE ORDER, CONTRACTOR DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED WITH RESPECT TO THE EQUIPMENT AND/OR SERVICES COVERED HEREUNDER, AND IN PARTICULAR DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ALL WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, AND ALL WARRANTIES RELATED TO THIRD PARTY EQUIPMENT, MATERIAL, SERVICES OR SOFTWARE NOT PROVIDED HEREUNDER ARE EXPRESSLY EXCLUDED.

14. 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.

15. 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.

16. 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.

17. INDEMNIFICATION AND INSURANCE

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

18. 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.

19. 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.

20. 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.

21. 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 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.

Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for services performed to the date of termination not to exceed the prorated amount of compensation due hereunder in accord with the milestone and payments set

forth in Section C of Exhibit B, less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the full price under this Agreement. CONTRACTOR shall furnish to COUNTY documentation in accord with EXHIBIT B reflecting the actual costs of wind-down activities set forth in Exhibit A that could not be avoided or mitigated due to the early termination for convenience and will pay those costs in addition to the services performed and unpaid to date of termination.

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.

In the event that funds have been appropriated or budgeted, Contractor understands that monies paid to Contractor by County are derived from federal, state or local sources, including local taxes, and are subject to curtailment, reduction, or cancellation by government agencies or sources beyond the control of County. County shall have the right to terminate this agreement in the event that such curtailment, reduction, or cancellation occurs.

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 in accord with the milestone and payments set forth in Section C of Exhibit B, 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.

22. 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.

23. 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.

24. 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.

25. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement and each covenant and term is a condition herein.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. STATE ENERGY CONSERVATION PLAN

CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

36. PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING

A. CONTRACTOR, by signing this Agreement, hereby certifies to the best of his or her knowledge and belief that:

1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of CONTRACTOR to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONTRACTOR shall complete and submit California State Standard Form-LLL, "Disclosure Form to Report Lobbying," to the COUNTY and in accordance with the instructions found therein.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C. CONTRACTOR also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

37. SUBAWARD

The CONTRACTOR shall comply with the requirements of 2 CFR Part 300 and 400, which are hereby incorporated by reference in this award.

38. MANDATORY DISCLOSURE:

CONTRACTOR must disclose, in a timely manner, in writing to the COUNTY all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award. Contractor is required to report certain civil, criminal, or administrative proceedings to the System for Award Management (SAM) located at www.sam.gov. Failure to make required disclosures can result in any of the remedies described in 2 CFR §200.338 or 45 CFR 75.371. Remedies for noncompliance, including suspension or debarment. (See also 2 CFR parts 180, 376, and 417 and 31 U.S.C. 3321.)

39. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

CONTRACTOR shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). CONTRACTOR shall promptly disclose, in writing, to the COUNTY office, to the Federal Awarding Agency, and to the Regional Office of the Environmental Protection Agency (EPA), whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the CONTRACTOR has credible evidence that a principal, employee, agent, or subcontractor of the CONTRACTOR has committed a violation of the Clean Air Act (42 U.S.C. 7401-7671q.) or the Federal Water Pollution Control Act (33 U.S.C. 1251-1387).

40. DRUG-FREE WORKPLACE

CONTRACTOR must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 CFR part 421, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

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Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **NEC Corporation of America dba NEC(NEW) Corporation of America**.

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 Social Services

CONTRACTOR:

NEC Corporation of America dba
NEC(NEW) Corporation of America

By: _____
Daniel Nielson, Director

By: _____

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

APPROVED AS TO ACCOUNTING FORM:

Theodore A. Fallati, CPA
Auditor-Controller

By: _____
Deputy County Counsel

By: _____
Deputy

APPROVED AS TO FORM:

Risk Management

By: _____
Risk Management

EXHIBIT A
STATEMENT OF WORK
For
FUSION (TFB) INTERACTIVE VOICE RESPONSE SYSTEM

CONTRACTOR shall provide the following Maintenance Support Services ("SERVICES") as set forth in the services descriptions below. The pricing for SERVICES purchased by COUNTY is listed in EXHIBIT B.

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 five (5) days per request. COUNTY shall not be liable for suspension under this provision and suspension shall not constitute a breach of this Agreement.

1. Definitions

- 1.1. Principal Period of Maintenance ("PPM") - The days and hours of the days when service is delivered to COUNTY.
- 1.2. Service Level Agreement ("SLA") - The cumulative time (Response Time) in which CONTRACTOR will make commercially reasonable efforts to respond to COUNTY's reported maintenance incident.
- 1.3. Response Time - Response Time is measured according to the PPM. If PPM is less than 24 hours per day, 7 days a week, then Response Time is measured within that PPM. Response Time begins upon CONTRACTOR's receipt of maintenance service request from COUNTY, verification of problem found, and dispatch or initiation of remote labor required to affect repairs.
- 1.4. Major System Failure - A general inability of the FUSION (TFB) IVR System ("System") to receive or process calls of more than 25% in its configuration.
- 1.5. Time and Materials (T&M) Rates - T&M rates do not apply as FUSION (TFB) does not offer T&M rates on their IVR system.
- 1.6. Covered Components – Covered Components are the hardware and/or software identified in EXHIBIT B under Covered Systems.
- 1.7. Incident Management - The process of managing the lifecycle of unplanned interruption to service or service alarms detected through the process of remote monitoring of COVERED COMPONENTS.
- 1.8. Incident Prioritization – Service requests and service alarms will be prioritized in order to determine severity and response time. These incidents will be categorized in one of the four priorities below, based on the impact to the COUNTY.

Priority 1: System is down or there is a critical impact to the COUNTY's business operations.

Priority 2: Operation of System is severely degraded, or significant aspects of the COUNTY's business operation are being negatively impacted by unacceptable System performance.

Priority 3: Operational performance of the System is impaired while most business operations remain functional.

Priority 4: COUNTY requires information or assistance regarding NEC Product capabilities, or configuration capabilities. There is clearly little or no impact to the COUNTY business operation. MACD - (Moves Adds Changes Deletes) Changes that are requested by the COUNTY to modify the functionality of the Covered Component.

- 1.9. SNMP - Simple Network Management Protocol (SNMP) is an "Internet-standard protocol for managing devices on IP networks". Devices that typically support SNMP include PBX's, routers, switches, servers,

NEC – Annual Maintenance for IVR System

workstations, printers, modem racks, and more. It is used mostly in network management systems to monitor network-attached devices for conditions that warrant administrative attention.

2. Performance of Services

CONTRACTOR shall provide the SERVICES selected in EXHIBIT A, "Maintenance Support Services SOW" (SOW), for the applicable hardware and software components ("COVERED COMPONENTS") identified in the Covered Components List in EXHIBIT B. CONTRACTOR reserves the right to change the SERVICES from time to time provided the CONTRACTOR is able to provide an adequately substitute service, and CUSTOMER will be notified of any material changes or updates to the SERVICES which may affect CUSTOMER. Changes to the SERVICES shall not result in a price increase other than provided for under EXHIBIT B. CONTRACTOR may use a subcontractor to provide the SERVICES, including, without limitation, any NEC parent company, subsidiary, or affiliate. References hereafter to EXHIBIT A shall mean the Maintenance Services SOW.

3. Services Descriptions:

Certified Parts Replacement:

Certified Parts Replacement provides extended parts coverage for faulty or defective parts. If any covered part listed in EXHIBIT B- Covered Components List and Pricing is found to be defective under normal usage, COUNTY will be entitled to a full replacement of the covered part. CONTRACTOR shall, during the contract period, furnish all parts necessary to maintain the System in good working order. Any replacement parts may be either new or refurbished but equivalent to new in operation. Parts will be furnished on an exchange basis, and any parts replaced under Certified Parts Replacement shall become the property of CONTRACTOR.

Certified Parts Replacement includes CONTRACTOR's Advance Replacement Program. CONTRACTOR will use commercially reasonable efforts to provide Advance Replacement service for COVERED COMPONENT as follows:

- 1) An Advance Replacement will ship the same day to arrive the next business day, provided both the COUNTY call to CONTRACTOR for notification and CONTRACTOR's diagnosis and determination of the failed COVERED COMPONENT has been made before 3:00 p.m., local time, Monday through Friday (excluding CONTRACTOR-observed holidays). For requests after 3:00 p.m., local time, the Advance Replacement will ship the next business day. Next day delivery is subject to parts availability.
- 2) Advance Replacements will be shipped using CONTRACTOR's preferred carrier, freight prepaid by CONTRACTOR.
- 3) COUNTY shall return the failed COVERED COMPONENT to CONTRACTOR. If COUNTY fails to return the failed COVERED COMPONENT to CONTRACTOR within thirty (30) days, COUNTY will be billed for the replacement cost of the COVERED COMPONENT. Upon receipt of the bill, COUNTY may either pay the replacement cost of the COVERED COMPONENT, plus any shipping charges, or return the failed COVERED COMPONENT within ten (10) days of receipt of the bill.

Software Assurance:

Software Assurance is CONTRACTOR's software subscription and support program that provides access to future software versions and scheduled upgrades. Both software upgrades and limited support are included.

With Software Assurance, COUNTY is entitled to bug fixes, service packs, and new major and minor version upgrades for COVERED COMPONENTS at no additional cost. CONTRACTOR will provide notice of such bug fixes, service packs, and upgrades as they become available. Under Software Assurance, COUNTY will be provided with access to CONTRACTOR technical experts through CONTRACTOR's Technical Support Center who can help ensure COUNTY's current software for COVERED COMPONENTS includes all the latest features and bug fixes. COUNTY will also be granted access to the Software Assurance collaboration site and technical knowledgebase.

NEC – Annual Maintenance for IVR System

CONTRACTOR will make all software upgrades available, including any necessary licensing, from CONTRACTOR's licensing server. CONTRACTOR's onsite support team will be responsible for obtaining these upgrades, software patches, and bug fixes for COUNTY as they become available. COUNTY is responsible for coordinating software upgrades from CONTRACTOR as new software becomes available and is also responsible for any costs associated with installing patches, service packs, and/or new major and minor version upgrades. Software Assurance does not provide coverage for labor or materials not already provided under Software Assurance.

***Certified On-Premise Services**

- Does not apply to the System. The System is supported remotely. If CONTRACTOR needs to provide on-site support for this system, the COUNTY shall be charged for hours required on-site at CONTRACTOR hourly rates outlined in EXHIBIT B. CONTRACTOR shall obtain the COUNTY's written approval prior to providing on-site support.

4. Maintenance Support Services Service Levels

CONTRACTOR shall provide only the SERVICES as specified in this SOW. Performance metrics associated with the SERVICES are specified below. The SERVICES and Service Levels described in this SOW are applicable only to the applications and components listed in EXHIBIT B – Covered Components List.

Standard Service Level:

PPM is 8x5 (Monday through Friday, excluding holidays observed by CONTRACTOR, from 8 AM to 5 PM COUNTY local time zone). SLA is next business day following the request for routine maintenance service. However, CONTRACTOR will exercise all commercially reasonable efforts to respond to incidents of Major System Failure within four (4) hours, as requested.

Premium Service Level:

PPM is 24x7 and SLA is four (4) hour response time to maintenance incidents of Major System Failure, and next business day response time to routine incidents as required.

5. Non-Covered Services

CONTRACTOR will respond promptly as possible to all requests for SERVICE. If SERVICE is required outside CONTRACTOR's normal service hours (M-F, 8 am x 5 pm), labor for such non-covered service calls will be chargeable to COUNTY in accordance with CONTRACTOR's hourly labor rates listed in EXHIBIT B. Onsite hours require a four (4) hour minimum charge after normal business per request, plus travel charges. Any SERVICE specifically requested by COUNTY outside standard PPM is billable at the after-hours or Holiday time and materials rates listed in EXHIBIT B, respectively, according to holidays observed by CONTRACTOR, and on-site hours require a four (4)-hour minimum per request, plus travel charges. NEC Technician after-hours service calls are billed at the Overtime rate, and services calls on CONTRACTOR-observed holidays are billed at the Double Time rate, as listed in the EXHIBIT B. Fusion TFB Service calls are billed according to quote provided as listed in the EXHIBIT B. CONTRACTOR shall be the primary responsible party for troubleshooting Systems covered under this Agreement and listed in EXHIBIT B for maintenance and repair. CONTRACTOR shall coordinate local area network issues with the COUNTY Information and Communication Technology (ICT) and the carriers for the proper resolution and operation of the System. To the extent that non-covered SERVICES are required, CONTRACTOR shall first obtain the COUNTY's written approval before commencing the non-covered SERVICES.

6. Rework

For any rework or additional work that CONTRACTOR is required to perform because of inaccurate information provided by COUNTY and/or COUNTY's failure to perform its responsibilities under this SOW, CONTRACTOR will provide a cost estimate to the COUNTY before commencing rework or additional work under this section.

NEC – Annual Maintenance for IVR System

CONTRACTOR must receive written approval from COUNTY before commencing rework or additional work under this section. CONTRACTOR shall invoice COUNTY on a time and materials basis after completion.

7. EXCLUSIONS

7.1 This SOW will not cover repair work in replacement of battery backup or expendable items such as headsets, video conferencing equipment, paper, diskettes, and printer ribbons. This SOW also will not cover service required when due to: (I) COUNTY's unauthorized maintenance or repair of the Covered Component equipment, (ii) COUNTY's unauthorized add, move, or changes to the Covered Component equipment, (iii) COUNTY's gross negligence, (iv) COUNTY's abuse, (v) connection to inappropriate power supplies, (vi) fire, flood, wind, lightning, or other similar acts of God, (vii) failure of COUNTY to maintain proper environmental conditions for the System (viii) improper wiring, installation, repair, or alteration of the Covered Component equipment by anyone other than CONTRACTOR or its agents, (ix) software changes or attempted software changes in the System by persons not authorized by CONTRACTOR but not including upgrades, fixes, etc. provided under Software Assurance, or (x) data base reprogramming required because of COUNTY error of any kind. If requested by COUNTY, repairs necessitated by any of the above excluded causes shall be performed by CONTRACTOR at CONTRACTOR's local rates for such services and/or materials as listed in EXHIBIT B.

7.2 The COUNTY is responsible for maintaining suitable environmental conditions for the System. Suitable conditions shall include: the provision of proper electrical power, air conditioning, and humidity control; and other environmental requirements for the configured system in accordance with the manufacturer specifications for the applicable System. The presence of asbestos, other hazardous materials or unsafe conditions ("Hazards") on the Premises shall be deemed an unsuitable environment for the System and CONTRACTOR shall be entitled to cease performance under this SOW until such Hazards have been cured to CONTRACTOR's reasonable satisfaction.

8. ACCESS

COUNTY agrees to provide reasonable accessibility to the Premises as required for CONTRACTOR personnel to perform SERVICES, and will make available to CONTRACTOR a reasonable amount of secure space for storage of such maintenance parts as CONTRACTOR deems reasonably necessary to affect repairs in accordance with this SOW.

9. Restrictions on Use of Services

COUNTY agrees not to (i) rent, lease, or loan the SERVICES or any part thereof, or provide or use the SERVICES on a third party's behalf; (ii) permit third parties use of the SERVICES; (iii) reverse engineer, decompile, or disassemble any software that provides the SERVICES, or otherwise attempt to derive the source code of such software; or (iv) download, export, or re-export any software or technical data received hereunder other than software or technical data to operate or update the System, regardless of the manner in which received, without all required United States and foreign government licenses.

10. COUNTY Cooperation

COUNTY agrees to provide all information, access, and full good faith cooperation reasonably necessary for CONTRACTOR to deliver and provide the SERVICES and agrees that CONTRACTOR's delivery of the SERVICES depends upon COUNTY's timely cooperation and assistance as CONTRACTOR may require. CONTRACTOR shall bear no liability or otherwise be responsible for delays or failure in the provision of the SERVICES caused by COUNTY's failure to provide such information, cooperation, assistance or access.

11. COUNTY acknowledges and agrees that:

11.1 Criminals, terrorists, or others may commit or attempt to commit unlawful, disruptive, violent, terrorist and/or warlike acts at times and places, and in manners, that cannot be predicted or prevented;

11.2 Information technology developments, configuration or implementation changes, software modifications (including routine maintenance, patches, enhancements and upgrades), human factors and other circumstances can create new, unknown and unpredictable security exposures;

11.3 Information technology "hackers" and other third parties continue to develop and employ increasingly sophisticated and powerful techniques and tools, which result in ever-growing security risks and potential for causing damage to persons and property;

11.4 CONTRACTOR does not make any representation or warranty (a) that COUNTY's or any third party's information technology, software, information, equipment, facilities, or personnel are or will be, (i) secure or safe from harm or (ii) secure or safe from intrusion, disruption, interception, viruses, or their security exposures, or damage to persons or property caused by the preceding, or (b) that CONTRACTOR will provide ongoing warnings regarding such exposures;

11.5 COUNTY is solely responsible for complying with the legal obligations of all local country data protection legislation, in particular with the legality of transmission of data to CONTRACTOR or its subcontractor and the legal requirements for processing of data.

12. COUNTY Responsibilities

12.1 COUNTY is responsible for the physical security of the COVERED COMPONENTS.

12.2 COUNTY is responsible for ensuring proper environmental conditions for COVERED COMPONENTS as required by the manufacturer.

12.3 If COUNTY needs to send equipment to CONTRACTOR, COUNTY agrees to ship such equipment via prepaid freight. No Charge on Delivery (COD) of returned equipment will be accepted.

12.4 COUNTY agrees to provide Secure Sockets Layer, Virtual Private Network and/or Internet Protocol connectivity between CONTRACTOR and COUNTY site/COVERED COMPONENTS for SERVICES.

12.5 COUNTY is responsible for provisioning, maintaining and any cost related to the private connections required for service delivery (For example: Private TI, Multiprotocol Label Switching (MPLS), and Frame Relay).

12.6 COUNTY is responsible for allowing reasonable access to all COVERED COMPONENTS as required by CONTRACTOR and its subcontractor. Any access-control servers required to provision access will be provided by COUNTY.

12.7 COUNTY is responsible for the management, support and maintenance of any non-covered component.

12.8 COUNTY is responsible for providing and maintaining an escalation path among COUNTY personnel.

12.9 COUNTY is responsible for end-user training unless otherwise agreed to in writing.

12.10 COUNTY shall provide or make available to CONTRACTOR, in advance and in writing, any COUNTY processes or policies with which CONTRACTOR and its subcontractor are expected to comply in connection with this SOW.

EXHIBIT B

PAYMENT ARRANGEMENTS
Periodic Compensation

- A. For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, not to exceed \$ **50,010, to be paid in quarterly payments in the amount of \$12,502.50**, for the items in the Covered Components List.

Department of Social Services (SITE C242025841) FUSION (TFB) IVR System
COVERED COMPONENTS LIST:

Description	UOM	QTY
CTI SERVER SYSTEM - 144 SIP PORTS	EA	2
MEDIA SERVER SYSTEM	EA	1
TOTAL ANNUAL AMOUNT:		\$50,010.00

If new or additional equipment is added to the Covered Components List subsequent to the date of the initial term of this **EXHIBIT B**, a new service fee will be calculated, to reflect the increased scope of service. New or additional equipment shall be subject to written approval by the COUNTY.

Pricing contained in this **EXHIBIT B** is applicable for the 2018-2019 service term. To the extent the COUNTY elects to exercise its option for an additional year of service, not-to-exceed pricing for the additional terms shall be adjusted accordingly:

1. **EXHIBIT B** pricing under the Covered Components List shall be adjusted based on the adjusted change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI), U.S. City Average all items, 1984 = 100, as published by the U.S. Bureau of Labor Statistics for the previous calendar year. However, in no case shall an annual upward adjustment exceed 3 percent regardless of the amount of change in the CPI for years 2 - 5. For example, if the CPI factor is 3 percent, the cost schedule for the following years is:

Year	Coverage Dates	Amount
Y1	7/1/2018-6/30/2019	\$50,010.00
Y2	7/1/2019-6/30/2020	\$51,510.30
Y3	7/1/2020-6/30/2021	\$53,055.61
Y4	7/1/2021-6/30/2022	\$54,647.28
Y5	7/1/2022-6/30/2023	\$56,286.70

2. Price adjustments are determined by calculating the CPI factor in effect on March 1st, immediately prior to the adjustment date. To calculate the new price the CPI factor shall be multiplied by prior term price. If the CPI factor is greater than 1.03, then the CPI factor 1.03 shall be used in the calculations.
3. To the extent the COUNTY does not expend the entire contract amount for the term, the remaining balance shall not be added to the total contract amount for the renewal term.

- 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. Labor rates for non-covered service calls shall be:

Non Covered Services Rates	Regular Time	Over Time	Double Time
NEC Technician	\$125.00	\$187.50	\$250.00
FUSION Rates	Changes to the Covered Components List are on a per quote basis		

- D. Quarterly, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned Board Contract Number. COUNTY REPRESENTATIVE shall evaluate the quality of the service performed 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.
- E. 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.
- F. CONTRACTOR shall submit invoices with sufficient documentation to demonstrate direct labor and non labor costs for which CONTRACTOR is requesting reimbursement and that those costs are compliant with the federal and state regulations applicable to the expenditure of funds for which CONTRACTOR claims reimbursement of incurred costs.

EXHIBIT C

Indemnification and Insurance Requirements (For Professional Contracts)

INDEMNIFICATION

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all 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. 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, his 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.

If the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained

by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

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** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
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. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the CONTRACTOR to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **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".
7. **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.

8. **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.
9. **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.
10. **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 five (5) years 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.
11. **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.